



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Consideration of Budget Estimates

TUESDAY, 29 MAY 2001

CANBERRA

BY AUTHORITY OF THE SENATE

SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Tuesday, 29 May 2001

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

Senators in attendance: Senators Carr, Coonan, Cooney, Crossin, Ludwig, McKiernan and Payne

Committee met at 9.04 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

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 Planning and Relationships
Mr Wayne Lodge

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
Ms Joan Sheedy, Assistant Secretary Information and Security Law Division
Dr Dianne Heriot, Assistant Secretary Law Enforcement Coordination 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 Paul Griffiths, A/g 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—Today we resume this public hearing of the Senate Legal and Constitutional Legislation Committee with examination of the proposed expenditure for the Attorney-General's portfolio. The committee is required to report to the Senate by Wednesday, 20 June 2001. The committee will consider the portfolio in the order on the agenda following on from yesterday. We will resume this morning with examination of estimates for the Family Court of Australia and then move back into the programs from the point at which we ceased last night. I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs, the Minister representing the Attorney-General, officers of the Attorney-General's Department and associated agencies. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy. Minister or Mr Cornall, do you wish to make any opening statements this morning?

Senator Ellison—No, thank you, Madam Chair.

Mr Cornall—No, thank you.

CHAIR—I invite the officers from the Family Court to come to the table.

Senator LUDWIG—Madam Chair, I want to be sure there was no confusion yesterday. We still have not finished with output 1.1 and there will be questions generally on the financial statements, native title, human rights, classification, intellectual property, the Administrative Review Tribunal, the Law by Telecommunication initiative, the Expensive Commonwealth Criminal Cases Fund, the Family Law Pathways Advisory Group, community legal centres, civil marriage celebrants; and the department's sexual harassment policy has been flagged, I think, by Senator Cooney.

CHAIR—I was in absolutely no doubt that we were going back to 1.1. I aim to proceed in as logical a fashion as possible through the outputs so we can ensure there is some order to the process and we assist the department in making sure officers are here.

[9.06 a.m.]

Family Court of Australia

Senator LUDWIG—Regarding the Federal Magistrates Service, can you detail the amount, if any, for services provided by the Family Court in 2000-01, up to 30 June 2000? If there are any figures that you might have projected after that, they would be appreciated. What we are looking for, if you have costed it, is the service that the Family Court has provided to the Federal Magistrates Service in the transfer of other funds, service or in-kind work.

Mr Foster—In terms of workload shifts in the broad sense, in relation to divorce, for the period 1 July 2000 to 31 March 2001 there has been a total of 36,006 divorce applications filed, of which 52.3 per cent were filed in the Federal Magistrates Service. In terms of final orders, form 7s, for the same period there were 17,463 applications filed, of which 15.6 per cent were for the Federal Magistrates Service. In relation to interim orders, form 8s, a total of 17,259 matters were filed, of which 14.4 per cent were FMS. In terms of other applications of a general nature, there were 4,621 filed, 16 per cent of which were for the FMS. So in summary, in terms of workload shifts, for divorces it is running at about 50 per cent plus and in the other general areas of the court it is around 15 per cent on average. Those figures are as

at 31 March. I can give you the numbers if you want them, Senator, as well as the percentages.

Senator LUDWIG—You might want to do that now, or provide it on notice. What we are also particularly looking at are the services that the Family Court may have transferred to the FMS in a more direct sense—not only workload. There may not be any. Has the FMS accessed your facilities, and will you then come up with a charge? We have heard from another agency that what they would be doing is getting out the calculator and working out a cost. They do not have that cost at the moment, they said, but they are certainly working on it. That is the same sort of question I am putting to you.

Mr Foster—There has been a transfer of funds from the Family Court of Australia to the Federal Magistrates Service this financial year of \$3.1 million, from memory. That transfer of funds was really a best guess about how much work would actually transfer to the Federal Magistrates Service, and there are some subsequent transfers of funding next financial year and the year after.

Senator LUDWIG—What are they? Are they detailed in the Portfolio Budget Statements?

Mr Foster—In the financial year ending 2001, it is \$0.72 million.

Mr Phelan—This year there was a return from the Federal Magistrates Service of about \$0.72 million for services that we would continue to provide out of the \$3.1 million that we have previously transferred across. In the 2001-02 year an additional \$0.7 million was transferred to the Federal Magistrates Service, but they have agreed not to accept that funding and to leave it with us so that we can continue to provide certain services, particularly in relation to interim work during that period of time. An additional amount of \$0.5 million, cumulative, was to be transferred in the 2002-03 year budget, but again, as with next year, the Federal Magistrates Service and the Family Court of Australia have agreed that that extra funding will also remain with the Family Court to allow us to deal with some interim or minor workloads that we have traditionally been doing.

Senator LUDWIG—How have you come to that agreement? Is that an agreement between agencies?

Mr Phelan—Yes, it is.

Senator LUDWIG—Is it reflected in a document anywhere?

Mr Foster—It is reflected in a letter from the Chief Executive Officer of the Federal Magistrates Service to us, but it was as a result of discussions with us which were then confirmed by letter.

Senator LUDWIG—Is that available to the committee? Perhaps you could have a look and, if it is, make it available.

Mr Foster—Yes. In relation to the future, there is a clause in the memorandum of understanding which refers to financial arrangements.

Senator LUDWIG—It is in 1.2? That is what the Federal Magistrates Service told us yesterday.

Mr Foster—It is in 2.14.

Senator LUDWIG—There is a different provision now?

Mr Phelan—You might have been referring to a Federal Court matter, Senator, I am not sure.

Mr Foster—It might be, but in relation to the memorandum of understanding between us and the Federal Magistrates Service it is 2.14.

Senator LUDWIG—What is the import of that provision?

Mr Foster—That is where the parties agree that any further transfer of funds from the Family Court of Australia to the Federal Magistrates Service may occur if, and only if, there is a transfer of workload between the courts and that transfer would reasonably be considered to have been covered by the funds transferred under the government decisions which we have already referred to. The amount of any such further transfer is something we would negotiate between the two courts.

Senator LUDWIG—What if there is a dispute over that? How is that resolved? One would hope that you would not have to revert to ADR. Does the memorandum of understanding have a facility for resolving that?

Mr Foster—In chapter 6 there is a section that deals with dispute mechanisms. But we are not anticipating that such an issue would arise. The relationship between the two courts is very good at all levels.

Senator LUDWIG—I wonder whether you could go a bit further in relation to those figures. You may wish to take this on notice, but could you provide a breakdown of the costs of each type of service? I am trying to establish the service that was transferred and whether you have earmarked a cost to that.

Mr Phelan—It is work in progress. The MOU envisages the court and the Federal Magistrates Service working together during this calendar year to come up with a cost basis for the services that are provided inter se. We just cannot tell you at this stage, Senator. I can tell you what the \$3.1 million refers to. It refers essentially to funding for 13 Senior Executive Service band 2 registrars, each of them having a support officer, and funding for 6½ court officers plus an administrative overhead of about 28 per cent on top of the salary component. That comes out at about \$237,000 per unit, SES band 2. Beyond that, it is too early to say. Obviously, we know what our salary levels are, et cetera, but not the percentages of work that each of our officers are doing. There are certain components that we can probably progress sooner than others, such as the rentals that we transfer across to the Federal Magistrates Service, so they can pay their share of the rent for the Commonwealth and other buildings that we occupy jointly.

Senator LUDWIG—Could you provide current figures for the completion times for children's and standard track property matters in each registry?

Mr Phelan—The terms 'standard' and 'complex' are disappearing from our case management guidelines because they were fairly meaningless.

Senator LUDWIG—I could not agree with you more.

Mr Phelan—It was one of these internally generated things. What we now have is reflected in our Portfolio Budget Statements at pages 122 and 123. This is the first manifestation of our strategic attempt to redefine the performance and standards against which we should be assessed.

Senator LUDWIG—What do you now call them? How will you then assess your performance standard?

Mr Phelan—In consultation with the department and others, we have recognised that we have two broad outputs: one is resolution, where we apply mediation services to help the

parties resolve their disputes, and the other is determination, which is the judicial and quasi-judicial decision making within the court. Within those, you can see the performance measures on the right hand side of the table on page 122. We have moved to percentiles as a better way of reflecting measures. We have some sub-outputs in that. On the right hand side you can see the price, quality and quantity measures for each of the outputs that we have described on the left hand side. We have focused on timeliness. We have different targets there which we believe are more meaningful.

Senator LUDWIG—If we take output group 1.1, Resolution, and then look at ‘Price’, ‘Quality’ and ‘Quantity’, do you graph that anywhere within your agency? Take ‘Quality’. Midway down it says:

Timeliness of Court events—target 90% of the matters resolved through mediated agreement are resolved within 6 months of filing.

It is a statement of fact: 90 per cent of the targets are filed within six months. I have no way of knowing what happens between zero and six months—whether they cascade at the end or whether you are resolving them within the first month. Is there something to show that they are all not ending at the six months?

Mr Phelan—Our systems are currently being automated in relation to the mediation performance measures around timeliness. When they are fully automated, which should commence around the end of this calendar year, we should be able to do that in finer detail. We can do other matters to do with determination now because those systems are automated. We do that to identify where matters are settled, particularly as part of the litigation pathway. We can provide that for each registry and for the court as a whole to quite a considerable amount of detail.

Senator LUDWIG—I do not need you to go to extraordinary lengths. Perhaps you could give us a snapshot of a medium view of those outputs in terms of price, quality and quantity in that area. If we need more we can come back to you at the next round. Looking at that timeliness again, what figures would demonstrate when the 10 per cent is finalised? If you say that 90 per cent are finalised within six months, how long does it take for the tail to be resolved? Can you obtain figures for me that reflect that?

Mr Phelan—In mediation?

Senator LUDWIG—I am just using that as an example. I was hoping we could go through all of these. We can do it one by one or we can follow the flow and understand where I am coming from.

Mr Phelan—For the first one, ‘Mediated Agreements’, the quality measure is:

Timeliness of Court events—target 90% of the matters resolved through mediated agreement are resolved within 6 months of filing.

We do not have the longitudinal information to track each individual case that would provide that level of precision. That will come later in the year. We can sample to find that sort of information. The choice of 90 per cent is a fairly tough measure but reflects the fact that there is always going to be a percentage of people who, for whatever reason, are not going to want their cases resolved within that period of time, or at all, and therefore we have chosen 10 per cent for that residual figure.

In relation to the other matters, when we get down to tracking particularly the interim and the final orders, which are getting to the upper end of our litigation food chain, we do in fact

track all of those cases and we can be sure where the full 100 per cent come out. In relation to interim, we have set ourselves the target of 90 per cent, which is a fairly tough target. In relation to final orders, we have set 75 per cent, which reflects the argy-bargy of the more complex litigation matters that we handle—25 per cent are not going to be sorted out within that fairly tough six-month time period. But we do track those. When we introduce our new case management system called Casetrack, which is a true database, it will allow longitudinal tracking of each and every case and therefore we will be able to sum to decimal point precision the times that we will be measuring these against.

Senator LUDWIG—When is that likely to be up and running?

Mr Phelan—We anticipate the roll-out commencing early in 2002. I cannot be sure just when the final data will be sufficient—presumably from the start of the following financial year.

Senator LUDWIG—Just to recap, we no longer use the terms ‘standard track children’ and ‘standard track property’, but if I wanted to track children’s matters or property matters where would I look? Are they divided up between all of those areas?

Mr Phelan—For most purposes we do not regard the children and property matters as being a meaningful separation, but we can track those. At this high level, in terms of performance, we do not intend to separate between them, but we can separate in more detail if you wish.

Senator LUDWIG—So have those terms gone away? You started by saying that those terms are not used.

Mr Phelan—The case management guidelines will be changed very shortly by practice direction by the Chief Justice to in fact reflect the realities now appearing in our Portfolio Budget Statements of the way in which our performance is measured.

Senator LUDWIG—But you still standard track children or standard track property—

Mr Phelan—No. We might have some legacy statistics on that for the rest of this financial year but, in tracking statistics on that, it is switched off from the next financial year.

Senator LUDWIG—Perhaps you could dig out what you have got left and we will call it quits at that point and not ask it next time around.

Mr Phelan—We could do that, but it would be terribly inaccurate. It is measured in terms of averages, and we have had problems in the past about what is the start and what is the finish and what is a complex matter anyway. There is an expression: ‘nonsense on stilts’.

Senator LUDWIG—I will take your advice and not seek it at this time. I might come back to you and ask it in future or before we finish today, if there is a view that we should. What I wanted to get to was this: if these are the new figures, you are saying to me that you cannot track them as well as you—

Mr Phelan—No, we have that information for this financial year right now and, if you wish, we can go through that in some detail on each of the performance measures.

Senator LUDWIG—If it is easier to make that available.

Mr Phelan—I can hand it up, Senator. I have a clean copy.

Senator LUDWIG—That might be the easiest way of doing it, Chair. And then there is a more general question. Where the targets end at 75 per cent in output 1.1.1, Mediated

Agreements, and where they end at 90 per cent and so on, are there figures that will show me how long the tail takes to complete?

Mr Phelan—Not yet on mediation. We could probably do a sample.

Senator LUDWIG—Perhaps you could do what you can on all of those. I am trying to get a snapshot.

Mr Phelan—It would be a matter of weeks, rather than years or months, in those cases.

Senator LUDWIG—But I have no way of knowing. That is my problem.

Mr Phelan—We will take that on notice.

Senator LUDWIG—The old system did give me a snapshot, if a poor one, of when it was likely to complete, whereas these might be the intractable ones that never finalise. I am sure you would not have them still on your books. In terms of the impact of the budget, can you update the questions on notice Nos 1, 4, 5, 6, 7, 8 and 9 with the appropriate figures as at 1 June 2000? We are looking for the answers to questions on notice that were delivered last time.

Mr Foster—Which set are you referring to, Senator?

Mr Phelan—Are these the questions on the number of registrars, et cetera? We can do that, Senator.

CHAIR—So you want those updated, do you?

Senator LUDWIG—Yes, please. Senator Mason is not here, but what caught my eye was the number of questions he asked and the detail that was put forward on questions Nos 13, 14, 15, 16, 17, 18, 20 and 21. I am not asking for an update of those, so you can breathe easy in respect of that. I was curious about the detail in the questions: it is very high and I hate to admit it, but it is much higher than I might turn my mind to. I was trying to ascertain where those questions might have originated. Are they prepared by staff in your department or are they prepared by staff in the office of the Attorney-General?

Mr Foster—The first we heard of the questions was when we received them as questions on notice.

Senator LUDWIG—Perhaps I will recap. In the questions referred by Senator Mason in relation to the Family Court—Nos 13, 14, 15, 17, 18 and 19—the level of detail is quite extraordinary, and I was hoping I could have Senator Mason's resources to be able to prepare for those, and I want to know if anyone in your department has been involved in preparing questions on notice for the Family Court that you are aware of?

Mr Cornall—No, we have not.

Senator LUDWIG—Thank you. I have no further questions on the Family Court.

CHAIR—Senator Cooney, do you have questions in relation to the Family Court?

Senator COONEY—No.

CHAIR—I will note that Senator Mason has further questions to place on notice, which he will do. He is currently in the chair of the Finance and Public Administration Legislation Committee. It is difficult for him to be in two places at the same time, so he must place those on notice.

Senator Ellison—I might add, Madam Chair, just while we are on that, that there is nothing untoward in those questions—

CHAIR—No.

Senator Ellison—if there is any suggestion. We often get detailed questions on notice. That is nothing new in estimates.

CHAIR—And I understand there are issues that Senator Mason is following up with further questions for these estimates.

Senator McKIERNAN—Nonetheless, it is a bit irregular. It has been consistent over quite a period of time. We do know from time to time that, where individual senators have an interest in a matter, they do attempt to attend and address the questions directly to the witnesses, which then enables other senators to get a hold on it. With Senator Mason the pattern has been of questions on notice and then waiting through a period of time to get the answers and then to follow up. It locks the rest of us out of the process, and I am not sure if this necessarily is a good practice. I do understand—I have done it myself in putting questions on notice—but I am not so sure that this practice of an absent senator continuing to put questions, particularly on this same issue, and not being present to follow them up is good practice for a Senate estimates committee. But I do not want to press that any further at this stage.

CHAIR—Senator McKiernan, I note that view, and I think that this committee makes an effort to afford every opportunity to opposition senators to pursue any issues or ask any questions which fall within the purview of the matters under consideration, and I do not propose to alter that approach. If there are issues which are raised within the questions that Senator Mason has put down previously, or puts down on this occasion, then of course they can be pursued by other senators. I would say that we are all acutely aware of the commitment that participating in the estimates process requires from all senators, but most particularly chairs. Senator Mason takes those responsibilities seriously and is not in a position—as I am not in a position—to leave his committee and wander off to another committee just when the mood takes him. So I think it is an allowable and appropriate process, absolutely within the standing orders. If other senators wish to take up the issues also, they are more than welcome to do so.

Senator McKIERNAN—I did not question the standing orders. I am just talking about the practice of it, because I have not got the details of the questions and I am not in a position to follow through on any particular point that may be raised in them. The first opportunity I will get to do that will be in November of this year, which is quite some period of time away, as indeed the first opportunity I had to do it from the last round of questions would have been these hearings today. I am just talking about the practice rather than the standing orders.

CHAIR—I am sure he will note it himself, but I will alert Senator Mason to your comments, and perhaps he can assist in providing some more information. Mr Foster, Mr Phelan and Ms Cooke, thank you very much.

[9.33 a.m.]

Attorney-General's Department

CHAIR—We will return now to consideration of the Attorney-General's Department, as we were last evening, and, as I noted in response to Senator Ludwig's question this morning, go back into 1.1.

Mr Cornall—Madam Chair, just before we begin, one issue raised yesterday was the membership of the pro bono task force. I have a list of 16 members of the pro bono task force. The one member who is not listed there is Janet Power, who was an officer of the department. She makes the number up to 17.

CHAIR—Thank you, Mr Cornall. I will ask the secretariat to take that.

Senator McKIERNAN—We were somewhat confused last evening as we were closing as to whether or not we had concluded on 1.1.

CHAIR—We have determined that we had not, and read into the record a list of issues that you will be pursuing this morning.

Senator McKIERNAN—Okay. I might start with some questions dealing with the departmental appropriations which seem to span the range of outputs. I am looking for further information and further clarity on what is contained in the PBS. On page 31, at output 1.2, there was a figure of \$4.7 million this year to \$5.2 million next year. Can you explain the reasons for that, Mr Hine? It is quite a large percentile chunk.

Mr Hine—The basic reason for that is that funding that will be paid to the Australian Government Solicitor under the memorandum of understanding between the two agencies is now reflected in that output 1.2. That amount is some \$421,000 additional.

Senator McKIERNAN—Why could it not be written up as funding for support of the AGS rather than the way it is written now?

Mr Hine—It is services we require from the AGS to assist with the discharge of the support for the Attorney-General as the first law officer. It is not funding for the AGS. You may recall that certain levels of work in national security and the constitutional area are tied to the AGS but there is a service provider arrangement between the department and the AGS for the provision of that advice.

Senator McKIERNAN—Right. In 1.4 there is a reduction from \$5.1 million to \$4.2 million.

Mr Hine—In 2000-01 we incurred additional expenditure associated with assisting in replies to a number of United Nations inquiries. There was a substantial amount of overseas travel associated with the discharge of the functions there. They are the major elements for the reduction in that particular output.

Senator McKIERNAN—There is an expectation from that that there will be less complaints and less need to defend?

Mr Hine—At this stage there is. This is an estimate for next year. If that does not transpire then obviously there will be a movement of money between other outputs as we reorder priorities. Similarly, last year's expenditure I think was an increase on what had been the previous estimate, because the situation is very fluid, as you would appreciate.

Senator McKIERNAN—There is renegotiation going on about Australia's commitment to a variety of international treaties. I understand a number of activities are going to be organised in concert with that, including some seminars to be held in Australia and a commitment by I think our foreign minister, together with the Attorney and the minister for immigration, to advance the cause of human rights in the region. Wouldn't that bring with it additional expenditure? If so, are they budgeted within this particular area of the portfolio?

Mr Hine—I do not have the specific details of that information but, depending on when the decision was taken with respect to the time of the preparation of these figures, if it has been taken in recent times, yes, we may need to make an adjustment to those figures to reflect that. That would be done at additional estimates time when we have got more accurate information.

Senator McKIERNAN—I do not have the various media releases available in regard to what I have just said about the activity of the three ministers. It may have happened since February, which would be the time when you were starting to put these figures down.

Mr Hine—Yes.

Senator McKIERNAN—In output 1.6, which includes public affairs and media, there is a decrease from \$4.8 million to \$4.5 million. What is the reason for that decrease? It seems to me that in every other portfolio there is an increase in expenditure in this particular area.

Mr Hine—That relates to services that the department was providing to the Insolvency and Trustee Service of Australia and to the Australian Protective Service. Both those organisations have become financially independent in terms of setting out their own corporate support.

Senator McKIERNAN—Does that figure include the funding for the media unit which is within the Attorney-General's Department?

Mr Hine—Yes, it does include funding for the public affairs area.

Senator McKIERNAN—I guess the public affairs area is the proper title for the unit.

Mr Hine—That is our title; we call it the public affairs section.

Senator McKIERNAN—How many personnel are attached to that unit?

Mr Cornall—It is of the order of five people, but we could be precise about that and give you the figure later this morning.

Senator McKIERNAN—Could you tell us if there has been an increase or a decrease in the resourcing of the unit over, say, the last 12 to 18 months?

Mr Cornall—In terms of finances or people?

Senator McKIERNAN—Both. I would imagine that, if you put extra people in, you would need extra resources as well.

Mr Cornall—Last year we acquired a new speechwriter, so that would have been an additional person. We are looking at restructuring that division with a view to its performing more effectively in the future—that is, proposing to increase it by one staff member—but we will give you those details a little later today so that we are completely accurate. If we do put the division up by a staff member, that will obviously carry with it an additional cost.

Senator McKIERNAN—Has the department used any additional external consultants for the purposes of public affairs or media support in the last 12 to 18 months or two years?

Mr Cornall—Nothing of any great significance that I can recall. We may well have used people to assist in preparation of publications or editing documents and that sort of thing, but nothing of any great significance that I am aware of. Again, we will check with our public affairs people and confirm that.

Senator McKIERNAN—Would that public affairs unit do the media monitoring for the department and the Attorney?

Mr Cornall—Yes, they do.

Senator McKIERNAN—Is there an interchange of personnel between the unit and the Attorney's office here in Parliament House?

Mr Cornall—An interchange in what sense?

Senator McKIERNAN—In the sense that the Attorney needs somebody to write an additional speech or an additional press statement so he calls the unit and they come up and do it.

Mr Cornall—We do write speeches for the Attorney-General. We also write speeches for the minister.

Senator McKIERNAN—For both?

Mr Cornall—Yes.

Senator Ellison—I do not write them myself, but I know the word 'press secretary' does all that.

Senator COONEY—You have written a speech in your time.

Senator McKIERNAN—So the public affairs unit services both ministers?

Mr Cornall—In those areas, yes; in the areas that are relevant to the work of the department and their role as ministers, yes.

Senator McKIERNAN—What is the distinction?

Mr Cornall—The ministers obviously have media people on their own staff who deal with their political media releases and so forth.

Senator McKIERNAN—What guidelines are in place to stop the public affairs unit from writing a political media statement? A lot of the stuff that comes from the Attorney-General and the Minister for Justice and Customs has political content in it sometimes very unduly critical of the opposition.

Mr Cornall—But that is all done in the minister's office.

Senator Ellison—Senator, perhaps I can explain it this way, and I think it might have been like this under the former government too: the department gives you—and this I have experienced in other portfolios for which I have had responsibility—a speech or a press release which is dealing with the issue. If it is an announcement of funding or whatever, you have the facts of the matter, they are all laid out, and then the minister's office invariably drafts it in a form acceptable to the minister. There is nothing new here at all; it is the political process over the departmental process.

I think that is an appropriate way for government to function with the administration of the day. In all areas you will get a brief, purely factual, on a matter from the department, whether it be Health, Education, A-G's or whatever—and I have had experience in all those—the department advises the minister and the minister then takes it from there. The way it operates in our system, as you know, is that the political edge or otherwise is the domain of the minister's office.

Senator McKIERNAN—What is the cost of the public affairs unit?

Mr Cornall—I can give you the figures, but I do not have them at my fingertips.

Senator McKIERNAN—You will come back to us on that?

Mr Cornall—Yes, I can do that.

Senator McKIERNAN—Thank you. Again referring to page 31, output 1.2, the actual figure for this year is \$196,000, but the budget estimate for next year is zero. What does this ‘Revenue from other sources’ comprise? Has there been any change in policy or practice to bring about the change?

Mr Hine—That revenue includes some funding we received from AusAID to assist in providing programs, I think to Indonesia. It is some grant money we received from AusAID to conduct some activities on their behalf. It is grant money: it is not an ongoing service that will vary from year to year. At this stage we have no indication that similar requests will be made for 2001-02.

Senator McKIERNAN—Was that to do with East Timor or was it to do with people-smuggling? Are you in a position to say what it was in regard to?

Mr Govey—The money was obtained, I think, under the auspices of the International Legal Services Advisory Council, or the secretariat for that council. It was for programs in the Asian region, I think primarily Indonesia. I do not believe East Timor was a specific recipient, but we can check and let you know if that is not correct.

Senator McKIERNAN—Turning to 1.3, there is an actual figure of \$43,000 for this year, but the budget estimate for next year is zero. Again, can you provide an explanation as to what is happening here?

Mr Hine—It is \$43,000; it is revenue that comes in from various sources during the year. It is uncertain in terms of its income stream. Therefore, there is zero anticipated for next year.

Senator McKIERNAN—Regarding 1.6, there is an amount of \$1.7 million for this year, but next year it is down to half a million.

Mr Hine—As I indicated with respect to the expenditure figure, that revenue is services that we provide to the Insolvency and Trustee Service and to the Australian Protective Service. Those services will no longer be provided, so the revenue will decrease accordingly.

Senator LUDWIG—Mr Hine, we had a fruitful exchange late yesterday evening in relation to section 200 matters that were reflected in the Portfolio Budget Statements. You tracked for me the lapsing of some \$14 million that was under section 200 and explained the difference between lapsing, which then went back to consolidated revenue, as I understand it, and rephasing, where an agency gets rephased. I am trying to examine where it might have lapsed and gone back into consolidated revenue. Of course, to do that, I unfortunately need the Portfolio Budget Statements for last year as well and I would then have to sit down with a candle and go through it.

In that context, I am wondering whether we could short-circuit that process. Would you have those tables at your disposal? Perhaps you could take that on notice, and I hope that it will not put you to too much bother. The type of information I am looking for, broadly, is: the amount which was appropriated in respect of each item in table 2.1.1 in outcome 1 and table 2.1.2 in outcome 2; the amount which was appropriated in respect of each item for 2000-01; the estimated actual expenditure on each of those items for 2000-01; the amount—and this is the crux of the matter—which lapsed in 2000-01 as a result of underspending on each of those items; and any such lapsed amounts which have not been reappropriated or reflected in the same amount or within a significant difference and appropriated for 2001-02 in addition to the previous forward estimates for 2001-02. In other words, a significant amount has been

‘reabsorbed’—if that is the accounting expression—back into consolidated revenue instead of being carried over to use in the 2001-02 period. You may have a table that shows that.

Mr Hine—Not here, Senator. We would need to reconstruct that. We have done something similar on page 32. We tried to explain there some of the differences, particularly in note 1. I will have regard to that table when I pick up the other information that you requested.

Senator LUDWIG—Yes, that table was helpful.

Mr Hine—I will need, unfortunately, to take that on notice at this stage.

Senator LUDWIG—Your assistance is much appreciated. And yes, I have gone through notes 1 to 5, so we do not need to re-examine those.

Mr Meaney—Maybe I can assist in relation to that line of questioning. With regard to this peculiar feature in relation to those section 200 provisions that gave rise to your questions, may I just draw to your attention that they are particularly referred to in the budget statement of risk, because they are of a very provisional and tentative nature. That they are somewhat peculiar is the point that I want to make.

Senator LUDWIG—We are not centring on that one. It is unfortunate that it was one of those ones that highlighted the problem that I then saw. If it had not been a peculiar item, perhaps it would not have stood out. If it had been the difference between \$10.5 and \$11 million, I may not have seen it. So unfortunately, Mr Hine, it helped it stand out, if nothing more.

In table 3.1 in section 3, ‘Budgeted Financial Statements’, another one of those areas stands out. It is the entry ‘Sale of goods and services’, where the estimated actual for 2000-01 is \$57,861,000. The budget estimate for 2001-02 is \$44,492,000. The forward estimate for 2002-03 then jumps back up to \$63,841,000—a best line of fit, when compared to the first figure. The amount of \$44,492,000 does not seem to fit very well within that line of best fit, particularly if you see that forward estimate go through to \$62,454,000 in 2004-05. Is there a shorthand way of explaining the difference? Is there a drop in your projection of what you will sell of goods and services out of your area? Is it the GST impact?

Mr Hine—Senator, there is no GST impact. The shorthand way is to say that there has been no reduction in the overall level of funding. That difference relates to the accounting treatment associated with eliminations. The table which you referred to is a consolidation of the financial performance of the department plus the Australian Protective Service and CrimTrac. I refer you to the budget estimate in that table for revenue from the government: \$132,389,000. That includes money that will be paid to CrimTrac—some \$25 million—and \$18 million that will go to the APS. Those two organisations then show that revenue as part of their sale of goods and services. In short, the money has been appropriated—the \$132,389,000. It has then been counted again as part of revenue for the APS and CrimTrac. If we were then to add all those up, we would finish with a double count. Therefore, we need to do the eliminations. I refer you to page 62, where you will see an elimination of \$43,170,000. That comprises the \$25 million, in round figures, that we have been referring to with respect to CrimTrac and \$18 million that has been appropriated into the budget for the APS. That is part of the \$132,389,000. To get the correct figures, we have to eliminate it, so we eliminate it through the sale of goods and services.

There is a similar offset—I refer you to page 62—when we get to the entry for suppliers. We will pay the money out by way of suppliers, and the APS and CrimTrac will use it. They may use it for either engaging consultants, or employing staff or doing something else, so we

need to eliminate that transaction as well because it is within the same organisation when we consolidate it. That, Senator, is the shorthand version. I do not wish to be difficult, but it is the accounting treatment. Senator McKiernan raised a related question last night. This is the one area that we have not had to address in the past—the presentation of financial statements involving eliminations between organisations—because CrimTrac came on board only last year.

Senator LUDWIG—Where you have a major acquisition, will it have that impact?

Mr Hine—Only if that major acquisition relates to an internal transaction. If that money were to go to another organisation, then that—

Senator LUDWIG—I can follow that.

Mr Hine—If we showed \$132,389,000—which is the amount of money that has been appropriated—as revenue, and then we give it to CrimTrac and the APS and then they show it as revenue, when we collapse the three financial entities into one, we have a double count. Similarly, we have a double count in terms of expenditure, because the department will be paying that money out to those two organisations and they will then disburse it as well.

Senator LUDWIG—So then that becomes your sale?

Mr Hine—That becomes a consolidated sale, yes.

Senator LUDWIG—Yes. But it starts out as your sale, their acquisition?

Mr Hine—Yes. It starts out as our revenue and it starts out as their sale, at that level. They are going to show the revenue, so it is a sale of services that they have done.

Senator LUDWIG—I think I follow. You will test me next year.

Mr Hine—As I indicated, it may be appropriate to have discussions on those technical issues some other time.

Senator McKIERNAN—But in government we might change it all again for next year.

Senator Ellison—Wishful thinking!

Senator LUDWIG—Then I will not have to follow it through!

CHAIR—And we could delete all references to the grandson from the *Hansard*!

Senator LUDWIG—In output 1.2 on page 31, the estimated actual is \$4,718,000 and then it jumps to \$5,263,000 in the budget estimate. What accounts for that? Output 1.2 is ‘Support for the Attorney-General as First Law Officer and advice on constitutional policy’. Is that increase a reflection of a new program that will look into the republic, or are they going to do something with the Constitution?

Mr Hine—The major reason for the increase is that we have a purchaser-provider arrangement with the Australian Government Solicitor. That increase reflects the additional services we anticipate acquiring from the AGS during the next financial year.

Senator LUDWIG—And what would they be?

Mr Hine—Advice on constitutional issues and litigation.

Senator LUDWIG—How does that come about? How do you then determine that there is an increased need for the AGS, or have they put up their fees?

Mr Hine—There has been a slight fee increase, but we just anticipate that there will be an increase in outlays in that area. As I said, they are estimates. If that does not transpire, the

change will be reflected at additional estimates, if we are aware of that information early in the piece, or when we do the annual report at the end of the financial year.

Senator LUDWIG—Let us test that. If you do not use it all, what happens to it?

Mr Hine—It would remain within the department. It would be shown as a surplus, if we do not reallocate it to other particular outputs.

Senator LUDWIG—So it becomes rephased?

Mr Hine—Yes, it becomes rephased. It is available to the department. We would show it in our financial statements, all other things being equal, as a surplus which would then be carried forward for future years.

Senator LUDWIG—On the same page, output 1.4: Protection of Australia's interests internationally and compliance with Australia's international obligations, it goes from \$5.1 million down to \$4.286 million. Does that reflect a diminished commitment to ensure that Australia complies with international obligations?

Mr Hine—It does not reflect any diminishing commitment; it reflects that during the current financial year there has been a significant level of activity in that area. We were anticipating when we did these figures that that investment would not be required because that peak workload has been handled. As I indicated, these are estimates—if funding is required, then the funds will be made available.

Senator LUDWIG—Similarly, for output 1.6: Machinery of government obligations, there is a small decrease there from \$4.808 million to \$4.588 million. Are you diminishing your public affairs and media support?

Mr Hine—No, that relates to expenditure that we incur this year in providing services to the Insolvency and Trustee Service of Australia and to the Australian Protective Service. That expenditure will not be incurred next year. Similarly, for completeness, that is why the revenue under 'Revenue from other sources' for output 1.6 has declined. So we charge a fee for service for that.

Senator LUDWIG—You must forgive me, I was not listening that intently when Senator McKiernan was asking the question about the media unit. Through you, Chair, has Senator McKiernan gone to the questions that I had in mind about the size of the unit, the number of staff on board—

CHAIR—Yes.

Senator LUDWIG—whether its resources have been increasing or decreasing?

CHAIR—Yes, all of that information.

Senator LUDWIG—On page 31, output 1.2, the actual figure is \$196,000, but the budget estimate for next year is zero.

Senator McKIERNAN—We have done that.

Senator LUDWIG—We are picking the same areas, obviously.

Senator McKIERNAN—I have gone over both of those pages and the next set of questions as well.

Senator LUDWIG—My next area of interest on that list that we read out went to classifications.

Senator McKIERNAN—No, we probably should go back and do the legal aid matters first.

Senator LUDWIG—I thought that was in output 2.

Senator McKIERNAN—No, it is actually right at the top in output 1.1.

Senator Ellison—Madam Chair, if it makes it easier for the committee, we can deal with output 1 as a whole.

Senator LUDWIG—Thank you, Minister. We have got different questions in different areas, but they are crisscrossing across the outputs.

Senator McKIERNAN—Some of them are merely seeking information and trying to get a handle on what is contained in the rephasings.

Senator Ellison—Yes, that is fine.

Senator McKIERNAN—Shall I start the legal aid matters?

Senator LUDWIG—Yes.

Senator McKIERNAN—Senator Cooney has got some more on legal aid afterwards.

Senator COONEY—Since we are doing output 1 as a whole, can I ask a question when you are finished?

CHAIR—Yes, I think we have an appropriate moment now.

Senator COONEY—On page 35 of the Portfolio Budget Statements 2000-2001, the third dot point down, says:

- the development of policies in relation to untying Commonwealth litigation, counsel fees, settlement of monetary claims against the Commonwealth, assistance to Ministers and officials in relation to legal proceedings, the Commonwealth's obligation as a model litigant and the use of in-house lawyers by the Commonwealth agencies ...

Do you agree that the Commonwealth should be a model litigant? Is that still the aim?

Mr Cornall—Yes, it is.

Senator COONEY—Has the Commonwealth thought of becoming a model contractor?

Mr Cornall—No, it has not.

Senator COONEY—Shouldn't it now think of becoming a model contractor? Does the Attorney-General's Department see any problem with the growth in the size of contracts? I am not going to ask you about commercial-in-confidence.

Mr Govey—If I can elaborate on that a little bit, firstly, the responsibilities of the Attorney-General's Department in this area are things like the model litigant and most of the other areas listed there are contained in the legal service directions that the Attorney-General issues under the Judiciary Act. I think it is true to say that the Commonwealth in general terms would regard itself as ethically bound to act properly as a contractor, but there is no particular code emanating from the Attorney-General or the department about that. To some extent the Department of Finance and Administration has got responsibility for rules regarding contracting, but I do not think they have got anything in terms of a code of the kind that you are talking about.

Mr Cornall—Senator, my answer was directed to your comments yesterday when you were referring solely to the length of contracts.

Senator COONEY—The Attorney-General's Department must have some obligation to see that the rule of law is properly looked to and preserved. Wouldn't you say that the size of contracts is starting to threaten the very fabric of the law? Lawyers are spending, as was said yesterday, weeks on looking at contracts because they are frightened that if they do not then their client will be sued for negligence and what have you. Shouldn't there be a diminution in the size of contracts? What is the biggest one you have seen?

Mr Govey—That is not a problem that has been brought to our attention particularly until the discussions yesterday—

Senator COONEY—I want to pursue this because I think this is the new area to worry about. Since you have got me going, you have also got the problem where the only people who now can look at a contract are big firms like yourselves and like the Government Solicitor, people with power and lots of people to go through and peruse these contracts. If you are in a small firm, you spend your nights and weekends going through these documents looking at all these various terms which I do not think the people who drew up the contract know about because it is all loaded up on the word processor. Instead of eliminating terms, people put in additional terms, so you get a whole growth in contractual terms. I think it is time something was done about it and time the Attorney-General's Department took this on board, as they do with the issue of being a model litigant.

Mr Govey—We will take it on board.

Senator COONEY—I do not want this in a hurry, but I would be very interested to see some evidence of the thickest contract in the Commonwealth and the thinnest and whether an average can be struck. I might say, Minister, that it is a terror.

CHAIR—We will return to Senator McKiernan.

Senator McKIERNAN—I think we probably need Mr Hine back.

Senator COONEY—You can look at the size of contracts, can you, and find the thickest contract in the Commonwealth?

Mr Govey—We do not normally have access to any contracts other than those that the Attorney-General's Department enters into.

Senator COONEY—Well, the biggest one you have got in the Attorney-General's Department.

Mr Govey—That is probably also a matter for Mr Hine.

Senator COONEY—Mr Hine, do you have any recollection of the thickest one?

Mr Hine—We have not really at this stage got any really large contracts. I would have to check. Perhaps our lease arrangements would be the only one.

Senator COONEY—I must confess I have always been secretly pleased when we have asked for contracts and you have said 'commercial-in-confidence', because if you were to one day say, 'Here it is,' I would be terrified. So don't give up using that excuse; otherwise, we would have to look as if we understood it. Senator McKiernan and Senator Ludwig would have to read through these things.

Senator McKIERNAN—As long as they do not write contracts on accrual accounting methods, we probably might be able to get through them. I go to legal aid. On page 30—I think I know the answer to this question but I was not able to explain it to somebody else who asked me—there are two lines on the payment of legal aid. Under 'Payments for the provision

of legal aid' it gives the figure of \$65 million for next year and under 'Commonwealth legal aid program' it gives the figure of \$54 million for next year. Why do we have two lines? Why not just one lump sum of Commonwealth legal aid?

Mr Hine—It is because of the various funding arrangements. Mr Bourke can answer the specifics. One program relates to funds that I think go to the states. The other is funded differently. Mr Bourke will have the specifics on it.

Mr Bourke—The appropriations were split into those two categories when the Commonwealth renegotiated the agreements in 1996-97. That was primarily because some of the arrangements were directly with the legal aid authorities rather than with the state governments. We had to divide the appropriation to make payments directly to the legal aid commissions. The first line is a payment to and for the states. They are the ones where we have a contract or a legal aid agreement with the state or territory government.

Senator McKIERNAN—The first line is paid to the states; the second line is paid to the commissions?

Mr Bourke—That is the basis for the appropriation, yes.

Senator McKIERNAN—In relation to notes on page 32 in regard to each of the lines, can you explain each of the deferrals that are contained in those notes?

Mr Bourke—In general terms, those notes report that there will be an increase in legal aid funding in both those appropriations. That is, I think, the second tranche of the additional funding that was provided by the government, which totals \$63 million over four years.

Senator McKIERNAN—That is \$3.9 million. I am looking at note 1.

Mr Bourke—There is \$3.9 million in the first line and \$4.9 million in the second line. Sorry, \$4.112 million is the funding.

Senator McKIERNAN—I have difficulty in finding \$4.112 million.

Mr Bourke—It is on the second line of note 2:

The 2001-02 estimate includes \$4.112m in additional funding (as provided for in the 2000-01 Budget).

Senator McKIERNAN—What will be the actual amount paid to legal aid commissions in the current year, and can we break that down to each state and each territory?

Mr Bourke—I will see if I have that table with me. Your question was about 2001-02?

Senator McKIERNAN—No, this year.

Mr Bourke—2000-01?

Senator McKIERNAN—Yes.

Mr Bourke—New South Wales is \$33.719 million, Victoria is \$27.75 million, Queensland is \$19.903 million, South Australia is \$9.45 million, Western Australia is \$8.995 million, Tasmania is \$3.773 million, ACT is \$3.039 million and Northern Territory is \$2.119 million, giving a total of \$108,748,000.

Senator McKIERNAN—That is the two sums added together?

Mr Bourke—Yes, that is the two added together. I should explain that the reason those appropriations were divided into two was that, if we had them only in the top line—which was the original way—we could not actually make a payment directly to a legal aid commission. It was for a technical reason that the appropriation was split into those two lines.

Senator McKIERNAN—Okay. Is the distribution of those funds to the commissions and to the states—because some goes to the government as well as to the legal aid commissions—still done on the formula that was adopted in 1997, I think, for the distribution of legal aid funding?

Mr Bourke—Yes, it is. It is done on what we call the needs based funding distribution model. The allocation that I just read out to you is the allocation arrived at by the application of that model.

Senator McKIERNAN—And my state of Western Australia continues to miss out, under that model.

Mr Bourke—I do not know how I can assist you with that, Senator. The application of the model, which was something developed between all state and territory governments and the Commonwealth, yielded a result for the state of Western Australia of \$8.995 million.

Senator McKIERNAN—Yes. There is a larger population in Western Australia than there is in South Australia, yet Western Australia gets less money than South Australia and Victoria, and I think they are the ones that cream it all.

Mr Bourke—You would know from our previous discussions that the needs model is based on the Grants Commission approach for the distribution of funding; and, with the application of those factors, that is the result.

Senator McKIERNAN—It was not only the Grants Commission, though, was it? A couple of other things went in there which helped to distort the per capita distributions.

Mr Bourke—Other factors were added because the straight application of the Grants Commission approach does not yield a legal needs factor. With the additional factors, I would have to stress that the workings were exposed to all participants in the development of that model.

Senator McKIERNAN—Yes, they were exposed; but, at the end of the day, there was a big stick hanging over their heads to either accept the agreement or not get any money; and so people entered into agreements.

Mr Bourke—I cannot comment on that, Senator.

Senator McKIERNAN—I know. I am not expecting you to, Mr Bourke. Is there any way that the way this is illustrated could be simplified and made easier to explain? It is rather difficult. I do have some knowledge of what has happened in this area, although I do not pretend to be an expert on it, but I do find it a little confusing when trying to understand the appropriations for the coming financial years. The expensive Commonwealth criminal cases funding is contained in the second line of the appropriation, for the Commonwealth legal aid program, with \$54 million for the forthcoming year.

Senator COONEY—What page is that on, Jim?

Senator McKIERNAN—It is on page 30, on the second line down, under ‘Administrative appropriations’. But note No. 2 on page 32 talks about the expensive Commonwealth criminal cases. I think last year was the first year that there was an appropriation for expensive criminal cases. Was that money allocated on a state by state basis?

Mr Bourke—No, Senator. The application of the expensive criminal cases fund requires the state or territory legal aid commission to make an application to us for a disbursement out

of that fund. It depends on whether the case for which the commission believes it ought to receive additional funding would meet the requirements for being an expensive case.

Senator McKIERNAN—The money that is in line 2 for next year, the \$54.573 million, includes the allocation for expensive criminal cases, doesn't it?

Mr Bourke—Which line are you reading from, Senator?

Senator McKIERNAN—From the second line on page 30, for the Commonwealth legal aid program.

Mr Bourke—Yes; the \$54.573 million will include that.

Senator McKIERNAN—Is there a limit on, for example, what Western Australia could seek to get from that—or South Australia or any other state or territory, for that matter?

Mr Bourke—The fund has a total limit and we have had five applications in this financial year—Northern Territory, South Australia, Queensland, ACT and Northern Territory again.

Senator LUDWIG—So you are telling us it was underaccessed in the last financial year; the money has been rephased and reallocated for the next financial year.

Mr Bourke—That is right.

Senator LUDWIG—It is available to any state on application as a lump sum?

Mr Bourke—It is available on application.

Senator Ellison—But there is no cap for each state or territory—that is what Senator McKiernan is driving at.

Mr Bourke—Yes.

Senator McKIERNAN—Given the increased funding that was made available earlier this year, does that allocation to each state include a proportion of the expensive criminal cases moneys?

Mr Bourke—No, it does not. The expensive criminal cases fund sits aside and it is on a needs basis.

Senator McKIERNAN—Can you provide the committee with the actuals of expenditure on the expensive criminal cases scheme so far?

Mr Bourke—Yes. We have one case in the Northern Territory at \$150,000, one case in South Australia at \$320,000, one case in Queensland at \$20,000, one case in the ACT at \$70,000 and a series of cases in the Northern Territory at \$217,228.

Senator McKIERNAN—South Australia is by far and away the largest; the next one is the Northern Territory. Did you say there were a number of cases involved in the Northern Territory?

Mr Bourke—Yes.

Senator McKIERNAN—What are you able to tell me about the South Australian one? It is double the figure of anything else that is here.

Mr Bourke—It was an expensive Commonwealth criminal prosecution.

Senator McKIERNAN—What was the issue? What was being prosecuted?

Mr Bourke—The issue was offences under the Corporations Law.

Senator McKIERNAN—Was this one that was put up for tender within the profession? Was the profession asked to tender as to whether or not they would take the case at a set amount?

Mr Bourke—Yes, it was.

Senator COONEY—Was the tender by contract, Mr Bourke? Did they sign a contract?

Mr Bourke—It was managed by the Legal Aid Commission and I do not know exactly what arrangements they came to.

Senator COONEY—You didn't see whether or not there was a contract there?

Mr Bourke—No, that is a matter for the Legal Aid Commission.

Senator COONEY—That is consistent with you being terrified of the size of that contract?

Mr Bourke—I cannot comment on that either.

Senator COONEY—But that would be a consistent conclusion to draw from what you have just said, wouldn't it? I do not want you to comment on that, but that would be a conclusion to draw that would be consistent with the evidence.

Mr Bourke—No comment, Senator.

Senator Ellison—Senator Cooney, I think legal aid commissions have their own cost scales. For certain large matters they have a set fee from a legal aid costs scale.

Senator COONEY—I know, but it is the Commonwealth's money and it is government money going into the situation. It would be interesting to see what the cost of the tender process was and just exactly what these agreements were. I do not know whether the Commonwealth has any interest in them, but it would be interesting to see just how big they were. Does the Commonwealth ever look at the contracts?

Senator Ellison—But that is for the Legal Aid Commission.

Senator COONEY—Yes, the Legal Aid Commission signs with the others, the people that it gives the contract to. Have you ever seen one of these contracts, Mr Dabb, or do they creep around in a very nasty manner?

Mr Dabb—Yes; I do not think the Attorney-General's Department would have the largest contracts in the Commonwealth: I have seen some frighteningly large ones.

Senator COONEY—But what about these ones with the legal aid providers?

Mr Dabb—I have not actually seen one of those particular contracts.

Senator COONEY—We might go in search of one of those.

Senator Ellison—Senator Cooney, I suggest you look in the area of Finance; I think DOFA might have a few.

CHAIR—I would suggest almost anywhere except here actually, Minister.

Mr Dabb—There is this constant emphasis on size, Senator Cooney, but some large contracts might be quite poorly drafted from the point of view of one or other of the parties and some small, slim contracts might be excellent.

CHAIR—And vice versa, Mr Dabb.

Senator COONEY—You have got the wisdom of Solomon, Mr Dabb. I could not express it myself. That is exactly what I have been trying to say.

Senator McKIERNAN—We are diverting from the expensive criminal cases.

CHAIR—I am hoping Solomon is coming to intervene, frankly.

Senator COONEY—Is Mr Dabb's statement on the *Hansard*?

CHAIR—I am sure it is.

Mr Dabb—I think I omitted to say vice versa.

CHAIR—I said vice versa for you, Mr Dabb, actually.

Mr Bourke—Could I just add one point.

CHAIR—Of course. Is it about a contract?

Mr Bourke—No, I do not want to enter into contracts.

CHAIR—Neither do I.

Mr Bourke—The tender in South Australia has not yet been completed. That information was just passed to me.

Senator McKIERNAN—It is a matter that has been going on for some period of time—or are you saying the case is not completed?

Mr Bourke—The case is not completed, yes.

Senator McKIERNAN—I am just a little bit confused about the words that the tender is not completed. I understood that the arrangements had been entered into.

Mr Bourke—No, the tender process to select the firm to represent the defendant has not yet been completed.

Senator McKIERNAN—How long has that been going on, then?

Mr Bourke—I will have to get the precise information and take it on notice, but it is in the order of six months.

Senator McKIERNAN—So this would not be the case that I am thinking of that was starting at the time the Senate Legal and Constitutional References Committee was doing its inquiry into the legal aid funding.

Mr Bourke—That case is being prosecuted.

Senator McKIERNAN—Is it the case that we are talking about?

Mr Bourke—I believe so.

Senator McKIERNAN—So it has been going on for more than six months, because—

Mr Bourke—No, the tender process. The case has been going on for some years, but the tender process has only been going for some six to nine months. I will get the precise information for you later in the day.

Senator LUDWIG—Is that usual?

Mr Bourke—Are you talking about the tender process or the case?

Senator LUDWIG—Both, I guess.

Mr Bourke—Some criminal prosecutions can go on for some considerable time.

Senator LUDWIG—I understand that, but the—

Mr Bourke—The tender process itself has only occurred on a few occasions. There was a tender arrangement, I think, in Western Australia and the one in South Australia.

Senator LUDWIG—Perhaps you would like to take that on notice and come back and tell us how many tender processes have gone out and how long they have been.

Mr Bourke—Yes, I can do that.

Senator McKIERNAN—That is probably the easiest way out of it. The figures you gave me are not completed cases—the Northern Territory, \$150,000; South Australia, \$320,000—so the expenditures would not yet have come out of the allocations for this year. How many of these have been completed and how many are ongoing and some of the funding at least has been expended?

Mr Bourke—I will take that on notice.

Senator McKIERNAN—I think you mentioned in the beginning there were five applications for funding outstanding. Is that included in any of the figures that you have provided to the committee so far?

Mr Bourke—I am not sure of the question.

Senator McKIERNAN—I think you told us at the opening of the questioning on the matter of expensive criminal cases that there were five applications. I do not want to misrepresent you, Mr Bourke, but that is my recall of what you said. We went into some details of cases which I thought were either complete or ongoing.

Mr Bourke—Yes, that is right. When I said five cases, I probably more accurately should have said five applications, because the application from the Northern Territory for the series of cases came through as a single application for funding under the expensive cases fund. We have had five applications.

Senator McKIERNAN—You have taken from Senator Ludwig some questions on notice on that. Would you in your response be as comprehensive as possible to explain just where we are with this matter?

Mr Bourke—I will do that to the extent that I am able to, to protect the privacy of the individuals involved.

Senator McKIERNAN—Yes, always. We understand that and always accept that. Just with legal aid, I got in response to questions from the last round of estimates some figures on the number of people who have been charged, convicted and sentenced to prison for people smuggling. All of those people would have an entitlement immediately to legal aid under the provisions of the agreements between the Commonwealth and the states and territories, wouldn't they?

Mr Bourke—They would be subject to a means test. It would depend on what means they would have available to them to fund their own defence.

Senator McKIERNAN—Does the Commonwealth have access to any figures on the number of persons who would be charged with this offence and who would be granted legal aid?

Mr Bourke—I will have to take that on notice, Senator. I can check that.

Senator McKIERNAN—It has mainly happened in the Northern Territory and Western Australia.

Mr Bourke—That is right, Senator.

Senator McKIERNAN—The expenditure of Commonwealth funds on legal aid is for Commonwealth offences. The offence of people-smuggling is indeed a Commonwealth offence.

Mr Bourke—That is right.

Senator McKIERNAN—What reporting requirements do you put on the states and territories to inform the Commonwealth on how the allocations of Commonwealth funding are being spent?

Mr Bourke—Under each of the legal aid agreements we have a series of reporting requirements. We have provided copies of the agreements to the committee in the past and I am happy to do so again.

Senator McKIERNAN—No, I do not want copies of the agreement—unless there have been dramatic changes in the ones that have been renegotiated.

Mr Bourke—No, they are much in the same in substance. The schedules to the agreement contain the reporting requirements for legal aid commissions to report to the Commonwealth on the expenditure of funds.

Senator McKIERNAN—Without having to go directly back to the commissions, is the Commonwealth able to discern from those figures how the money is expended and the breakdown between family law matters, for example, and that spent on migration matters?

Mr Bourke—In general terms, we should be able to discern that, yes.

Senator McKIERNAN—I wonder whether you would be able to do that for me so far, not only on the people-smuggling issue but on general migration matters.

Mr Bourke—Can I take that on notice, Senator?

Senator McKIERNAN—Indeed. I would not expect you to have it off the top of your head.

Mr Bourke—I will provide what information I can.

Senator McKIERNAN—What services are provided by the family relationship support organisations?

Mr Bourke—That is primarily funding which goes to organisations to provide counselling, mediation and similar programs.

Senator McKIERNAN—Can you elaborate on note 3? There was an increase in the estimated expenditure, but there was also a rephasing from the year before.

Mr Bourke—That is right. There was money which was rephased into this financial year. That is included as a one-off expense. It relates primarily to initiatives such as the rural and remote counselling initiative which was announced by the Attorney early this year.

Senator LUDWIG—Let me get this straight. You announced an initiative—

Mr Bourke—Senator, I do not think initiative has been announced yet.

Senator LUDWIG—Perhaps you can tell me about it then.

Mr Bourke—We are actually in a tender process. It is nothing that is confidential. We have sought tenders for the provision of services in identified rural and remote locations for counselling services, but the results of those tenders have not yet been released.

Senator LUDWIG—That will form part of your \$26 million?

Mr Bourke—No. The additional funding is the one-off rephased amount from the previous year, which explains the 31.452. Both of those figures—the 31.452 and the 26.105—contain the ongoing recurrent funding base for the organisations which are funded under that appropriation.

Senator LUDWIG—What I am trying to get a handle on is this. I am sorry, Senator McKiernan, I will let you come back to this in a minute. If you look at 3, it effectively tells me that, of the money in the previous financial year from the \$31 million, \$4 million was not spent—or there was an additional \$4 million that came from somewhere that was not spent and it was rephased.

Mr Bourke—Sorry?

Senator LUDWIG—If you look at the \$31 million and look at note 3, it says:

The 2000–01 estimated actual includes a one-off increase in expenses of \$5.675m for expenses that were rephased from 1999–00.

Mr Bourke—That is right.

Senator LUDWIG—So, if I can follow Mr Hine's analysis, what happened in that year was that there was either an addition of money or an underspend of \$5.675 million in the 1999 year.

Mr Bourke—That is right.

Senator LUDWIG—That amount was then rephased into the 2000-01 year, which reflected an increase of \$5.675 million to \$31.542 million.

Mr Bourke—That is right.

Senator LUDWIG—What you then did was grab it back. By saying that, it has now disappeared in a sense, because you have then only put \$26,105,000. You have grabbed it back by that note saying that you have rephased it, notwithstanding the small amount of \$0.325 million in wage costs indexation. The net effect was the negative \$5.347 million. So it got rephased in 1999-2000 as an underspend or additional amount; in that year it was reflected as \$31 million. Then the next year you are clawing it back, in essence.

Mr Bourke—The essential reason is that the money which was rephased into this financial year, which is 2000-01, which gives the total of \$31.452 million, contains one-off expenditure. So it does not need to appear in the next financial year.

Senator LUDWIG—What was that one-off expenditure?

Mr Bourke—The one-off expenditure was the counselling initiatives that I was referring to. In addition to that, there was funding for the contact services program, for the contact orders pilot evaluation and for primary dispute resolution.

Senator LUDWIG—So all that amounted to about \$5 million.

Mr Bourke—That is right.

Senator LUDWIG—But it looks to me—and this is where I need you to correct me—as if you saved out of one year, put it into the next year, and then took it out of the following year.

So all you did was shuffle the deckchairs: the new initiative was not there. It is not reflected in the \$26 million for 2001.

Mr Bourke—It is just a question of timing as to when the money is disbursed for the initiative. Under the current PBS, it shows as an expenditure item in this financial year and does not appear next year because it is an expenditure item in this financial year.

Senator LUDWIG—So it was a one-off payment?

Mr Bourke—That is exactly right.

Mr Hine—Had the \$5.675 been spent in 1999-2000, the estimated expenditure for 2000-01 would have been reduced by that amount of money. Over the three-year cycle, assuming we have full spend this year and next year, the same amount of money would have been spent as the government originally anticipated; it just would not have been spent at the time that we anticipated. The total level of funding has not been amended.

Senator LUDWIG—So if I take a view that, because of the underspend in 1999, you had the ability to announce a new initiative to spend that money in 2000-01, that would be wrong?

Mr Hine—I cannot comment on the timing of when initiatives are actually announced, but the funding would have been made available.

Senator LUDWIG—The funding was available there?

Mr Hine—The funding was available there; it just was not spent because of timing. Commitments were entered into and expenditure will be incurred this financial year and therefore will not be required for next year. Over the three-year period, there has been no change in the total level of funds available for the initiative.

Senator LUDWIG—Thank you, Senator McKiernan. I will hand back to you at that point.

Senator McKIERNAN—Thank you. At the time of the budget last year, the Attorney issued a press statement which said in part that in 2000-01 the government would spend about \$40 million on a family relationship counselling and mediation service. We have a figure of \$31 million of estimated actual. Was there another \$9 million floating around last year in the budget that is not reflected here? If there was, where is it now?

Mr Bourke—The explanation for that is we think some of the appropriation is in the item appropriated to this portfolio and the balance would be in an appropriation to the Family and Community Services portfolio, but we will need to confirm that for you.

Senator McKIERNAN—I would appreciate that. Are you in a position at this point in time to give us an assurance that no family relationship support organisation will receive less funding next financial year than it did this year as a result of the rephasings?

Mr Bourke—The rephasings?

Senator McKIERNAN—You told us earlier on that the money involved one-off payments, but it will take some time to track through each of them. What I am concerned about is whether the funding of programs delivered by family relationship bodies around Australia will be cut in any way as a result of the very blunt reductions that appear here in the budget statements.

Mr Bourke—The short answer to that is no. I just need to add a note of caution: there may be some organisations that decide not to continue the service. If I gave you an ironclad assurance, I would not want to be bound by decisions which are outside our control. But funding to organisations remains as in the recurrent base.

Senator LUDWIG—I remember that there was a rural counselling service in Toowoomba. It did not get a grant and had run out of money or some such position, so it closed its doors. Then the rural scheme was announced and, as I understand it—and this is a long bow that I am trying to draw, out of my memory—they then opened their doors and provided rural counselling. But if the money disappears again then they close again.

Mr Bourke—If the funding for that organisation—and I do not know the details—was a recurrent amount, it would be in the base.

Senator LUDWIG—But if it came out of the \$4 million—

Mr Bourke—I do not know the details of that.

Senator LUDWIG—But if it did—I am not asking you to speculate—in terms of the \$4 million that was reflected in the program which was rephased out of 1999 to 2001, when that ends then any program that is part of that program will go with it because it is not reflected in the \$26 million. Is that right?

Mr Bourke—Unless there was an injection of new funding. But those initiatives that are one-off are simply designed to be one-off initiatives.

Senator LUDWIG—By calling them ‘one-off’, I think we have made sure of that.

Senator McKIERNAN—Moving to the community legal centres, again referred to on page 30, there is a reduction from \$25.6 million to \$21.7 million. Note 4 again talks about a rephasing for expenses that were rephased from 1999 to 2000-01, and now the sum has been adjusted. Can you provide some further information on that—on what last year’s rephasing was about?

Mr Bourke—Yes, Senator. The elements of that rephasing were partly funding for the Law by Telecommunications initiative, some additional funding for reviews of the Community Legal Services Program, and some funding for the cost of the new data system. As I was explaining, they are all under the previous item—again, one-off items—and the recurrent base, which is in the order of about \$19.5 million, remains.

Senator LUDWIG—Do you have a breakdown of those programs that were additionally funded? Can you give us a breakdown under note 4 of those? You mentioned the Law by Telecommunications initiative; can we have a breakdown of those amounts that were put to those programs?

Mr Bourke—I can do that, but I will need to take it on notice.

Senator LUDWIG—Thank you.

Senator McKIERNAN—For clarity, could you repeat what those initiatives were for 1999-2000?

Mr Bourke—Part of it was for funding for the Law by Telecommunications project. The second one was for reviews of the Community Legal Services Program. The other main item was some funding for the development of a new data collection system to replace the existing system.

Senator McKIERNAN—In 1999-2000 there was part funding for Law by Telecommunications. Was there additional funding for that in last year’s budget?

Mr Bourke—Yes, there was funding over a couple of years. The Law by Telecommunications project drew funding from two initiatives, one in the Family Relationship Services Program and one in the Community Legal Services Program. It was

funding over a number of years—it was rephased. Finally the initiative of Law by Telecommunications was announced by the Attorney-General.

Senator McKIERNAN—Is there any funding for that in this budget?

Mr Bourke—In 2001-02?

Senator McKIERNAN—Yes.

Mr Bourke—Yes. I am not sure of the amount. I will take that on notice.

Senator McKIERNAN—We will be coming back to Law by Telecommunications a little later in the morning, so we can leave it until then. Have all the reviews of CLCs been completed?

Mr Bourke—No. The reviews in South Australia and Queensland have been completed; the review in Victoria is ongoing; and we are in the early stages of review in New South Wales and Western Australia.

Senator McKIERNAN—Is there funding for the reviews in the 2001-02 budget allocation?

Mr Bourke—It is in the 2000-01 budget.

Senator McKIERNAN—Data collection was another one that you mentioned funding was provided for and then rephased. Has that project been completed?

Mr Bourke—No, it has not. That project remains ongoing.

Senator McKIERNAN—I suppose you would be aware of the problem within most community legal centres of the reporting requirements. It is rather like the small business paperwork with the BAS—they have been snowed under with the paperwork. It is a real diversion from the work that they have got to do. Has this project in data collection anything to do with relieving the pressure on CLCs so they can get on with the job that they are supposed to be doing?

Mr Bourke—We certainly hope so. The project is designed as a web based data collection tool to enable the easier entry and provision of information. Certainly we are mindful of the administrative burden that can be imposed. We work primarily through the National Association of Community Legal Centres to find ways to ease the administrative burden as much as we can.

Senator McKIERNAN—Has the burden been increasing rather than decreasing, including the data collection project itself?

Mr Bourke—I think that is a subjective judgment, Senator. All I can say to the committee is that, apart from the data collection tool, each centre signs a service agreement and under that agreement there are information provision requirements. Those information provision requirements and the model service agreement are arrived at after discussions with the national association.

Senator COONEY—Do you find the information supplied by the CLCs to be trustworthy? Are they the sorts of people who can be trusted to provide accurate information?

Mr Bourke—I do not think it is a question of trust.

Senator COONEY—So you do not trust them?

Mr Bourke—I am not saying I do or do not trust them; trust in that sense is again a subjective judgment. My function is simply to collect the information and then to provide it in a comprehensive way.

Senator COONEY—Are you saying that trust is not important?

Mr Bourke—I certainly did not say that trust was not important, Senator. Your question was whether I found the community legal centres trustworthy. I am saying that that is not an issue for us. The issue is data collection.

Senator COONEY—If they are going to provide data for you, I would have thought that you might ask yourself whether the data was trustworthy. In other words, are they trustworthy in giving you data? Normally when people ask for information—say if I were to ask you for information I would say, ‘Mr Bourke is a very trustworthy man’—they ascertain the trustworthiness of it. That is the whole point of decision making, I would have thought—whether you can trust the material that is given to you.

Senator Ellison—We have a value judgment here. I do not think any of the officials can be asked whether they think a person is trustworthy. I appreciate the line of questioning that Senator Cooney is taking, but you cannot ask an official to say whether they think someone is trustworthy.

Senator COONEY—Let me explain this. You ask for this data. Senator McKiernan has said that one of the problems with this is that the community legal centres have had to provide all this information that is being collected. First of all, if you ask people for information, you have to make some assessment as to whether they are trustworthy, and then when you get the information and go forward on it you have to work out whether it is trustworthy. The answer given here is, ‘We don’t care whether the information is trustworthy or not.’ Why get it in the first place?

CHAIR—That is not what Mr Bourke said.

Senator Ellison—The question is more of a forensic nature. The question you are getting at is: does the data have integrity, does it have forensic value?

Senator COONEY—Exactly.

Senator Ellison—That is it—not so much casting a value on the person behind it but rather asking: is the data of value, does it cut the mustard?

Senator COONEY—Yes. I did not ask whether they were honest or dishonest; I asked whether they were trustworthy, in other words, was their evidence to be trusted. If he does not want to answer it, we will leave it on the record as it is.

CHAIR—I think Mr Bourke has endeavoured to answer the question as you put it, Senator Cooney. If he wants to add anything, then that opportunity is available now.

Senator COONEY—I have it on the record that he was not prepared to say whether the community legal centres were trustworthy or not. That is where we are. That is amazing.

CHAIR—I am not sure that that is an accurate reflection of what Mr Bourke said.

Mr Cornall—As a general observation, in matching data from different sources you ask several questions. Is the data accurate? What is that data telling you about the business? Is the data being consistently entered into the computer system or however else you are recording it so that, if it is entered by different people, they are entering it the same way so the data you are getting is consistent and accurate? Finally, is it compatible with data you are getting from

other states, other jurisdictions, other CLCs so that you can make valid comparisons based on that data? Those are the sorts of questions you have to ask about data.

Senator COONEY—It still remains.

Mr Bourke—I cannot add anything to what the minister and the secretary have said, thank you.

Senator COONEY—All right, we will leave it as it is. The position is that when I asked whether the CLCs were trustworthy, there was a disinclination to answer.

CHAIR—Senator Cooney, Mr Bourke has answered to the best of his ability. Both the minister and the secretary have added to that answer to the best of their abilities and knowledge.

Senator COONEY—That is a value judgment on your part.

CHAIR—I am the lucky one because I am in the chair.

Senator COONEY—That illustrates exactly what I am saying. You are prepared to say that they have answered to the best of their ability. That is an easy thing to say. But when I ask them about community legal centres, they decline to answer.

Senator McKIERNAN—Will any community legal centre receive less funding next financial year than they did this financial year as a result of the rephasings?

Mr Bourke—The recurrent funding for community legal services remains at about \$19.5 or \$19.6 million and that was indexed—cost adjusted—and each centre will receive their cost adjusted amount. The rephasings do not go to funding directly to any community legal service.

Senator McKIERNAN—Would another name for the data collection be ‘community legal aid information systems’?

Mr Bourke—Yes, it could be. I think it is community legal services information system. It goes under the acronym CLSIS.

Senator McKIERNAN—I have questions which ask for detail over three years. It may be more appropriate that these questions be placed on notice.

Senator LUDWIG—While you are looking, I will ask a question. I am still having trouble with that rephasing over the three years. Mr Hine tells me that we stay the same after the three years. That is in relation to note 3, which refers to the \$31 million to \$26 million. Do you have the figure for 1999?

Mr Bourke—I do not have that with me, Senator.

Senator LUDWIG—Would it be, and I will not pin you to this, broadly less the \$5.675 million of the \$31.452? Can I pin you down on the package, the \$4 million? Can you confirm whether that has been announced or not, or is it on the drawing board? When will it be announced, and what will it consist of? How much money will it consist of?

Mr Bourke—I will provide all the information I can, Senator, but in general terms there has been a tender process which is under way. The announcement of the successful tender is imminent. I will get precise information for you, and the dates, Senator.

Senator LUDWIG—Thank you. Is that a tender process in the sense that organisations will be able to tender and obtain funding for special projects on a one-off basis?

Mr Bourke—That is right.

Senator LUDWIG—Is that available throughout Australia?

Mr Bourke—Yes.

Senator LUDWIG—A proportion to each state?

Mr Bourke—I would have to take that on notice.

Senator LUDWIG—Has that been announced by a minister? Is there a press release about that?

Mr Bourke—There would have been an earlier press release on the process itself.

Senator LUDWIG—I think I do recall it; that is why I was trying to work out whether it was Toowoomba, because I think they had a reprieve and it may have been because of that. I thought that was small business—that Mr Macfarlane had announced that. I am hoping you can correct me, actually, because that would not make sense.

Mr Bourke—I will take it on notice and provide the information for you.

Senator LUDWIG—Thank you.

Senator McKIERNAN—I have a list of some 11 questions which are asking for details of the proposed community legal service information system for the financial year 1999-2000. Rather than reading them all into the record, I will place them on notice. Even if I asked them directly, I do not think the officers would have the answers in their heads or even in their briefs. I have a number of questions relating to the community legal centres and the reviews. The South Australian review has been completed. What was the cost of that review?

Mr Bourke—I thought we might have answered a question on notice on that last time, Senator, but it was the provision of funding to the new services that we answered last time. I will take that on notice.

Senator McKIERNAN—Thank you. A number of new services were established, and we were provided with details of those last time. What is the progress of the establishment of the new services that have received funding for the first time?

Mr Bourke—I will confirm this, but to the best of my knowledge the services have now opened for business.

Senator McKIERNAN—All of them?

Mr Bourke—That is my understanding, but I will confirm that.

Senator McKIERNAN—Were they on time, as well?

Mr Bourke—Yes.

Senator McKIERNAN—Some services closed down as a result of the review and the funding package. Is the department aware of what happened to those CLCs that were defunded as a result of the review? Have any or all of the services closed, and which ones?

Mr Bourke—We have no information about what happened to those services, so I will take that on notice.

Senator McKIERNAN—Can you also tell us whether you monitor what happens when a service that has been in existence no longer continues? Do you monitor what is happening with that? If it does continue to operate, one would imagine that the department and the section would have an interest in what work is going on.

Mr Bourke—What we monitor is whether the services which were formerly provided through that service are provided through one of the other services. We obtain information from the new services under the service agreement.

Senator COONEY—I am not sure what you are saying. You close down a service in one place and open it up in another. You do not actually close them down but they close as a result of action taken and another one opens somewhere else and you expect the second one to do the work that the first one was going to do. Is that what you are saying?

Mr Bourke—I do not think it is as simple as that, Senator.

Senator COONEY—That is how you put it.

Mr Bourke—No, I am saying that the review process in South Australia was one where there was a consolidation and a redistribution of services. There was no reduction in funding for the provision of community legal services.

Senator COONEY—That is not what I am saying.

Mr Bourke—So the services that were provided continued to be provided.

Senator COONEY—No, you are saying that you are consolidating, and a consolidation, in my view, means that you bring two or three services into the one spot and relocate them. Then—not that you are trying to do this—the impression given is that somehow that produces the same service that was there before, which is a very interesting proposition to put.

Mr Bourke—I do not think I can add to what I have said, Senator. The process was one which involved the sector, the state government and the Commonwealth government.

Senator COONEY—Yes, but you can put it differently; you could put it in a way that was more descriptive of what happened. It was not a consolidation; it was a change of location in the service. As a result of what was done, either for good or for worse—I am not going into that—one service closed down at a particular location and another opened at another location. To say that that is the same situation before and after is just not correct, is it?

Mr Bourke—It is simply a restructuring of the sector.

Senator COONEY—That is exactly right, but restructure, by its very nature, indicates that there is going to be a rearrangement. To simply say that that is the same as before is just not right. It might be better or it might be worse, but it is different. The way you are describing it is as if there has been no change, except some sort of improvement.

Mr Bourke—I agree that it was different, Senator.

Senator COONEY—Yes.

Senator McKIERNAN—The reviews of funding services in Western Australia and New South Wales, I think you told us, are about to commence. When will they commence?

Mr Bourke—We have a process where we need to settle the terms of reference with the respective state governments and we are going through that process at the moment. We do not have a particular date at this point.

Senator McKIERNAN—Do you have any idea what the costs of those will be? Do you have any ballpark figures at this time?

Mr Bourke—I will take that on notice, Senator.

Senator McKIERNAN—Thank you. What are the reasons and the circumstances which lead to the withdrawal of funding for the Women's Legal Service in Western Australia?

Mr Bourke—I am not sure that I understand the question. Are you asking about the withdrawal of funding for the Women's Legal Service in Western Australia?

Senator McKIERNAN—Yes.

Mr Bourke—At this stage, there has not been a withdrawal of funding.

Senator McKIERNAN—So funding for the Women's Legal Service in Western Australia has not ceased?

Mr Bourke—Are you referring to funding for projects for indigenous women?

Senator McKIERNAN—Yes, I think I am.

Senator LUDWIG—Perhaps you could tell us about that.

Mr Bourke—The funding for the indigenous women's projects which was provided to the Women's Legal Service of Western Australia was not used by that service and was then removed and reallocated for those projects. So I think that the funding for the Women's Legal Service itself continues at this point, but the funding for the indigenous women's legal services projects has now been redistributed.

Senator McKIERNAN—To where?

Mr Bourke—I would have to take that on notice. I do not have the detail with me.

Senator McKIERNAN—Would it be within Western Australia?

Mr Bourke—Yes, it would be within Western Australia.

Senator COONEY—That means the funding is different, doesn't it? Can you understand what is being said?

Mr Bourke—Yes.

Senator COONEY—The redistribution of funding is different. Are you willing to concede that?

Mr Bourke—I would agree, Senator. The funding is different.

Senator McKIERNAN—What amount is involved?

Mr Bourke—It was in the order of \$900,000. I will take that and give you the precise information.

Senator McKIERNAN—When was the funding ceased?

Mr Bourke—Again, I will get the precise date for you.

Senator McKIERNAN—Have any conditions been placed on the restoration of the funding to that particular service or has the money now been, as you said a short while ago, redistributed and is not open for rebidding by the Women's Legal Service of Western Australia?

Mr Bourke—I do not think we have gone through a process for rebidding for that funding. It was tied money for specialist projects for services to indigenous women.

Senator McKIERNAN—What were the circumstances that led to the withdrawal of that particular funding?

Mr Bourke—In general terms, they were unable to provide projects which would actually expend that money. I can give you the precise detail of that, again, on notice.

Senator McKIERNAN—What other funding is available to the Women's Legal Service in Western Australia?

Mr Bourke—They would have their funding which is provided on an annual basis.

Senator McKIERNAN—Do you have a ballpark figure in regard to that amount?

Mr Bourke—It is in the region of \$250,000. The Women's Legal Service Western Australia received Commonwealth funding.

Senator McKIERNAN—What were the circumstances of the withdrawal of the money? Did it have anything to do with the service agreements which were in place between individual service providers and the Commonwealth?

Mr Bourke—There would have been a service agreement for the provision of the indigenous women's projects. It would have been pursuant to that.

Senator McKIERNAN—Is it possible to provide the committee with the details about the section of the service agreement under which the funding was withdrawn?

Mr Bourke—Yes, I can take that on notice.

Senator McKIERNAN—If you are going to provide part of the agreement, is it possible to provide all of the agreement?

Mr Bourke—I will take that on notice and, if I am able to do so, I will.

Senator McKIERNAN—Thank you. What is the status of the review of the Victorian CLCs? When will it be completed?

Mr Bourke—The implementation advisory group has completed its task and is writing its report. That report has not yet been presented to either the Commonwealth or the state.

Senator McKIERNAN—The review is more or less complete; it is in the writing stage now.

Mr Bourke—That is right.

Senator McKIERNAN—Do you know what that cost?

Mr Bourke—I can provide that for you on notice.

Senator COONEY—Are the people writing the report trustworthy, or would you prefer not to answer that?

Mr Bourke—I do not think I can take that any further than I said before, Senator.

Senator COONEY—So we are not going to say that they are not trustworthy.

Mr Bourke—I have dealings with the community legal sector on a regular basis and I believe we have a very cordial and good working relationship with those people.

Senator COONEY—But you can have a good and cordial relationship with people who are not trustworthy, if you are an open-hearted man like yourself.

Mr Bourke—I have no reason not to trust them.

Senator McKIERNAN—What about the review in Queensland?

Mr Bourke—I will give you a cost on that.

Senator McKIERNAN—The areas that have not been mentioned so far are Tasmania, the ACT and the Northern Territory. I think we have covered everything else.

Mr Bourke—Yes.

Senator McKIERNAN—What is happening in regard to reviews of those states and territories?

Mr Bourke—The Northern Territory has five community legal services that are funded solely by the Commonwealth. The ACT has three community legal services, receiving funding from the Commonwealth and the Territory government. In Tasmania, again, it is all Commonwealth funding: there is no state funding which goes into the services in Tasmania.

Senator McKIERNAN—Is the ACT Commonwealth only, or is there a relationship with the Territory government?

Mr Bourke—There is Territory funding which goes in as well.

Senator COONEY—Apropos the inquiry in Victoria: that inquiry took place with the possibility, or perhaps probability, of a change in mind from how things were in Victoria.

Mr Bourke—I think you had the terms of reference yesterday and you were reading them out, and that is the framework for the review.

Senator COONEY—I will try to explain what I am saying to you, Mr Bourke, and it is this: I know the terms of reference, but people do not suddenly—or they might; I do not know—sit down and write terms of reference for no reason to all except that they like writing terms of reference. Oftentimes—I am not saying all the time—terms of reference are written because people want to find out something: there is a purpose for writing terms of reference. The purpose that people have in mind tempers what the terms of reference are. That is just my finding on how terms of reference are written. You might have bushfires and, as a result of those bushfires, terms of reference are written. Or there might be an inquiry into the collapse of a bridge, and people write terms of reference. If I said to somebody, ‘Why are you having this inquiry?’ they would say, ‘We’re having this inquiry because the Westgate Bridge fell down and we have terms of reference.’ I asked you why we have had this inquiry in Victoria and you say, ‘It is because there are terms of reference.’ So I take it from that that you do not think there was any particular purpose for having terms of reference and that these terms of reference just suddenly appeared. If that is right, that is a very interesting situation to have developed.

Mr Cornall—I thought that the background to the CLC review was that it was a timely opportunity for the Commonwealth to review its reasonably significant contributions to CLCs across Australia and to ascertain whether it was achieving an efficient outcome for that investment. I think that Senator McKiernan yesterday talked about it being timely to have a review of something else, and I think it came about in that way. If I am wrong, Mr Bourke will add to that.

Senator COONEY—I think that is fair enough.

Mr Bourke—To add to what Mr Cornall has said, the factors which went to the genesis of the review were that the program in Victoria was now of such a size because it had grown over some 25 or 30 years and had become a diverse program but had never had any evaluation over the course of its 25 or 30 years and, as Mr Cornall has said, there was a need to examine whether planning and evaluation of resource use was a question that needed to be asked at this point in time.

Senator COONEY—Listening to Mr Cornall, I thought to myself that that was not only a very reasonable explanation but a very lucid explanation and full of logic. So, as a result of that, there is a possibility or a probability that there might be a change that follows this review. Mr Cornall, I must be right that that possibility must be there.

Mr Cornall—Yes; that is certainly possible.

Senator COONEY—Who is going to be in charge of any change that may be made? Would that be the Attorney-General's Department federally or state-wise? Or a combination of both? Would various pro bono organisations—which I am going to ask you about soon—in Victoria have any say? What is contemplated? Maybe nothing is contemplated just at the moment.

Mr Cornall—I am not sure of the mechanics of it—Mr Bourke may have a comment on that—but we do have the experience in South Australia to draw on as well, which might give some indication as to how it could go forward.

Mr Bourke—Yes. Once the report is presented to both the state Attorney and the Commonwealth Attorney, that report will be considered; and it will be a matter then for discussion between both levels of government as to what outcome they would want to achieve from it.

Senator COONEY—When you are looking at that, are you going to take into account the contribution made by those firms doing pro bono work? Will the system have in mind the fact that that contribution is made with very little assistance—and not necessarily any assistance at all; I am not sure of that—from government? Are you going to keep that in mind too? After I get an answer to that, gentlemen, the next question I am going to ask is this: is there any plan or idea of arranging things so that the whole thing of pro bono, legal aid and community centre legal schemes is in some way correlated into an even more effective system than at present?

Mr Bourke—In terms of the material which would be considered by both the state and territory Attorneys, that will be largely contained in the report of the implementation advisory group. By pro bono, I take it you would include volunteer work?

Senator COONEY—Yes.

Mr Bourke—There is certainly a degree of volunteer work which is provided through community legal services and that was considered in the course of the review.

Senator COONEY—Do the terms of reference for the review lock in the way that a revamp of the legal assistance schemes will be forwarded? Will it be open? If somebody comes along and says there is a better way of doing this than was contemplated by the terms of reference, will there be an adherence to the terms of reference or will people say that this is a better idea and so we will follow it? Have there been any discussions that you know of about that?

Mr Bourke—If you have a look at the terms of reference, you can see that the first one is 'a consistent and equitable distribution of CLC service resources throughout Victoria'. The result of that could be some change or no change. As to being locked in, as you put it, I do not think that the terms of reference are drawn in such a way as to suggest an outcome.

Senator COONEY—I asked this question just for completeness, expecting a complete rejection, and to get it on the record. So we have not gone about this exercise so as to justify conclusions already drawn but what we are going to do is work out what is the best way of

providing legal assistance in Victoria—and indeed in any other state—based on the evidence we obtain, not using that evidence to justify conclusions already drawn.

Mr Bourke—I do not think the terms of reference would suggest that. The terms of reference are drawn in such a way as to have a very open process.

Mr Cornall—When you review the way this matter has gone forward, you see that—by recollection—the Impact Consulting group did the original report. That was the subject of quite extensive consultation, and that in turn was referred to the implementation advisory group, which has a diverse membership. It has been asked to make recommendations to both the state and the Commonwealth Attorneys. So that does suggest that there is a very much open approach to the outcome of the terms of reference.

Senator COONEY—That is a very fair way of putting it, and I take it that is an assurance that no conclusions have already been drawn in respect of what the material we are now gaining is to be used to justify—‘Look, we have gone through this inquiry; now we will do what we were going to do anyhow’. What you have said, and I accept this, is that the evidence is going to determine what happens.

Mr Cornall—Ultimately, any report from the implementation advisory group will have to be accepted by the Attorneys, but the process indicates that there is no predestined conclusion.

Senator LUDWIG—I will take you back to the human rights area. If you recall, there were questions by Senator McKiernan—question on notice No. 62—which related to the activities of the branch. As I understand it from the transcript, Senator McKiernan asked what the main activities of the Human Rights Branch of the department were. This appeared in the transcript but was not included in the question that you took on notice.

Ms Leigh—Sorry, Senator, you said that the question was about the activities of the branch?

Senator LUDWIG—Yes. During the hearing on 19 February, Senator McKiernan, in asking the questions that appeared in question on notice No. 62, prefaced them by saying:

I want to ... ask about the main activities of the Human Rights Branch of the department.

This appeared in the transcript but was not included in the question that you took on notice. Are you following so far? You are not nodding, so I have got no idea.

Ms Leigh—You are saying that a question was asked last time and that we did not provide the answer. Are you saying that we should have provided the answer?

Senator LUDWIG—It will not matter, if you provide it now.

Ms Leigh—Okay. I need to mention that we have just been reorganising work in the division. I think I mentioned yesterday that we try to work flexibly in the division and allocate work according to priorities to ensure that there is a spread of workload across the staff in accordance with the priorities, and we have taken that a step further recently. To increase our flexibility, we have moved away from using the branch structure for a strict subject area delineation and there are now some additional staff in the division who are also working on human rights issues. So perhaps I should answer it not just in relation to the Human Rights Branch but in relation to the human rights work that the division is undertaking.

Senator LUDWIG—If you can, but I guess I am still stuck on examining you on a branch by branch basis. So it would be helpful if you could say which parts are within the branch and which parts are outside the branch.

Ms Leigh—I guess we did not have a ‘Human Rights Branch’ as such any more. We have two clusters within the division and one of them is human rights.

Senator LUDWIG—Let us see how we go then.

Ms Leigh—The division provides advice to the Attorney-General on all domestic human rights issues, on the existing antidiscrimination legislation and on other human rights issues as they arise. The division also assists other departments where human rights issues arise in relation to their areas of portfolio responsibility.

Senator LUDWIG—What is the main activity that is currently going on? What is the main brief that you have before you now—or are there a number of briefs? I call them ‘briefs’, but I am sure you have a nomenclature that you can enlighten me with.

Ms Leigh—Off the top of my head, there is the legislation that is currently before parliament to amend the Sex Discrimination Act in relation to IVF. That is a major project. There is the implementation of the HREOC pregnancy and work report. There is the work being done in relation to appointments to HREOC. We mentioned yesterday the sex discrimination position in recruitment. There is work being done on disabilities. The government announced some months ago that it would be issuing a disability standard in relation to transport and there will need to be amendments to the Disability Act in relation to that. There is also work being done in relation to disability standards for building access and for education. There is work being done in relation to race discrimination and indigenous issues. We mentioned yesterday the World Conference against Racism—

Senator LUDWIG—Yes. And that is all domestic, in that sense?

Ms Leigh—That is right. Of course, often with human rights, there is an international dimension to it, as in the World Conference against Racism. A lot of human rights issues are related to international treaties and we work closely with the Office of International Law in the department on those matters.

Senator LUDWIG—In response to question No. 62, you say that there were 14 ongoing positions in the branch. Is that still the answer today? You prefaced your remarks in relation to the branch by saying that you have put yourself into two clusters. Does that have an impact on that number?

Ms Leigh—Yes, it does. First of all, I should say, in relation to the staff that were working on human rights when we dealt with that question on notice, that there were 14 positions at the time, as you said. Two of those were part-time positions. We have subsequently replaced those two part-time positions with one full-time position. That number would now be 13. And then, in addition to that, there are four other staff in the division who work in part on human rights work.

Senator LUDWIG—Are there any vacancies? Do you have any advertisements for staff positions?

Ms Leigh—Yes, we have recruitment action ongoing in relation to two sets of vacancies at the moment.

Senator LUDWIG—Can you explain to me what they are?

Ms Leigh—Yes. We have interviews this week in relation to principal legal officer positions, and we will soon be doing a selection process in relation to legal officer positions.

Senator LUDWIG—So how many positions of each type?

Ms Leigh—There are four principal legal officer positions allocated in the division; two of those are not currently filled by staff who are ongoing at that level.

Senator LUDWIG—So there are two vacancies? Is that what you are telling me?

Ms Leigh—That is probably how to describe it, yes. You were asking about recruitment action. Those positions have people acting in them at the moment. That is why I was saying they are not filled by people who are currently ongoing in those positions. There are people doing the work at the moment.

Senator LUDWIG—Are there any vacant positions then?

Ms Leigh—Yes. There is one PLO position that there is nobody in at the moment and there is one legal officer position that there is nobody in at the moment.

Senator LUDWIG—If we look at the budget, as I understand it \$1 million will be trimmed from the running costs of the department next financial year. You have recruitment action going on the one hand to fill two ongoing positions. In relation to the two vacant positions, is recruitment action being taken to fill those positions?

Ms Leigh—That is part of the recruitment action I mentioned?

Senator LUDWIG—Are there any cuts that will flow? How do you intend to save your \$1 million? Do you have a program in place? I know it is a bit early.

Mr Cornall—Now that the budget has been announced by the government, we are finalising our internal departmental budget. Our internal departmental budget is basically made up of staff costs, rental of premises and equipment, computer costs, library costs, supplier expenses—largely legal expenses—and some consultancy fees. Across the broad range of those expenses, some of them are fixed, and there is nothing we can do about those. Some of them we can adjust as the year goes on. With staff, for example, staff leave of their own accord and there is the opportunity to reconsider staffing levels as staff leave. Alternatively, we can look at things such as trimming our costs in discretionary areas with a view to fitting within the budget. It is not a simple matter of saying that \$1 million equates to X positions, so we just get rid of X positions. It is a much more complex process in adjusting our expenses as we go through the year and monitoring very carefully our discretionary expenses. We also have some carryover funds from this year which I am hoping we will be able to take into account next year in finalising our internal budget. That is how we are approaching the matter for the coming year.

Senator LUDWIG—It just seemed to me that, if you are in the process of recruiting staff, it would be unfortunate if they were then to be earmarked for being cut at a subsequent point in time.

Mr Cornall—I do not expect that to happen.

Senator LUDWIG—I am not asking for your commitment on that. It is a matter for your budget to be worked out. In respect of your staffing levels, how have they fluctuated over the period? Have they been relatively stable in that branch? Perhaps you could go back to 1995, 1996, 1997, 1998, 1999 and 2000. Have they always been at the 14 level? Perhaps you could look at that for me.

Ms Leigh—I would have to take that on notice to go back that far.

Senator LUDWIG—Thank you, that would be helpful. You have got four what I will call vacant positions but two people filling two of them. Have you looked at the staff turnover

rate? Do you have a methodology for staff turnover, projected retirements and age profile—‘experience profile’ perhaps is a better term—of your staff as to what requirements you might have?

Ms Leigh—As we are planning the work of the division and as we are undertaking recruitment action, we are constantly mindful of the experience that staff would need in order to carry out their functions.

Mr Cornall—Across the whole department these are issues that we are addressing at an executive level. One of my concerns is that we do not have ready access to accurate data on staff details by division, and we are working on improving our data in that area. I am also conscious that, as a general Australian Public Service issue, the public sector is ageing and there are concerns about obtaining a proper mix of new staff and younger staff with older staff so that you do not run into the sorts of problems you are adverting to, of experience being lost and inexperienced staff replacing them.

My own perception is that our staff turnover is higher than I would like it to be. But that may well be explained by a number of factors to do with the possibility of outsourcing IT and so on, which we have been living with for some time, which has been quite unsettling for staff. These are issues we are certainly concerned about at an executive level.

Senator LUDWIG—Do you have a rate or a ratio that you use for comparative purposes? For instance, you can work out a turnover rate and it can be used as an indicative figure to then compare divisions with divisions or branches with branches or the department as a whole. Do you have one for, say, the Human Rights Branch as against another branch of like type or against the department as a whole?

Mr Cornall—No, we do not. One of the reasons we do not is that we do not have, to my mind, accurate data at this stage to make those comparisons. It is one of the reasons why I do want to get to the stage of having accurate data, to make those comparisons to track that sort of behaviour over a period of time.

Senator LUDWIG—Just to finalise this question about the staffing levels, by deduction, if there are 14 positions, four are vacant with two filling those roles—

Ms Leigh—I think I mentioned 13 would be the correct number, because we replaced two part-time positions with one full-time position.

Senator LUDWIG—I missed that. How many permanent employees are there then, if we tackle it from the other end?

Ms Leigh—There are four employees in the branch who have ongoing status.

Senator LUDWIG—How many have non-ongoing status?

Ms Leigh—Six.

Senator LUDWIG—How many are casual or part time?

Ms Leigh—They are all full time.

Senator LUDWIG—Is there a balance then somewhere, or have we struck 13?

Ms Leigh—I did add all of these up in advance.

Mr Cornall—Perhaps we could give Ms Leigh a minute to do that calculation and come back with it.

CHAIR—Thank you, Mr Cornall. Good suggestion. Senator Ludwig, did you wish to ask other questions?

Senator LUDWIG—They are all questions directed to Ms Leigh.

CHAIR—Hold that thought then.

Senator LUDWIG—I can talk about native title, but that would be another area.

CHAIR—It would. Perhaps we will just take a moment then.

Senator McKIERNAN—While there is a lull in discussions, I have got some questions on the Family Law Pathways Advisory Group which I would seek to put on notice.

CHAIR—At the same time as we are putting those on notice, I will note that I have received four questions to be placed on notice from Senator Harradine which pertain to the Office of Film and Literature Classification.

Ms Leigh—I am now in a position to clarify that. As I said, there were four ongoing and six non-ongoing, and there are three positions where there are no staff at the moment. That relates to the recruitment action that I mentioned.

Senator LUDWIG—Given the range of work that you have indicated—which stretches across the sex discrimination amendment bill, the implementation of HREOC, disability standards, disability access to buildings and the world race discrimination conference—how does having three positions unfilled and a couple filled on an ongoing basis affect the ability of the Human Rights Branch to meet its commitments? Do you have a performance measure as to whether you are meeting all your targets?

Ms Leigh—Some of the topics are covered by those additional staff in the division that I mentioned who have recently been allocated to work for some of their time on human rights issues. These positions are also not vacant on a long-term basis. We are taking action to fill them at the moment.

Senator LUDWIG—How long have they been vacant? Perhaps you would like to take that on notice.

Ms Leigh—I think I had better, because it is a bit complicated.

Senator LUDWIG—How many staff have been pulled in from other places and for how long in relation to that area we have defined? I am happy for you to take that on notice too. In other words, you said that additional resources have been allocated—I assume they are people.

Ms Leigh—Yes, it is to do with how we organise work in the division. For some time now we have been trying to organise work in the division flexibly. Rather than having people stuck in particular subject areas and when new issues arise having nobody immediately obvious to work on them—or perhaps these issues all arise in one area and one person becomes very overburdened—for some time we have therefore been allocating work flexibly across the division. Most recently, in order to do that we have decided to move away from subject area delineations for the branches and to think in terms of the division subject area of responsibilities. In order to do that, we have organised the work of the division into two clusters: a human rights cluster and a justice systems cluster. So those additional staff I mentioned are now available to work for some of their time in that human rights cluster.

Senator LUDWIG—How many and, if we call them a whole, is there a point you appor-

Ms Leigh—No, because it depends on need. There are four staff, but none of them is allocated full time. They have a spread of responsibilities; they have responsibilities for some of the other matters—

Senator LUDWIG—So you do not know how much of their time has been spent?

Ms Leigh—I could tell you at any given moment. I can tell you that right now two of those staff are occupied full time on human rights matters and, of the other two, one is involved almost not at all and the other to some extent. But it will fluctuate. At the moment, for example, one of those officers is in Geneva at the World Conference against Racism, so that officer is occupied full time on human rights matters. Next week there will be a slightly different demand in the division and that will change. That is the advantage of operating in the way we do. It provides additional resources to the human rights area according to need and allows us to use our resources most efficiently.

Mr Govey—If I could hark back to something that you said a moment ago, Senator, I think from where I stand I could make the general comment that the people in the Human Rights Branch have been working very hard and also very effectively in satisfying the requirements put upon them both by the minister's office and in interacting with other departments.

Senator LUDWIG—I do not think I was saying anything other than—

Mr Govey—I think you asked how they were going, so I thought it was important to put that comment on the record.

Senator LUDWIG—I am pleased that you took the opportunity to do so. What I detect—and perhaps you could set me straight about this—is that it seems you are having some difficulty getting them to work interactively in the clusters. There is a difficulty in trying to unstick them from—I hate to use the expression—a pigeonhole in relation to an issue. Is that right?

Ms Leigh—No, Senator, I would put it the other way round—that people have been receptive to the idea that we look at priorities across the division. As I said, we have been moving along a continuum since late 1999 in thinking in these terms. I think we have been receptive to it because it gives people an opportunity to work on whatever are the current topics and to move around and have some variety.

Senator LUDWIG—That is where I am getting a mixed message. I would not have thought it would have taken from 1999 till now to achieve that.

Ms Leigh—I see it as part of an ongoing process in ensuring that we are allocating our resources appropriately. We will never get to a point where we say, 'From now on this is the number of people we need on this topic.' We need to review it constantly.

Senator LUDWIG—In relation to some more mundane matters such as annual leave and sick leave, do you have figures on the averages that are taken by the staff in that area? For arguments sake, I think you stated in answer to question No. 63 that the percentage rate for sick leave for staff in the Human Rights Branch was above the departmental average, both for the 1999-2000 financial year and the current financial year to 31 January 2001. What I was looking for was an update of those figures and the average rates of sick leave for the department as a whole, and how you usually express it. In other words, do you express it as a whole, as a point number or as a ratio? If you do not, perhaps you can tell me about that as well.

Ms Leigh—I would have to take the update of the figures on notice. You ask how they are expressed in relation to the department as a whole?

Senator LUDWIG—As an average. For arguments sake, if your entitlement is 10 sick days per year and you have an accumulated number of X held, you would have a ratio of five, or you might call it 0.5 of the 10. It would depend on how you would statistically keep the information. If there are 10 sick days per year, you might use 0.5 of the 10 or you might use five out of 10, on average.

Mr Hine—We will take the question on notice in terms of the detail. It is usually expressed as a percentage of working days available during the year. We will ensure that there is a consistent representation.

Senator LUDWIG—So you use 365?

Mr Cornall—No.

Mr Hine—It is 212—

Senator LUDWIG—I thought Ms Leigh was telling me they worked very long and very hard!

Mr Hine—Most of us do in the department, Senator, but for statistical purposes we will use these figures.

Senator LUDWIG—At this point you do not have those figures available?

Ms Leigh—Not the update.

Senator LUDWIG—As I understand it, the rate for the Human Rights Branch is above that of the department?

Ms Leigh—In relation to sick leave for those periods that are provided, yes.

Senator LUDWIG—Is there a reason for that?

Ms Leigh—Without going into individual circumstances, there were two officers who were on extended sick leave. Of course, when you are talking about small numbers, that skews—

Senator LUDWIG—It can have a major impact.

Ms Leigh—Yes.

Senator LUDWIG—I did not want to go back to this matter, but yesterday I asked a question in relation to probity. What that set off in my mind was your staff practices—how you keep your statistics, how you monitor staff leaving, whether you have exit interviews, whether you deal proactively with job satisfaction in the work force, how you deal with morale and work performance, those sorts of things. Do you have a structured program or a methodology in addressing those issues, both for the branch and more broadly for the division?

Ms Leigh—There are a range of things. For the department as a whole we have a performance appraisal system which provides for regular feedback to staff and opportunities to discuss those issues. We also use our work planning to ensure that we have a reasonable spread of workload, which is a relevant issue here. We look at training and development opportunities for staff. That is done on a systematic basis as part of the performance appraisal system. When the department is made aware of training programs that might be of relevance to staff, that information is forwarded out to the whole department and people are encouraged

to take up those opportunities. And then there are the more informal mechanisms that arise as part of daily supervision of work and daily contact with people.

Senator LUDWIG—If you said that there was a blip in relation to sick leave, would you expect your ratio to come down?

Ms Leigh—Yes, Senator.

Senator LUDWIG—Thank you.

Senator McKIERNAN—You mentioned that some of the work that the branch is doing or the cluster—should it more properly be called that?—is access to buildings. Will that require legislative change in any way?

Ms Leigh—It is not clear at the moment whether that will be the case. The Disability Act already provides for standards to be issued under the act, so it is not necessarily that that one would require legislation.

Senator McKIERNAN—You also mentioned some of the other priority work that the branch is involved in. The Sex Discrimination Amendment Bill is now in the parliament. What work would be ongoing in regard to the bill? I assumed you were talking current when you made your remarks to Senator Ludwig.

Ms Leigh—I was speaking generally, Senator. I was speaking about over the last period. Yes, it is before the parliament. We will be called upon at some point to assist in relation to that. It needs to be reintroduced, and I imagine that will be done shortly, and so we will be called upon to prepare documentation to assist in relation to that.

Senator McKIERNAN—It needs to be reintroduced?

Ms Leigh—Sorry—not reintroduced but I think it is due to be introduced into the Senate. Yes, it has passed through the House and we are expecting it to be introduced into the Senate shortly.

Senator McKIERNAN—Okay. It has missed the Senate cut-off date.

Ms Leigh—For passage in the same sitting?

Senator McKIERNAN—Yes.

Ms Leigh—I will take your advice on that, Senator.

Senator McKIERNAN—Do you know when the Senate cut-off date is?

Ms Leigh—I would need to consult my calendar.

Senator McKIERNAN—We are very aware of it. I guess the minister is aware of it as well. Minister, do you know whether there is any intention to seek passage of that bill prior to the end of the budget session of parliament in the two weeks of sitting in June?

Senator Ellison—I am not aware of any push for that. With the remaining sitting days in the Senate, it is fairly well booked out with other legislation. I have been trying to get one of my bills in there. It is very difficult. I would be surprised if it were in there, but it still has to be determined by the Manager of Government Business.

Senator McKIERNAN—Indeed. I was asking the question in the context of the priority workload that the branch is concerned with. What were the other priority areas that you mentioned?

Ms Leigh—I mentioned the pregnancy and work report that the Human Rights and Equal Opportunity Commission issued, I mentioned the disability work in relation to transport, building and education, I mentioned the World Conference Against Racism—

Senator McKIERNAN—And the appointments.

Ms Leigh—And the appointments.

Senator McKIERNAN—Would a representative of the branch be on the interview panel? Will there be an interview panel?

Ms Leigh—In relation to those appointments for the Sex Discrimination Commissioner position, interviews have already been held and officers of the department and the office were on those panels. That is not to say that there will not be further interviews; interviews have already been held.

Senator McKIERNAN—Thank you.

Senator COONEY—Does your section ever give advice to other departments about human rights?

Ms Leigh—Yes.

Senator COONEY—I do not want to know what the advice was. Yesterday there was a case where the President of the Human Rights and Equal Opportunity Commission had decided that some people in a detention centre had been poorly treated by government and that they ought to be compensated. Do you know anything about that case?

Ms Leigh—I am not in a position to know.

Senator COONEY—So the cluster of human rights people in the Civil Justice Division does not know about that matter?

Ms Leigh—I am not aware whether the Department of Immigration and Multicultural Affairs consulted us in relation to the outcome of that report.

Senator COONEY—But you do not even know about the case?

Ms Leigh—Of course we are aware of the report because the Attorney tabled that report in the parliament. The recommendations in the report are things that DIMA would be looking at, and I do not know at this moment whether they came to us in relation to that.

Senator COONEY—The reason I ask you that is that page 35 of the Portfolio Budget Statements says:

Output 1.2: Support for the Attorney-General as First Law Officer and advice on constitutional policy ...
And then it goes on:

- the development of policies in relation to untying Commonwealth litigation, counsel fees, settlement of monetary claims against the Commonwealth, assistance to Ministers and officials in relation to legal proceedings, the Commonwealth's obligations as a model litigant and the use of in-house lawyers by Commonwealth agencies ...

I was looking at the phrase 'the Commonwealth's obligations as a model litigant'. I just wondered whether the Attorney-General's Department gave any weight to that statement at all and, if it did give any weight to it, whether it saw any possibility of advising DIMA about being a model litigant in respect of the matter that I raised.

Mr Cornall—We do give weight to that, and it is an obligation that is set out in the Legal Services directions, which have been approved by the Attorney-General and which are binding on the Commonwealth in terms of its legal business.

Senator COONEY—Let me just put something to you. You get a statement like that in the Portfolio Budget Statements. You then raise an issue which seems directly on the point where the Human Rights Commissioner—that is, Professor Tay, a very eminent person—gave this decision and the Commonwealth did not do anything about it and did not pay. Then you raise it here and the person you ask says, ‘I know something about that—yes, I have heard of the case. No, we have not done anything.’ The difference that that answer shows from what is put down here is just profound. I wonder why those sorts of statements are put in a report like this.

Mr Cornall—This section of the Portfolio Budget Statements also talks about the untying of Commonwealth legal services, and it seems to me that the issue you are raising goes to the fact that the department no longer provides extensive legal advice to government because of the separation of the AGS, and the AGS no longer provides exclusive advice to government because of the untying of legal services. A direct consequence of that is that we cannot comment on every case that is being conducted by the Commonwealth through other lawyers.

Senator COONEY—I understand that, but why put that in? That statement just cannot any longer be guaranteed. Why put it in this book, these Portfolio Budget Statements? You read this and you think, ‘This is high stuff,’ and that is what used to be the situation, but it is not the situation any more, so why put it in?

Mr Govey—Can I make a couple of comments about that. Firstly, it is possible—although neither Ms Leigh nor I are aware of any involvement—that the Office of Legal Services Coordination, the Civil Justice Division or the Office of International Law had some involvement in that matter you referred to, and we can take that on notice. In relation to the model litigant policy in particular, it is not clear from my understanding of that matter that it actually involved litigation, but if it did then obviously the policy would have some applicability.

Senator COONEY—Now what you are doing is defining matters so as to exclude your responsibility. It was clearly a matter heard by the Human Rights and Equal Opportunity Commission. That is not a court. If what you mean by ‘litigation’ is that it is a model litigant only insofar as it goes before a court of record, then why don’t you put that in? If you have a contest between two people locked up in a detention centre and the Commonwealth, and a person of the standing of Professor Tay makes the statement she does, and then you say, ‘Oh, we don’t take any notice of that but we are still model litigants because that is not really litigation,’ I would suggest to you that is a very funny way of using that phrase.

Mr Govey—The point I was wanting to make in relation to the Legal Service directions is that our responsibilities as set out in that dot point are for the policies reflected in those directions. There is quite a detailed setting out of the various policies, and the scope of them is also set out in the directions themselves. The responsibility of the department is for the maintenance and the enforcement of those policies. The Office Of Legal Services Coordination has a policy on the action it takes to enforce those policies.

Senator COONEY—It still does not make any difference. This is a book that is put out. You have been to these places before. People on this side of the table try to take these things seriously. That is all set out. The senators have not set this out; it is set out by the Attorney-

General's portfolio. You come along and you ask somebody who is in charge of the human rights cluster who seems to have all sorts of vague ideas about what is going on and then you point to this and say, 'We get the high moral ground because we are model litigants.' You want the high moral ground, but you do not want to put in the effort that deserves the high moral ground. I do not mind you taking a position, but I think it is a funny sort of statement to put in, given the approach taken in this matter. I think it was written out at about midnight one night—somebody said, 'Oh, we always put this in.'

Mr Cornall—It is an accurate representation of work done within the department. The one thing it does not mean is that we are doing this work for every other department.

Senator COONEY—I would be quite happy if you put in there, in relation to legal proceedings, 'the Attorney-General's obligations as a model litigant'. But you have put in 'the Commonwealth's obligations'. I did not put that in. We have somebody here who does not even really know much about it, from what I have heard.

Mr Cornall—Because it is not our matter. It arose in another department.

Senator COONEY—When the mind floats round, someone thinks 'Oh, yes, I think I do remember something about that.' That is not really—

Mr Govey—What it says is 'the development of policies ... in relation to the Commonwealth's obligations as a model litigant'. That is what these Legal Service directions were for.

Senator COONEY—So you are telling me that what you are there to do is to write these things—'That is the policy, we are writing these policies, but we are not going to carry them out'?

Mr Govey—No. I also mentioned that there is also an enforcement policy in relation to those Commonwealth policies as set out in the Legal Service directions, and the Office Of Legal Services Coordination follows that policy.

Senator COONEY—But you did not—

CHAIR—It is my understanding that Mr Govey is answering the question to the best of his ability on behalf of the Attorney-General's Department, which is the role he is here to perform, and that in other areas it is perhaps a matter that we can take up further with other departments.

Senator COONEY—No. Have you looked at page 35?

CHAIR—I have it open in front of me.

Senator COONEY—Do you see dot point 3?

CHAIR—I understand the issue we are discussing.

Senator COONEY—I cannot see that that statement is confined to Attorney-General's. The word 'Commonwealth' is used.

CHAIR—And that is exactly what Mr Govey has just said to you. It is in relation to the development of policies. Mr Govey has responded in that regard, and then further indicated, as has Mr Cornall, that the officers' responses here this morning specifically relate to Attorney-General's, notwithstanding the fact that they have also referred to the development of policies.

Senator COONEY—They say it is because of the development of policy in this area. I am saying that, when you put to the test whether or not there is a policy development, the evidence seems to be quite to the contrary. Not only was nothing done about the statement but there was a very vague understanding of what I was talking about when I put it to the officer. That all indicates that the statement about the development of policies is hardly consistent with the facts.

CHAIR—Mr Cornall, do you or the officers or Ms Leigh have anything to add?

Mr Cornall—I think we are at cross-purposes. It is obviously difficult for an officer to comment on a case which is not within our responsibilities. But, in terms of the statement in the Portfolio Budget Statements, that currently covers the work that the department does.

Senator COONEY—I understand what Mr Cornall is saying, but I am saying that, if you had really developed policy in this area, first of all you might have hoped that the immigration department—I will ask them about it—might have done something about it but, secondly, you would have thought that there would have been a greater knowledge about the issue, which would have borne out that there was some policy development in this area.

CHAIR—Thank you, Senator Cooney. Are there any further questions in this area?

Senator McKIERNAN—Not in that area. I want to move on to content classifications.

CHAIR—Certainly. I welcome Mr Griffiths to the table.

Senator McKIERNAN—I remember when Mr Griffiths used to be on this side of the table. Welcome back. Hopefully this will not take too long. I was asking about the progress of the review of film and computer games classifications, and the committee was told in February that a draft document was being considered by the censorship ministers in March. In answer to a question, the committee was advised that the review would be conducted in accordance with the process agreed by the Commonwealth, state and territory classification ministers; that advertisements would be placed in national, state and territory newspapers calling for submissions; that an information package would be widely circulated; and that a period of at least six weeks would be allowed for submissions to the review. Has this been done? Can you bring us up to date?

Mr Griffiths—Yes. I can provide some information, Senator. The guidelines review principles have been approved by the Commonwealth Attorney and the state and territory ministers as well. The project is being coordinated by the Office of Film and Literature Classification. I cannot tell you whether the advertisements calling for submissions have yet been placed, but I can certainly get that information for you quite quickly and I can provide that later on today.

Senator McKIERNAN—Thank you, Mr Griffiths. We were also advised at the time that it was expected that proposals for the revision of the guidelines would not be finalised for consideration until the ministerial meetings in November this year or March next year. Is this still on target for that?

Mr Griffiths—It is a little difficult to say probably at this early stage of the review. The next meeting of censorship ministers is not scheduled until November, and I think there would be a strong desire by all of the participating jurisdictions to have the project advanced and considered by ministers at that meeting. There are a lot of contingencies that could change the time frame. The guidelines review was only relatively recently agreed to, only about four weeks ago, and so it is very, very early in the process. There is, I guess, a certain amount of

scope for the guidelines review to be a somewhat larger project than is perhaps intended at the outset. I guess it will depend on the number of submissions, the range of issues raised and how contentious some of them prove to be for various jurisdictions before you would be confident in saying that November is realistic. But that certainly is the hope at this point.

Senator McKIERNAN—Thank you very much, Mr Griffiths.

Senator COONEY—I have to say that this officer adorns the department and has adorned the law.

CHAIR—Thank you, Senator Cooney. I am sure Mr Griffiths is very grateful for that description. As there are no further questions on the area of classifications, we thank you, Mr Griffiths.

Senator McKIERNAN—Concerning intellectual property: can the committee be advised whether the Australian Screen Directors Association and the Screen Producers Association of Australia have reached common ground on the issue of directors' copyright?

Mr Holland—Joan Sheedy is responsible for that area.

Ms Sheedy—No, there has not been agreement reached. The directors have now put in a submission and the government is considering that submission. We will now start talking to the other stakeholders to see whether there is any part of the directors' submission that they can agree with.

Senator McKIERNAN—How does the government now propose to act on this matter, if no agreement has been put in place? I am mindful of a media release put out by the Attorney, the Minister for Communications, Information Technology and the Arts and the Minister for the Arts and the Centenary of Federation saying that they would hope to have legislation ready for introduction by the end of this year.

Ms Sheedy—Certainly that was the hope at the time that that release was put out because we had been informed that the two organisations were trying to come to some agreement. As I say, we received a submission from the directors at the end of March, but nothing yet from the Screen Producers Association of Australia. The directors had delayed their submission, trying to come to some agreement with the producers, which was not successful. Obviously, there is a sharp division of views between the two groups and they have not been able to come to this agreement. So we are now trying to set up meetings with the producer representative to see whether there are some aspects of the directors' proposal or possible variants of that proposal that they might be able to come to some agreement on. Obviously the timetable has slipped, but it has slipped because we had been given to understand that the two groups might be able to reach agreement.

Senator McKIERNAN—So the timetable has slipped but the will of the government to amend the act is still there, even though that timetable will not have been met.

Ms Sheedy—Definitely, yes.

Senator McKIERNAN—Would it be your intention not to proceed without agreement of the two major parties?

Ms Sheedy—We would certainly hope to get some agreement before we proceed. I guess there will be a government decision, if there is no agreement possible at the end of these discussions.

Senator McKIERNAN—In February, we were also advised that the government was re-examining its approach to the issue of performers' rights in the light of an international agreement. What progress has been made in regard to performers' rights?

Ms Sheedy—The situation remains as we reported. I pointed out then that there was a diplomatic conference in December which failed to reach agreement on the issue. We said in that response to you and it is still our intention to re-examine the position. We had hoped that there might be some further discussions between the US and EU following on the failure of the DipCon, but as we understand it, those discussions have not yet taken place.

Senator COONEY—I do not want to go into policy, but I want to go into research. This excellent committee is currently inquiring into parallel imports—you would know all about that. There has been a contention that, as a community, we do not pay enough attention to the protection of intellectual property. Do you know of any moves to bring forward—I must be careful with my words, as I do not want you to go into policy—legislation to make the regime even more protective than it presently is? Do you know of any sort of move to tighten international agreements? If you think that goes too far into policy, just leave it be.

Ms Sheedy—Yes, I suspect that I would stray quickly into policy. But one thing that I would say in that area is that we have under very active consideration in the department at the moment the House of Representatives committee report, *Cracking down on copycats*, which made a number of recommendations about tightening the enforcement area. In that context, we are looking at the issues, but I would say no more than that at this stage.

Senator McKIERNAN—I have a quick follow-up question on the Administrative Review Tribunal. We asked most of the questions of the department while the agency representatives were with us yesterday. We were informed yesterday of the selection panels and told the names of the people that came from the various offices—from the Attorney's office and from the department. We were also told that there was a scribe who attended the interviews. Was the scribe from the Attorney's office or from the minister's office?

Ms Leigh—The scribe was commercially engaged through the agencies that provide those services. There were, in fact, two scribes—one for each panel. A scribe is somebody who attends the interviews, takes notes and then writes a draft report to assist the panel in its work.

Senator LUDWIG—So they were commercially engaged to provide note-taking, either by tape or by a stenographer service, and to then produce a draft for you?

Ms Leigh—That is right. Usually each committee organises how they will work. The committee would probably have a short meeting at the beginning to explain to the scribe how they were going to operate. Then, after each person was interviewed, they would probably have an exchange to ensure that the scribe understood what their views were in relation to that candidate, because the scribe is basically writing up the committee's views.

Senator McKIERNAN—Was it a shorthand exercise or was it by machine?

Ms Leigh—It was longhand, Senator. Normally these scribes use longhand, and that was the case in this instance.

Senator LUDWIG—From a commercial organisation?

Ms Leigh—That is correct. It is a very usual process.

Mr Cornell—It is not a transcript. They are writing up a recommendation report in a proper format, so it is not a transcript of everything that is said.

Senator LUDWIG—I see. That is where we had crossed wires. So it was a commercial organisation that provides a scribe. What sort of background would they have? They are not shorthand typists, to use a very old expression.

Ms Leigh—Usually they are people who have experience in preparing interview reports and who are esteemed in these matters. They are used extensively in the Public Service for selection processes. Often they are people who have some public service background in that context. There are quite a few commercial agencies that make these people available.

Senator LUDWIG—What sort of qualifications would they have?

Ms Leigh—I do not know about formal qualifications—I think that would vary greatly—but they are certainly people who are experienced in undertaking this task and often they have a Public Service background. So, in relation to Public Service positions, they would have some familiarity with the processes.

Senator COONEY—Interviews have taken place. This is for the ongoing peopling of the AAT?

Mr Cornall—That is correct.

Senator COONEY—Have you interviewed the people who are already sitting there?

Ms Leigh—I think I mentioned yesterday that there are about 63 positions where people are currently sitting AAT members and their appointments will expire at the end of June. In relation to those people, they were all asked whether they would like to be considered for reappointment. Those that said yes were then interviewed.

Senator COONEY—With two scribes there.

Ms Leigh—One scribe for each panel.

Senator COONEY—What sorts of questions do you ask? How long have they been on the job before you ask them whether they are fit for it, do you know? You would only interview to see whether or not they were fit for the job.

Ms Leigh—I guess there is a question of merit as well. There would be a baseline—people who complied with the requirements for appointment—and then beyond that the selection of the best people for those positions.

Senator COONEY—Do we draw the conclusion—I suppose that is a matter for us and you may wish to rebut it—that the fact that you interviewed these people who wanted to keep going, to see whether they had merit, would seem to indicate that there was doubt about their merit beforehand?

Ms Leigh—No, Senator, I do not think you should make that assumption at all.

Senator COONEY—I wonder why they were interviewed. If they had the merit, why were they interviewed, Mr Govey?

Mr Govey—One aspect of that is that there were other people who were also available for appointment. As Ms Leigh was saying, there is a degree of merit to compare the whole pool of people who were available, taking into account a whole range of matters, including getting the right mix that is usually regarded as desirable for positions of this kind, including a geographical mix because the tribunal sits in different places.

Senator COONEY—So we must draw the conclusion from what you have said that we might not have had the best people on the AAT beforehand.

Mr Govey—I guess it is always a question of who is available and who is prepared to be considered for positions at any particular time.

Senator COONEY—It must follow though, mustn't it, that there was some doubt as to whether or not we had the best people on board?

Mr Govey—Not necessarily at the point in time when they were appointed, no. But now the pool of people can be assessed at a particular time.

Senator COONEY—I suppose it is the same as looking at High Court judges after they have been there for 10 years. Is that the suggestion—that we will see whether they are up to it? Is that what you are saying?

Mr Govey—The other thing that perhaps I should have mentioned is that the positions we are talking about are not tenured positions for the most part. Their term has expired.

Senator COONEY—This leads us to a new way of going forward—that we would perhaps change the Constitution and take tenure away from the High Court judges and make them go for their job every five to 10 years. I am not asking you to comment, but that would be a reasonable conclusion to draw from the way this exercise has been put forward.

Mr Cornall—Senator, I made the comment yesterday that these are administrative positions, not judicial positions.

Senator COONEY—But that raises a problem when you think, 'These are just making decisions about administrative matters. It does not really count.' That is the other thing that worries me a bit.

Mr Cornall—I do not think there is any view that that is the case.

Senator COONEY—An administrative decision might be even worse for me than a judicial decision. A judicial decision on using abusive language or something would have some consequence for me, but if you then made an administrative decision and said, 'You owe all this tax,' that would be even worse.

Senator Ellison—Senator Cooney, you are arguing for a strengthening of the AAT and an elevation of its status which not even the previous government acknowledged in the way it was set up.

Senator COONEY—It is a bit strange to interview people for their own job, but there you go. I suppose we are interviewed every three years, Minister.

CHAIR—Senator McKiernan has a question about marriage celebrants.

Senator McKIERNAN—Somebody at the table might be able to answer this; if you cannot, you can take it on notice. When do you expect that the review of the responses to the proposals paper will be completed and the proposals for reforms announced?

Mr Bourke—The responses are being analysed at the moment and we are preparing a report for the Attorney-General. As to when an announcement could be made, I could not commit the Attorney to that but it would be some months before a final position would be made public.

Senator McKIERNAN—Is there an expectation that legislative change will be required or could this be accompanied by changes in the administration of the program?

Mr Bourke—It would be a combination of both.

Senator LUDWIG—I wish to turn to the Law by Telecommunications initiative. On what date and through what processes did the department consult with members of the community in regional, rural and remote Australia to make an assessment of the needs? That broadly concerns the best way to meet the needs and to take specific comments on the methods that were finally chosen to deliver the Law by Telecommunications initiative. You established a web site and the national call centre, so what I am trying to elicit from you is what processes you adopted to come to the final conclusion.

Mr Bourke—There was a scoping study which was undertaken at an earlier point in time and that informed the final decision that the Attorney took to provide the service in the way in which you have now described it, being the call centre, the web site and the service directory.

Senator LUDWIG—Let us look at the scoping study. Was that a paper or a departmental committee or a committee of one?

Mr Bourke—Consultants were contracted to provide the study.

Senator LUDWIG—Have we asked for that before?

Mr Bourke—I would have to check. I would be surprised if you had not.

Senator LUDWIG—So would I. Perhaps we can put that on notice. If you have already supplied the information, you can refer us to the reference point.

Mr Bourke—Certainly.

Senator LUDWIG—If you have not done so, we would certainly welcome that consultative report. From your memory of it, do you recall whether the needs of regional, rural and remote Australia were assessed, particularly given the final outcome of a web site and a national call centre? That begs the question of whether the scoping study recommended that. What were the recommendations of the scoping study?

Mr Bourke—In general terms, the scoping study found that economies of scale could be achieved by providing a national online service.

Senator LUDWIG—And you will come back to me with those other parts of the question in relation to rural and remote Australia?

Mr Bourke—Yes.

Senator LUDWIG—You say you relied on the consultant's report to come to the conclusion that you would establish a web site, a national call centre and a reference directory; is that right?

Mr Bourke—That was certainly one of the matters taken into consideration.

Senator LUDWIG—What else was taken into consideration?

Mr Bourke—There are always other considerations, such as the quantum of funds, the budget and the policy decisions about what is the best way to deliver services. There are a number of factors which go into the consideration of the final policy outcome, but certainly one of them was the scoping study.

Senator LUDWIG—Was there any specific research that the department undertook or that was available to the department about community legal needs in regional, rural and remote Australia?

Mr Bourke—No. The question of legal needs is one which, as you know, is quite difficult to come to terms with. We have taken and used a number of approaches to try to identify it, but there was no separate study or research done by the department.

Senator LUDWIG—What other ways did you use, outside the consultant's report?

Mr Bourke—As I said, the other matters which we have taken into consideration—

Senator LUDWIG—You mentioned 'approaches'. I was just trying to follow up on that word.

Mr Bourke—In our earlier discussion with Senator McKiernan we talked about the needs study for legal aid generally. That is one approach using the Grants Commission method.

Senator LUDWIG—Who was 'we'?

Mr Bourke—I am using the generic term 'we', meaning 'in the department', and that is advice that then goes to the Attorney.

Senator LUDWIG—What I am trying to identify, as specifically as I can, concerns the fact that there was a consultant's report—there was no research by the department—and you went on to alternative approaches that were taken into consideration and then you talked about 'we', which can then only refer to the department. I did not want to go around this circle too many times, but what I was trying to identify is how you came to the conclusion that you did. So far we have highlighted the consultant's report and the needs based approach that the department has undertaken. Is that reflected anywhere in minutes, documents or a paper that was then added to the consultant's report?

Mr Bourke—It would probably only be contained in advice which we prepare for the Attorney.

Senator LUDWIG—Is that advice available?

Mr Bourke—As a general rule, we do not provide advice that we provide to the Attorney.

Senator LUDWIG—That is what I thought, but I was hopeful.

Mr Bourke—I would just add that we had an information paper on this project, which is on our web site. I have downloaded a copy for the information of senators, if that would assist in your deliberations.

Senator LUDWIG—Thank you, that would be helpful. To reach the position of having the Law by Telecommunications initiative, does that spark the question that there are major gaps in available research about legal needs in regional, rural and remote Australia? In other words, did you, as a department, consider that there are major gaps in available research?

Mr Bourke—I think the question of legal needs is generally one that we have a number of ways of approaching, as I mentioned earlier. I think the state of knowledge of how to measure legal needs still requires further research. As I was saying, the approaches that we have used in this area are the distributive model that we talked about with Senator McKiernan earlier and indices that are made available by the Australian Bureau of Statistics, in particular the SIFA index, which I think stands for the Socioeconomic Index for Australia. So there are a number of mechanisms that we use to try and identify this, but it is an area that it is quite difficult to get a definitive, objective answer to.

Senator LUDWIG—So far as the work went that you then did in preparation for the development of the Law by Telecommunications initiative, are you satisfied that you took into

consideration the needs of regional, rural and remote Australia and that there were no gaps in the research that you did prior to the delivery of the Law by Telecommunications initiative?

Mr Bourke—To the extent that we were able to with our current state of knowledge, yes.

Senator LUDWIG—So you addressed their needs prior to the initiative?

Mr Bourke—As best we could with our current state of knowledge.

Senator LUDWIG—Did the department at any stage consult with the Department of Transport and Regional Services, including the Regional Women's Advisory Council, in relation to the Law by Telecommunications initiative?

Mr Bourke—I would have to confirm whether we consulted specifically with that part of the department. I know there were discussions with that portfolio at different points in time, but I could not say at this point whether there was contact with the group you just mentioned.

Senator LUDWIG—I would be pleased if you would take that on notice and also provide to the committee the dates on which and through which processes that consultative process—if it did take place—took place.

Mr Bourke—Certainly, Senator.

Senator LUDWIG—Did the department at any stage consult with ATSIC in relation to the Law by Telecommunications initiative?

Mr Bourke—Again, I would take that on notice.

Senator LUDWIG—All right, and the same would apply: perhaps you could provide any dates and through what processes. Did the department at any stage consult with the Office of the Status of Women in relation to the Law by Telecommunications initiative?

Mr Bourke—Yes, we have had discussions with the Office of the Status of Women. We have regular discussions with them on a number of our projects. Mr Govey has just reminded me that there was a general call for comments on this project. You will see in the information paper I have tabled that there was a call for comments in response to that.

Senator LUDWIG—While you are looking at the Office of the Status of Women, perhaps you could also have a look at which dates and through what processes that consultative process was taken.

Mr Bourke—Certainly, Senator.

Senator LUDWIG—Did the department take into account and implement the principles from the Regional Australia Summit about services for regional Australia? Are you familiar with the Regional Australia Summit?

Mr Bourke—They would have been taken into account.

Senator LUDWIG—You might want to take this on notice: what I am looking for is how those principles are reflected in the final shape of the Law by Telecommunications initiative.

Mr Bourke—I will take that on notice.

Senator LUDWIG—While addressing those above, you might want to reflect on how the initiative has been developed having regard to the Regional Australia Summit principles about services for regional Australia. What I am looking for is both how you can say unequivocally that you took those principles into consideration in developing the Law by Tele-

communications initiative and reflected those principles in the Law by Telecommunications initiative as directly as you may.

Mr Bourke—Certainly, Senator.

Senator LUDWIG—Turning to a more budgetary focus, could you please provide an update of spending on the Law by Telecommunications project to date? Do you have that?

Mr Bourke—I have expenses to date. The date that I have on my notes is 23 May 2001. So far we have expended \$230,000 on a call centre, \$297,693 on the database development, \$6,326 on content development, \$975 on consultation referral agency support and \$58,854 on the project manager, totalling \$593,848.

Senator LUDWIG—Could you provide an estimate of the actual expenditure for 2000-01 and also the forward estimates for 2002-03?

Mr Bourke—I have a total budget for the project which totals \$6.064 million. That has 11 elements to it.

Senator LUDWIG—Can that be made available to the committee? What I was looking for were what you have spent to date, the forward estimates and whether the budget line has changed at any point—not to use Senator McKiernan’s idea, but I want to see the graph of how that is going, or at least the figures so that I can have a look at it. If the budget line has changed at any point, why has it changed? Is there a change in the initiative? Does something kick in later or is it distributed over the whole period?

Mr Bourke—Are you looking to see whether there was a reduction in funding?

Senator LUDWIG—Or an increase, perhaps.

Mr Bourke—What I can say is that the budget has allocated \$6.064 million to the project and that remains.

Senator LUDWIG—What amount has been allocated for advertisements or community awareness raising out of that budget?

Mr Bourke—\$121,500.

Senator LUDWIG—And that is both for the national phone line and other components of the initiative? That is for the total package?

Mr Bourke—That is for the total package.

Senator LUDWIG—Has any money been committed to funding any advertisement programs?

Mr Bourke—No money has been committed to that at this point.

Senator LUDWIG—Is there an estimate in the future for that?

Mr Bourke—It would come out of that \$121,500.

Senator LUDWIG—Is there an amount that is earmarked out of the \$121,000 for that?

Mr Bourke—I do not have that information with me, but I do not think that at this stage we have the detail of the budget to that point.

Senator LUDWIG—But there will be?

Mr Bourke—Yes, Senator.

Senator LUDWIG—Perhaps you can take that on notice and provide a best guesstimate when the figure firms up, notwithstanding the period in which you have to reply. If it is beyond that, a best guesstimate or a question mark will be fine.

Mr Bourke—Certainly.

Senator COONEY—What information will the call centres give? Is it just where you can go to get further legal advice or will they give you legal advice?

Mr Bourke—No, they will be providing legal information. It would be initial information on the problem that the caller would have and then, if appropriate, referral to an appropriate service provider.

Senator COONEY—Say I have a dispute with a neighbour about a fence—he or she wants to put up a new fence. If I ring up, what will happen?

Mr Bourke—I should say at this stage that the call centre will be dedicated to family law issues.

Senator COONEY—This might be a family law issue: it is my wife in the house next door. What do I do about that?

Mr Bourke—If there were, say, a property dispute in a family law matter, there would be information on a screen available to the call centre operator who would be able to provide that information to the caller and then an appropriate choice of service providers to follow up from there. It may be that the person needs a reference to a legal aid commission or to a private legal service provider, or indeed a community legal service.

Senator COONEY—It is a great scheme, and a fairly ambitious one. You would have to have people who have some knowledge about what they are talking about on the end of a phone.

Mr Bourke—The purpose of the screen is for the call centre operators to provide the information. To guard against the possibility of wrong information being provided, call centres are instructed to adhere to the information on the screens.

Senator COONEY—So it would all be set out. You would follow up and read it off the screen.

Mr Bourke—That is right, Senator.

Senator COONEY—So if you are being asked about a contact visit you would press the ‘contact’ button and—

Mr Bourke—And you will get a screen which will give you information about contact.

Senator COONEY—And you will read that out.

Mr Bourke—The call centre operator will do that, yes.

Senator COONEY—You will not be able to sue for negligence or anything like that because it is not going to be that sort of thing.

Mr Bourke—It is simply information, Senator.

Senator COONEY—Has it got to be accurate information, or doesn’t it matter?

Mr Bourke—It is accurate information.

Senator McKIERNAN—I would like to follow up on one of the questions asked about the public affairs unit in the department. What can you tell the committee—I direct this to Mr

Cornall—about the recruitment of a manager of the public affairs unit? When was a manager of that unit appointed?

Mr Cornall—Early this year. The appointment was made just before Christmas and the new manager commenced on 12 February.

Senator McKIERNAN—How was the person recruited?

Mr Cornall—There was an advertisement placed, applications were received, there was an interview panel, recommendations were made and a selection was made from that process.

Senator McKIERNAN—Do you have details of the cost of that recruitment?

Mr Cornall—I do not have them with me, but we can find them. They would be normal recruitment costs.

Senator McKIERNAN—Was there anything unusual about the appointment?

Mr Cornall—Nothing that I am aware of.

Senator McKIERNAN—Or the recruitment process? Was it advertised throughout Australia or was it just within the Public Service?

Mr Cornall—It was advertised. I would have to check, Senator. I cannot recall the detail of the advertisement.

Senator McKIERNAN—You are taking it on notice. Could you provide the committee with details of the advertising that occurred, where it occurred, the cost of the advertising and the cost of the recruitment—the whole of the recruitment process.

Mr Cornall—We had a recruitment agent assist us with the appointment, so I will have to go back and get the details of it. It was also advertised, I think, earlier in 2000, but that matter did not lead to a final appointment.

Senator McKIERNAN—Can you provide me with details of the expenditure on that earlier recruitment drive or advertising drive, or whatever the appropriate name is in regard to that. Can you also provide us with details of the Public Service level at which the officer is employed?

Mr Cornall—Yes, we can do that. You asked a couple of questions about the public affairs unit this morning.

Senator McKIERNAN—Yes.

Mr Cornall—Over the last 12 months the staff level has varied between seven and nine. It reached its peak of nine during the Olympics, when you will appreciate we had a very significant work commitment. As to the expenditure for the public affairs unit for 2000-01, the estimated actual expense is \$1.099 million. That amount is higher than one would normally have expected and includes expenditure of \$120,000 for the Olympics and \$100,000 associated with pro bono matters. The budget expense for the coming year, 2001-02, is at this stage \$799,000 but that may be reviewed, as I indicated earlier.

Senator McKIERNAN—I am actually a bit shocked by the size of the figure. I did not expect it to come anywhere close to the \$1 million mark, never mind exceed it.

Mr Cornall—I think for the \$1 million you have to take out those two exceptional items. Of the remaining figures, the bulk of the expense is salaries and then there are some supplier expenses.

Senator McKIERNAN—With the Olympics, bearing in mind we are in the Attorney-General's portfolio—and I guess the Minister for Justice's portfolio is included in there—it is not one of the portfolios where there would have been an expectation of a great spin-off from the Olympics in the way that culture or the arts or communications might have been. What were the circumstances which warranted an additional expenditure associated with the Olympics?

Mr Dabb—The reason for the focus on the Olympics is that the Attorney-General was the spokesperson for the Commonwealth government on national security matters. That led to considerable travel arrangements, consultations on a series of national security training exercises—there were three major exercises conducted in the lead-up to the Olympics—and a full-time dedicated officer immediately before and during the Olympics in Sydney in a liaison role. I might say that there is some continuing commitment through the coming financial year to CHOGM, where the Attorney-General has a similar role as the spokesperson for the Commonwealth on national security matters.

Senator McKIERNAN—Are you saying that the full-time security officer came from the public affairs unit?

Mr Dabb—So far as the media side of the national security effort was concerned, yes, an officer came from the public affairs unit. The Commonwealth security role, of course, extends across a number of agencies, across the PSCC and this department, the Australian Federal Police, the Defence Force, ASIO and so on; and the effort of all those agencies was enormous, of course, in relation to the Olympic Games and quite significant in relation to CHOGM. The spokesperson on questions, incidents, issues that arose was the Attorney-General, who of course needs to be supported in his media role.

Senator McKIERNAN—What incidents did arise?

Mr Dabb—There were a number in the lead-up to the Olympics. There were a number of media stories relating to preparations for the Olympics, the state of the preparations, who was responsible for different matters, and the extent of security for VIPs from overseas. You might recall the famous phials incident, when phials of some initially unknown substance were located on a Qantas aircraft that was related to the Olympics. Were there weaknesses? What was the Commonwealth doing to stop something being smuggled into Australia before the Olympics? I could go through a whole catalogue of things.

Senator McKIERNAN—No; I understand all the security things about it, but I do not understand the additional expenditures associated with the public affairs office of the Attorney-General's Department.

Mr Cornall—The Attorney-General is the spokesperson on national security issues, and there was a very great concern in government that if anything untoward occurred in the Olympics there would be massive media interest and that massive media interest could reflect very adversely on Australia and could detract from the very great benefits we were expecting from the Olympics—and in fact derived from the Olympics. There was something of the order of 15,000—I think I have this figure correct—accredited media in relation to the Olympics, and there were expected to be another 5,000 or more unofficial members of the media from elsewhere in the world taking an interest in the Olympics. So the preparation ensuring that we had in place communication processes that would ensure that information was transmitted immediately and accurately to the Attorney and the Prime Minister and everyone else was a very significant undertaking, and we had a great responsibility in that

area. In retrospect, it is a bit like the year 2000 issue: there was a lot of concern about having covered every base in case something went wrong, and we were very relieved, as everyone else was, that nothing did. But it did not detract from the amount of effort and preparation and work that had to go into being prepared for that eventuality.

Senator McKIERNAN—Thank you. I am not going to labour the point any further here. We do want to move on. We have asked Senator Crossin to come in. I have just two more questions on this area. The \$100,000 associated with pro bono matters—

Mr Cornall—I do not have the detail of that with me. I have a note here, and we can provide that to you if that would be of assistance.

Senator McKIERNAN—Okay. The expectation for next year is of \$799,000—which will, of course, take into account the CHOGM conference, which will be not quite as big a security effort and associated media effort, after hearing what Mr Cornall has said; nonetheless, I would have an expectation that there would be dedicated expenditure of additional funding towards CHOGM. Can you isolate that amount of money within the amount of \$799,000 you told me for next year's funding for the public affairs unit?

Mr Dabb—I think we should take that on notice in the interests of being quite accurate. But I can say that there is a dedicated officer in the public affairs unit assigned to media matters in relation to CHOGM; and that will continue through to the end of CHOGM from now. That involves costs, of course, of accommodation, travel—if all these things were taking place in Canberra, it might be a different matter. But there has been quite a lot of travel between the department and Brisbane in the lead-up to CHOGM.

Senator McKIERNAN—But it is not being held in Canberra, the national capital, is it?

Mr Dabb—That adds to the expense; that is the point I was making, yes. Also associated with that, of course, are the security aspects of other CHOGM related events, such as the business forum.

Senator McKIERNAN—Sorry, but that is where you are confusing me. If this money is for security, why is it going into the public affairs unit?

Mr Dabb—Because it is for the media related aspects of security. The Commonwealth security effort—in fact, the total effort—covers a large number of Commonwealth and state agencies. The relevant police force in New South Wales during the Olympics and the police force in Queensland are, if you like, the prime security agencies, and the Defence Force is playing a very large support role also. These are all national security matters, and that relates to how security is being delivered. The media side of security is something else again. It is here that the Attorney-General has a responsibility that extends beyond what would normally be regarded as part of the Attorney-General's portfolio, and he is the spokesperson for the government on national security related matters in relation to CHOGM, as he was in relation to the Olympics—and, of course, he needs to be supported in that role.

CHAIR—Thank you very much, Mr Dabb. As we move into outcome 2, Senator Crossin has some questions which pertain to the items listed in table 2.2.2, specifically diversionary programs for juveniles in the Northern Territory.

Senator CROSSIN—That is correct.

CHAIR—We will begin there, before we break for lunch. We will resume after lunch with the rest of outcome 2.

[12.55 p.m.]

Senator CROSSIN—The area I want to specifically concentrate on is on pages 42 and 43 of the PBS. It relates to diversionary programs for juveniles in the Northern Territory. Could someone provide a breakdown of the funding, of the \$4 million which makes up the actual estimate for 2000-01?

CHAIR—Is there an officer who can assist with an answer to that question?

Senator CROSSIN—Who am I directing my questions to here?

Mr Carnell—It would be a proportion of the \$5 million in the first 12 months of the programs—remembering that that 12 months ran from 1 September last year. For that first 12 months the total of \$5 million was broken up as follows. There was to be \$2.489 million to the NT police to set up the juvenile diversion unit and conduct victim-offender conferences and other diversionary measures. Then there was \$1.338 million to the NT police to purchase community based diversion programs. There was \$522,000 to cover 50 per cent of the recurrent costs of the Aboriginal interpreter service, some \$250,000 for extra training for Aboriginal interpreters in the first year and, lastly, \$400,000 for direct funding to NT Aboriginal Legal Service to purchase interpreter services.

Senator CROSSIN—So that is the first year, and \$5 million—

Mr Carnell—It was \$5 million for that 12 months, from 1 September last year.

Senator CROSSIN—which takes us to September of this year. Is that correct?

Mr Carnell—To 31 August, yes. I am sorry I have not done the maths to apportion it across the two years.

Senator CROSSIN—So from 1 September 2001 there is a further allocation of \$4 million. Is that right?

Mr Carnell—Obviously, we would spend \$4 million in this financial year, which is close to completion.

Senator CROSSIN—You are talking to me about financial years, but you are actually saying the funding goes from September to September. So what date do I concentrate on in terms of yearly allocation of funds?

Mr Carnell—Which do you want to talk about—the financial years or the 12-month period?

Senator CROSSIN—I am just trying to get a handle here. So the \$5 million goes from 1 September to the end of August. When do you pay the Northern Territory their next lot of money, and how much is that?

Mr Carnell—We have been paying monthly.

Senator CROSSIN—What is the amount of money that is appropriated in the following year's budget?

Mr Carnell—In 2001-02 it is \$6 million.

Senator CROSSIN—Is that because you are only anticipating spending \$4 million of the \$5 million in this first year?

Mr Carnell—Yes.

Senator CROSSIN—Is \$1 million being rolled over into the following year?

Mr Carnell—Effectively, yes.

Senator CROSSIN—In note 2 you say:

The rephrasing relates to the establishment of community based juvenile diversionary programs: a consultation process has commenced but it is not expected that the programs will commence until the 2001-02 financial year.

Can you explain where in the \$5 million is the \$1 million that needs to be carried over? Is it in the purchasing of the community based programs by the Northern Territory Police?

Mr Carnell—In large part, yes.

Senator CROSSIN—And what is the delay?

Mr Carnell—There is an inherent challenge in that sort of task, talking with the communities and getting matters established. That is something we have been raising with the Northern Territory and they have been assuring us that they are making every endeavour to achieve that. Having spoken myself to the commissioner and to the person in charge of the program, I have no doubt of their commitment to it, but in the payments we have made to the Northern Territory we have not as yet made any payment against that particular element of the five elements that I mentioned at the start.

Senator CROSSIN—So at this stage, of the \$1.338 that have been set aside in the first year for the Northern Territory Police to purchase community based diversionary programs, none has been purchased to date. Is that correct?

Mr Carnell—We have passed no money to the Northern Territory. I should emphasise, for the sake of clarification, that there are already 80 existing programs which are recognised in the arrangements and there have been some referrals to those, but this particular line of money, as it were, was meant to establish new programs as such.

Senator CROSSIN—Why is the emphasis on new programs instead of on existing programs?

Mr Carnell—It is an issue of geography, that the current programs are not necessarily spread according to need, but I will ask Ms Heriot to add to that answer.

Ms Heriot—At the moment there are 85 existing diversion programs that have been approved by the Northern Territory Police and they are primarily located in Darwin and Alice Springs. The police have been actively consulting with communities with a particular focus on indigenous communities in rural, regional and remote settings to identify the communities' needs and capacities. It is in those sorts of communities that we envisage the new program would be located. Because that consultation takes a long time and the agreement has been in effect only since last September. They have not actually got those in place. However, I understand that they have identified a number of options and we will be looking to make some financial commitments to those programs early in the new financial year.

Senator CROSSIN—My figures tell me that by mid-April, 80 programs had been licensed under the Northern Territory government. Are you saying that that is now 85?

Mr Carnell—Yes, that is what Ms Heriot said.

Ms Heriot—I am sorry, I missed the first part of the question.

Senator CROSSIN—My figures tell me that there were 80 programs that had been licensed by mid-April. That is now up to 85. Is that correct?

Ms Heriot—That is my latest advice. I could confirm that.

Senator CROSSIN—Are there any reasons why that increase has occurred in Darwin and Alice Springs when in fact your emphasis is on communities outside those major centres?

Ms Heriot—These are not new programs; these are existing programs that the police have assessed to determine their suitability under the agreement. There are in fact more programs that exist but they are assessing the suitability of the programs.

Senator CROSSIN—Also, I understand that up to the end of January, which is my latest statistics, you had provided to the Northern Territory \$1.7 million under this arrangement. Out of the \$5 million, what is the total amount that the Northern Territory has been given as of today?

Mr Carnell—As at 30 April, there has been \$1.7 million for the juvenile pre-court diversion scheme and \$600,000 to the Aboriginal Interpreter Service. We had also, as of that date, paid \$100,000 to the Aboriginal Legal Service for the purchase of interpreter services. I could also give you a figure to 30 April for each of the five elements that I mentioned at the start, if that would be helpful.

Senator CROSSIN—Do you want to table those?

Mr Carnell—I can certainly have it typed out on a bit of paper that I have not scribbled on.

Senator CROSSIN—Read them out and I will jot them down.

Mr Carnell—For the juvenile diversion scheme, it was a total of \$1,691,836.

Senator CROSSIN—Is this under the—

Mr Carnell—This is for the police for—

Senator CROSSIN—To the NT police?

Mr Carnell—It is via the NT Treasury, but yes.

Senator CROSSIN—For their training? Is that correct?

Mr Carnell—Yes.

Senator CROSSIN—What was that figure again?

Mr Carnell—\$1,691,836. It might assist you to know that at that point of that 12-month period—that is, 66.6 per cent of the period—that amount was 68 per cent of the total. So they are tracking pro rata, as you would expect.

Senator CROSSIN—And no money to the NT police for community based programs?

Mr Carnell—Correct. The operational costs of the Aboriginal Interpreter Service were \$358,340. Again, that is marginally ahead of pro rata. A separate allocation for training of \$250,000 has all been paid. We paid a first instalment in September last year, and then the second instalment in April. That has been fully paid.

Senator CROSSIN—And \$100,000 to the Aboriginal Legal Service?

Mr Carnell—Correct.

Senator CROSSIN—What is your latest figure on how many juveniles have actually been diverted from the court system?

Mr Carnell—We have figures to 31 March. Those figures are that 855 had been offered diversion. I should perhaps anticipate another question you might ask. The total juvenile apprehensions in that period were 1,033, so of that figure 855 were offered diversion. Eight of those declined, so 847 were offered and accepted diversion. That answers your immediate question.

Senator CROSSIN—How many were actually diverted to programs? Some 855 were offered diversion. How many were actually diverted to a program?

Mr Carnell—The figures I have have two categories in that regard. To registered programs, it was a total of 14. There is another category in these statistics of ‘Informal program’, and that is another 14.

Senator CROSSIN—How many took up the offer of offender conferencing?

Mr Carnell—Of those 847 who accepted the offer, the categories I have it broken down into are ‘Written warning’, ‘Verbal warning’, ‘Formal caution’ and ‘Conference’. I take it that is the sort of conference you are interested in.

Senator CROSSIN—Yes.

Mr Carnell—The conference number is 40.

Senator CROSSIN—And for the written, verbal and formal warnings?

Mr Carnell—Written was 182, verbal 443 and formal caution 182.

Senator CROSSIN—We still have a majority of offenders basically having the police wag their finger at them, as opposed to being directed into registered or informal programs or conferencing. What sort of evaluation is being done on the expenditure of this money?

Dr Heriot—Before I get to that question, I just note that, of the 285 juveniles who had completed written warnings, formal cautions or conferences, 132 had conditions imposed upon them, which included some form of restitution, restoration of damage, work for the victim or curfew. Although they were not formally referred to a program, there was an element of—‘penalty’ is the wrong word—restitution or work for the community that did not show up as a formal program referral.

Senator CROSSIN—Just explain that process to me again. The police give a juvenile offender a written warning or a formal warning. Who decides whether it is attached to conditions or not?

Dr Heriot—That would be the police.

Senator CROSSIN—On what basis do they make that decision?

Mr Carnell—They have a very lengthy set of guidelines on the scheme. I do not have those guidelines with me. It is the sort of document that would make Senator Cooney unhappy, I think.

CHAIR—Because of its size?

Mr Carnell—Yes.

CHAIR—It is a long story, Senator Crossin, don’t worry.

Senator CROSSIN—What sort of legal representation does the offender have while this process is being conducted by the police?

Dr Heriot—The offender does not have legal representation, because it is a pre-charge process. However, the person involved and their family have to consent to participate in the process as an alternative to being charged and going through the court process.

Senator CROSSIN—If they do not consent, they are automatically charged? Is that correct?

Dr Heriot—It would proceed through the normal processes, yes, if they refused diversion.

Senator CROSSIN—How many of those who were offered diversionary programs are non-Aboriginal juveniles?

Dr Heriot—My note says that program referrals comprised 22 indigenous males, two indigenous females and four non-indigenous males.

Senator CROSSIN—You do not have a breakdown of the 855 who were offered diversion?

Dr Heriot—I am sure I do somewhere.

Senator CROSSIN—Take it on notice if you need to, given the time. Do you have a breakdown or the details of the alleged crimes for which these juveniles have been offered diversionary programs?

CHAIR—Senator Crossin, in view of the time, can you give the committee some indication of how much more you have in this area and whether it might be appropriate for us to resume after lunch.

Senator CROSSIN—I probably have about 15 minutes.

CHAIR—We will go through to 1.30 and take lunch then.

Mr Carnell—We do not have detailed categorisation for you, but we can give you some feel for it in a basic manner.

Senator CROSSIN—They are not details that you have with you, or you do not keep them—you do not request them of the Northern Territory?

Dr Heriot—We do not have them. The data that we have relates to minor offences as defined in the agreement and then more serious offences.

Mr Carnell—Against that sort of breakdown of the minor property offences, they comprised 194 of the total apprehension figure. All of those were offered diversion and only one of them declined it.

Senator CROSSIN—Only one declined; the others then went into a regular or an informal program or had a conferencing or some sort of written warning, did they?

Mr Carnell—Yes, they went into those four categories.

Senator CROSSIN—The other figures?

Mr Carnell—Yes.

Senator CROSSIN—Of the serious offences, that must be more than 600 or so?

Mr Carnell—Yes, 801 were for more serious offences.

Senator CROSSIN—What is a serious offence defined as?

Dr Heriot—Minor offences are property offences under the Juvenile Justice Act where the value of the property is less than \$100. That is as laid out in the agreement. It does not include offences related to unlawful entry. More serious offences are offences other than those.

Senator CROSSIN—Is it possible for the committee to get a copy of the agreement you signed with the Northern Territory government?

Dr Heriot—Certainly.

Mr Carnell—I have a recollection that one might have been provided previously, but we are happy to provide another copy.

Senator CROSSIN—Thank you. Do you have an indication of how many juveniles are proceeded to court instead of going through these programs?

Mr Carnell—Not with me.

Senator CROSSIN—Would it be safe to assume, if I excluded the figures you have given me from the 855, they would have proceeded to court, or not necessarily?

Dr Heriot—Not necessarily. Charged matters would not necessarily always proceed to court. It would be the role of the prosecutor in—

Mr Carnell—It would be a matter of the normal process then.

Senator CROSSIN—Do you have those figures at all? Can you get them?

Dr Heriot—We do not have them. I am not sure that we can get them exactly because not all of those who did not accept diversion would necessarily make it through to the courts, but we can try and find the numbers that have gone through.

Mr Carnell—Just to make sure I am clear: that is in that category of those who were offered and declined diversion? There is also that group who simply are not eligible for diversion because they fall into the definition of quite serious matters—‘excluded offences’ I think is the jargon in the agreement.

Senator CROSSIN—For excluded offences they do not get this offer by the police at all; they are automatically charged?

Mr Carnell—No. That is 178 of that 1,033.

Dr Heriot—They include offences such as armed robbery or sexual or aggravated assault. They would not be in the group that was offered it; they would proceed to court.

Senator CROSSIN—From the statistics that you are gathering, can you tell us where the 855 who were offered diversionary programs come from in the Northern Territory?

Mr Carnell—I do not have them with me, but we could certainly take that on notice. I am pretty sure we have a geographic spread.

Senator CROSSIN—The juvenile diversion program detail does not actually tell us how many of the juveniles would have been found guilty or not guilty of committing an offence if they had gone through the court process.

Mr Carnell—No.

Dr Heriot—No.

Senator CROSSIN—So we do not actually know how many juveniles entering the process were actually guilty of the offence or would have been found guilty of the offence; is that correct?

Mr Carnell—That is correct.

Senator CROSSIN—In other words, we do not know how many juveniles would have been found guilty or otherwise of the offences; is that correct?

Mr Carnell—Yes.

Senator CROSSIN—You are going to get me a breakdown of where they come from. Is there a breakdown of how the \$6 million will be spent over the next financial year?

Mr Carnell—No, not as yet.

Senator CROSSIN—To date, the \$6 million has not been allocated against the five categories you outlined before; is that correct?

Mr Carnell—That is correct.

Senator CROSSIN—What requirements are there to ensure that the diversionary programs that juveniles actually enter are culturally appropriate to meet the type of crime and background of the person who has allegedly committed the crime? Is that left solely up to the Northern Territory Police, who give those licensing arrangements to the program?

Dr Heriot—Certainly the police are the licensors and so they would make those determinations. I would note that a number of the projects have been similarly assessed by the Northern Territory Department of Corrections along similar lines for their post-conviction diversion program, and issues such as the effectiveness of the programs will be looked at in the context of the review of the agreement.

Senator CROSSIN—So the Commonwealth has no joint guidelines or specifications as to what constitutes a culturally appropriate program for juveniles? Is that solely left to the discretion of the Northern Territory authorities?

Mr Carnell—It is left to their administration of it, yes.

Senator CROSSIN—It is not something the Commonwealth has any input for comment on?

Mr Carnell—We would obviously expect them to pay significant regard to that, and my recollection of the guidelines is that is certainly the sort of point that is covered.

Senator CROSSIN—But there are no checks and balances by the Commonwealth as to which programs are being licensed and their appropriateness; is that correct?

Mr Carnell—Yes.

Senator CROSSIN—How many police officers have been employed under the use of this funding to date? My figures at February tell me that the funding had been used to employ 11 police officers and a couple of other professional and administrative support staff. Is that accurate or are there more police officers than that?

Mr Carnell—Could we take that on notice?

Senator CROSSIN—Certainly.

Mr Carnell—Thank you.

Senator CROSSIN—Has the federal Attorney-General, Mr Williams, been happy with the way the program has been operating?

CHAIR—I am not sure that is a question Mr Carnell can answer. The minister might wish to take that question up.

Senator Ellison—I will take that on notice.

Senator CROSSIN—Are you aware of any diversionary programs that Mr Williams might have visited while he was in the Northern Territory during the year?

Mr Carnell—I cannot recall his itinerary for a trip he made there.

Dr Heriot—I am sorry, Senator, we will have to take that on notice.

Senator CROSSIN—What is the assessment or acquittal of this money in respect of the Northern Territory government? In other words, what are you doing to ensure that the money you provide them for each of these areas is actually being spent in that way? Is there an acquittal process or an evaluation process?

Dr Heriot—The Northern Territory provides performance information at six-monthly intervals. There is a review of progress 12 months from the date of commencement and a review of the agreement as a whole not less than six months prior to the expiration of the agreement. The Territory will provide to the Commonwealth annual audited statements of accounts of expenditure of the funds. Any non-expended funds will be returned to the Commonwealth at the conclusion of the financial year.

Senator CROSSIN—Are you able to provide this committee with the first six-monthly report? They are reporting six monthly; you must have a report to date.

Mr Carnell—Yes, we received one set of statistics. We inquired of the Northern Territory whether they saw any obstacle to us providing it and we have not had a response yet. I will take that on notice and, if there is no obstacle to providing it, we will most certainly provide it to you.

Senator CROSSIN—Thank you. I take it you have not had your first acquittal of moneys because the financial year is just coming to an end. Is that correct?

Mr Carnell—Correct.

Dr Heriot—We would also expect the audited statements to follow the year of the agreement since that is how the financial allocations were made.

Senator CROSSIN—So you would expect a first acquittal of moneys to come to you after the end of August. Is that correct? Could you find that out?

Dr Heriot—Yes, we will clarify that.

Senator CROSSIN—Do you know how many staff are working in the juvenile diversion unit of the Northern Territory Police?

Mr Carnell—Could we take that on notice?

Senator CROSSIN—Yes. Thank you. Could you also take on notice these questions: how many of those staff would actually be police officers, and how much, if any, of your allocated funding to the Northern Territory Police—not for community based programs but the first allocation you mentioned—goes to the Northern Territory Police juvenile diversion unit. I have a minute left, so I will close there and keep my record intact.

Mr Cornall—Before we close, there is one thing I want to correct from yesterday. Senator McKiernan asked about sexual harassment allegations and I said that there had been one. Two allegations were made at the same time by two officers against one person. They are being investigated at the same time, as one investigation, and that was how I recalled the matter. I want to make it very clear that there were two allegations against one person at the same time.

CHAIR—Thank you, Mr Cornall.

Proceedings suspended from 1.29 p.m. to 2.32 p.m.

CHAIR—We will begin where we left off on outcome 2 and move on to administrative appropriations.

Senator McKIERNAN—The total administrative appropriation for 2001-02 is \$13½ million. This is compared with \$18½ million for this current financial year. Do these figures represent a cut-off of almost \$5 million?

Mr Hine—No. As you can see, the bulk of that reduction refers to the fact that we are not anticipating an act of grace payment of \$6.822 million in the next financial year.

Senator LUDWIG—What does the act of grace payment cover?

Mr Hine—As the note says, it covers the payment authorised by the Minister for Finance and Administration in relation to the guns buyback program.

Senator LUDWIG—Yes, I read the note. But what specifically does it cover: one, many?

Mr Hine—It is one payment to an organisation in Victoria.

Senator LUDWIG—What organisation is that?

Mr Hine—I think that was Olin.

Senator LUDWIG—Is that a Victorian organisation or an overseas organisation?

Mr Hine—I am not sure of its background. I do not know whether anyone else can help.

Mr Carnell—I think it is a subsidiary of Winchester, an American firm.

Senator LUDWIG—I read an article about it in the *Australian*, I think it was. It was talking about Olin being a subsidiary. As you have said, it might have been of Winchester, or something like that.

Mr Carnell—I think it was in the *Financial Review*.

Senator LUDWIG—I cannot recall which paper. So one payment went to them?

Mr Hine—I need to correct that. There were two payments: of the total amount of \$6.822 million, \$40,000 was paid to an individual, and the balance—therefore the bulk of the payment—went to Olin.

Senator LUDWIG—Was that a settlement? How does it work? When you say it is an act of grace payment, do you enter into an arrangement to settle it? There must be some liability that is apportioned. Someone must have considered themselves at fault and decided to pay it—or can anyone put their hand up for an act of grace payment?

Mr Carnell—You can always put your hand up. No, act of grace is where there is no legal claim against the Commonwealth. I will just read a key bit out of the guidelines. They read:

An act of grace payment can be made to anyone for any reason but typically they are a method of providing equitable remedies to persons who may have been unfairly disadvantaged by the Commonwealth government but who have no legal claim against it.

Senator LUDWIG—How does the government then come to that conclusion? Is there a process they go through to consider that there is an act of grace payment required to be paid to Olin without any liability arising?

Mr Carnell—Yes.

Senator LUDWIG—Is the information available about how that process came about?

Mr Carnell—I can certainly give you some factual information on it. I am perhaps jumping ahead a bit. I cannot discuss the actual decision, because that decision was made by a decision maker in another portfolio, but I am certainly happy to assist with some background information about it. It was a claim made by Olin. The normal process with act of grace payments is that a panel assembles to write a report on it, which then goes to the Minister for Finance and Administration. That is the process.

The background to the actual claim is that, as you will recall, the Commonwealth indicated that whether or not a state or territory was compliant with the national firearms agreement was something that it would take into account in considering whether to pass further moneys to a state or territory for the reimbursement of firearms dealers. One of the states that was considered not compliant with the national firearms agreement was Victoria. Olin got caught. They had a substantial legitimate claim under the buyback arrangements. Victoria was able to pay part of the claim but needed additional Commonwealth moneys to pay out the balance of the claim. The Commonwealth refused to pay it through that compensation arrangement but, nonetheless, entertained this request from Olin for act of grace consideration.

Senator LUDWIG—Of course, you have not reflected a future amount, because you do not know what a future act of grace payment might be, because it could be on any matter that could arise under any portfolio.

Mr Hine—That is correct.

Senator LUDWIG—Do you know whether or not there are any other claims for act of grace payments in relation to the gun buyback scheme?

Mr Carnell—Mr Hine mentioned that there was that one—

Senator LUDWIG—Sorry, outside the one for \$40,000. That was an individual; I thought it was inappropriate to ask anything more about that.

Mr Carnell—I am not aware of any, and I am getting confirmation of that. Just for the sake of completeness, not act of grace claims, there are still a small number of dealers' claims not finalised and there are also some cases where the dealers have taken the matter to court in the different jurisdictions—small numbers, but it is those cases that are preventing finalisation of the buyback process.

Senator LUDWIG—That was my next question, when the gun buyback scheme is likely to be finalised. That is how long is a ball of string, then.

Senator McKIERNAN—The Standing Advisory Committee on Commonwealth-State Cooperation for Protection against Violence operating expenses has had a reduction from \$6 million to \$3.7 million.

Mr Hine—The expenditure for 2000-01 includes one-off expenses of \$3.38 million associated with the provision of microwave videolink capabilities.

Senator McKIERNAN—How is that related to the standing advisory committee on violence?

Mr Hine—The basic background is that this was in last year's budget. The ACA had sold off a part of the spectrum band that was used by the agencies who collaborate in SACPAV. Because they needed to move to using different bandwidths, they had to buy new equipment,

so the Commonwealth through that SACPAV process has given moneys for the different police services to buy new equipment to operate in that different bandwidth.

Senator McKIERNAN—Which agencies have received the funding for the resource?

Mr Tyrrie—All jurisdictions have received funding from the \$3 million.

Senator McKIERNAN—So it allows for a link-up between all capital cities, for example?

Mr Tyrrie—No, it does not go that far. It is a move on the spectrum on a band for microwave links that were used in relation to video surveillance. So it allows the jurisdictions to switch the bandwidth from 3.4 gigahertz that was reallocated to 3.1 gigahertz.

Senator McKIERNAN—Is there any particular reason why this money was not appropriated to the respective law enforcement agencies, rather than through SACPAV?

Mr Tyrrie—That is beyond my knowledge and before my time. I cannot give you the answer to that.

Mr Carnell—These are state and territory police services that are getting the money, so the Commonwealth needs some way of passing it to them.

Senator McKIERNAN—Was there an announcement at the time the decision was made?

Mr Carnell—It was part of the budget kit in last year's budget. I am 99.9 per cent sure of that, but I can confirm that. Do you want me to send you a copy of whatever was put out?

Senator McKIERNAN—Yes, please. That would be the easiest way of doing it, thank you. Let me move to the overdraft facility for the Australian Protective Service on page 42—\$3.5 million dollars.

Senator LUDWIG—There is a one-off rephase from 1999 to 2000.

Mr Studdert—That overdraft facility was first described in the MOU with DOFA from 1995 and has continued through as a mechanism that we have available to us. We have never drawn on it.

Senator McKIERNAN—And it just continues year in, year out?

Mr Studdert—Correct.

Senator LUDWIG—It does not show that it is going to continue for the budget estimates 2001-02. Or is it not spent and is then rephased, Mr Hine?

Mr Hine—That is correct. It is shown that it was not required in 2001—or that we do not anticipate it being required—and it has been made available in 2001-02. As Mr Studdert indicated, it is just there as a reserve facility in the event that the Australian Protective Service has a liquidity problem. That has not arisen and we do not anticipate it arising. It is just there as a reserve element.

Senator McKIERNAN—What about the next payment of \$742,000 for business rationalisation and redundancy costs? You have finally resolved your industrial relations problems, have you?

Mr Studdert—Very nearly, Senator.

Senator McKIERNAN—Making them all redundant.

Mr Studdert—That is the residual amount. The amount shown there in the column, estimated actual 2000-01, is the residual amount from the appropriation that was made some years ago that was related to a change in responsibility at the Department of Immigration and

Multicultural Affairs detention centres. When the APS moved out of that function there was a requirement for some redundancy moneys. That is a residual amount. As you see, it is not there in the next financial year. The reason for that is that it has now been used up completely.

Senator COONEY—The immigration department says that APS were not anywhere near as good as the present one in the camps—the detention centres. It is an extraordinary statement, I would have thought.

Mr Cornall—I am not aware of them saying that, Senator.

Senator COONEY—I have asked them on occasions here why the Australian Protective Service were not used and they said because the ones they have in now are a lot better.

Senator Ellison—In fairness, Chair, if there has been a statement on this, the statement should be given to Mr Studdert to comment on. As I remember, the outsourcing of that contract was discussed at last estimates. I seem to recall that it was more a policy on outsourcing—

Senator COONEY—If there is a dispute on it, then we will leave it. I think it was clear that the Australian Protective Service were in charge of the camps and then Australasian Correctional Management came in.

Senator Ellison—That is true. That is a fact.

Senator COONEY—And they said it was because they were better.

Mr Cornall—I am sure that would have followed some sort of tender process which would have had a range of issues under consideration such as cost. We have always understood that the APS does have a difficult cost structure because of the quality and the skills of its staff and the level of their training, which is higher than in some other competitive agencies.

Senator COONEY—Is the proposition being put that cost was more important than quality?

Mr Cornall—No, I am saying that there would have been a number of factors taken into account in appointing a tender.

Senator COONEY—Was quality taken into account?

Mr Cornall—You would have to ask the people who made the decision.

Senator COONEY—I was simply putting it to Mr Studdert. I did not raise the issue.

CHAIR—Thank you.

Senator McKIERNAN—I will need to come back to Mr Studdert a little later when we get to the guarding. For our purposes, however, I would prefer to continue dealing with items on page 42. The next one down is departmental appropriations. The figure for 2001-02 is \$56.2 million compared with \$33.5 million last year. This is an increase of \$22.7 million. According to note 5, this is explained by appropriations deferred from 2000 to 2001. That is set out in appendix 6 on page 65. Page 22 of the PBS says that annual departmental appropriations do not lapse, which is why the deferred appropriations do not appear in the appropriation bills and therefore the figures in Budget Paper No. 4 are different from those in the PBS. Can we have an explanation of where things are?

Mr Hine—As the note points out, these funds are made available through the department—we are not spending one year's roll-over in the next year—and they are not reappropriated, therefore they do not appear in the budget bills, that is, in Budget Paper No. 4.

As we discussed earlier, there are a number of programs which had money made available to them in previous financial years. That money was not spent in those years, and we now anticipate the expenditure being incurred this year. That is why you have that substantial increase of some \$23 million between the estimate for 2001 and the budget allocation for 2001-02. In answer to Senator Ludwig's question of this morning, I propose to set all this out in terms of definitions and how they apply to the different elements of the funding arrangements. So over the two-year period—if we go back to our earlier discussion—we are not expecting any change in the total level of funding. It is just because of the timing differences. As you can see, appendix 6 lists the programs where we had expected expenditure in the current financial year. That expenditure is now being incurred in the next financial year.

Senator McKIERNAN—We went through some of them. There is the CrimTrac one—I have made some notes again. We talked a bit about the establishment expenses for the ART yesterday. We also talked, I think, when we had the Privacy Commissioner in front of us, about the privacy conference. Can you remind me of where we were on that yesterday? What were the responses on that? The conference was supposed to be held this year and it is going to be held in the early part of the next financial year.

Mr Hine—It is scheduled for August this year, in the early part of the financial year.

Senator LUDWIG—I am not sure that we covered the implementation of the National Crime Prevention Program. I turn to appendix 6. We were talking about CrimTrac and where all that money went. One stood out, which was \$5 million for the implementation developments of the National Crime Prevention Program. I am sure we have asked but can someone remind me what that is? It is a significant budget. If they are not here—because it may be out of order—I am happy to arrange it for some time later today.

Senator Ellison—I can give you some detail on that. There are a number of aspects to crime prevention. The figure you have there I think is \$5.6 million.

Senator LUDWIG—It is \$5.91 million.

Senator Ellison—There is an extra \$1.2 million which is to come off that in relation to the DUMA program, which is something that the Australian Institute of Criminology is involved in—you may have seen it in the press—and that is the result of some of its research of urine testing at various lockups. There was an article in the *West Australian* about the East Perth lockup at one stage. It is for the continuation of the program which deals with that. So that reduces the figure to \$4.7 million. There are some other projects in the pipeline. The program funding for 2000-01 amounted to \$8½ million, which included a carryover of \$4 million from the previous year. The net figure of \$4.7 million is what remains, but of course there are other programs which are being looked at in relation to crime prevention. They range across areas dealing with recidivism, after-care of people released from custody, capacity building programs, information on crime prevention, bullying in schools and early intervention. Also, there are some others dealing with sexual assault and domestic violence. That is a bit of a thumbnail sketch.

Senator LUDWIG—So it is fair to say that those initiatives, which will be earmarked for the expenditure of \$4.7 million in that next period, have not been articulated in the sense of being released?

Senator Ellison—They are at various stages of being dealt with. In relation to one project—which I do not want to go into detail at the moment because it is still not finalised—

Senator LUDWIG—The import of my question was they have not been released, in the sense that you or the Attorney-General have not made a media release and launched the project as such.

Senator Ellison—That is right. There is one on the burglary information which went out previously and was evaluated—that is public knowledge. But, as I say, they are at various stages of consideration.

Mr Carnell—Perhaps I could add to that. Two of these were in fact covered in answers we gave to questions on notice from the November hearings last year. If you look at question on notice No. 82 from those hearings, you will see a reference to the bullying project that the minister mentioned.

Senator LUDWIG—From which agency?

Mr Carnell—From the department—questions 82 and 158 from the November hearings last year. They are two where obviously something has been said publicly.

Senator LUDWIG—If you take a look at page 22—I suspect this is a question for Mr Hine again—the PBS says that the annual departmental appropriations do not lapse, which is why the deferred appropriations do not appear in the appropriations bill. I was going well up until the time I read that. Can you tell me what that means in plain English or as close as you can to plain English? What I was looking for was exactly how a deferred appropriation works both practically and, from your perspective, from an accounting background.

Mr Hine—From an accounting background, there is not really too much difference. We still recognise the revenue and the expenditures. From a practical application, this was appropriated in 2000-01. The funds have therefore been made available by the parliament. Under the accrual accounting arrangements and the outputs and outcomes, they do not lapse; they continue. So they are not reappropriated in the current financial year, but they are reflected in the Portfolio Budget Statements, which outlines the reasons why expenditure will be incurred on certain outputs during the year.

Senator LUDWIG—Can you give me a ‘for instance’? Can you pick one and take me through it so that it makes practical sense?

Mr Hine—Probably CrimTrac is the best example of that. We anticipated spending \$15.132 million in 2000-01. Those funds were included in the Portfolio Budget Statements for last year as being a possible expenditure for 2000-01. When we prepared the budget at the end of February it became highly likely that we would not spend all that money this year. Because the appropriation does not actually lapse, we therefore needed to defer the appropriation from 2000-01 to 2001-02. Assuming timetables are met and commitments are discharged, at the end of 2002 we will have spent the amount of money that was originally anticipated be spent over that two-year period. As I said, when I reply to that I will try and set it out so we can track it through, because this is an area where some appropriations are deferred and others lapse and are rephased. It is difficult to try and track things through.

Senator LUDWIG—Are matters such as those shown at appendix 6 on page 55 supposed to give me a better idea of how that all works?

Mr Hine—It is to give you more detail about where you can find the figures. We are trying to provide more information so that it is quite transparent to the committee where the money could be located. That is why that detail is there with respect to appendix 6.

Senator LUDWIG—The minister has taken us through what that amount might consist of, but has that been rolled over from 2000-01 and not been spent in earlier years?

Mr Hine—That is right.

Senator LUDWIG—All of it?

Mr Hine—Yes, all of it.

Senator LUDWIG—Was any of it allocated to the NCP budget in 2000-01? In other words, is it from there?

Mr Hine—Yes.

Senator LUDWIG—That was the full amount that was not then spent in the NCP program?

Mr Hine—It is the full amount that we do not anticipate spending. I need to be careful, because we could be back at the—

Senator LUDWIG—Sorry. You might have a rush in the last month. So it could change when we next see it. It could be higher or it could be lower.

Mr Hine—It could be higher if we do not spend the money we had anticipated spending at the end of February, or it will be lower if we spend more than we had anticipated, and the \$5,915 million would be reduced. For example, the minister indicated that an amount of \$1.2 million had been allocated for the DUMA project. If we receive a claim with respect to that money, that money would go out and, therefore, at 30 June when we do the statements we will be only showing \$4.715 million carried over.

Senator LUDWIG—That is in relation to that one program, and so I can follow that. What missed out in relation to the NCP program? Is that a valid question? What wasn't funded or what wasn't spent? What area was not called upon? I guess there are two elements to it.

Mr Hine—I cannot answer that question in terms of what elements make up the total program. I can only say that this is the financial consequence of delays. It may be that nothing has missed out. We may have just anticipated that certain action would occur in July and August 2000 that did not occur until mid-January of this year, and therefore there is a delay in the payments. So nothing may have missed out; it may just be that expenditure did not take place early in the financial year as we had originally anticipated when we developed the program.

Senator LUDWIG—Yes. I can follow that, because the example you gave in relation to that agency makes sense. But there is still a balance of some \$4.7 million that the department may have budgeted for and then not spent in a program. How can I identify which programs individually did not exhaust the amount allocated?

Mr Carnell—They are the sorts of things that the minister ran through. An example in there—

Senator LUDWIG—I was looking for a higher degree of specificity, though. I accept that the minister gave me a broad brush approach and I am not complaining about that. But, while the minister has given us a broad brush approach and a broad explanation, the department must be able to say with some degree of specificity how much each of those programs was worth and where they came from and how the money is then rolled up into the \$4.7 million—or am I being hopeful?

Mr Carnell—We have found that with this sort of program you have to have a certain amount of flexibility. You never have a budget that works out to the very last cent and that is what you end up spending. When you go to tender on particular things, you find that the price moves around. Of course we had a rough idea of where we thought we would spend that money.

Senator LUDWIG—Perhaps you would take that on notice and do what you can. Do not go down to the last cent. It is just so I can see where the money is going. Perhaps you could also have a look, Minister, at your forward program of when you would be likely, in broad scale, to implement a program. I know that you will not want to announce it ahead of time, because you have got all the necessary things to put in train to that.

Senator Ellison—We will take that on notice. No worries.

Senator LUDWIG—What is the total budget for the NCP for 2001-02 or is that it?

Mr Carnell—No. There is an amount there from the original appropriation a couple of years ago.

Senator LUDWIG—Where do I find that?

Mr Carnell—Dr Heriot will be able to give that to you now. While she is looking for the exact figures, the NCP was originally approved to run over four years. We are fast approaching the end of the second year and so there is an amount there for 2001-02 and 2002-03, and that is when the original—

Senator LUDWIG—So there was a total amount apportioned over four years, with a projection of what was likely to be spent each year and then, as those two years rolled by, you have had a rephasing.

Mr Govey—A carryover.

Mr Hine—Or a deferral. Technically—and seriously—it is a deferral because the funds, as Mr Carnell indicated, were available over a four-year period. We developed a cash flow and then, for a variety of reasons, we have deferred the expenditure from one year to the next.

Senator LUDWIG—So that is the convention where there has been a program announced for multiple years?

Mr Hine—Yes.

Senator LUDWIG—Where it is not announced for multiple years, then it is a rephasing or it could lapse if it is not an agency's administrative expense?

Mr Hine—It could lapse or, yes, there is a rephasing.

Dr Heriot—For 2001-02—was that your year?

Senator LUDWIG—Yes.

Dr Heriot—We will have an appropriation for the National Crime Prevention Program of \$4.680 million for project funds and \$1.1514 million for employee administration expenses. For 2002-03, we will again have \$1.15 million, as we anticipate, for employee and administrative expenses and an allocation for projects of \$4.727 million.

Senator LUDWIG—That is much appreciated. If in that four-year period the money is not expended what happens to it? I am just looking for the accounting terms so you do not trick me again—not that you would intentionally.

Mr Hine—I would hope not ever.

Senator LUDWIG—Assuming there is \$0.5 million left over and something happens—

Mr Hine—and assuming there are no commitments entered into with respect to that money—

Senator LUDWIG—There is nothing wrong with it; it is just that somebody forgot to spend it.

Mr Hine—It would be returned to consolidated revenue, because the purposes—

Senator LUDWIG—So it lapses?

Mr Hine—Yes, it would lapse.

Senator LUDWIG—I was just looking for the term to use.

Mr Hine—As I said, we will set out all the correct terms—when it lapses and when it is deferred.

Senator LUDWIG—It could not be appropriated by the department and rephased and spent elsewhere?

Mr Hine—No, I would not think so, because it is about the program, the purposes for which it was originally appropriated by the parliament. By that I mean the parliament could make a decision, during the course of which—

Senator LUDWIG—Yes, we should preface our remarks by saying we are speaking hypothetically about this. In May 1999 the government announced \$21.4 million over three years for the Building Safer Communities package within the NCP program. I may be confused, but in the November estimates Mr Carnell informed the committee that Building Safer Communities was the predecessor of the NCP. Is that the case? So in fact it is not, as the minister's press release said on 11 May 1999, that the Building Safer Communities was the government's 'crime prevention initiative in the 1998 election'? In the press release of 11 May 1999, the minister announced \$21.4 million over four years for the NCP for the Building Safer Communities initiative as outlined. Can the department explain exactly what the Building Safer Communities initiative involves? I have a bit more, but we will see if we can get ourselves up to date to that point.

Dr Heriot—The Building Safer Communities initiative is really the National Crime Prevention program. It is just called the National Crime Prevention program. It had previously had a change of name. So the National Crime Prevention program continued, but it is the same budgetary item that we have been talking about earlier in this session. It funds a range of research, demonstration and information projects that are intended to develop, identify and promote more effective and innovative ways of preventing crime and fear of crime in the community.

Senator LUDWIG—Is it the same money that we have been talking about?

Dr Heriot—Yes, it is.

Mr Carnell—I must have confused matters on that on a previous occasion.

Senator LUDWIG—That same accusation, I suspect, could be levelled at me as well by the time we finish this round. So Building Safer Communities is, in effect, another nomenclature for part of the NCP program?

Dr Heriot—Yes.

Senator LUDWIG—Are they interchangeable or are they just used interchangeably?

Dr Heriot—I am not aware of the evolution of the nomenclature, but the Building Safer Communities program is essentially the National Crime Prevention program—it is the same amount of money. It is very rarely called the Building Safer Communities program; it is usually referred to as the National Crime Prevention program.

Senator LUDWIG—So it may have been—as we got explained to us earlier—where the factual material comes forward and the name gets attached to it for a publicity release.

Dr Heriot—I would say so, Senator. I do not think it caught on.

Senator LUDWIG—The NCP web page says that the NCP program includes national research projects, national pilot projects, local prevention activities and communication training activities. Those are some of the matters that you spoke about. Is that the case still?

Dr Heriot—Yes, Senator.

Senator LUDWIG—In answer to question on notice No. 79 from November estimates, the committee was told that in the two years from 1998 to 2000 the total amount spent by the NCP on these activities was \$2 million. In the November hearing Mr Carnell told us that the amount spent on projects by the NCP in 1999-2000 was \$3.4 million to \$8 million. I am wondering how you reconcile these figures. What projects is the NCP spending money on which do not fall into the categories outlined on the NCP web page?

Mr Carnell—It would assist us if you could repeat those figures, Senator.

Senator LUDWIG—In answer to question on notice No. 79 from November estimates, the committee was told that in the two years from 1998 to 2000 the total amount spent by the NCP on these activities was \$2 million. In the November hearing Mr Carnell told us the amount spent on projects by the NCP in 1999-2000 was \$3.4 million to \$8 million. There may not be a difference.

Mr Carnell—I have in front of me a copy of the answer to question on notice No. 79. It shows for 1998-99, in that year alone, \$2.125 million; and then for 1999-2000, \$3.532 million. So the sum of those two years is obviously greater than \$2 million.

Senator LUDWIG—We will go back to a broader question. Was all the money spent on those activities shown on the web site, was it spent outside those initiatives for the NCP program or are they only indicative of the programs? It says 'includes national research projects'. Is it exclusive or inclusive of?

Dr Heriot—I think one of the issues is that the structure of the program and how we classify things has changed. That has certainly caused some issues with providing financial comparisons across years.

Senator LUDWIG—Perhaps you could explain that.

Dr Heriot—The first year of the program focused on functions like research projects, pilot projects and communications activities. It was then refocused on issues such as violent crime and property offences, and it was more offence based than activity based. That has caused some issues in how things are counted and captured across the years. But the same range of projects would be undertaken as is specified on the web site.

Senator LUDWIG—Is the web site an accurate reflection of the NCP program?

Dr Heriot—I believe so, Senator.

Senator LUDWIG—So the money earmarked for the NCP program has been spent on the programs that have been articulated on the web site?

Dr Heriot—Yes, projects that are under development and negotiation—

Senator LUDWIG—Programs—we will not confuse words. The web site page says:

The NCP programme includes ... national research projects, national pilot projects, local prevention activities, communication and training activities.

Are there any others outside of that that the NCP program has spent money on?

Dr Heriot—No. They are very broad headings, so everything would fall within those headings.

Senator LUDWIG—Do we have the total expenditure of the NCP program in each financial year from 1998-99 to 2000-01? I am happy for you to take that on notice, Mr Hine, unless you have that available.

Mr Carnell—My understanding is that our total crime prevention program expenditure—and I say ‘program’ to separate it from the administration, the cost of the branch itself—in 1998-99 and 1999-2000 is amongst those figures in the answer to question on notice No. 79. If your concern is that some lumps of money were spent on other activities, no—that is the total that we spent on our crime prevention related activities.

Dr Heriot—They do not include salary costs.

Senator LUDWIG—Isn’t the problem I then face—and I am open to correction—that those figures that were done back then can change? I suspect that some of them were projections—in No. 79, were they projections or actuals?

Mr Carnell—These are actuals.

Senator LUDWIG—But you do not have a final figure for 2000-01 because you only have a projection from February. That is right, isn’t it?

Mr Carnell—Yes. That figure then was about \$2.6 million.

Senator LUDWIG—Can you then itemise what the expenditure went to? We know about the \$5.9 million, and the minister is going to give a bit more specificity in relation to that. But can we also itemise the ones that we have just talked about that were spent in the 1998, 1999 and 2000 period—notwithstanding that there is a little bit of time to run.

Mr Carnell—Itemise them?

Senator LUDWIG—Under what program headings—national research projects, national pilot projects?

Dr Heriot—Do you want—

Senator LUDWIG—What they were.

Dr Heriot—specific projects and costings? Is that what you are after, Senator?

Senator LUDWIG—Yes.

Dr Heriot—We could certainly do that on notice.

Mr Carnell—So, effectively, you want further detail and a further breakdown in each of the categories that are in the answer to question No. 79.

Senator Ellison—It relates a bit to what we were talking about earlier, in more detail.

Senator LUDWIG—The minister was very helpful in relation to the \$5.9 million, and I thought we could also get the department to bring out what they spent their money on, because they are now past initiatives—or at least I suspect they are.

Mr Carnell—And you want that for 1998-99 and 1999-2000?

Senator LUDWIG—Yes, and 2000-01, up to what you have done, what has been announced. You can put a question mark on some of them.

Mr Carnell—When this answer is due, compared to when we do the final expenditures.

Senator LUDWIG—I am not going to criticise you for a question mark. The \$21.4 million included a component, as I understand it, of \$8 million for early intervention. Is that right?

Mr Carnell—Yes. But over the four years, to add to the \$21.4 million, there was a carryover amount from the earlier program, NCAVAC.

Senator LUDWIG—I wish I had not said that!

Mr Carnell—I have no wish to conceal anything from you, Senator.

Senator LUDWIG—I might have forgiven you for that one! How much was that?

Senator McKIERNAN—We should arrange a private briefing!

Mr Carnell—Subject to the minister's views, I would be quite happy to do that!

Senator LUDWIG—The \$8 million was the pathways to prevention money, as I understand it.

Mr Carnell—Yes.

Senator LUDWIG—And then we heard that there was a carryover, so we can pinpoint how that was spent as well. The youth crime and families strategy will implement a range of projects following on from the *Pathways to prevention* report. What I was trying to ascertain with the youth crime and families strategy was whether that project was funded by the \$8 million for early intervention announced by, I believe, the then minister, Senator Vanstone.

Mr Carnell—Yes. The early intervention report that was put out—*Pathways to prevention*—will lead to that \$8 million figure that was labelled 'youth crime and families' in the 21.4. Your understanding is correct. In relation to that \$8 million, we have already touched on the meta-evaluation on bullying programs in schools and a couple of the other things that the minister touched on.

Senator LUDWIG—In answer to a question on notice from the November supplementary estimates we were told that the minister had not yet publicly announced the majority of the projects to be funded under the youth crime and families strategy. Have they been announced yet?

Mr Carnell—No, they have not been announced formally.

Senator LUDWIG—How much was carried over out of that other one that I cannot accurately use—that I have now lost—into the \$8 million, or into the 21.4, I guess?

Dr Heriot—I do not have it, Senator.

Mr Carnell—The figure was \$4.902 million.

Senator LUDWIG—Did that \$4.902 million go on top of the 21.4?

Mr Carnell—Yes.

Senator LUDWIG—What happens to it? Is that absorbed into the total of the 21.4—so it goes to 26 something?

Mr Carnell—Yes.

Senator LUDWIG—Is that carried over to the four years, as part of that?

Mr Carnell—Yes.

Senator LUDWIG—If there is an amount that is not expended at the end of the four years, is it still earmarked as that carryover or is it part of the program and then lost, or do you then carry over that bit to another project? Otherwise, you get this \$4 million floating around. Then when this four-year program ends you have \$4 million or \$4.9 million and you can say, ‘That’s not part of the four-year program. Because it got tipped into the bigger bucket, we will pick it up and use it somewhere else.’ I know that seems highly improbable but you could tell me.

Senator Ellison—I do not think it is quite right. Perhaps Mr Hine can tell us why.

Mr Hine—The money was appropriated for a specific purpose. That purpose will lapse and, therefore, the appropriation will lapse also.

Senator LUDWIG—But the \$4.902 which was appropriated for the program—

Mr Carnell—It gets worse, Senator. It was actually moneys from the previous safer Australia program and that was obviously the program under the previous government. With the coalition government there was the National Campaign Against Violence and Crime.

Senator LUDWIG—Do you see what I am saying, Mr Hine? That money was not earmarked for the \$21.4 million Building Safer Communities or the NCP program, as I will call it. So in relation to the NCP money, which was earmarked under the Building Safer Communities initiative announced by the minister, I understand that it has to be appropriated for that amount and when it finishes, if it is not spent, it goes back to consolidated revenue. But the 4.902, which came out of a program twice removed, is not part of the Building Safer Communities program—or is it?—and earmarked for that. If the answer is no, the same thing does not happen with the Building Safer Communities, does it?

Senator Ellison—I think what it means is this: you have this money which was appropriated for safer Australia—forget the name of the program; it was for crime prevention. Then you get another program—NCP or whatever it is. It is still in the same vein, it has the same purpose, but it is rebadged. As I understand it, that money has to stay for the use for which it was appropriated. It does not matter if, by change of administration or whatever, we rebadge it as long as the money is used for that purpose. I think that is the point. You just cannot take the \$4 million and bank it elsewhere in the department’s bank account.

Senator LUDWIG—No, I was not suggesting that. I did not think it would go elsewhere in the department, but it is a big area.

Senator Ellison—Crime prevention is a very big area. Where does it begin and where does it stop? It goes to education, it goes to diversionary programs—it goes to all sorts of things that can lead to crime prevention. Educating schoolkids, kids at risk and adults on alcoholism and drug abuse all relate to crime prevention in some way, as is educating people to look after their homes and to lock them up.

Senator LUDWIG—I understand that, thank you, Minister. I am trying to sort out the accounting process as well. Mr Hine, when that \$21.4 million is expended, which now

includes an additional \$4.902 million, it will not go back to consolidated revenue, but if there is a carryover can it carry over to the amount of \$4.902 million out of that total?

Mr Hine—I will set it all out in the program. Effectively, we had a three-year program announced by the previous government, and that was then subsumed by the four-year program. We now have a seven-year program. We just need to step it through. The total level of funding that has been made available will be made available. What happens in 2003-04 is purely conjecture. I will go through and just set out where the regional program is and how it fits in. These changes also occurred when we moved from a cash to an accrual basis, and we had moneys which were originally appropriated as revenue that had to be appropriated as capital. I am not trying to be evasive. I think it will be easier if we just set it all out and then we can flow it right through.

Senator LUDWIG—Moving on to a more mundane question then, in relation to youth crimes and family strategy, you said there were no announcements. When can we expect to hear some announcements about that? I think this one is yours, Minister.

Senator Ellison—The announcement of all these other programs?

Senator LUDWIG—Yes.

Senator Ellison—There is the prisons one, which we have not really announced yet. It depends upon the participation of people in that program. I cannot go further than that. If that is going to work it will work, but it depends on these negotiations which we are having. Also, there are some others which are in those developmental stages. I really do not think I can give you more of an idea on those, suffice to say that we are working on them to get them up as soon as possible, obviously.

Senator LUDWIG—Of the \$8 million, how much has been announced publicly to be spent?

Mr Carnell—The meta-evaluation on bullying is half a million dollars.

Senator LUDWIG—So of the \$8 million that has been earmarked, \$0.5 million has been—

Senator Ellison—DUMA as well. I have just approved that and made the announcement today when you asked me. That is the Institute of Criminology's one. It is a continuation. That is \$1.2 million.

Mr Carnell—I would have to check.

Dr Heriot—The other one, as Mr Carnell just said, is a project to do meta-evaluation of bullying programs in preschools and primary schools and to develop out of that a best practice resource for teachers, carers and parents of pre-primary and primary school-age children. It is actually quite timely. I note a report released by the AIC the other day talked about the fact that aggression in preschoolers is actually carried through to adolescence in many cases and talked about the need for targeted interventions, and that is the sort of thing this project will be looking at.

Senator LUDWIG—How much is that?

Dr Heriot—That is half a million dollars for both the meta-evaluation and the development and dissemination of information resources.

Senator LUDWIG—So we have the \$1.2 million and the \$1.5 million of the \$8 million that we know has been announced.

Senator Ellison—It is \$2.7 million.

Senator LUDWIG—So, of the \$21.4 million announced in 1998, leaving aside the \$4.9 million, how much of the total has been spent?

Mr Carnell—If we take that on notice, we could give you a more accurate answer.

Senator LUDWIG—What other program is there?

Dr Heriot—The program has had a number of initiatives that have concluded and has actually published reports. A number of projects with state governments have also concluded and reports have been produced.

Senator LUDWIG—I understand. You need to take that on notice.

Dr Heriot—Yes.

Senator LUDWIG—In relation to CrimTrac initiatives, the \$15.132 million was deferred. I think we went through some of this earlier.

Mr Carnell—Yes, I did talk about the original estimates being \$20 million, \$20 million and \$10 million. The first year we spent \$9 million, and when this document was prepared we were looking at an expenditure of \$16 million this year. That carryover of \$15 million is the difference between the \$40 million and the \$25 million. In terms of use of the \$50 million, we have a budget of \$20 million in it for the new fingerprint-palmprint system, and most, although not all, of that is expended. We have also expended money in the area of DNA and in taking over the systems that were run by the old National Exchange of Police Information. Within the budget, there is a little over \$20 million for the third and fourth elements of the new systems that CrimTrac is to produce. One of them is what is now known as the CrimTrac police reference system.

Senator LUDWIG—You are not changing the name on me again, are you?

Mr Carnell—It was not my desire, but we are driven by our stakeholders. We listen to them, and in this case the police services were much more comfortable with the name ‘CrimTrac police reference system’. This is the project that gives police speedy access to about a dozen categories of key operational information and to the national child sex offenders database.

Senator LUDWIG—At output 2.5, ‘Provision of national policing information systems’, the item is shown as a deferred appropriation for CrimTrac from 2001 in output 2.1. Is that right or have I missed that again?

Mr Hine—By 2.5, I assume you are referring to page 43.

Senator LUDWIG—Yes.

Mr Hine—That refers to the revenue of CrimTrac, and 2.4 refers to the revenue the Australian Protective Service anticipate generating this financial year.

Senator LUDWIG—So that is \$25.618 million. Then it is expected to be \$30.753 million the following year. So there is expected to be a rise in usage and a rise in revenue from that?

Mr Hine—I would presume so. There are officers from CrimTrac here who could provide more detail.

Mr Carnell—Perhaps it would help if I sketched the arrangements, because I think—

Senator LUDWIG—It is a significant increase.

Mr Carnell—Basically, the \$50 million, which is project funds for those four systems or projects that I talked about, is effectively a capital injection by the Commonwealth. It is money that the department holds, and we pass it to the CrimTrac agency, which is an executive agency within the portfolio, on an as required basis. Obviously, we closely look at the project plans, et cetera. The CrimTrac agency has taken over the functions of the old National Exchange of Police Information. That was a common police service that was hosted by New South Wales. Now the Commonwealth is hosting a national common police service called CrimTrac, which has an intergovernmental agreement establishing it.

Senator LUDWIG—It became an agency on 1 July 2000.

Mr Carnell—Yes. The CrimTrac agency, as a separate executive agency, has revenue from both the police services—all of the police services use its information sources—and accredited third party agencies who do criminal records checks effectively through CrimTrac. Indeed, it is important to understand that the recurrent costs of the CrimTrac agency are met from those other sources—the state and territory police services and the accredited third party agencies—and that they are also to meet the depreciation costs of the systems. So the Commonwealth's financial part in this is the capital injection of \$50 million, but the Commonwealth has not picked up any other financial liability in respect of the CrimTrac agency and its operations.

Senator LUDWIG—So 2.5 then becomes a new figure effectively for 2000-01. How do I compare that? Was there a figure for the last financial year?

Mr Carnell—The CrimTrac agency commenced on 1 July 2000.

Senator LUDWIG—Yes. So where do you get the 25 from? Is it just an estimate—best guess?

Mr Carnell—No, the agency has been receiving revenue from the police services and the accredited third party agencies and capital amounts from the Attorney-General's Department.

Senator LUDWIG—They estimate then that in the following budget, next year, it will be 30.753?

Mr Carnell—Yes. I stand to be corrected if necessary, but most of that increase would be in the project funds; although there is probably some anticipated increase in revenue from the police services and third party agencies as well.

Senator LUDWIG—The other sources as well.

Mr Carnell—Yes. CrimTrac is providing a terrific service. Some of the fees are transaction based. You would expect some increase.

Senator LUDWIG—Why is it, Mr Hine, that the appropriation for CrimTrac from 2001 is in output 2.1?

Mr Hine—Because that is for the department. This is what I was talking about this morning—about the elimination. We are then transferring it. Because we are consolidating the Australian Protective Service and CrimTrac, we have to show that in here as a source of revenue.

Senator LUDWIG—I am ahead of you, yes.

Mr Hine—For clarity, I refer you to page 62, where you will see total revenue from ordinary activities for the Australian Protective Service next year as \$54.439 million and

\$30.753 million for CrimTrac. That then crossmatches with those two figures that are on page 43.

Senator LUDWIG—That is the same as we went through with the 43 ones last night.

Mr Hine—Yes.

Senator LUDWIG—I wonder if we could shade them and put them in brackets. It is a very loose suggestion. You do not have to take it up.

Mr Hine—We have a view as to the best way that this would be handled.

Senator LUDWIG—I will not ask you for that. Can we have an outline of how the agency will operate?

Mr Carnell—As I said, it inherited, as it were, the systems that the old NEPI ran. They include a national names index, a national vehicles of interest database, the national firearms licensing registration system and access to the electronic white pages. The CrimTrac agency has successfully taken those systems over and made some enhancements to them. It is looking at what else is appropriate. The agency has also got the new fingerprint and palm print system, which is now operational. It represents, I believe, a very considerable success. The fingerprint staff in all the police services around the country are very happy with it. It replaces the system that NEPI ran, which is now close to decommissioning.

The agency has also developed the national DNA database and search engine, which is undergoing testing at present. The agency will obviously do those further two projects that I mentioned: the CrimTrac police reference system and the national child sex offenders database. You can see that some of those existing systems will go into that CrimTrac reference system—to include the sort of data that is of interest to operational police on vehicles of interest and firearms.

Senator LUDWIG—I think Senator McKiernan might have mentioned this earlier, but the figure for protective services—

Mr Hine—For security?

Senator LUDWIG—Yes. You went through that area?

Senator McKIERNAN—I think we did that last night. That was the \$810,000 deferred rephrasing of the protective security area—

Mr Hine—Official establishments.

Senator McKIERNAN—Yes.

Senator LUDWIG—At output 2.3, 'Provision of diplomatic and consular guarding services', it shows \$14.384 million and then jumps to \$18.039 million. Footnote 6 tells us that there is a contingency reserve of \$5 million. What would that be for?

Mr Hine—That contingency reserve is, just as the name indicates, to cover off eventualities where there may be a need to increase the level of security at diplomatic missions or other areas as part of our international obligations. This will require an increase in the number of resources provided by the Australian Protective Service. Funds therefore need to be made available to underwrite those additional costs, if required. It is there as a contingency reserve purely because the level of drawdown is unknown—it is available if and when required. There is an acquittal process that needs to be gone through. The risk assessment is undertaken by a committee of senior officers. That will then determine the level of security that is provided. That level of security obviously then flows on to the cost. So it is

there purely as a contingency reserve to meet those sorts of circumstances in what is, as you would be aware, a fairly volatile worldwide community.

Senator LUDWIG—In the 2000-01 budget there was an extra measure of \$10.4 million for diplomatic and consular guarding which should have brought output 2.3 up to \$16.433 million—or have I got that wrong somewhere?

Mr Hine—That increase was over two years, I think.

Senator LUDWIG—So there was \$5.2 million over?

Mr Hine—The actual value is \$7.831 million in the current year and the balance in the out years.

Senator LUDWIG—What was that figure?

Mr Hine—It was \$7.831 million—the \$2.831 million is in recognition of an increased level of requirement and then there is the \$5 million contingency reserve.

Senator LUDWIG—That would then bring output 2.3 up to \$14.384 million?

Mr Hine—Yes, and there is a baseline figure there of \$10.1 million. There was an additional \$2.69 million included, and \$1.7 million was spent from the contingency reserve last year.

Senator LUDWIG—How do you reconcile that with the mid-year economic statement, which contained an additional \$8.5 million for the diplomatic and consular guarding?

Mr Hine—Because at that particular time that was the figure that we thought would be required.

Senator LUDWIG—Let us start from the beginning, then. I ended up with about \$24.933 million, which was a bit under your \$18 million for next year. You started off with—

Mr Hine—The base fund is \$10.079 million.

Senator LUDWIG—And then you had a contingency of—

Mr Hine—Then we added some additional funding to that, because there was already a recognition that that level of base funding could not meet the level of security that was currently required and we felt at that stage that it would be ongoing. That gave us a new base funding of \$12.7 million in 2000-01. In addition to that, we found that, because of certain situations that occurred during the course of 2000-01, we now anticipate that we will require \$1.7 million from the contingency fund. That was done as at the end of February. That gives a total of \$14.384 million being the estimated expenditure for 2000-01. If we compare that with 2001-02, the base funding, adjusted for indexation, becomes \$10.208 million, plus in the budget there was an additional \$7.831 million made available. Of that, \$2.831 million will go back into the base funding because, as I said before, we consider that the level of need that was established last year will continue. There is a reserve of \$5 million, if and when required. That gives a total of \$18.039 million.

Senator LUDWIG—I will bring my calculator next time, I think. That was the budget measure—diplomatic guarding—of an additional \$7.831 million in 2000-01?

Mr Hine—In 2001-02.

Senator LUDWIG—Yes. And an additional \$7.831 for 2002-03?

Mr Hine—Yes.

Senator LUDWIG—Yet there was money rolled over from 2000-01, which we just identified when we were looking at the deferred appropriations.

Mr Hine—No, that was a different figure.

Senator LUDWIG—You have lost me again. What exactly is this year's budget measure for?

Mr Hine—The budget measure is basically to provide the additional resources, if and when required, to meet our international obligations.

Senator LUDWIG—So where will the additional money be spent?

Mr Hine—It will be spent on acquiring services from the Australian Protective Service based on security assessments done by a number of agencies.

Senator LUDWIG—How is it accessed? Is it called on when and as required?

Mr Hine—It has been accessed. The additional money that was made available at the additional estimates process this year has been accessed. It is on an as required basis when the accounts come in. Because we have had the expenditure approved through an independent body, those funds are then automatically drawn down as required.

Senator LUDWIG—So there was or was not a deferred appropriation for \$1 million from the last year?

Mr Hine—No, Senator.

Senator LUDWIG—So, at page 42—

Mr Hine—The deferred appropriation relates to the physical upgrading at official establishments, not in terms of the guarding services, if you like. The other relates to security fences or whatever else might be required of a physical nature to assist in protection.

Senator LUDWIG—Is there a break-up of that? So the provision of diplomatic and consular guarding services is not the provision of upgraded buildings?

Mr Hine—No, Senator.

Senator LUDWIG—Where else is it spent, other than the APS?

Mr Hine—No, it is only spent on services we acquire from Australian Protective Services.

Senator LUDWIG—That was lucky, wasn't it? I think we have covered most of these. The money appropriated to the department for guarding services has increased with every financial statement over the last 12 months. You will agree with me that every time we look at it we seem to be putting more money into it.

Mr Hine—I would think that that is correct. I have not checked the numbers, but I have no reason—**Senator LUDWIG**—That is the impression I get from these figures. Did we arrange a time to deal with the industrial relations issues surrounding the APS?

CHAIR—We are bringing the APS back. Senator Cooney has some questions for Mr Studdert and then we will come back to Senator McKiernan.

Mr Hine—Madam Chair, could I make a correction? I have just been advised that in 1999-2000 we actually spent some \$19 million on guarding services. So the figure was estimated to drop in 2000-01.

Senator Ellison—Madam Chair, we have been dealing with outcome 2 as a whole, as we did with outcome 1.

CHAIR—Yes, we have, broadly speaking.

Senator Ellison—Have we reached the stage where any of the officers are free to go?

Senator McKIERNAN—We might leave Mr Studdert for the moment and continue with these economic questions.

CHAIR—Does that clarify that for you, Minister?

Senator Ellison—I think it helps.

Mr Cornall—Mr Griffiths is here to answer one question about classification.

CHAIR—We will do that now.

Mr Griffiths—Senator McKiernan asked a question this morning about the classification guidelines review and I undertook to get some information about the advertising of that review. The review has not yet been advertised. I have ascertained from the Office of Film and Literature Classification that the stage that the process is at is that ministers are being asked to sign off on the information package, which will be distributed and which contains an issues paper as well as an outline of some suggested amendments to the guidelines to provoke comment. In this area, consultation with state and territory ministers is obviously good policy but it is also a statutory requirement under the legislation. As ministers have not yet signed off on it, it might be a bit pre-emptive to talk about the advertising that is proposed, but I have been given some information about that. You may want to get information on that after it has occurred. I can provide that if you wish.

Senator McKIERNAN—As much as you could provide would be beneficial, particularly as we are talking about advertising. It is not so much an issue in this portfolio but it is in others.

Mr Griffiths—The Office of Film and Literature Classification anticipates that advertisements will be inserted in national and also in capital city newspapers. There would be one advertisement on a Saturday or weekend edition in each of those papers and it is proposed that a period of six to eight weeks be allowed for responses. I would like to stress that that information is subject to any views that participating ministers might have.

CHAIR—Thank you very much, Mr Griffiths. I am sorry we kept you waiting. Senator Ludwig and Senator McKiernan are next, and then, as I indicated, we will come back to Senator Cooney with those questions to Mr Studdert.

Senator LUDWIG—In relation to output 2.1, the name, as I understand it, has changed, and ‘Maintenance and development of the federal system of criminal justice’ has been added; is that right?

Mr Hine—That is correct, Senator.

Senator LUDWIG—Didn’t it do that before?

Mr Hine—I think it was just a better alignment, because before—if I can refer you to page 26—it was ‘Development and implementation of law enforcement and national security’. We felt that that title did not really reflect what we were trying to achieve with that particular output.

Senator LUDWIG—Does it reflect new services being provided?

Mr Hine—No. It reflects the transfer of some services that were previously under one of the original outputs into this output so that we get a better organisational alignment with the output structure. No, there are no additional services in there, Senator.

Senator LUDWIG—But there is a transfer.

Mr Hine—We have changed some of the other outputs. I think some of the criminal justice elements and criminal law reform were in output 1.1, and we have moved those to 2.1, so that we have all the law and order elements of the department contributing to the one output.

Senator LUDWIG—I see. Does that mean the transfer of bodies and people as well?

Mr Hine—Not in a physical but in an accounting sense, yes. What we have done with the numbers is to align them so that we are saying we have assumed that the change took effect from 1 July last year so that when we are doing comparisons we are comparing like with like and I am not answering questions and saying that you have to discount for this or that figure back. So there was a straight comparison, as if the new arrangements had been in place from 1 July last year, so that when we compare output 1.1 or 2.1 this year with last year, they are on the same basis.

Senator LUDWIG—All right. It is fair to say that there are no new services reflected under 2.1 nor under 1.1.

Mr Hine—That is correct.

Senator LUDWIG—And the description is to better reflect the output 2.1 or 1.1, as the case may be. And 2.1 now, Maintenance and development of the federal system of criminal justice, better reflects where the money is spent.

Mr Hine—Yes, we believe so.

Senator LUDWIG—Who is the ‘we’?

Mr Hine—The department.

Senator LUDWIG—In relation to output 2.2, the estimated actual for 2000-01 was \$9.46 million, and it has now dropped to \$8.303 million. What has been lost as a consequence?

Mr Hine—The major reason for the reduction was that we had an amount of \$1.644 million available in 2000-01 for the physical security upgrades of official establishments and, obviously, that is a one-off capital expenditure and that is not required.

Senator LUDWIG—Was it spent?

Mr Hine—All bar the \$810,000 carryover.

Senator LUDWIG—It does not have any implications for staffing levels other than outside the department?

Mr Hine—No, Senator: it is capital expenditure on physical upgrades.

Senator LUDWIG—In the last year’s budget papers, the budget estimate for output 2.2 was \$12.150 million and it was reduced to \$13.473 million on page 43 of the PBS for 2000-01. Why are we trending down? I know you have explained 1.6 this time around quite fairly.

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

Senator LUDWIG—It seems to be something in the order of \$2.5 million less. There might be an accounting explanation for that.

Mr Hine—There are no accounting issues with that. It was just the way we had split some of the guarding costs. Some we had allocated to the diplomatic community and others we had allocated to official establishments. We just rolled that all in together. So that is why there has been the change between 1999-2000 and 2000-01.

Senator LUDWIG—To confirm that, who would I ask about the staffing levels of the department and whether there are any vacancies? Is that you, Mr Cornall?

Mr Cornall—The average staffing levels are set out in the PBS, for example, on page 31 in relation to outcome 1 and there is a similar figure for outcome 2, on page 43.

Senator LUDWIG—So what about that section itself in the department that deals with output 2.2—how many are employed in it and at what level? I am happy for you to take it on notice to get a snapshot of that section.

Mr Cornall—That is the figure on page 43 but that does include the APS. And then it is broken down on page 64. Does that help you?

Senator LUDWIG—Yes, thank you very much. I do not have any further questions.

CHAIR—So you have completed your questions?

Senator LUDWIG—Well, at least in relation to that area. There is still the APS.

CHAIR—I do not want to bring Mr Studdert back to the table and then send him away again. He may get a complex. I would.

Senator LUDWIG—No, I would not want you to do that, either.

Senator McKIERNAN—We certainly would not want to give Mr Studdert a complex. My reading of things, Joe, is that we have finished with the department generally and with the outputs and outcomes.

Senator LUDWIG—If you ask three questions, I will have a quick look through. One question would do.

Senator McKIERNAN—Barney was going to start with the APS, because he has been waiting patiently.

CHAIR—As he always does.

Senator COONEY—I am leaving it up to you. It is riveting stuff!

CHAIR—I do not think there is any call for cynicism at this point, Senator Cooney.

Senator LUDWIG—All good people should go home.

CHAIR—I would take Senator Ludwig's advice: all the good people should go home. Is that what you said, Senator Ludwig? Except for Mr Studdert.

Senator LUDWIG—You did it again.

Mr Cornall—I think that the other officers can go back to the department.

CHAIR—I understand, Mr Cornall, from my colleagues, that the other officers can go.

Senator COONEY—Yes, thank you.

CHAIR—And they go with our grateful thanks, indeed. Unless they want to watch the next show.

Mr Cornall—You can have too much of a good thing.

CHAIR—Frankly, I may go with them. Thank you very much, Mr Studdert. I am sorry about that earlier confusion.

Mr Studdert—Not at all.

CHAIR—Shall we now begin with the APS.

[6.03 p.m.]

Australian Protective Service

Senator COONEY—Mr Studdert, I did not want to damage in any way your prospects of getting the contract with the various detention centres, so I will not pursue that further. Did any of your members go into any of the detention centres to help arrest people? Did the APS go, for example, to Port Hedland this week?

Mr Studdert—Yes, the APS sent 20 officers to Port Hedland for the operation that occurred last weekend.

Senator COONEY—On what basis was that?

Mr Studdert—We were asked to provide some support to the operation by the Department of Immigration and Multicultural Affairs.

Senator COONEY—The Department of Immigration and Multicultural Affairs asked you to provide 20 people?

Mr Studdert—That is correct.

Senator COONEY—And they paid you for that?

Mr Studdert—Yes.

Senator COONEY—Did you give a quote?

Mr Studdert—We have a standing agreement with the department about the cost of this sort of support.

Senator COONEY—How big is that agreement? Do you know? Have you seen the agreement?

Mr Studdert—It is quite small, quite succinct and to the point.

Senator COONEY—What does it say? Do you know?

Mr Studdert—It says that the Australian Protective Service will provide support to DIMA on an as required basis.

Senator COONEY—So whenever they ring up, you send them? Have you got those 20 people on stand-by ready for the call to go up to wherever DIMA want to send you?

Mr Studdert—I have a pool of people who have notified me of their volunteer status for that sort of work.

Senator COONEY—Are they permanent employees?

Mr Studdert—Yes, they are.

Senator COONEY—Where are they when they are not going to the detention centres?

Mr Studdert—The bulk of them are located in the ACT at various stations. For example, there may be some from Parliament House here. There are some at Russell Offices.

Senator COONEY—So the people that went to Port Hedland were flown up from Canberra. Is that correct?

Mr Studdert—That is right.

Senator COONEY—Can you remember when you were asked for the people from your service to go up to Port Hedland to carry out this operation?

Mr Studdert—They were deployed on Friday morning at about 0130 hours, and we were asked—

Senator COONEY—What does ‘deploy’ mean?

Mr Studdert—‘Deploy’ means they got on the aircraft and flew across out of Canberra.

Senator COONEY—So at 1.30 in the morning, they got on an aircraft? Would I be right in saying that that was a charter aircraft?

Mr Studdert—They were charter aircraft.

Senator COONEY—Were they the only people on the plane or were there Federal Police as well?

Mr Studdert—I believe they were the only members on the plane.

Senator COONEY—So there were the 20 people from APS and the pilot. One pilot or two pilots?

Mr Studdert—I am not sure.

Senator COONEY—Don’t you have the safety of your men in contemplation?

Senator Ellison—I can answer that, Senator Cooney. In my experience, I think you have to have two for that number of people.

Senator COONEY—I am sure that Mr Studdert, in the interests of the safety of his members, would like to think there were two there. It would be very dangerous flying with one. So there were the two pilots and the 20 men, and they were flown over.

Mr Studdert—They were in three aircraft.

Senator Ellison—Six pilots, then.

Senator COONEY—Two pilots in three aircraft would have been a bit of a problem.

CHAIR—Unless there were three pilots.

Senator COONEY—What time did they get there?

Mr Studdert—Approximately 11.30 on Friday morning.

Senator COONEY—Who was in command of them? Were they under a unified command with, I think we were told, Western Australian police and Federal Police? I think even DIMA courageously came forward and contributed some people. Who was in command?

Mr Studdert—I understand that the operational aspects of it were under the command of the Western Australian police.

Senator COONEY—They had command of your people.

Mr Studdert—Yes.

Senator COONEY—And of the Federal Police?

Mr Studdert—I do not know the answer to that.

Senator COONEY—And of DIMA people?

Mr Studdert—I do not know the answer to that either.

Senator COONEY—Even though your people were under the command of the Western Australian police, they were contracted on a fairly short contract with DIMA?

Mr Studdert—That is correct.

Senator COONEY—Does somebody ring you up, do they press a button, or what happens when somebody wants the people to journey forth from Canberra to Port Hedland?

Mr Studdert—Normally we get a phone call from the department to my operations area, and that is the commencement of the tasking.

Senator COONEY—Do you allocate people or do you ring up and say, ‘Do you want to volunteer?’ How long does it take you to get your force of 20 men together?

Mr Studdert—As I said, we have a pool of volunteers, and it is a matter then of making contact with them through their station managers and gathering together an appropriately sized force.

Senator COONEY—And the 20 volunteers were happy to get up in time to get the plane at 1.30 in the morning?

Mr Studdert—Yes.

Senator COONEY—I suggest it shows a devotion to duty.

Mr Studdert—It certainly does.

Senator COONEY—Why would you want to take off at 1.30 in the morning on a dark night—and a cold night at this time in Canberra?

Mr Studdert—It certainly would have been cold.

Senator COONEY—So they got onto the three planes—at six people each, I suppose—and flew off literally into the night. Was there any reason why DIMA wanted them to go at night? Could they have gone in the morning?

Mr Studdert—My understanding, and I guess you will get the opportunity to ask DIMA, is that there was some difficulty obtaining aircraft for the movement.

Senator COONEY—So they chartered the aircraft and then got your people, put the aircraft they chartered together with your people that they had hired and flew off from Canberra to Port Hedland at 1.30 in the morning; have I got the right picture?

Mr Studdert—That is right.

Senator COONEY—Were your people in uniform? Did you see them off?

Mr Studdert—No, I did not.

Senator COONEY—Do you know if they were in uniform, or has somebody told you that?

Mr Studdert—I have not heard that, but it would be normal for them to deploy in uniform.

Senator COONEY—Do you know if they landed at Port Hedland?

Mr Studdert—I do not know the site of the landing strip they landed on.

Senator COONEY—But they certainly got to the Port Hedland camp somehow or other—you have confirmed that.

Mr Studdert—Yes, they did.

Senator COONEY—Do you know when they came back?

Mr Studdert—They remain there.

Senator COONEY—Are they still over there? Do you know what they are doing?

Mr Studdert—Yes, I do.

Senator COONEY—What are they doing?

Mr Studdert—They are doing some escort work, guarding work and providing other support to DIMA whilst they are there.

Senator COONEY—So, as far as you are concerned, if DIMA said, ‘We’ll go into this camp again and take out some people,’ you would say, ‘Be my guest: that is part of the contract’?

Mr Studdert—If DIMA asked us for support, I would certainly talk to them about it. I would not necessarily agree to it immediately, but after discussion I would be happy to support them in most things.

Senator COONEY—Do you know if your people were armed when they took off?

Mr Studdert—I do not believe they went over there armed.

Senator COONEY—Were they armed after they arrived?

Mr Studdert—No, I do not believe so; not with firearms.

Senator COONEY—They had batons?

Mr Studdert—They would have had batons.

Senator COONEY—Would they have a peaked cap? What sort of uniform do you wear?

Mr Studdert—We have a variety of caps; we have a flat-brim slouch hat.

Senator COONEY—Did these people wear the peaked one or the slouch hat?

Mr Studdert—I think they would have probably worn a baseball style hat for the operation if they were not wearing helmets.

Senator COONEY—Did they have flak jackets on?

Mr Studdert—They would have had plenty of protection, yes.

Senator COONEY—Black trousers? What do you wear?

Mr Studdert—Dark-blue ones normally.

Senator COONEY—Did they have leggings or just leather boots?

Mr Studdert—No.

Senator COONEY—Thanks very much.

Senator McKIERNAN—Can you confirm that APS is still the only organisation being paid by the department for the provision of guarding services?

Mr Cornall—Diplomatic guarding services? What I am getting at is that in the department itself we have people on reception over the non-business hours who come from Chubb, but in

terms of the diplomatic guarding we purchase, as I think Mr Hine said before, all of the services from APS.

Senator McKIERNAN—Was the provision of guarding services—I assume these are at head office, the Robert Garran building—a competitive tender process in which Chubb won over APS or others? How was Chubb selected?

Mr Cornall—I would have to find out the answer to that, because that has been the arrangement for as long as I have been with the department. I have not had occasion to look at it.

Senator McKIERNAN—Thank you, if you would take that one on notice. Can we have an update on the industrial relations situation within APS? Your opening comments earlier were that it is close to resolution.

Mr Cornall—Mr Studdert can provide the details, but the 170MX hearing is proceeding and coming to a resolution. That is what I think Mr Studdert was referring to.

Mr Studdert—That is correct. I think most of the senators will be aware that in November last year Commissioner Deegan terminated the bargaining period and recommended to the president of the AIRC that he consider compulsory arbitration on the issue of a workplace agreement for the APS. That arbitration has commenced. We have had five days of hearings. There are a further two days of hearings to occur on 25 and 26 June, and sometime after that the full bench will bring down an award for relevant members of the Australian Protective Service.

Senator McKIERNAN—Is there a commitment from at least your side of the negotiations to accept what the commissioner brings down?

Mr Studdert—It is not an issue that I or the CPSU have a choice about. If they bring down the award, it is compulsorily arbitrated for the APS.

Senator LUDWIG—Do you intend to continue to offer AWAs once the award is brought down?

Mr Studdert—Once the award is in place, it is not possible for the period of the award to bring down AWAs or any other sort of agreement.

Senator LUDWIG—Is that legal advice that you have taken or is that your view?

Mr Studdert—That is legal advice.

Senator LUDWIG—Is that available?

Mr Studdert—The Workplace Relations Act makes that clear, Senator.

Senator LUDWIG—Under what section?

Mr Studdert—I cannot quote it but I can get you the relevant section.

Senator LUDWIG—Thank you.

Senator McKIERNAN—How long is it now since the APS officers received a pay increase?

Mr Studdert—The last pay increase was in October 1997 for those who are not on AWAs or under a certified agreement. There are 150 officers who are under various forms of AWA and have had a pay rise, and there are a further 100 that are covered by other workplace agreements.

Senator McKIERNAN—I certainly hope that on this occasion you are close to a resolution. We have been told in the past at estimates committees that a resolution was around the corner. I hope that on this occasion that is going to be the case and that we will not repeat that question next time you are in front of the committee, Mr Studdert.

Senator LUDWIG—In relation to those who are on an AWA, when the AWAs expire subsequent to the award, should an award be made, is it your intention to renew the AWAs or to let them lapse and let the people go under the award, should one be made?

Mr Studdert—Again, that is covered by the Workplace Relations Act. If an AWA lapses during the period of the award, the individuals have the choice as to whether they wish to renew the AWA or to move to the award.

Senator LUDWIG—What view will you express to the employee who has a choice?

Mr Studdert—I will express the view that they have that choice, Senator.

Senator LUDWIG—You have not adopted a view in relation to that choice?

Mr Studdert—No, I have not.

Senator McKIERNAN—I have one final question on the redundancy that is mentioned in the overdraft. We asked a question earlier about the overdraft facility and the provision of money for redundancy costs. Are there any proposals for redundancies and redundancy payments?

Mr Studdert—No, Senator.

Senator GREIG—I would like to ask a couple of questions in relation to the recent budget announcement. I understand that an amount has been set aside for increased or new protective service arrangements for consular officials and dignitaries from Australia who are overseas. Is my understanding correct?

Mr Studdert—It would be more appropriate for that question to go to the head of the Protective Services Coordination Centre or to the secretary; it is not about the APS directly.

CHAIR—I invite Mr Tyrie to the table.

Mr Tyrie—Could you repeat your question, Senator Greig?

Senator GREIG—Certainly. My understanding is that the budget announced recently contained a substantially greater amount of funding, if not a new amount of funding per se, dealing specifically with protective services for Australian diplomatic and consular officials overseas. Am I right in that understanding regarding that funding allocation? If so, where did that initiative come from? Was it a concern that the department raised with the government and for which it then got the money, or was it a concern raised by diplomatic and consular officials themselves, who felt that the money was needed for additional protective services?

Mr Tyrie—It is certainly money for increased diplomatic guarding in Australia, but there is no money to the PSCC for guarding officials overseas.

Mr Cornall—When I started with the department, the funding of the APS—which, although it looks like an independent organisation, is actually a division of the Attorney-General's Department—was part of the overall funding of the department. The problem that we faced is that diplomatic guarding costs are affected by international events—things like the Olympics and so forth—over which we have no control. Although there were some small allowances in the budget figures for guarding costs, they just could not absorb very large swings in cost. If we had a swing in cost of, say, \$6 million a year, we had to find that out of

the general budget of the department, and we just do not have that much scope to move. So we arranged to move into an environment where we had better funding to take up these highs and lows in expenditure. As a result of that process of negotiations with the Department of Finance and Administration, of approval through the NSC and of approval through the ERC, we now have a much better basis to accommodate what might be higher or lower demands on guarding than the department could accommodate out of its own budget.

Senator GREIG—So the money that has been allocated will not necessarily be spent in full; rather, it is a bucket of money from which to draw in the event of necessity?

Mr Cornall—There was some increased funding and there was also a contingency amount, which will only be drawn on if required.

Senator GREIG—You mentioned the Olympics, but were there any particular examples of overseas incidents? My understanding—and I may be mistaken—is that the money was principally allocated in the budget for overseas troops protecting officials overseas, rather than the Olympics scenario.

Mr Cornall—It is for guarding missions and so on in Australia, but the need for guarding may well be affected by overseas incidents. If there is some uproar in China, that may lead to demonstrations outside Chinese missions—that sort of thing.

Senator GREIG—Is this a scenario that the department anticipates will require increased funding over coming years? Is it an area of concern?

Mr Cornall—It was certainly an area of concern to me in a budgetary sense when we had to find the variables, because it is an uncertain amount—although guarding costs seem to be going up rather than going down. We just do not have the capacity to absorb a several million dollars overrun in guarding costs. So, yes, it was a concern in that sense, and I think the arrangements we now have for funding it are far more appropriate and reflect the fact that they respond to demands which we cannot control or budget for. They give us some capacity to meet the demands of a particular year without putting the rest of our budget into terrible strife.

Senator GREIG—Has there been any liaison with state based police services in terms of coordination of these sorts of protective services? Was there an indication from state or territory based services that this is an area of funding that the Commonwealth ought to give greater attention to?

Mr Cornall—No. It is our duty under our international obligations to guard official establishments, diplomatic missions and so on. It is not a matter of issues with local police.

Senator GREIG—For my own clarity, the money would not be used for protecting consular or diplomatic officials leaving Australia?

Mr Cornall—That is my understanding. It is all based in Australia, and it is all directed by the PSCC.

CHAIR—If there are no further questions, Mr Cornall, may I say a few words. Officers over the past day and a half have taken a significant number of questions on notice—as is usually the case. The committee has determined that the return date for answers to those questions will be 9 July, which is approximately five weeks from now.

Senator McKIERNAN—We had negotiations about that on this side of the table. Is that a reasonable figure? It seems to me that the appropriate figure is about 30 days, but we have

compromised on this side of the table. Does the department or the minister have a view on that return date?

Mr Cornall—It seems more generous than the last one.

CHAIR—Given the great cooperation and assistance shown by the department in responding on the previous occasions, it seemed appropriate.

Senator McKIERNAN—Look upon it as a reward.

Mr Cornall—Thank you, Senator.

CHAIR—We do reward a time frame.

Mr Cornall—We will endeavour to meet that time frame in respect of each question. There is the issue that with some questions we have to find a lot of information, and we are very concerned to ensure that what we give you is accurate.

CHAIR—We appreciate both of those points.

Mr Cornall—We certainly appreciate the extra time and we will make every endeavour to meet that time frame.

CHAIR—Thank you very much, Mr Cornall.

Mr Carnell—Could I save myself one question and table a copy of the agreement between the Commonwealth and the Northern Territory on juvenile diversion that Senator Crossin wanted?

CHAIR—Yes. Thank you, Mr Carnell. On behalf of the committee, Mr Cornall, I thank you and your officers for your assistance over the past day and a half. I think that we have elicited a great deal of information and that it has been a very productive estimates.

Proceedings suspended from 4.26 p.m. to 4.48 p.m.

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

Refugee Review Tribunal

Ms Paula Cristoffanini, Senior Member

Ms Katherine Matic, Deputy Registrar

Mr Gregory Parkes, Acting Manager, Finance and Property

Migration Agents Registration Authority

Laurette Chao, Chairman

Andrew Cope, Vice Chairman

Ray Brown, Immediate Past Chairman

Len Holt, Member from Queensland

David Mawson, Executive Officer

Migration Review Tribunal

Mr Steve Karas, Acting Principal Member

Mr Noel Barnsley, Acting Registrar

Department of Immigration and Multicultural Affairs

Department Executive

Mr Bill Farmer, Secretary

Mr Andrew Metcalfe, Deputy Secretary

Mr Ed Killesteyn, Executive Coordinator, Business Solutions

Outcome 1: Lawful and orderly entry and stay of people

Output 1.1: Non-humanitarian entry and stay

Output 1.2: Refugee and humanitarian entry and stay

Output 1.3: Enforcement of immigration law

Mr Abul Rizvi, First Assistant Secretary, Migration, and Temporary Entry Division

Mr Todd Frew, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration, Branch

Mr Peter Job, Director, Business Employment Section

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr Vincent Giuca, Acting Assistant Secretary, Humanitarian Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Philippa Godwin, First Assistant Secretary, Detention Task Force

Ms Christine Sykes, Assistant Secretary, Unauthorised Arrivals and Detention Branch

Ms Rosemary Greaves, Assistant Secretary, Detention Policy Branch

Mr Greg Kelly, Director, Detention Operations Section

Mr Jim Williams, Director, Unauthorised Arrivals Section

Ms Linda Webb, Executive Coordinator, Detention Strategy

Ms Mary-Anne Ellis, Assistant Secretary, Detention Strategy Group

Ms Lesley Daw, Acting Assistant Secretary, Detention Services Contracts Branch

Mr Dario Castello, Acting First Assistant Secretary, Border Control and Compliance, Division

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division

Outcome 2: A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably

Output 2.1: Settlement services

Output 2.2: Training and Interpreting Services

Output 2.3: Australian citizenship

Output 2.4: Appreciation of Cultural Diversity

Mr Peter Hughes, First Assistant Secretary, Multicultural Affairs and Citizenship Division

Mr David Doherty, Assistant Secretary, Citizenship and Language Services Branch

Mr Peter Vardos, Assistant Secretary, Settlement Branch

Lynne Gillam, Director, Community Programs Section

Internal Products

Mr Vincent McMahon, PSM, First Assistant Secretary, Corporate Governance Division

Mr Steve Davis, Assistant Secretary, Resource Management Branch

Mr Bernie Hackett, Acting Director, Budget Strategy Section

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Mr Hamish Lindsay, Acting Assistant Secretary, Ministerial and Communications Branch

Australian Government Solicitor

Mr Bert Mowbray, General Counsel (Immigration)

CHAIR—I call to order the meeting of the Senate Legal and Constitutional Legislation Committee to examine the Immigration and Multicultural Affairs portfolio budget estimates 2001-02. On 22 May 2000, the Senate referred to the committee the particulars of proposed expenditure for the year ending on 30 June 2002 for the Immigration and Multicultural Affairs portfolio. The committee will consider the portfolios primarily in the order in which they appear on the circulated agenda, with one small variation for the beginning of this evening's proceedings. We will then move to general questions.

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. The committee has determined that the date set for receipt of answers to questions taken on notice and additional information will be 9 July, as was indicated to the Attorney-General's Department in the previous hearings. I have been requested to once again remind committee members that the Finance and Public Administration Legislation Committee is continuing to monitor format and contents of the Portfolio Budget Statements. If there are any comments that members wish to make about these documents, they should be placed on this public record during these estimates hearings or directed at a later stage to that committee.

I welcome again Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural Affairs, Mr Farmer and officers of the Department of Immigration and Multicultural Affairs and associated agencies. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy.

I would normally now move to ask the minister or Mr Farmer if they wish to make any opening statement but, because the committee has been able to begin this consideration of

Immigration and Multicultural Affairs estimates slightly earlier and several officers and agencies have rearranged their schedules to assist us in that process, I am going to invite the Immigration Review Tribunal to be the first agency that we consider in this hearing and then return to asking Mr Farmer or the minister if they wish to make an opening statement.

[4.50 p.m.]

Migration Review Tribunal

CHAIR—Mr Karas, I understand that I welcome you to this hearing in your capacity as Principal Member of the MRT. On behalf of the committee, I am very pleased to be able to do that. Welcome also, Mr Barnsley.

Senator Ellison—I think Mr Karas has an opening statement he wishes to make.

Mr Karas—I thought that, since this was my first appearance before the committee, I would prepare an opening statement. I would like to present that to you.

CHAIR—Thank you.

Mr Karas—It is expected that the Migration Review Tribunal will achieve an almost 60 per cent increase in the number of case finalisations this financial year. In 1999-2000 the tribunal finalised 4,144 cases. This year the tribunal expects to finalise close to 6,500 cases. This has been achieved in part through the growth in the number of staff and members but also through members and staff becoming more familiar with the case load and as a result of a range of initiatives to increase the efficiency of the organisation.

These initiatives include a structured program for the training of staff and members, the implementation of an enhanced case management system, having registries and within those registries members and staff specialised to a greater extent in particular case loads, and the expansion of the availability of standard format documentation within the tribunal. This has been achieved in the face of the uncertainties associated with the planned commencement of the Administrative Review Tribunal, initially on 1 February 2001, then on 1 July 2001 and now at some unspecified date in the future. It is a tribute to tribunal staff and members that they have been able to remain focused on its objectives in the face of this significant distraction.

I would point out at the same time that as the number of case finalisations has increased so has the number of new applications. At the time the tribunal was established, it was anticipated that in 1999-2000 it would receive about 6,100 new cases per annum. The tribunal actually received 6,480 new applications. In 2000-01 it is expected that the tribunal will receive at least 6,800 new applications, though a late surge in the application rate may take this to 7,000 cases or thereabouts.

Major changes in application rates are in the following areas. There has been a 46 per cent increase in the number of student visas—refusal and cancellation—which in part reflects the growth in the size of the overseas student program. It has also occurred because of an apparent increased activity in this area on the part of the department. There has been an eight per cent increase in the number of partner visas, a six per cent growth in the number of business visa related cases, a 37 per cent reduction in the number of skilled Australian link cases as the number of these cases at overseas posts is reduced and a 19 per cent reduction in the number of visitor visa cases, in part due to the increased use of the ‘no further stay’ condition by delegates of the minister and as a result of the growing use of the sponsored visitor visa at overseas posts.

It is expected that the application rate may continue to increase in future years. The net effect is that the number of applications on hand has grown since 30 June last year. On 1 July 2000, the tribunal had 7,552 cases on hand. The tribunal expects to have between 7,800 to 8,000 applications on hand as at 30 June this year. The final outcome will of course be dependent on the number of applications received and the number of cases able to be finalised between now and 30 June 2001.

It is worth noting, however, that since the end of February 2001, when the number of applications on hand peaked at about 8,306, the tribunal has been able to achieve some reduction in the number of cases on hand. The tribunal anticipates that this may be the beginning of a downward trend that should continue from now on. It is also worth noting that 2,575 cases are currently with members for their consideration, with other cases being worked on by case officers prior to their being referred to a member. The number of cases on hand continues to be of concern to the tribunal and the tribunal is looking at ways in which it can make greater inroads into this on-hand case load over the coming 12 months. The next time I appear before this committee I would hope to be able to report that the tribunal has achieved a significant reduction in the on-hand case load.

CHAIR—Thank you very much: we appreciate that.

Senator McKIERNAN—I had come to accept, particularly over the last five years, that the MRT was a lean, mean organisation. I was surprised to find, in the opening pages of the PBS, that you have agreed with DOFA that there is an amount of \$125,000 that has been identified as a saving that can be achieved during the current year. How come you have that residue of funds within the organisation? If you do have a surplus, why is it not being directed to a reduction of the number of cases that are of concern to the tribunal, as you have just told the committee?

Mr Barnsley—I think you raised a similar issue with the AAT yesterday morning. As you are aware, there is the expectation of certain savings out of the ART process. In discussions on the budget fairly late in the piece, it was decided that there would be savings from the tribunal—that we would be expected to achieve efficiencies in operations through closer cooperation with our other tribunals. The ultimate figure will be reviewed as part of the additional estimates.

Senator McKIERNAN—Where do you expect those efficiencies to occur? We put questions to the AAT yesterday. Part of the answer, as I recall, coming back from the AAT was a giant co-location of facilities. You have already gone through that in the MRT.

Mr Barnsley—Only in three states—in Adelaide, Perth and Brisbane, which are very small operations. Obviously our major functions are in Sydney and Melbourne.

Senator McKIERNAN—You do not have a registry in Perth?

Mr Barnsley—We operate out of the AAT premises in Perth. We have two part-time members there and they accept applications.

Senator McKIERNAN—The savings have already been achieved. Where are you going to get this \$125,000 from?

Mr Barnsley—At this stage, Senator, we need to sit down with the other tribunals and the portfolios and look at other areas where we can work more closely together. Obviously that is going to be in Canberra, Sydney and Melbourne.

Senator McKIERNAN—You say in the PBS that these savings are expected to be achieved through the AAT, RRT, SSAT and MRT working more cooperatively. In how many states do you have registries? How then can it be put together in order to achieve this \$125,000?

Mr Barnsley—We operate our major registries, which we operate ourselves, in Canberra, Sydney and Melbourne. We have a memorandum of understanding with the AAT to provide accommodation and support to the tribunal for our members in Adelaide, Perth and Brisbane. Obviously there were savings in that at the time we set up the MRT. That is why we went that way. What we will need to look at with the other tribunals is what is achievable in the other states—in the three states where we operate our prime registries. I could not put an exact percentage on it, but a large part of our operation would be in those three states, and the case load would originate in those states. As I say, we will need to sit down with the other tribunals and their portfolios to work out what can be achievable in those locations.

Senator McKIERNAN—Would it be fair to say that the figure of \$125,000 is an arbitrary figure imposed on you by DOFA at this instance?

Mr Barnsley—It was not an extremely scientific figure at this stage, no.

Senator McKIERNAN—I was serious about that comment I made in opening about it being a lean, mean organisation. The MRT has been restructured in recent times, and we have talked a bit about what has happened with various registries. I would not have thought that there was a great deal of surplus there at all.

Mr Barnsley—You are quite right. We were set up as a fairly lean, mean organisation in terms of being a tribunal, but we will need, as I said, to work with other tribunals to see what is achievable and we will need to report back to government on that in due course.

Senator McKIERNAN—My concern on this is the processing times on cases—the waiting periods that persons have to go through while their case is being considered by the tribunal, and for those relatives who are sponsoring. If your funding is going to be further curtailed, that could actually have an impact in blowing out those waiting periods and processing times, could it not?

Mr Barnsley—I would hope that that would not be an outcome of this exercise. We are very conscious of the waiting times and the effect on our clients. We are pushing hard to do everything we can to reduce those waiting times as much as we can.

Senator McKIERNAN—Can you tell me the number of cases that are at hand at the moment? What is happening with them? Are they trending up, trending down or are they at a plateau?

Mr Barnsley—Over the last couple of months, we have had a very close look at what we expect the application rate to be. As Mr Karas said in his opening statement, it was initially expected that the tribunal would receive 6,100 in the first year; we received 6,480, an additional 380. That is not a huge increase but it all adds up. I got some figures before I came today and, as Mr Karas mentioned, there seems to be a late surge in the application rate late in the year and we look like receiving probably close to 7,000 this year. Looking at the variables in future years, it is a very game person who would predict what will happen in another year down the track but I would expect that there could be some slight trending up over the next year or so. There are a number of legislative changes coming into effect shortly, but at this stage they are something of an unknown quantity for the tribunal.

Senator McKIERNAN—Do we know about those?

Mr Barnsley—I am sure you do, Senator. They are the provisions relating to students—for example, whereby the providers are required to notify students if they are not making adequate progression or attending courses. They will be able to apply to the tribunal for a review of a decision not to revoke that ordinary cancellation. How many of those cases will actually come to the tribunal is a bit of a mystery at this stage. We will need to have some experience of that case load for probably three to six months before I would make any confident predictions as to what that might mean for the tribunal. Early indications and discussions with my colleagues in the department show that it should not have a huge impact on the tribunal.

Senator McKIERNAN—Coming back to my question, what has been happening with the case load and the processing times, for example, since the MRT itself was established? Is that trending up, plateauing or trending down?

Mr Barnsley—I do not have the precise figures. Obviously over the initial period where we started off with a 5,000 backlog, it took a while to recruit staff, recruit members, train people up and get the place operational. I would think that we are now starting to see a reduction in the waiting periods. It is not good enough yet in the lower priority case loads but certainly from now on I think you will see the time reducing.

Senator McKIERNAN—Are you not in a position to be more definitive about what is actually happening?

Mr Barnsley—Could I take that on notice and see what I can do for you? If I could do that, I would like to have a chance—

Senator McKIERNAN—If you do not have the information—

Mr Barnsley—I do not have it here at the moment. We would need to develop new reports on the system to produce that for you.

Senator McKIERNAN—One of the matters that have been affecting the performance of the MRT which the principal member referred to in his opening statement was the proposal to establish the ART in February and then again in July. Now there is no ART or no proposal for the establishment of an ART. There is an idea in the minds of the ministers, but until you come back and talk to certain interested parties there is no proposal on the books. What is happening with the members of the MRT? Have there been any reappointments? If so, how many and for what period of time?

Mr Karas—There is presently a total of 39 members, including full-time members and part-time members. You may be aware that there has just been a process of advertisements in relation to the senior member position in Sydney, where the person there is presently acting in that position. Also, there are advertisements for members for the tribunal. The process in relation to the appointment of those new members is progressing, and the reappointments of the present tribunal members as well.

Senator McKIERNAN—Were there any expiries of members and no appointments to fill the places?

Mr Karas—All members presently on the tribunal are due to expire on 30 June of this year. This is where the situation is at present, except that there are processes now in relation to the reappointment of members and also in relation to possible appointment of new members

for the tribunal. In other words, the present members, whose terms were due to expire on 30 June of this year, are going now through a process of reappointment.

Senator McKIERNAN—That has not happened yet.

Mr Karas—When I say ‘process of reappointment’ I mean there is a process going on in relation to what may happen to the members.

Senator McKIERNAN—I am astounded by that. We have addressed questions on this matter previously in this forum of the estimates committee and also in a different forum when the committee was looking at the ART Bill, and my memory tells me that the members’ appointments were going to expire on 28 April, and then it is carried over to 30 June.

Mr Karas—I think the members were then going to expire at the end of January 2001, then they were carried over until 30 June 2001.

Senator McKIERNAN—So there was a reappointment from 1 February—thank you for the correction on that—to 30 June.

Mr Karas—Yes.

Senator McKIERNAN—The reason I am shocked with this is that it is only a month and a few days until 30 June.

Mr Karas—That was on the expectation that the ART was to have commenced on 1 July.

Senator McKIERNAN—Sure, but that bill has been defeated for quite a period of time now. It would have been defeated in the parliament in February or March.

Mr Farmer—Perhaps I could help you. The processes for reappointment and appointment are very close to finalisation. I think we are talking a matter of single, not double, figures.

Senator McKIERNAN—At the same time, there is a team of very well qualified and dedicated people who are working for the tribunal whose appointments will cease on 30 June and, let us face it, the government knew about this whenever it was that the bill was defeated on the floor of the Senate—I think it was late February or early March—and we find that it is only 30-odd days until 30 June. They do not know what they will be doing on 1 July, whether they will have an appointment with the tribunal or not.

Mr Farmer—I think that people will know soon. It is a statement of fact, what you are saying. People have been the subject of some uncertainty because of the parliamentary process. There is no doubt about that.

Senator COONEY—It is not uncertainty because of the parliamentary process. Parliament is supreme, as you know, Mr Farmer!

Mr Farmer—I say nothing about priorities or views, but I think that it is a statement of fact.

Senator McKIERNAN—How did the parliament intervene in the appointment processes, then, if it is a statement of fact?

Mr Farmer—No. I do not think it did intervene in the appointment process, but I think the process of extensions has paralleled what has been happening in the parliamentary sphere.

Senator McKIERNAN—Recruitment for the new ART was on foot from the early part of the year. I know there were advertisements for the president of the ART from very early in January, if not in December, and then there was a subsequent series of advertisements—which I recall we questioned the cost of in the February estimates hearing—calling for members of

the ART. So the recruitment proposals were on foot in early February for the ART. The bill was defeated—and I do not have the date on me but we could certainly find that out—to my memory in late February or early March. The minister, or the panel appointed by the minister to make the selections, has had since then to make those appointments. Why has that not happened earlier? Why did it not happen in March, April or May?

Mr Farmer—I think any selection process—particularly a public, open selection process—takes time. That could only start at a particular point in time, and it will finish very soon.

Senator McKIERNAN—I will not labour the point because we have a few things to talk about. Does the tribunal collect any statistics on the number of persons who appear before it who have the assistance of a migration agent and/or a lawyer as opposed to those who do not have assistance?

Mr Barnsley—I could obtain those for you; I do not have them with me at the moment.

Senator McKIERNAN—Thank you. Have there been any other impacts on the tribunal because of the proposal to establish the ART? Was there any impact on other staffing levels within the tribunal?

Mr Barnsley—No. We are in a bit of a different position from the other tribunals in that we were in a set-up phase from June 1999, and therefore we were growing and trying to position ourselves to deal with as many cases as we could as quickly as we could. Despite the distraction, we have been able to, generally speaking, recruit people. Certainly in more recent times we have been able to hang on to them pretty well. The result is that the number of cases we are now finalising per month is quite substantially more than we were achieving 12 months ago. We have tried to take a business as usual attitude as far as possible, while keeping very much in mind that we have a big task in front of us to reduce the number of cases on hand.

Mr Karas—I also mentioned in my opening statement that the tribunal staff and members did remain focused in relation to their objectives, and at the same time I think you will see that the trend over the last few months has been for case finalisation numbers to rise.

Senator McKIERNAN—I am certainly looking forward to that occurring. You are aware of my concerns about this \$125,000 that has been identified as a saving. If there are savings of that nature around in an organisation such as the MRT—phew!—what can we do with the department?

Mr Barnsley—We will see what we can do.

Senator McKIERNAN—Thank you very much.

Senator COONEY—Mr Karas, you say that the staff at the Migration Review Tribunal are soldiering on, as it were, doing their best to get their decisions to us promptly and fairly, and you say that, as far as the law goes, they cease to have any jurisdiction from 30 June, unless some change takes place in the meantime.

Mr Karas—I said that the current terms of the present members do expire on 30 June but that, as has already been indicated, there is a process that is nearing completion in relation to the reappointment of members; and there will also be a process to be gone through in relation to any further members that are required for the tribunal.

Senator COONEY—None of them know whether they are going to be appointed again, do they—unless you have told them. Have you told them they are going to be appointed?

Mr Karas—I could say in relation to that—

Senator COONEY—Could you just listen, Mr Karas, to what I am asking. They either know or they do not know. If they know whether they are going to be appointed again, that is one position; if they do not know, that is another position. All I need to find out from you is whether they know or do not know. If there is a third alternative to that, I am happy for you to take that.

Mr Karas—I can indicate that the members are aware that their terms expire on 30 June this year, and they are also aware that there is a process that is being conducted at present in relation to the reappointment of members. Members continue to work and remain focused on the producing of decisions, if I can refer to it that way.

Senator COONEY—The original proposition I put to you is correct, isn't it? They are working on, not knowing whether they are going to be appointed or not. If I am wrong, I just want you to clarify it in my mind for me. Do you follow?

Mr Karas—Yes, Senator.

Senator COONEY—What is the position, I wonder. Do they know or don't they know whether they are going to be reappointed?

Mr Farmer—Perhaps I can help. They do not know.

Senator COONEY—They do not know. Thanks very much, Mr Farmer. Mr Karas, given the fact that you are the head of the tribunal and you have to make sure that the members are as happy as they can be, because they have to make these decisions, are you concerned at all that the people who are making the decisions at the moment get into their cars in the twilight at this time of the year in Canberra and around Australia and drive home saying to themselves—they may be saying this to themselves; I do not know—'I don't know what the future is'? Do you think that that sort of question might tax their sense of wellbeing? Could you imagine that it could?

Mr Karas—If it is, they are not peppering me—if I can use that expression—every day of the week in relation to—

Senator COONEY—I take it from that answer that you think that there would be no effect upon them from being uncertain as to their future.

Mr Karas—No. I take from it that they remain focused on what they are there to do, namely to keep producing decisions. As I have indicated, they have remain focused during the unsettling time in relation to the appointments and the consideration of the introduction of the Administrative Review Tribunal; and I think that is reflected in the statistics in relation to case finalisation by members of the tribunal.

Senator COONEY—I now understand your position. You are saying, 'They are focused on producing decisions and they are producing decisions of the right quality; and that is all I'm interested in.'

Mr Karas—Yes.

Senator COONEY—So the quality of the decisions is not an element that you would consider taking into account?

Mr Karas—The tribunal members are urged, and they continue, to make what we regard as lawful decisions. In relation to the quality of the decisions, that is considered from time to time. When I say 'considered from time to time', members know that they are obligated under

the act to make fair decisions and, as I refer to them, lawful decisions. As a result of that, some members are more adept—if I can use that expression—than perhaps others are, perhaps because they have been there longer and have had more experience.

Senator COONEY—I take it from what you say there that your approach to this is, ‘True enough; they don’t know whether they are going to be appointed or not, but they are required by the act to produce decisions that are fair and of equality, and since the act obliges them to do it, I presume they will do it.’

Mr Karas—And they are doing it, Senator.

Senator COONEY—You have looked at all the decisions, have you?

Mr Karas—Sorry, I do not read all the decisions, no. There are just too many.

Senator COONEY—You cannot imagine that people who are just over a month off possibly being without a job might be concerned about that, that that might make them a bit uneasy at work?

Mr Karas—They may be concerned about it but it is not reflected in, as I said, the statistics and the completion of decisions by members. They are continuing to remain focused and are continuing to produce.

Senator COONEY—Your position is that, as long as they produce a certain number of decisions a week, it is all right?

Mr Karas—Yes, and they are encouraged to remain focused in relation to the production of decisions, as the core function of the tribunal.

Senator CARR—Can you enlarge on the statement that you made that there had been a 46 per cent increase in the number of student visa cases dealt with by the tribunal?

Mr Karas—As I indicated in my opening statement, that does reflect in part the growth in the size of the overseas student program, and also the increased activity of the department in relation to the number of cancellations and refusals in the student visa category.

Senator CARR—This is a percentage figure. What is the number of cases that have been brought before your tribunal?

Mr Karas—I will try to get that figure for you.

Senator CARR—While you are looking for that figure, what is meant by ‘increased activity in this area on the part of the department’?

Mr Barnsley—It is primarily in the area of cancellations of student visas. Perhaps the department could answer that question more directly later, but generally speaking there has been a higher level of activity on the compliance side of things, in terms of students complying with their visa conditions.

Senator CARR—How many of these cases were found in favour of the applicant?

Mr Karas—Again, we would have to find that figure for you.

CHAIR—Perhaps if you let them find the first figure, they can then give you next ones.

Senator CARR—Sorry.

Mr Barnsley—The total number of student visa applications lodged so far this year, and that includes cancellations and visa refusals, is 1,334 to the end of April. As Mr Karas mentioned, that is a 46 per cent increase on what we received last year. It is partly because the

size of the student program is growing at the rate of 20 per cent plus per annum, and also because of the growth in the number of student visa cancellations by the department.

Senator CARR—I take it that the 46 per cent figure is calculated on an April to April basis?

Mr Barnsley—That is total to date, this financial year. If you took that out to a full 12 months, you would add more.

Senator CARR—The figure may be substantially higher than 46 per cent?

Mr Barnsley—It would be another several hundred higher.

Senator CARR—Would it go up in percentage terms? If we were to take it on a financial year, would it be, say, 60 per cent?

Mr Barnsley—No, the 46 per cent is based on the 12-month period, estimating what the numbers would be for 12 months.

Senator CARR—Of the 1,334 student visa applicants, how many cases were found in favour of the student?

Mr Barnsley—To the end of April this financial year, we finalised 1,219 student visa cases. I have not got the set-aside rates broken down. I will take that on notice.

Senator CARR—Thank you. Where have these students come from? Which particular colleges? Can you identify them?

Mr Barnsley—We do not collect that data, Senator.

Senator CARR—There is no pattern in the number of students applying for review?

Mr Barnsley—Anecdotally, I would say they are pretty well spread across the range of mainstream tertiary education providers—the main universities in Sydney and likewise in Melbourne. I do not think there is a substantial pattern of them being in the lower end of the market, but we do not collect that data separately. It is not of specific interest to us.

Senator CARR—You also stated that you thought that the impact of the new ESOS regulations would change the number of students coming before the tribunal. Did I understand you correctly?

Mr Barnsley—It is an unknown factor at this stage. We have had a look at the variables that may impact on our case load over the next couple of years and ESOS is one of them. How many students will report to Immigration in that initial 28-day period after they have been notified by the education provider is an unknown fact at this stage. If they report in significant numbers and if the department refuses to revoke the automatic cancellation, then that could conceivably generate quite a bit of work. If they do not report in any numbers, it will not generate much work for us at all, at that point.

Senator CARR—Finally, when did you notice a significant increase in the number of applications for review of departmental decisions in regard to student visas? At what point can we date the actions of the department as having an impact on your activities?

Mr Barnsley—April-May last year.

Senator CARR—It was roughly the same time as those things were pursued through the parliament.

Mr Barnsley—There has not been the same surge in student numbers this year as there was in the previous year. The surge this year seemed to be more evenly across the board than being clearly in one major category.

Senator CARR—Thank you.

CHAIR—Thank you, Mr Karas and Mr Barnsley, for assisting the committee this evening. I propose that we return now, Mr Farmer, to your statement, then begin with general questions. I would hope that general questions can be dealt with in a fairly constrained manner because we do have the full estimates in which to examine every other conceivable part of the department's activities. After the dinner break we will begin with MARA and then continue with general questions again. After that we will move through the department progressively from that point. We will do the Refugee Review Tribunal first thing tomorrow morning. They were unable to attend this afternoon.

Senator CARR—I have questions to do with ESOS and some other visa application questions that I have asked on notice in the chamber.

CHAIR—We will try to achieve that by 6.30 p.m. and resume at 7.30 p.m. with the MARA. I welcome Mr Farmer.

[5.31 p.m.]

Department of Immigration and Multicultural Affairs

CHAIR—Mr Farmer, do you or the minister have an opening statement?

Mr Farmer—Thank you. Reading no more slowly than I can get away with, I will just comment that, at previous committee hearings, questions have been raised about Australia's ability to attract top quality people as part of our immigration arrangements. Senator Cooney, in particular, suggested at the last estimates hearing that this and indeed some of the other positive things that are happening in the immigration area might be appropriate matters to touch on briefly at a future estimates committee. We thought it might be helpful if we took up that suggestion and outlined how Australia is performing in some relevant areas.

On this question of the attraction of top quality people: contrary to some popular opinion, Australia is experiencing a significant brain gain. For the years 1995-96 to 1999-2000, we achieved a net gain through overseas movements of around 40,000 managers and administrators, 57,000 professionals and 21,000 tradespeople. Far more people in major occupations in demand, such as information and communications technology, accounting and nursing, are coming to Australia than are leaving. We are in effect a substantial beneficiary from the movement of skilled workers around the globe. Because of the significantly more targeted and rigorous selection criteria that are used, skilled migrants are performing many times better today than earlier counterparts. Under the new points tests used to select the most skilled migrants, the principal applicants are younger: around 51 per cent of principal applicants were aged between 18 and 30 in the 1994-95 cohort, while for 1999-2000 this had increased to around 63 per cent. They have better English language skills. In 1994-95 around 83 per cent of principal applicants achieved the maximum points for English language compared with around 92 per cent by 1999-2000. Immigrants are more skilled, with nearly 94 per cent of independent skilled principal applicants scoring the maximum points for skill. Around 50 per cent of these migrants are former overseas students with many having significant postgraduate qualifications from Australian universities, and around half have an occupation that is in national shortage. Research by the National Institute of Labour Studies shows that independent skilled migrants have an unemployment rate of around seven per cent

six months after arrival. This is a reduction from the 24 per cent unemployment among migrants entering under the same category only four to six years ago.

Our situation contrasts markedly with concerns being expressed by commentators in both Canada and the US about declining skill levels and the employment performance of immigrants to those countries. The 2001-02 migration program and associated reforms will further enhance the benefits that we are reaping from the entry of skilled people. Access Economics modelling shows that the new year program will deliver a net benefit to the budget of around \$3.7 billion over the next four years if it is maintained at the 2001-02 level and structure. Chris Murphy of Econtech has shown that the changes made in the last five years and those in the next year will enhance living standards by some \$323 per head or \$6.7 billion in total by 2007-08.

Moving from the permanent area to temporary entry, with the increasing integration of world economies and the more rapid movement of skilled people we have also enhanced our temporary entry arrangements. The 1999-2000 year was a record one for temporary entry. Visitor visa grants were up seven per cent to over 3.2 million, a new record that we can expect will be broken again in this coming financial year, possibly by seven per cent, while at the same time visitor non-return rates are declining. Student grants were up nine per cent to over 120,000, another record that will be broken again in 2000-2001 by between 10 and 20 per cent. Working holiday maker numbers were up 14 per cent to almost 75,000, yet another record that could be broken in 2000-01.

We believe that skilled and other temporary resident visas, which were up eight per cent to around 77,000—another record—are also a positive area. Around 25 per cent of temporary business visa entrants were in the ICT sector, with the vast majority being managers and other professionals. We recognise that this is an area where further improvements continue to be needed. From 1 July this year a new student visa processing regime will be put in place and in time this will ensure clearer and more consistent decision making. Similar changes will take place from 1 July to health processing for temporary residents and a range of electronic lodgment initiatives will be introduced later this year. We are undertaking a review of the skilled temporary resident categories to see how these can be further improved, both in terms of speed of processing and ensuring greater levels of integrity. Again, 1 July 2001 will see the introduction of some initial changes flowing from this.

A best practice spouse visa processing model has been introduced around Australia and we are looking to extend this offshore. A global skilled migration processing centre is being established in Adelaide and we are also now repatriating business skills case loads from Jakarta, Pretoria, Nairobi and Cairo to Perth. These initiatives will ensure that our competitive advantage in immigration management is maintained, if not extended.

To complement these initiatives we have developed a comprehensive package of information for schools entitled 'Australia 2030'. This is designed to introduce the younger generation of Australia to the benefits of immigration and is being presented to schools as part of a series of youth challenges. It is a visionary multimedia project which asks the decision makers of tomorrow to look at issues surrounding immigration, including multicultural issues and the population debate. An offshoot of a 1998 campaign, 'Immigration: the facts', this new project is expected to continue for several years. Information on the project was given earlier this year to all members of parliament. The project aims to take a long-term approach to immigration and asks our young people to express their visions for Australia in the year 2030. In order for them to grasp the somewhat difficult concepts, the project helps students to access

facts surrounding population issues, immigration and multicultural affairs. By providing them with the type of information that is already available to members of parliament, for example, the project will help students work their way through the information—and, regrettably, misinformation—that so often appears in emotion charged debate surrounding immigration.

Already, around 1,000 students in Tasmania, Victoria, South Australia, New South Wales and Queensland have attended youth challenges, which introduce some of the concepts covered in depth by the project, and in the next few weeks the youth challenge program will extend to the Northern Territory and Western Australia. Next week, the multimedia kit will be sent to all secondary schools in Australia. As well as providing a large storehouse of information and detail about immigration and multicultural issues, the kit invites all students in years 9 to 11 to enter the national participation task. We would be happy to provide the committee with a copy of that kit when it is available shortly.

Students who enter the task will perform in conjunction with other material prepared in youth challenges an audit to ascertain the impact immigration has had on their community. This work will be collated on the Australia 2030 web site, which will be presented as a gift to the nation from the youth of Australia in this centenary year. Two winners from each state and territory will be selected to attend the national final youth challenge to be held at the National Museum of Australia on 14 September. That event, which will include the presentation of the web site, will be web-cast throughout Australia and indeed to other countries.

Senators, thank you for your attention. We appreciate the opportunity suggested by Senator Cooney for talking about some of the positive aspects of the work of this portfolio, one which has been engaged in nation building and nation transforming tasks for the last 56 years.

CHAIR—Thank you very much, Mr Farmer, for putting your opening statement on the record. Under the arrangements we have made, I will go straight to Senator Carr for general questions.

Senator CARR—Can you tell me how many student visas you are likely to issue this year, given that the financial year ends fairly soon?

Mr Rizvi—Last year—that is, 1999-2000—we issued, both onshore and offshore, approximately 120,000 student visas. That does not include permission to work visas or change of provider visas. This year we are running approximately 15 to 20 per cent ahead of last year. I would expect that we will come in around that level, assuming things continue at that rate for the next two months.

Senator CARR—What is the total you anticipate by the end of the financial year?

Mr Rizvi—We anticipate something in the order of 140,000.

Senator CARR—In previous estimates you have been able to advise me that the number of students who have been in breach of their visa conditions increased by 19 per cent in 1998-99 and 36 per cent in 1999-2000. Can you tell me what the numbers are today—what you anticipate, given that the financial year is drawing to a close? Can you tell me what the figure is for the 2000-01 period?

Mr Rizvi—We are having some difficulty extracting the student compliance figures from our systems at the moment. I would not be able to give you an estimate at this stage. If I can take that on notice, we will be able to get you a number later on.

Senator CARR—Why are you having trouble extracting this from the system?

Mr Rizvi—Earlier this year we moved the compliance system to incorporate it into the ICSE system, which is our department-wide system. We have experienced some difficulties in that conversion. As a result of that, the data that you have asked for is not readily available right now. We can obtain it, but we would need to take that on notice.

Senator CARR—Can you give me some advice as to why there are problems with the conversion, as you put it?

Mr Rizvi—I suspect those go to fairly technical issues that I am not really competent to answer.

Senator CARR—Have you bought a computer system that does not work?

Mr Killesteyn—It is usually a question of the design of how the data is migrated from one system to another. You are taking data that is specified in one particular application and changing it to another specification on a different type of platform. Often the direct translation of the data is not quite as accurate or as clear as you might anticipate it could be. There are rules and designs to try and interpret the data and replace it into another database.

Senator CARR—Is it a programming problem or a hardware problem?

Mr Killesteyn—It is partly a programming problem. It is also partly a definitional problem. I would think that the data will be extracted. It is now more a question of the ability to delve into the particular database and having the extraction programs that can pull the information out. It becomes a matter of time as distinct from a matter of the ultimate ability to do it.

Ms Siegmund—As Mr Rizvi said, unfortunately we do not have exact figures, for example, for the total number of cancellations for 2000-01. What I do have available at the moment is total number of locations in the student program, which is 2,193, that is, to the end of April. Last year, as you would aware, the locations were 2,230. So year to date to the end of April we are virtually at the same figure we had for the whole of the financial year for last year. Reports from our state offices indicate that our figures for numbers of locations will continue to rise to the end of the financial year and we believe that would be the same for cancellations. The figure you quoted was quite correct: 36 per cent last year was the increase from 1998-99.

Senator CARR—What did you mean by ‘locations’?

Ms Siegmund—Students who were located in breach of their visa conditions.

Senator CARR—So you are saying the number you have found?

Ms Siegmund—Yes, who were breaching their student conditions.

Senator CARR—You have found 93?

Ms Siegmund—No, 2,193 to 30 April this year. We will provide you with further updated figures as soon as we have them.

Senator CARR—How many students have we lost altogether?

Ms Siegmund—Lost in what regard?

Senator CARR—We cannot find them in the country?

Ms Siegmund—These are the figures we have of students we have located who are in breach of their conditions. Do you mean students who have overstayed and have now become unlawful?

Senator CARR—You cannot find them, yes. They have breached their visas and you have not been able to locate them.

Ms Siegmund—I do not have that figure available.

Senator CARR—Do you recall we had some discussion a couple of years ago on the NCA college in Sydney and there was some argument about the number of persons actually enrolled in the college? Do you feel that the systems are now able to tell you accurately how many people are enrolled in any particular college?

Mr Frew—The first phase of the electronic confirmation of enrolment commenced last year. You would be aware that the second phase of the electronic confirmation of enrolment system is due to commence on 4 June—very soon. We are better placed than we were and we will be better placed still once the second phase of the ECOE has been in operation for a period of time.

Senator CARR—Mr Frew, do I take it from your answer that you cannot guarantee me that you do know where all the students are at the moment with the computer systems you have? You say you are better placed. Would it be unfair for me to assume from that answer that you are not able to guarantee the committee that you are able to identify where the students are in terms of their enrolments?

Mr Frew—When we first started talking about the development of the electronic confirmation of enrolment system, which, as you are aware, is an offshoot of the DETYA PRISMS system—

Senator CARR—Yes.

Mr Frew—When it was first implemented, it gave us some new functionality collectively that we had not had before. Phase 2 was always going to be the component that would give us greater capacity to identify students by provider and, as I have said, once it is operational from 4 June and has had time to develop some data, I think we will be far better placed.

Senator CARR—I think I have understood you, Mr Frew, but I have not actually heard an answer to my question. Can you now tell me that you know where the students are in terms of their enrolment in each of the colleges across Australia?

Mr Frew—At the moment, I do not believe the current system would allow us to extract by provider the number of visas. From the 4 June enhancement, we will be able to do so.

Senator CARR—What troubles me about what you have said, given the computer problems you have, is that this whole system is not electronically reliant. The confirmation of enrolment forms and one presumes the monitoring forms are all computer reliant.

Mr Frew—Yes, that is correct.

Senator CARR—Are you confident that your computer systems are adequate to meet the challenge of an electronically reliant system, given that you cannot provide me with basic information at this point and that the whole new system is to be in force by 4 June?

Mr Rizvi—Can I respond to that one. From our systems there are a number of things we can already tell regarding students. Firstly, we can tell the students that are in Australia on a student visa. We can tell whether they are here or overseas. We can tell whether their visa has or has not expired. To obtain data with regard to individual students and providers, as Mr Frew has said, is what we are now seeking to develop. We are moving ahead with that, we believe, very well. An important point to make in this regard is that the student immigration

data that we have in Australia far surpasses in quality anything any other country has in the world, and I believe the systems changes we are putting in place will place us in an even better position.

Senator CARR—That is very reassuring. Given that we have had some difficulties in the past with the student record system—and I have not actually heard you say to me yet that a definitive answer is available in regard to the provision of this basic information—perhaps my confidence might be a little overstated, judging from what you have said. Can I draw your attention to a specific case that I mentioned to the officers before those proceedings were commenced. I was interested in a recent company collapse, Austral Commerce and Language College, which was operating out of Pitt Street in Sydney, known as Catch the World Pty Ltd, a notorious visa factory. In fact, it is described as such in a recent press release by the Independent Education Union. Are the officers familiar with that enterprise?

Mr Rizvi—Yes.

Senator CARR—Are you familiar with the fact that that company collapsed in April?

Mr Rizvi—Yes.

Senator CARR—Are you able to tell me how many students were enrolled?

Mr Frew—Yes, there were 210 students enrolled at the time of the closure of the college on 6 April.

Senator CARR—Are you confident that is an accurate figure of the number of students enrolled?

Mr Frew—In the case of Austral, we were involved not only with the principals of the college but also to a high level with ACPET, the peak body. ACPET were particularly helpful in informing us and informing DETYA on the position of the college. This leads us to have a higher level of confidence than we would have been left with had we been dealing just with the college itself.

Senator CARR—Can I put it to you this way: it was put to me that there are in fact 600 students enrolled in that college, many under the counter, and they were not shown up in the official records. Is that possible?

Mr Frew—The only answer I can give you is that, if they were creating fraudulent records to that level in the absence of the data that the new electronic confirmation of enrolment system will give us, we are at this stage beholden to the records that we can physically locate.

Senator CARR—That brings me back to my original point about the capacity of the system, which is now electronically reliant, to effectively guarantee the integrity of the program.

Mr Killesteyn—We are confident that the electronic COE system will provide the level of integrity that you are looking for. The issue that we have here is a matter of linking a number of government departments. It is a link between DIMA and DETYA. Without that link, to collect the sort of data that we would like to have, to give us the sort of integrity you are looking for, it is a matter of locating and manually recording that information from a number of different sources. The COE link brings all of that data together from processes that are used in both departments. The system that previously recorded that, which was the PRISMS system that Mr Rizvi has referred to, had just fallen into disrepute. I guess that is why I am confident that with the automatic linking of the two systems we will have a much more comprehensive view of what is happening in the area of students than we had before.

Senator CARR—Thank you very much for the frankness of your answer. I only wish that you had been able to advise me when we started raising these issues and we were told by government that we should put up or shut up that there was no evidence to support the concerns that were raised—that we had had the benefit of your advice that the system had fallen into disrepute. The new system has been in place, the new legislation was passed in December, there has been a series of stages moving towards the 4 June second stage of the new electronic enrolment regime and we have a college that collapses in April, so it is in the middle of this period, and my concern is whether or not we have accurate information within the existing system about the number of students actually at this college. We are not able to get the information at the moment about the number of people who have breached, but I am wondering whether or not it is possible that there were 600 students enrolled in the college. Bearing in mind that we had the NCA case prior to this, I have reason to believe that it is possible. We had the case at Lloyds, which I still have not heard anything further about, in regard to the allegations of document fabrication, fraud. There are no prosecutions, as far as I know, on that, are there? Has any action been taken on Lloyds?

Mr Rizvi—I am not aware of any action that DETYA has taken in respect of Lloyds.

Senator CARR—Furthermore, I am advised that, of the 210 people at Austral, 100 have been reported for visa breaches. Is that correct? Of the 210 that you have acknowledged were at Austral College, how many were reported to you as being in breach of their visas?

Mr Rizvi—Can I give you a breakdown of the 212 that I have in front of me?

Senator CARR—Thank you.

Mr Rizvi—There were 68 visas cancelled, five people have departed, 21 received a visa in a new class, there are 48 cases ongoing with student compliance, which means obviously they are still under examination, and 69 have gone to a new education provider.

Senator CARR—Of the 69 who have gone to new providers, how many have gone to Bridge College?

Mr Rizvi—Sorry, I do not have the information available.

Senator CARR—Could you take that on notice, please.

Mr Rizvi—Yes.

Senator CARR—Given that I have raised the issue of Bridge College in the past—it has been the subject of considerable debate within the parliament—and they have gained some notoriety, would the department be concerned about the transfer of students between one college, which I take it you would acknowledge has a reputation for being a visa factory, and other college that has a reputation for being a visa factory?

Mr Rizvi—I am not sure if I can unreservedly agree that Bridge College is described as a ‘visa factory’. Yes, there have been concerns about it. As I mentioned earlier on, ACPET were heavily involved with us and other agencies in placing students. We have some regard for the way in which ACPET conducts itself. For us to grant visas we have to be satisfied that certain criteria are met and, as you are aware, if the college has courses registered on CRICOS, et cetera and the students meet the criteria, they would be granted visas to go to this other college.

Senator CARR—What it points to is the adequacy of the new regime. What I am troubled by, if there are issues arising this early, is whether or not the regulations which have now been gazetted are adequate to deal with these sorts of circumstances. In your judgment, are the

regulations adequate? Do they give you sufficient powers to actually deal with these circumstances?

Mr Rizvi—As I understand it, you are referring to the regulations under the ESOS Act.

Senator CARR—Yes.

Mr Rizvi—Those regulations would be administered by the Department of Education, Training and Youth Affairs.

Senator CARR—I thought they had a bearing on your activities as well.

Mr Rizvi—They do have a relationship to our activities in respect of assisting us to deal with student visa non-compliance issues, and in that regard we are happy with what we have.

Senator CARR—So you do not feel that there is any need to strengthen those regulations?

Senator Ellison—I think that is inviting the official to talk about things which really are not in the portfolio, Senator Carr. We have got DETYA all next week, you and I.

Senator CARR—Absolutely.

Senator Ellison—We can go into it at length then. No doubt you will.

Senator CARR—Obviously, Minister, I will pursue this issue. I am interested to know, though, because—as you are only too well aware—we do have this pattern where I ask a question of DETYA and I am told to ask the same question here. So I obviously would want to avoid having to come back with these matters. I would like to know whether or not the Department of Immigration and Multicultural Affairs is of the view that the current regulatory regime that is now moving into place would be sufficient to meet the circumstances such as we have seen with the collapse of Austral.

Mr Rizvi—We are of the view that the new ESOS Act that is in place is significantly improved on the previous one and will enable government to deal with the providers of concern much more effectively than in the past.

Senator CARR—Thank you very much for your definitive answer, yet again. There is an issue here about the fit and proper persons test. The directors of this particular college have managed, I understand, to abscond. They are not in the country any more, are they? Given that you were working with them, are you still in contact with them?

Mr Frew—I am sorry, I could not tell you the last date that we dealt with them, but I can take it on notice.

Senator CARR—If you could, please, because I understand that they have left the country and there are large debts outstanding and proceedings before industrial relations courts in New South Wales. I am told that assets are missing, computers and other office equipment have been sold and that the teachers that were employed by them have been diddled of very large sums of money and wages entitlements. They are not matters necessarily in your purview, but they do go to the fit and proper persons test, surely. Will these people be actually able to attract new students if they were to open another college?

Mr Rizvi—That would be a matter in the first instance for the New South Wales government.

Senator CARR—But there is nothing to stop them opening another college if they chose to, is there?

Mr Frew—I am looking as we speak at the code of practice which, as you are aware, falls under the ESOS Act. I believe that the fit and proper persons test is in here.

Senator CARR—Yes, it is.

Mr Frew—So one imagines that those people would have to go through that kind of test.

Senator CARR—Fair enough. Can I ask you about Australian Premier College, which is another company that has collapsed recently. It had 50 students. What has happened to those students, do you know?

Mr Frew—Yes, there were 51 students enrolled; 24 are being relocated to other providers, and I do not have any more information on the balance of those.

Ms Seigmund—Perhaps I can answer. I have a few more details about it. We have just had some updated figures given to us from ACPET. There are 53 students affected: 10 are being considered for another provider, 24 are definitely being relocated, 15 are of interest to DIMA for failing to comply and we are currently looking at those, two have already departed, and two have had their visas cancelled and we are making arrangements for them to be removed or to depart.

Senator CARR—Do you know where the other 11 are?

Ms Seigmund—24 are definitely being relocated, 10 are being considered for another provider, 15 are of interest to DIMA, two have departed, and two have had their visas cancelled.

Senator CARR—Isn't that 11 who are missing?

Mr Farmer—That is 53.

Ms Seigmund—That is 53.

Senator CARR—Sorry, of the 15 who are of interest to you—

Ms Seigmund—Oh, I am sorry, we are still examining their cases now.

Senator CARR—That is the point that I am making. You are actually in direct contact with those, are you?

Ms Seigmund—Yes.

Senator CARR—If we can just come back to Austral, you are happy that you have located all of the 210 that you think are there?

Ms Seigmund—Of the 68 who had their visas cancelled, unfortunately nine have had their visas cancelled and are currently 'whereabouts unknown'—we are trying to track them at the moment.

Senator CARR—So it is only the nine you think are missing.

Ms Seigmund—Yes.

Senator CARR—Is there any way to check to see whether there are in fact more students enrolled under the counter, as it was put to me?

Mr Rizvi—I am not clear what you mean by 'under the counter'.

Senator CARR—That is how it was put to me—that there were in fact 600 students on the premises associated with the company, that they have only declared 210. Is there any way that

allegation can be checked? Our present knowledge would be limited to what is actually through the electronic system, would it?

Mr Rizvi—All students who enter Australia are linked to a particular provider. They are required to remain with that provider for the first 12 months unless there is some specific circumstance which enables them to change provider. After the first 12 months, they are able to change provider without notifying DIMA. Those are the current regulations. Where those students may have changed to perhaps Austral, we would, under the current arrangements, not know that if they did that after the first 12 months after arrival. What we would know about them is whether their visas are still valid. We would also know whether those students had been reported by another provider, who may have been the provider to whom they initially went—whether that provider had reported them to us as not complying or not meeting course requirements. If that had taken place, our compliance people would be seeking to locate those persons and to initiate visa cancellation processes.

Senator CARR—Can I put it to you this way. This is information provided by a former student who actually claims that there were 600 students at Austral despite the official claim that there were 212. I ask you whether it is possible to have that matter inquired into. Do you have access to the company records yet? Under the new legislation, you have the capacity to seize those. Have you sought to identify the company records? Have you sought to investigate the company records?

Ms Siegmund—No, we have not, but if there are claims of this nature that are being made we would obviously be interested in pursuing them.

Senator CARR—Given that there are obviously other claims regarding debts and other matters associated with this college, I would have thought there might be a matter that does require your attention.

Ms Siegmund—Yes, indeed, Senator.

Senator CARR—I would appreciate it if I could get a response to my inquiries on these matters. I am sure you will do it very thoroughly. I have a few other issues. In terms of the government's announcements in regard to the new student visa program—the changes to the student visa program—as I understand it, in the budget, the minister announced that there is an intention to establish a new office in South America. Is that the case?

Mr Rizvi—An expanded operation is being put in place in Brasilia.

Senator CARR—Why Brasilia?

Mr Rizvi—Brazil is the source of a growing volume of overseas students. We have been advised by the industry and by DETYA that that is an area where increasing levels of promotion are taking place. We were also aware of a recommendation by the Joint Standing Committee on Foreign Affairs, Defence and Trade, which recommended that we closely examine our operations in South America.

Senator CARR—Of course, there are the issues that arise in regard to the numbers of students coming from Brazil, which I notice from a press release is up 72 per cent. It is still less than 1,000 students, is it not?

Mr Rizvi—It is coming off a low base, but it is increasing quickly.

Senator CARR—But is it the case that China or one of the other countries, where most of our students come from, have substantially larger numbers? Why wouldn't we put resources into those countries?

Mr Rizvi—There are two aspects of that. We do have a very significant operation out of China already. We have three posts in mainland China, with a very substantial number of both Australian based and locally engaged officers. I think it is also worth noting that the post in Brasilia will be working not only on student matters but also on a range of other visa categories. Tourism out of Brazil is also on the increase. The Brasilia post will also be assisting with a number of other countries in that region. It will not be focusing just on Brazil.

Senator CARR—And India? It has 10,000 applicants a year. That is 10 times the number. Do you think we have adequate resources in India?

Mr Rizvi—We have substantial resources also in India, both in New Delhi and in Mumbai.

Senator CARR—There are 15,000 in Malaysia. I can go through the list. Brazil is very low down the list.

Senator COONEY—People in India are going off, so we are told, to Silicon Valley. That is where we are going to get our intelligence from. Have you loaded that factor in?

Mr Farmer—Could I make a statement that might be helpful. In general terms, over the last three or four years, what we have done in the department is move very significant new resources into posts in China and the subcontinent. That has been to help us deal with the actual and potential growth in student numbers, in business, in skilled migration, in tourism and so on. That process has already gone a very long way. By comparison, the operation in Brasilia will be quite small.

Senator CARR—Absolutely. And you have, for instance, the United States with nearly three times the number of students. Canada is much larger. There is a whole range of areas where I would say there are much more significant opportunities than Brazil. I cannot quite follow what the argument is as to why that should get a higher priority than these other countries.

Mr Farmer—It is not so much a question of Brazil competing with those countries for resources. For example, I do not think we have a resources problem in North America. But, as one of my colleagues said, a recent parliamentary report on our relationship with Latin America pointed to visa issues, and we were attempting to respond to some of the points made in that report. It is quite a modest operation that we will be having in Brasilia. It is really attaching people to the existing embassy there.

Senator CARR—Can I ask about another matter in relation to the English language test—the criteria test that you are using, which presumably you are using in cooperation with the Pre-Qualified Institution Program, the PQI program. Who is currently running that?

Mr Rizvi—I am sorry—

Senator CARR—Is there not an English criteria test that is being applied for visa applications at the moment?

Mr Rizvi—From 1 July 2001, the new visa regulations will establish very explicit English language requirements for each student visa category—student visa categories will be broken down by sector—and it will establish them at different assessment levels—that is, representing different levels of risk. Those English language requirements have been discussed extensively with industry, and we have reached an agreement with industry about the levels that will be set.

Senator CARR—The industry has agreed? Have I got that clear? You are saying the industry has agreed to this?

Mr Rizvi—We believe we have reached an agreement with the industry.

Senator CARR—You mean ACPET?

Mr Rizvi—No. We have been negotiating on this matter with the AIEPB, which is the peak body of student peak bodies, which includes a representative from ACPET.

Senator CARR—That is mainly the universities, though.

Mr Rizvi—No, the AVCC is only one body.

Senator CARR—But it is a body that predominantly caters to the universities rather than the whole—the vocational education colleges, the TAFE colleges and so on. Is that a fair representation?

Mr Rizvi—I am not sure it would be fair to say that that body caters solely to universities.

Senator CARR—Predominantly.

Mr Rizvi—There is one representative from the AVCC.

Senator CARR—Can I cut to the quick, because I have a lot of stuff. The concern was put to me that you have one test—the Oxbridge test—at the expense of a whole range of other tests, that it is being run through IDP as the sole licensing agent, which is a university company, and that there are no other opportunities for other institutions or other bodies to apply the test. This is a criteria test that determines visas, as I understand it, and you have contracted it out through the department of immigration to one body owned by the universities, to the exclusion of others. Furthermore, it can only be taken at very limited locations. Would that be a fair description of the current proposal?

Mr Rizvi—What the government has announced is that, as of 1 July, there will be one acceptable test. The regulations will allow other tests to be gazetted as long as they meet our requirements. Those requirements are as follows: firstly, it must be a test which is acceptably rigorous in nature—that is, it is not a test that you can readily learn through rote. Another criterion will be that the mode of delivery of the test is sufficiently secure to prevent people defrauding the test. A third criterion is that the test is reasonably well available across all of the various student markets. We believe at this stage IELTS is the only test that meets those three criteria. The regulations will allow the minister to gazette other tests if it can be demonstrated that those three criteria can be met.

Senator CARR—At this point there has been only one test gazetted; is that the case—or intended to be gazetted?

Mr Rizvi—That is correct, Senator. That is also the only test that is acceptable for migration purposes, and has been the case for many years.

Senator CARR—How do the Europeans do it? Do they have a different test? Do they apply the Cambridge test or do they apply the Oxbridge test?

Mr Rizvi—I could not comment on that.

Senator CARR—Can you take that on notice?

Mr Rizvi—I will take it on notice.

Senator CARR—You are saying that only one test is applicable and that it applies currently to immigration visas. Is it the same criteria that are applied by OECD countries—comparable countries—in terms of their English language tests?

Mr Rizvi—I would have to take that on notice.

Senator CARR—I would appreciate that. I put it to you that the level of agreement you are asserting may be somewhat more fragile.

Mr Frew—Our consultative partners in the policy arrangements that we have been going through are the Affiliation of International Education Peak Bodies, of whom there are seven members—the Australian Vice-Chancellors Committee, English Australia, ACIVC, NCISA, ACPET, government schools representatives and TAFE Directors Australia. It is true to say that, within our various discussions, in some sectors there is concern about the IELTS test but I believe, having been a part of not only the negotiations but also involved with providers on this matter extensively for the last few weeks, it is a minority of concern about the application of the IELTS test.

Senator CARR—Fair enough. I will have a look at your questions on notice and obviously we will have a talk on these matters at another time. I turn to two other issues. One is a question on notice that I placed in the chamber on 29 March regarding the employment of refugees at G&K O'Connor in Pakenham in Victoria. I am absolutely sympathetic to the economic destitution of people who are faced with the situation of being refugees and who are recruited by unscrupulous employers to work in jobs at substantially less pay than unionised workers secure. My questions do not go to issues in terms of taking a hostile view to the individual workers concerned here. My concerns go to the role of government. In the question I asked you, you advised me that the department essentially does not collect information about people once they are granted a visa. Refugees can move freely within the country and it is of no particular interest to the department what happens to them. Are you able to tell me whether or not there are any recruitment activities taking place within the Maribyrnong detention centre by employers or labour hire companies, or by any other people?

Ms Godwin—Not to my knowledge, but I would have to confirm this on notice. People who are in detention at that point are not available to work, obviously, unless they are granted visas and are released. If an individual has a visitor who raises the question of post-release employment, that may occur, but there is no routine discussion of employment opportunities after they leave detention that I am aware of.

Senator CARR—So at no point does the department seek to provide employment for people who are being released from detention centres?

Ms Godwin—No, Senator.

Senator CARR—And you do not seek to monitor the recruitment activities of employers or labour hire companies through detention centres?

Ms Godwin—I think that goes more to the question of what the opportunity is for people to have visitors. People in detention centres are able to receive visitors at their request, but if someone approached a detention centre seeking to speak to detainees about matters such as that they would not be able to simply undertake those activities without a detainee having asked to see them. So, as I say, if an individual detainee has an individual visitor who speaks to them about post-release employment opportunities, that may occur. But we have certainly had occasions when people have wanted to talk to detainees as a group, not so much about employment activities but about other things, and, unless that is something that is requested by and agreed to by the detainees, we would not approve it.

Senator CARR—I have been advised through your answers that, granted protection visas, refugees are able to take advantage of employment opportunities. That is what you have said

in your formal answer to me. What concerns me is that on the evidence of recent cases there are of course opportunities where they are taken advantage of as well. The situation here involves 60 Afghan refugees who, from my information, came from the Maribyrnong detention centre and ended up at a meatworks in Pakenham in Victoria being paid substantially less than the unionised workers who were locked out of the plant—the longest lockout in the history of this country. It would seem to me that the department might have some obligations here as well with regard to providing advice to people about the sorts of employment they might undertake. Are there any limits on the authority to ensure that refugees who are enjoying temporary protection visas are not exploited in the labour market once they are released from detention?

Mr Farmer—Could I make a general point? With some classes of visa—and it does not apply to the temporary protection visa—there are regimes that apply which do involve people making applications for particular jobs at particular standards of remuneration. In relation to the temporary protection visa or, for example, the student visa, there is a work right simpliciter. With those visas we do not have a monitoring responsibility because we are only extending the right.

Senator CARR—But do you not advise people who have been released on temporary protection visas, for instance, of their welfare entitlements? Do you discuss with them their access to English language classes, for instance? Is there any advice given to refugees who are on temporary protection visas or do you just open the door and say, ‘Off you go’?

Mr Farmer—No, there is a process of talking to temporary protection visa holders about the services they are entitled to—for example, the Centrelink services—but not access to English language classes because that is not one of the services that they are entitled to.

Senator CARR—Can you explain to me then whether you advise them on being used in industrial relations disputes? Do you talk to them about those sorts of issues?

Mr Farmer—I do not believe so, Senator. That is subject to correction if any of my colleagues can help me there.

Senator CARR—Do you think it is not strange that 60 refugees from a detention centre would end up at one workplace, suffering quite substantially fewer wages and conditions than the people that they have replaced, and where an industrial dispute has occurred where a unionised work force has been locked out? Doesn’t that strike you as a little odd?

Mr Farmer—It strikes me as not being within my purview, regardless of how it might strike me as an individual.

Senator CARR—There was some advice going to come on what other information is provided to temporary visa holders being released from detention centres.

Mr Giuca—TPV holders on release from detention centres are provided advice about Centrelink, Medicare, the location that they are going to, community organisations that they could find in those locations and other community based services that might be available. They are also told about their right to work. The specific issues about industrial relations are not part of that briefing process. You suggested that the Afghans may have come out of Maribyrnong. That superficially seems unusual because TPV holders have tended to come from other detention centres—namely, Woomera, Port Hedland or Curtin.

Senator CARR—I thought I actually saw film footage of Afghan refugees being kept at Maribyrnong, but perhaps I was mistaken—maybe it was another detention centre. Are you telling me that I have mistaken the detention centre?

Mr Giuca—It seems unusual for that number of Afghans to come out of a centre.

Senator CARR—I was also advised, I thought, that there were media reports of a group being released with some \$6 in their pockets. Is that right?

Mr Farmer—There have been many media reports in this area, many of them based on quite inadequate and sometimes fabricated material or views, with allegations being reported in the media as fact. If you would like us to talk a bit about the arrangements that are made for the temporary protection visa holders on release, we would be very happy to do that.

Senator CARR—So you are not able to advise me or provide me with any information about temporary visa holders being employed at O'Connor's meatworks in Pakenham?

Mr Farmer—I believe I am not able to do that at this moment.

Senator CARR—Can I draw to your attention another case that I have asked questions about, and that concerns a group of eight Indian 457 visa program holders. They were employed building a temple. You mentioned skilled migrants before. I was concerned about the answer you gave me, which suggested to me that there had been a series of quite significant breaches of the law by the sponsor here, Dr Janarthanan, who had been the director of at least two companies which had gone into liquidation owing workers wages entitlements. My question goes to what checks the department makes regarding prospective sponsors of guest workers, particularly where there have been previous examples of poor industrial relations and poor employment records. Can you advise me if there are any checks made?

Mr Rizvi—The checks we would make in regard to a sponsor's background where this sort of visa is involved will depend very significantly on what information we have regarding that sponsor or other material that may come to hand that suggests further investigations are needed. The basic checks we make are to make sure that the sponsor is appropriately registered either as a company or as an association. If they are registered as a company, we will check with ASIC. If they are registered as an association, we may check with the relevant state body that undertakes such registrations.

Senator CARR—In this particular case, what checks were undertaken regarding this sponsor?

Mr Rizvi—With regard to the temple association?

Senator CARR—Yes.

Mr Rizvi—The checks that would have been undertaken would be to ensure that they were registered with the relevant state government body. We undertook those. We found that they were appropriately registered, and we relied on that state government body having undertaken the appropriate checks to ensure that the people who were members of that association were appropriately qualified.

Senator CARR—Were you misled? Clearly the history of this matter suggests that the temple association sponsors were not fit and proper persons.

Mr Rizvi—No, I do not think I have necessarily made a comment about whether they were fit or proper. Upon becoming alert to your concerns regarding Dr Janarthanan—

Senator CARR—That is the question I asked in parliament.

Mr Rizvi—Yes. We wrote then to the New South Wales Department of Fair Trading to ask whether they had any adverse information regarding Dr Janarthanan. We have been advised by them that he is not listed in the National Personal Insolvency Index and that they have no specific information of concern regarding that gentleman. They have, however, advised that they will continue to undertake searches with respect to all the principals of the temple association, and they will advise us of the outcome of the examination that they are undertaking.

Senator CARR—Dr Janarthanan had 35 days to respond to your inquiries regarding revocation of his sponsorship status. That period expired four weeks ago. Has his sponsorship status been revoked?

Mr Rizvi—The sponsorship which was used as the basis of the entry in this instance was a standard business sponsorship, which of itself naturally expires after 12 months of initially being approved. In other words, the sponsorship had already expired. Hence, there was no need to take revocation action.

Senator CARR—So he will not be able to ask any more people to come out and work for him?

Mr Rizvi—I could not give you an answer to that. If and when the temple association makes an application to become a sponsor under the 457 visa class, we will consider that application on its merits. Clearly, the previous history of the case will be taken into account when it is considered, but I could not pre-empt what the outcome of any such application would be.

Senator CARR—My colleagues are anxious to get to tea, so perhaps I will push ahead with a few minor questions. I wonder if you could provide me with advice on the number of guest workers who have had their adverse treatment raised with the department during the periods of 1998, 1999 and 2000.

Mr Rizvi—We have a listing of cases that have come to our notice in the year 2000-01. I have 14 separate cases listed here. I am not sure whether you would like me to go through the details.

Senator CARR—Can we have the details of those 14 cases and how many workers were involved in each case? What action was taken by the department in each of those cases?

CHAIR—On notice.

Senator CARR—Yes, on notice.

Mr Rizvi—Yes, we can take those on notice.

Senator CARR—Could I also get advice on the period 1998-99? Do you have records going back that far on those similar patterns?

Mr Rizvi—We will take that on notice and see what we can do.

Senator CARR—Thank you. There are two other questions. Is the department pursuing any redress for the Indian workers who were so obviously mistreated in these circumstances? Is that part of your responsibilities?

Mr Rizvi—In respect of the Indian workers, I must keep parts of this confidential, because it was provided to us on a confidential basis by the New South Wales Labor Council—

Senator CARR—A very confidential group of people.

Mr Rizvi—I am sure you have better contacts with the New South Wales Labor Council and would be able to obtain details.

Senator CARR—Let us in on the secret.

Mr Rizvi—I am advised that there were consultations between the temple association and the New South Wales Labor Council which led to a resolution of the matters. Subsequent to that, a part of that agreement provided appropriate compensation for the workers and the workers have now departed Australia.

Senator CARR—Finally, where can we get the results of the review that you have undertaken into the temporary residents program?

Mr Rizvi—That review is ongoing. Once the draft final report is available, we will be making that available to the minister, and I am sure he will then make it more widely available. He will make a decision on how to deal with that.

Senator CARR—That is very big of you. Do I take it that you mean you expect it to be released publicly?

Mr Farmer—I think Mr Rizvi said the minister would consider that.

Senator CARR—I am sure that is what he said. Thank you very much for your time.

Proceedings suspended from 6.35 p.m. to 7.39 p.m.

Migration Agents Registration Authority

CHAIR—I thank the representatives of MARA for being here this evening and enabling us to ask our questions. I know that, with the committee's rescheduling of times, that may not have been easy. The committee is very grateful. Thank you for your assistance. I welcome the new chair for the first time. We will begin with questions from Senator McKiernan. I have here a statement from you.

Ms Chao—Yes. We are seeking to table it to form part of the record.

CHAIR—Thank you very much. That is fine.

Senator McKIERNAN—It would probably be better if it was incorporated so that it becomes a formal part of the record.

CHAIR—Yes. We will have the document incorporated.

The document read as follows:

1. Introduction: who we are

We appear before this Committee as the Chairman and several Members of the Board of the Migration Agents Registration Authority (MARA).

The MARA is the entity set up by the Migration Act 1958 to regulate the migration advice industry. It commenced on 23 March 1998, to operate for three years under a sunset clause in the legislation. During 2000 the Government decided to extend the operation of the scheme to March 2003. This is now reflected in the legislation.

As well as being MARA Board members we are concurrently the President and Board members of the Migration Institute of Australia (MIA). The MIA is the industry organisation that exists to support the development of the profession of migration advice practitioners. We are on the Board of the MIA because we have been elected by our Institute membership, which comprises some 900 of the 2400 registered migration agents. Because we obtain our livelihood principally from professional practice, we are part time in our service on the MIA Board, and serve in an honorary capacity on it. We are also part

time in our role as members of the MARA Board, though we are paid a per diem fee on an hourly basis for this MARA work.

The MIA has been contracted by the Minister for Immigration and Multicultural Affairs to perform the functions of the MARA. We have been contracted to do this since the inception of the present regulatory scheme and we are now early in the term of our second contract with the Government, which lasts for three years.

From the MIA's point of view within the migration advice industry, this MARA role for the MIA represents a step in the direction of industry self regulation, a goal towards which we strive because we are pursuing higher standards of performance in the industry. By the same token our MARA functions involve us in extensive decision-making roles under which, though we are part time and essentially private-sector professionals, we are exercising statutory powers. This requires us to be acutely responsive to the needs of lawful decision-making that characterises the public sector, as though we were delegated officers of the Minister.

We believe we have a light hold on our MARA function, one that gives us possibly a quite brief time in office but, nonetheless, an important window of opportunity to advance the various interests we serve, especially the public interest. The Parliament has given the scheme a limited life, through the sunset clause. We are contracted for the purpose of discharging the statutory function in the scheme only for so long as it is the Minister's pleasure for us to do so. This two-fold limitation on our tenure provides a very strong incentive for us to perform with high levels of accountability in three directions: to the Government under the contract; to all registered migration agents who provide our revenue through compulsory registration application fees; and to our MIA members who elected us to office in that contracted organisation. The short tenure, as any business person would appreciate, also imposes organisational costs.

2. Our functions under the law

Our statutory functions are principally to:

administer the scheme of compulsory registration and repeat registration of people who provide migration advice whether they are fee-charging or not, legal practitioners or not, voluntary sector or not;

administer a limited range of sanctions against agents who may breach lawful requirements including compliance with a Code of Conduct legislated as part of the scheme; and

examine and resolve complaints against migration agents.

This means that, within parameters controlled by the legislation, we control the gateway into registered practice and try to ensure minimum competence standards are met by new entrants. We operate the system of maintenance of professional standards whereby agents must demonstrate that they retain and hopefully develop their competency standards year-on-year. We seek to ensure compliance of practitioners with the Code of Conduct and we pursue breaches of it. And we receive, pursue and resolve complaints received from outside and inside the industry against the conduct of migration agents.

In resolving complaints our direct sanctions are limited to the suspension or cancellation of registration and the issuing of cautions. These sanctions are published on the Register of Migration Agents. We cannot fine or impose wider penalties though we can refer matters to other authorities. This is similar to schemes of industry self-regulation in some other professions.

Achieving these functions to standards set by terms of our contract with the Department of Immigration and Multicultural Affairs (DIMA) are our deliverables and outputs. Under the terms of our contract we are committed to achieving improvements in the efficiency and effectiveness with which we produce these outputs. As mentioned below the MIA has a similar interest in that commitment.

We must ensure that in delivering these contractual obligations to the hilt, we also serve the interests of our members because, to repeat, industry self-regulation is our long term aim as it is also the long term aim of government.

3. Our performance

We consider that we will be held to account in one or all of the three dimensions of our relationship of accountable trust: to the public at large (who are the beneficiaries of the statutory scheme), to the registered agents (who are our direct clients) and to the members of our Institute (in our role as MIA Board). The performance for which we will be held to account falls across the following areas:

Quality improvements in the services we make available to the public

Clearly the principal interest we serve is the public interest in a migration advice industry delivering a high quality, reliable and cost-effective service to members of the public.

During 2000-2001 a review was performed by Ernst & Young of a number of our business processes. Data from that review was used in negotiations between MARA and DIMA on the second and current contract for our role as MARA. We have implemented many of the recommendations of this review and are closely examining our processes to ensure they are optimal to our task in the light of it. We have established the framework of our systems to achieve high quality service delivery but acknowledge that we have only made a start and need to make further progress to achieve our aims.

The Ernst and Young review identified a number of areas for improvement in the field of complaints processing. We accept that a primary yardstick for our services to the public will be the speed and effectiveness of our dealing with complaints against migration agents. This is a negative yardstick as it does not measure how well we perform for the many satisfied customers of registered agents. But we fully expose ourselves to this test of effectiveness.

Since commencing its operation in March 1998 MARA has received 641 complaints. Of this number there were 52 complaints which had been with the MARB (the predecessor scheme to MARA, operated within DIMA) and were passed on by DIMA. The number of complaints resolved to 28 May 2001 is 411 or 64 % (of a total of 641). There have been 35 complaints against unregistered agents but the MARA no longer opens a file on an unregistered agent and the material is referred to the Investigations branch of DIMA. Currently we have too many unresolved complaints and are working hard to resolve them by developing new processing methods. It is important to note is that the full measure of the law applies to the decision making processes involved. The MARA must be a credible decision-maker.

It is also of note that of all the complaints resolved about 8 % have involved a decision to sanction the agent.

While we have to depend heavily on the complaints process to exercise quality control we have a general power to monitor the conduct of agents regardless of whether a complaint has been made. We take a proactive role in monitoring advertisements in the mainstream and ethnic press and conducting (random) audits of individual agents. From 1 July 2000 to date MARA has initiated 11 matters "of its own motion" and has made 21 inquiries regarding advertisements.

A key service we can provide for the public is to refine and develop the knowledge and skill requirements for entry to the profession. Through our role in determining standards for Continuing Professional Development we can move towards achieving a form of quality assurance for members of the public needing help from registered migration agents.

Awareness of our role in serving the public and the accessibility of our services

We are seeking to ensure the maximum potential outreach of our role and services.

Our efforts are being directed towards widening the circles of people who know who we are and what we can do to assist with grievances. With the assistance of DIMA, steps are being taken to signpost our work in more prominent places: for example, on forms, in waiting areas and in overseas posts. We are keenly interested in the extension of the regulatory scheme to cover overseas operating agents whose conduct can jeopardise the interests of Australian sponsors and residents.

While maintaining the highest entry level standards and CPD requirements we want to ensure that as few impediments as possible are placed in the way of qualified people from all over Australia gaining

access to the registered migration assistance profession. We want them to be able to develop their capabilities, allowing them to serve residents from locations in regional and remote areas of the country.

We are working on a client service charter. We will be exploring all appropriate measures to ensure high levels of public consultation input into the project and the widest public awareness of the contents of the resultant charter.

(c) Efficiencies – in the interests of our industry members and the wider public

Our revenue comes wholly from the registration and repeat registration application fees charged on migration agents. All MARA's costs are paid for by the migration advice industry.

We do not regard this income as assured. The registration application fee is set by a statutory formula and the costs of operating the scheme are completely transparent. We want to keep our costs as low as possible, consistent with the public outcomes we seek. If our costs increase, agent registration application fees will increase. We know that parts of any such increases in our costs will flow through to the fees registered agents charge their clients. And as industry people ourselves, representing a large part of the migration advice profession, we want to minimise the impact of these compulsory charges on our members.

Our operations need to be under constant review to see where efficiencies can be generated. We have instituted major changes in the business of repeat registration of agents following an external efficiency review conducted in 2000. As indicated above, changes and improvements will soon be made in our complaints processing arrangements, where we accept that untenable delays have occurred in processing the backlog of complaints. Other business systems are being reviewed and developed.

We expect that the migration advice industry will be subject to close scrutiny and review later this year as the sunset clause on the scheme becomes imminent. We want to ensure in that review that the record of our performance vindicates our decision to accept the challenge given us by the Minister to play the MARA role.

4. Our governance and external scrutiny

The assumption by the MIA of the role of MARA, and the ongoing work we are doing as MARA, have not come easy to the MIA. Like all industries the migration advice industry has changed and become more diversified. The Institute has developed its own capabilities to advance the interests of its members in recent years. In turn, members' expectations of their executive have increased. We as board members of both the MIA and of the MARA need to meet the needs of two quite different (if overlapping) constituencies in the roles we play. The time we spend on MARA activities comes at the expense of time with the MIA's matters, not to mention our clients.

The dual role we necessarily play has caused us to focus closely on our corporate governance arrangements, and to define them carefully.

In the balancing of the needs imposed on us there is no room for any questions about conflicts of interest. This is not an area for risk management. We have sought strenuously to put in place best practice standards for eliminating conflict of interest. The arrangements we observe, in conjunction with the Department, for dealing with complaints against our own roles as individual practising agents should convince any reasonable observer of fairness and propriety. In addition, the offices of all MARA Board members are subject to routine audit.

5. Conclusion

We are happy to answer any questions from members of the Committee that are within our competence.

Laurette Chao
Chairman
Migration Agents Registration Authority
29 May 2001

Senator McKIERNAN—This is the first opportunity since the collapse of Barlow that MARA has appeared before this committee or the joint committee. I acknowledge the work that MARA did on that occasion. There were a lot of people who were put in very difficult circumstances by the collapse of that company, and I am aware—and indeed I think the parliament as a whole is aware—of the work that the authority put in to alleviate their problems and their concerns and the fact that they were left without representation for a period of time. That work is acknowledged, and I am pleased to be able to do that formally on the public record.

Ms Chao—Thank you.

Senator McKIERNAN—We did not get to talk with you last year in the November hearings. I think the reason for that was that your annual report was not with the parliament—was not tabled in time. As I recall, we decided as a committee to put off hearing from you during the course of the reviews and investigations into annual reports. Is there a reason why the report was late in being presented? Am I correct in my memory that it was indeed late?

Mr Mawson—The report was tabled, I believe, in parliament in November. It would have been early in November that it was dropped down to Canberra, and it was delivered to the parliament within a week of my delivering it down here. I do not think the report was late.

Mr Waters—Last year's report was certainly tabled on time. You may be thinking of the year before, when it was slightly late.

Senator McKIERNAN—Do you recall why we did not have MARA appear at the November hearings?

Mr Waters—No idea.

Senator McKIERNAN—It does not really matter in any case. I do not have that report in front of me now, and because of the amount of work that is before this committee at the moment I do not seek to go through and dissect the report, but I still recall a concern by the authority about the conduct of some migration agents. I think that concern was expressed in the report. Am I correct in that? Mr Brown, you would then have been the chair, and you would have put in the covering letter.

Mr Brown—Yes, that is correct. Yes, the authority had concerns about some agents at that stage. It still has concerns about a small number of agents at this particular stage. Overwhelmingly, I think the broad stream of agents adhere, and we do not have problems with them, but there does remain a small number. Each year the complaints relate to a very small percentage of the total number of agents.

Senator McKIERNAN—Is the industry improving in the sense that there is a declining number of complaints proportionate to the number of registered migration agents? Are the authority, the regulation and the self-regulation having an impact?

Ms Chao—I would say yes, Senator. We have at the moment approximately 2,400 registered migration agents. The number of complaints exactly—we have that up-to-date figure—have declined. And we believe that our existence is having a deterrent effect as well as an educative effect.

Senator McKIERNAN—The number of registrations and refusals of re-registration would also be an indicator of that. The refusal of registration has only been recently conferred on the authority—recent in the terms that it has now been a number of years. Is that an indicator as well of the influence of the authority on the industry?

Ms Chao—Could you repeat your question, please, Senator?

Senator McKIERNAN—The re-registration or refusal to re-register agents, is that an indicator of the influence of the authority on the migration advice industry?

Ms Chao—Certainly there has been an increase in interest in entering the profession and an awareness of the existence of the scheme, but normally we have approximately 15 refusals a year.

Senator McKIERNAN—What are the reasons for refusal?

Mr Cope—Of the initial registrations or of repeat registrations?

Senator McKIERNAN—Both, if you could.

Ms Chao—It is a mix of integrity issues and continuing professional development for repeat registration applicants where they have failed to meet the requirements.

Senator McKIERNAN—In the tabled document, you have given us a figure on the number of complaints. I am aware that in the last annual report there were some 177 over the last financial year—the financial year that that annual report covered. Is the number of complaints increasing or decreasing?

Ms Chao—Decreasing, Senator. New complaints from 1 July last year to date are now at 140.

Senator McKIERNAN—If that rate is maintained you will not reach the 177 at the end of this financial year, will you?

Ms Chao—No.

Senator McKIERNAN—You hope, anyway.

Ms Chao—That is right.

Senator McKIERNAN—Have you any forward planning on that as to what you expect to receive by the end of June this year?

Ms Chao—It varies. We cannot say exactly what we expect but, as you have said, and we agree, we hope that it does decline for last year.

Senator McKIERNAN—An area of concern, and I do not know whether it is of concern to the authority, was that 60 of those complaints in the last financial year were against legally qualified persons. Is that of particular concern to the authority? Do you read anything into that, that legally qualified persons should rate so highly—a third of all complaints received in the year?

Ms Chao—No, it is not a concern. Approximately 42 per cent of all agents are legally qualified.

Senator McKIERNAN—So there is not an expectation of a better standard of performance from legally qualified people as opposed to registered agents, or agents who get through the MARA first? There is not an expectation that there will be a better performance from those that are legally qualified?

Ms Chao—We have an expectation that all registered migration agents who enter the scheme are of a particular standard and meet the requirements and abide by the code.

Senator McKIERNAN—Not a higher expectation though?

Ms Chao—I would say no.

Mr Cope—Not all of the people with legal qualifications have practising certificates, so the cohorts that you have referred to may not necessarily be solicitors or barristers; they may be people who simply have a prescribed qualification, namely a Bachelor of Laws. It is just simply that the entry requirement is either you hold a prescribed qualification or you have a sound knowledge: you have a knowledge of migration procedures that the authority considers to be sound. I said that just in case you were taking the line that those who were legally qualified were necessarily solicitors or barristers.

Senator McKIERNAN—At this time of night, with the amount of work in front of us, I am not going to pursue the difference. What do you do with complaints against legally qualified persons? Are they referred to the various law councils or do you deal with them yourself within the authority?

Ms Chao—As for every complaint we receive, we initially deal with them to ascertain the nature of the complaint against the code of conduct and the law. In relation to referrals, we have a good working relationship with some of the associations or institutes that lawyers belong to. To date, the only referral has been the Barlow matter.

Senator McKIERNAN—Was the Barlow matter a complaint?

Mr Cope—This was a MARA initiated complaint; it was not a complaint from a consumer. It was a matter that the authority itself saw ought to have been investigated about Mr Barlow. We thought that particular issue was one that was better handled by the state law authority and we referred it pursuant to section 319 of the Migration Act.

Senator McKIERNAN—I do not think the Barlow matter was covered in the last annual report. Was it?

Mr Cope—Yes.

Senator McKIERNAN—So it was contained in that?

Ms Chao—Yes.

Senator McKIERNAN—I do not want to pursue it if the answer is yes.

Mr Cope—It was not about all of the conduct.

Senator McKIERNAN—So a MARA initiated complaint against a legal entity is recorded as a complaint for your statistical purposes within MARA?

Mr Cope—It may generate a complaint.

Senator McKIERNAN—It did.

Mr Cope—It did in that instance.

Senator McKIERNAN—Were there 59 other complaints against a legally qualified agent plus Barlow in the annual report that we are talking about, the 1999-2000 report?

Mr Cope—We disclose 60 in the annual report on page 20.

Senator McKIERNAN—Barlow plus 59 others?

Mr Cope—Yes.

Senator McKIERNAN—Are you receiving further instructions?

Mr Cope—We are trying to establish whether there is any further information.

Senator McKIERNAN—I just thought you were receiving further instructions—that is why I paused.

Mr Cope—We have just been considering the Barlow issue and simply the matter of the complaints against legally qualified agents, nothing specific to your question.

Senator McKIERNAN—It comes as some surprise to me that you have not referred any other complaint against a legally qualified person to any of the various law councils or law societies throughout Australia, only the one which was a self initiated one. Is there a particular reason for that? Were the complaints so insignificant—I am not saying they were meaningless—that they did not warrant further attention by the law societies?

Ms Chao—The complaints would have been varied, Senator, and some may have been of a ‘no further action’ type or insignificant, but we have a focus on mediation and trying to resolve a complaint for the benefit, also, of the complainant. That is an issue which may have also impacted on the resolution of those complaints rather than referring them to their societies.

Mr Cope—One aspect would be that the Migration Agents Registration Authority does have some measure of expertise in matters of immigration assistance. We are not saying that the state law regulatory authorities do not possess that skill, but specific elements of the code of conduct relate to the giving of immigration assistance or the management of their office as a result of giving immigration assistance. In those instances there would be some consideration as to whether it is something specifically particularly suited to something referred out or something that should stay within the jurisdiction of MARA.

Senator McKIERNAN—Thank you. How long does it take to process a complaint?

Ms Chao—At the moment, we have approximately 200 days for the bulk of initial complaints.

Senator McKIERNAN—That is from lodgment with the MARA to determination?

Ms Chao—To finalisation, yes.

Senator McKIERNAN—Would a case as serious as the Barlow case, which, I imagine, is the most serious one, have taken 200 days?

Ms Chao—It could have taken more because of its complexity.

Senator McKIERNAN—I understand the complexity because of the number of clients that were involved, and I suppose I should not judge it from the outside because I have not seen all the evidence, but I thought that the evidence was pretty clear cut in the case of that particular company. Is that correct?

Ms Chao—In the Barlow matter, he withdrew his registration and fell outside our jurisdiction. It is difficult to hypothesise—to deal with him as a complaint outside what happened to his bankruptcy.

Senator McKIERNAN—I do not want to go over the Barlow matter, but I do want to tease out the powers of the authority to act upon complaints. I used the instance of the Barlow matter because of its seriousness and the large number of people who were affected by what was happening with that company. As an indicator, I asked you how long would it have taken for a complaint such as the Barlow one to go from lodgment to resolution. You said that it would probably be over 200 days.

Ms Chao—It may have taken that long; however, we would obviously endeavour to make it a shorter period because of the seriousness of the matter and the number of people who would be affected by the behaviour of the agent.

Senator McKIERNAN—There are a number of natural justice provisions contained in what the authority has to do in order to process a complaint—and I understand those provisions. What would the shortest period of time be between lodgment and resolution? It wouldn't be up to 200 days on every occasion, would it?

Ms Chao—No, Senator. The shortest would be 17 days.

Senator McKIERNAN—You can act as quickly as that?

Ms Chao—Yes.

Senator McKIERNAN—Do you see that you have any obligations to the complainant to report back to them on progress of the complaint that has been made?

Ms Chao—Yes.

Senator McKIERNAN—If the complainant launched the complaint on, for example, 14 August 2000 and has not heard anything since then on what was happening, what would they be able to assume from that? Obviously I am not going to use names in this forum.

Ms Chao—That the matter may not be resolved yet and is still under investigation, Senator.

Senator McKIERNAN—I am not sure how many days there are between 14 August and 29 May, but it would have to be getting pretty close to 200. Is that an unduly long time for a complainant not to get any feedback on the complaint? The complainant on this occasion was a member of parliament.

Mr Brown—I would think it would be, and it is an overly long time for somebody to get some feedback on a complaint. Our process generally is to refer the complaint initially to the registered agent and seek a response from the registered agent, and then to refer back immediately to the complainant. That has been our approach. I would be concerned—and I guess we have all been concerned—about the delay; and the 200 days that we talked about is, we believe, too long in terms of the process. We have been looking at ways that we can expedite and speed up the process and facilitate that, because we have not been comfortable with that time frame.

Senator McKIERNAN—I will pass on the name of the complainant and that of the person whom the member of parliament was complaining about, and see if that can move the process along. I will do that in private rather than put names in the public arena. I try to maintain the practice of not using names of individuals. Hopefully that will speed the process up and at least get some feedback. There are concerns within the parliament about the activity of migration agents, and there are complaints from time to time and, indeed, some of my colleagues—not this one—have lodged complaints in the past, and we would have heard of others. We are, like others, constrained because the individual sometimes do not want the action to go any further, despite the assurances one gives or attempts to give that the matter can and will be dealt with. There are still some fears out there in the community that indeed the protection that they are deserving of is not necessarily there—and it is a perception which, hopefully, will be broken down earlier rather than later. If another Barlow were to happen tomorrow—

Mr Brown—Excuse me, Senator. Can I make a comment there? There is one matter that I am aware of where a decision has been made, and it relates to a sanction on an agent. It has not been published to the agent as yet. It does relate because a member of parliament was involved in the representation. So the complainant has not yet been notified until the outcome has been notified to the agent. It may be the one you are referring to. I do not know but, if you give us the name, we will certainly follow it up.

Senator McKIERNAN—I certainly will, but off the record. The concern I have is that, if another Barlow were to happen—Barlow was able to just walk away from the industry immediately, and for a period of time there was almost going to be no action against him; and I know there is legislative action proposed—have the amendments to the migration agents registration act actually been introduced yet?

Ms Chao—Yes, Senator. After the Barlow issue we made recommendations for changes and there have been a number of changes that flowed from it.

Mr Waters—The legislation amendments are scheduled to go before the House during these sittings.

Senator LUDWIG—Let us assume then that the legislation is not before the House as it is. Will it deal effectively with pursuing the person who then ceases to be registered and then as such, at the moment, cannot be accessed? But then you can now only access them if they remain registered by a sanction, and the sanction is a disqualification, at its worst. But in the case of Barlow, as I understand it from reading your report, he declared himself a bankrupt. So the ability to then recoup any costs from him is not there. Is any proposed legislation going to address that fact? If a Barlow were to happen again or again or again, would you continue to run into the red while you tried to sort it out? What happens?

Mr Waters—The legislation proposed gives MARA the power to investigate agents who have become deregistered. I expect the effect of that would be that, if an investigation revealed that this person should otherwise have their registration cancelled, despite the fact that they deregistered themselves, sanctions could nevertheless be taken against that person re-entering the industry. So, for example, they might face a five-year bar on re-entry to the migration agent industry.

Senator LUDWIG—Yes, but that does not answer the question I asked.

Mr Waters—In terms of your question, ‘If the person is bankrupt, can we get blood out of a stone?’, clearly the answer is no.

Senator LUDWIG—So what are you doing about that issue? I understand that you then said, ‘We will chase them down and they cannot be registered in the industry, at its worst.’ Great. But I am more interested in what happens to the clients of Barlow or any future Barlow. How do they then proceed to get their work done? How will you then address it? Or do I keep reading your balance sheet, where you have then had to adopt a proactive approach? I congratulate you for that; there is no doubt. My concern is that I do not want to continue to congratulate you for that every year as a Barlow and Barlow occurs. I hope they do not occur, but one has occurred and that certainly flags that that can happen. I do not want to hear about an amendment that will deal with how you chase someone down; I want to know how you deal with all the circumstances of Barlow. It is not just about a migration agent disappearing off the register, then you having the ability to chase them back or keep them off the register. In the case of Barlow, I suspect he does not care. So I cannot see how your proposed amendment actually addresses it, quite frankly.

Mr Cope—With respect, we should thank the parliament for passing some element of legislation to provide inactive agents. In the case of people who fall off the register, the parliament put forward some amendments to the legislation fairly quickly—I think it is 305A, from memory, but I could be wrong—to at least allow the authority to go to that deregistered or no longer registered agent and procure the files and get copies of those to the clients. That is certainly one element of it, from a consumer perspective.

Without wanting to trespass too much into matters that might be confidential, we have had some information that Mr Barlow was reappearing in the immigration advice scene. Attempts were made on integrity provisions to try to limit persons who were working or possibly working with Mr Barlow not to be able to be registered. So if a person falls out of the scheme and still wishes to remain in giving immigration assistance, the authority will look very closely at those relationships by employment, which are set out in the legislation. It does not solve the case of a person who runs their own practice disappearing, but it does provide some flexibility within the MARA to try to keep the provisions of immigration assistance on a proper footing.

Senator LUDWIG—I am being patient. That is all very wonderful, and I am not asking about Barlow in any degree; I am using that as an excuse. Let us call it X as an easier way of describing it. I am interested in the situation where a number of Xs occur—given the number of complaints that you generate and deal with. I congratulate you on that, and that you then proactively deal with them. But, given the number that occur, if they occur to the extent that X goes into bankruptcy or receivership, or is a company that gets wound up, and there is no money to be sought, and they are substantive files that are kept by either the sole trader or the company, what do you do? What strategy do you have in place to deal with it other than spending your money again and telling us in your next annual report that you have spent X amount of dollars fixing it up.

Mr Cope—The code of conduct has been—

Senator LUDWIG—What happens is that you become the insurer of last resort, so the industry then understands that you are the stopgap. You are the person who, if they are the wicket-keeper and they miss it, will catch it. It becomes very easy then to make sure that you have a shell company so that you wear the can.

Mr Brown—One of the recommendations that we have put forward in the code is to encourage—it is not mandatory at the moment—the holding of professional indemnity insurance by agents. I do not see that as a panacea, and I do not see that as covering it, but it is a small step down that path. I am sure you would understand this better than I do, but I am led to understand that there are limitations in that it is not possible to give us the power to order restitution. It would be nice if we had that power, but we do not.

Senator LUDWIG—But what I am interested in is what you are doing about examining that situation and then dealing with it. What have you instituted to deal with the situation of X, if we call it that—if we think Barlow is a bad name to call it? Maybe the short answer is nothing. You can tell me that if that is the case.

Mr Cope—It depends on the nature of the complaint and the nature of the circumstances. The authority does have the power to audit—to seek examination of the client account of an agent. Again, that will just give some indication as to what the financial circumstances are; it does not solve things. In the circumstances where the agent is guaranteeing the success of an application, there is a requirement for the person to have the financial evidence to be able to

buttress that claim that there is a money back guarantee. The code of conduct has been amended several times, even in the years in which MARA has had the responsibility, since March 1998. There will always be inadequacies in that code of conduct. All we can try to do is to identify any shortfalls and use the existing powers in the most flexible way possible.

Senator LUDWIG—Let me put it this way. If Barlow was to happen again, and three or four were to happen in the one year, you would deal with it the way you dealt with this case? That can be applauded. You stepped in; you got the files.

Mr Cope—I think we just do the best we can within the powers we have.

Mr Waters—I would like to make one addition to an answer that I gave. The annual report was tabled on 5 December 2000.

Senator McKIERNAN—The old memory is not too bad! The estimates hearings were in November, so it could not have been tabled before the estimates. It would be nice to have that annual report in at that time. It is much more pleasant coming to Canberra in November than it is in May.

CHAIR—On behalf of the committee, I would like to thank Ms Chao, Mr Cope, Mr Brown and Mr Mawson for assisting the committee with our deliberations this evening, and also for assisting us with the timetabling of your appearance—we are very grateful for that. As I indicated before we adjourned for the dinner break, we will now return to questions in the general area. I have said before that I hope that we are able to make these truly general questions and to ask questions that pertain directly to the areas of the outputs.

Senator McKIERNAN—I am aware that there is great interest in a number of matters that are associated with the department's activities since we last met as a committee. I certainly have a number of matters to address with regard to the disturbances in the detention centres and the actions that occurred in Port Hedland—

CHAIR—Which would normally be in 1.3, Senator McKiernan.

Senator McKIERNAN—Yes, I intended to address those questions in 1.3. I had some other questions relating to grants programs, which I was going to open up in general. But, again, all the grant programs, as I understand, would come in at output 2. In the absence of my colleagues, I am prepared to go directly into the programs and we can deal with the detention matters and the contract for detention services under 1.3.

[8.17 p.m.]

CHAIR—Thank you for that very useful suggestion. We will begin under outcome 1, lawful and orderly entry and stay of people, with output 1.1, non-humanitarian entry and stay.

Senator McKIERNAN—My colleague Senator Carr addressed some questions regarding the budget proposal to increase DIMA's representation in Brasilia. When will that representation begin? Are there any firm dates on that at this stage?

Mr Metcalfe—We are currently in the process of making arrangements for that position to be established. As you may be aware, I think there is currently a locally engaged presence undertaking visa processing in Brasilia. The intention is that we will be providing an Australia based officer presence there. We are undergoing a significant internal recruitment process for officers for a large number of vacancies overseas. The Brasilia position will be filled through that process which we will be finalising in the next few weeks. We are making preparations to post the officer soon thereafter. Accommodation and other issues are being addressed within

the expansion to the chancellery project that is under way. The simple answer is that I hope that our A based presence there is established within the next few months.

Senator McKIERNAN—Will any other posts be affected by the proposed reallocation? Will there be any reallocation of resources? Is this an increase in resources overall or will it be taken from somewhere else in order to fill the needs of Brasilia?

Mr Metcalfe—There is an adjustment.

Mr McMahan—This involves both the reallocation of resources and an increase in resources. We will be taking one A based staffer out of Santiago, we will be reducing the number of locally engaged staff in Santiago by two and we will also be reducing the number of locally engaged staff in Washington. In addition to that, we will be having a net addition of one A based staffer in the Americas as well as a number of locally engaged staff members.

Senator McKIERNAN—Before I get into the details of parent migration, at the time of the announcement of the migration program for 2001-02, the minister announced that there was going to be a new initiative to overcome the difficulties in the parent category, to resolve some of the problems of the backlog. Is anybody in a position to provide further details of what the new initiative might be?

Mr Rizvi—Yes, Senator. Essentially, the minister announced two things. One was a contingency reserve of 1,000 places over and above the program announcement and that that contingency reserve would be used subject to the development of an initiative to help resolve the parent issue. The minister indicated that there would be further consultations with community groups and, subject to the outcome of those consultations, there would also be consultations with members of parliament. If those consultations on the new initiatives prove to be successful, then legislation would be introduced and hopefully some of that contingency reserve would be utilised. At this stage, we are undertaking consultations with community groups. Those will continue for another few weeks and, subject to the outcome of those, we hope to then have discussions with relevant members of parliament.

Senator McKIERNAN—The current cap is at 500?

Mr Rizvi—The cap for this financial year is 500 in the standard category, plus there is a number of places in the one-off designated parent category. We think around 700 places will be taken up by the designated parent category this year and 500 in the normal cap. For the following year, there are 500 places in the standard parent category and there may be a few additional places left over from the one-off designated parent category. The contingency reserve is on top of that.

Senator McKIERNAN—If the contingency comes into being, it will provide for another 100 places. How many applications are in the pipeline now?

Mr Smith—There are 19,986 people in the pipeline at the moment.

Senator McKIERNAN—So if the 1,000 does come into being and there are no more applications, would it take 14 years to overcome it?

Mr Rizvi—The minister also indicated that the 1,000 place contingency reserve for this year takes into account the likelihood that it will be well into the financial year before legislation would be able to be passed. Hence, only 1,000 places at the most, we estimate, are likely to be taken up. The minister has indicated that for future years a larger contingency reserve would be made available.

Senator LUDWIG—How large?

Mr Rizvi—He has indicated a figure of 4,000 at this stage.

Senator McKIERNAN—He may not be in control of that process. How many onshore applications in the aged parent category have been lodged so far during 2000-01?

Mr Smith—I have got the monthly application figures in front of me, if I can add them up quickly. Applications are averaging out onshore—I think that was your question—at a bit over 100 a month. In March of this year we had 104 applications in subclass 804—that is the aged parent category you referred to. To date we have had about 1,000.

Senator McKIERNAN—How many have been approved? Have you got an average monthly figure?

Mr Smith—Onshore the cap is 100 places, currently.

Senator McKIERNAN—And that cap is for this current financial year.

Mr Smith—Yes.

Senator McKIERNAN—Has a cap for next year been announced?

Mr Smith—No cap has been announced for next year.

Senator McKIERNAN—Thank you, Mr Smith. How many are currently queued, if we can use that term without going into the detailed explanation of what queuing means?

Mr Smith—The queue pipeline in total is 6,135. That is offshore and onshore.

Senator McKIERNAN—What is the average delay between the date of lodgement and the queue date allocated to applicants for aged parent migration?

Mr Smith—I do not know the answer to that offhand. I will take that one on notice.

Senator McKIERNAN—Thank you very much. I have asked this question before, and I cannot recall whether I was actually given the details. I know Mr Rizvi and I had some dialogue about it. How much revenue is the consolidated revenue fund holding in terms of application fees, assurances of support and health levies relating to the aged parent class?

Mr Rizvi—If we could take the question of the amount of application fees—that is the first stage visa application charge—on notice we can calculate it precisely for you and come back with an exact number. It is approximately \$1,000 per application, and it will depend on the number of persons in each application. We would have to multiply the average number of people per application by around \$1,000 to get the figure. We generally do not seek the assurance of support bond or the migrant health levy until we are ready to actually grant the visa. So you can get to queue stage but we will not ask you for the bond and health levy until we are ready to actually grant you the visa.

Senator McKIERNAN—Thank you; and you have taken that earlier part on notice. Just going back to an earlier question I asked about the new initiative for the 1,000 contingency reserve, is there any discussion going on about fees to enter that contingency reserve? Fees were a factor in two earlier initiatives in the aged parent category. Are fees being discussed now? I am not going to ask you what amounts of fees are being discussed, if indeed they are.

Mr Rizvi—As a general question, yes. Fees are of course very much part of this, both at the first stage visa application charge and at the second stage when the bond and the migrant health services levy become an issue. My recollection of the earlier proposals that were defeated is that people who had already lodged application fees and were seeking to then enter the other streams that were seeking to be created would not have paid a further first

stage application charge; they would have paid second stage application charges. People who were applying for the first time would of course have to pay both the first stage and the second stage. My recollection is that is how the proposals that were defeated were designed.

Senator McKIERNAN—I am glad to hear you have got the previous parliamentary debates in mind. Hopefully, the minister and others who are talking about this matter will also keep these matters in mind—without seeking to score any more political points at this late hour in the night! That is all I have got for the parent category. I do not know if any of my colleagues wanted to enter into further questions on that. I have got some questions on the sponsored visitors category, which will also take up some of the points that Senator Carr raised earlier today about the Indian workers, without repeating the questions on the Indian workers. How many applications have been made and approved within the new sponsored visitor category?

Mr Frew—Since the program was introduced on 1 July 2000, up until 30 April 2001, 5,752 sponsored visas have been granted.

Senator McKIERNAN—Do you have any figures on the default of those?

Mr Frew—Yes. There are 301 defaulters to date who have not departed within the validity of their visas, and 66 of those 301 have defaulted leaving bonds.

Senator McKIERNAN—Do you have a figure on the number who have departed within that time?

Mr Frew—The number of defaulters?

Senator McKIERNAN—No, the number of persons who have come in sponsored and have fulfilled the obligations connected with the sponsored visitor visa.

Mr Rizvi—Of the 5,752 applications granted, 5,282 had made an arrival, and of the 5,282 who had made an arrival, 3,575 had made a departure. That is a significant difference between those two figures and that is explained by a substantial portion of those people would still be in Australia on a valid visa.

Senator McKIERNAN—What are the top 10 source countries for the sponsored visa applications?

Mr Frew—The top 10?

Senator McKIERNAN—Or the top eight would give me a good indicator, too.

Mr Frew—I can give you the top 10. They are, in descending order, Shanghai, Guangzhou, Manila, Colombo, Beirut, Suva, Beijing, Belgrade, New Delhi, Nuku'alofa.

Senator McKIERNAN—What was the last one?

Mr Rizvi—Nuku'alofa, the capital of Tonga.

Mr Metcalfe—Those are obviously posts of issue. The first two posts are obviously both in the People's Republic of China.

Senator McKIERNAN—Those source posts would meet the expectations of where the sponsored visitor visa would come from. Am I right in that?

Mr Rizvi—Sorry, Senator, I am not sure I understand the question.

Senator McKIERNAN—There would have been an expectation that a majority of persons coming in on the sponsored visitor class, when it was introduced, would come from posts such as those. I am not so sure about Tonga.

Mr Rizvi—Certainly there is a predominance from high-risk posts, that is true.

Senator LUDWIG—Have you done an analysis of the 300-odd which have defaulted, as to where they are from?

Mr Rizvi—Yes. We can go through the posts with the various default numbers: Shanghai 39, Guangzhou 17, Manila 13, Colombo 26, Beirut 24, Suva 37, Beijing nine, Belgrade four, New Delhi 16, Nuku'alofa 20.

Senator McKIERNAN—Can you provide details of the number of applications that were refused by post as well in the sponsored visitor class?

Mr Rizvi—I have a grant rate, if that would help, and the reverse would be the rejection rate.

Senator McKIERNAN—Yes.

Mr Rizvi—I can give you those. In Shanghai, the grant rate is 45 per cent; Guangzhou, 45 per cent; Manila, 83 per cent; Colombo, 69 per cent; Beirut, 54 per cent; Suva, 70 per cent; Beijing, 62 per cent; Belgrade, 41 per cent; New Delhi, 73 per cent; and, Nuku'alofa, 77 per cent.

Senator McKIERNAN—Thank you for that. What was the bond, on average, that sponsors were requested to lodge at the overseas missions?

Mr Rizvi—The average bond amount across all of the cases where a bond had actually been requested—remembering that in the large portion of cases a bond was not actually requested—was \$7,081.

Senator LUDWIG—Is that under review, or are you happy with that process?

Mr Rizvi—As you can tell by the statistics, we monitor that very closely and we keep posts advised of issues as they arise. The non-return rate for the sponsored visitor category is perhaps higher than we would be comfortable with. For that reason, our advice to posts where there is a high defaulting rate has been to consider the application of bonds more frequently than they have been doing so up until now.

Senator LUDWIG—In considering the applications of bonds, does that also include considering the amount?

Mr Rizvi—Yes, the direction from the minister at this stage, which he has tabled in parliament, is that the bond should be set at a range between \$5,000 and \$10,000. If the default rate continues to be high over time, I suspect the minister may wish to review that.

Senator COONEY—When you were asked about what you do about problems that might arise at any particular post, you say that you write a letter or send a communication or an email to the person there. What does that do? That just tells him what to do. Does anybody inspect or work out how a person complies with what the instructions are? I have said this before: just because there are 10 commandments does not mean that they are going to be obeyed. Since the time of Moses, they have been disobeyed on many occasions. Mr Rizvi, I could not send an email to you because I do not know how to, but you could send one to me and I would send a fax back to you. Then you would say, 'I have cured that fellow Cooney, I have sent him an email.' But you have not really; you have got to look at what I do.

Mr Rizvi—At the first stage, our communication tends to be to try to feed back to the posts what is happening to the caseload that they are visaing onshore. So the first thing is to let them know, ‘Of the people that you visaed, this is what happened to them in the circumstances that they did not comply.’ That feedback is in itself useful material for the decision maker to take into account in the future. Where we are of the view that there continue to be issues, we will open a dialogue—which is more than just necessarily mailing; it may be by telephone or a post visit—where we will discuss those issues. We also discuss these sorts of issues at overseas training courses, so that decision makers have an appreciation of the issues. Through those sorts of mechanisms, we try to keep decision makers apprised of the issues and about how they can manage this caseload.

Senator COONEY—You try to give them wisdom, but who in the department is giving them the wisdom?

Mr Rizvi—I am not sure that we are trying to impart wisdom—

Senator COONEY—Not only do you have to have a decision maker in the post, you have to look at the wisdom giver. Who in the department is the wisdom giver? There might be more than one wisdom giver.

Mr Metcalfe—There are many wisdom givers. I think what Mr Rizvi has described is part of an overall framework of quality control in our decision making overseas. We have Australian officers in over 50 posts and they are responsible for managing throughout those posts and supervising some additional posts where local staff operates under DFAT supervision. We have a network overseas of 10 regional directors. We have senior officers who have a management and quality control role. As Mr Rizvi has indicated, there is a range of mechanisms—from instructions, through training, through post visits, through annual conferences of migration officers. That comes through from a large number of levels through the department. So there is no one wisdom giver. The way that these matters are dealt with is imparted by a whole range of contacts and a whole range of ways.

Senator COONEY—It would be terrible if we kept out some genius that would come down here and add to that store of intellectual capacity that Australia has. Are you ever worried that these visitors could come down and help us here and we have rejected them? That would be a terrible thing, Mr Farmer.

Mr Farmer—If there is an English speaking genius with skills and of the right age, then they will not be overlooked.

Senator COONEY—But who is going to recognise the genius? Who is the genius within the department that has the ability to recognise a genius?

Mr Farmer—We do not have to be the repository of that wisdom, because of the way the skills are assessed. It is objective.

Senator COONEY—Thank you.

Senator McKIERNAN—I was going to present this wonderful cap—‘Immigration Golf Society’—to the person from Immigration who gave me the direct answer. I now hold it to the wisdom giver; I will give it at the end of the hearings. I picked it up during my overseas travels recently.

CHAIR—Which are too extensive to tell us about now.

Senator McKIERNAN—But a detailed report has been presented to the minister and to the secretary to the department. Incidentally, as that has been mentioned, I will on the record

express my appreciation to the department and to those officers at the overseas posts that I visited during the tour for all the assistance that I was given during that visit. As I indicated, a report has been given to the minister on that and at an appropriate moment I will speak in the Senate and give a shorter, more public report on the results of my travels. I am grateful to you, Mr Farmer, and to your officers in the various places that I visited for the assistance that was given to me. Thank you very much.

Mr Farmer—Thank you, Senator.

Senator McKIERNAN—I mentioned I was going to address a matter related to the matter that Senator Carr addressed to you about the Indian workers. In answer to question No.25 taken on notice at the February hearings, the minister's response was that over 30,000 overseas workers came to Australia each year on 457—the category number—visas and that only 12 cases of alleged exploitation had come to the department's attention in the year 2000-01, which we are still in. Of those 12 alleged cases of exploitation known to the department, who were the sponsors and from what industries were those workers sponsored in?

Mr Rizvi—Senator Carr, in a related question, asked for all the names of those sponsors and the details. I can provide some more details now or I can deal with it in the question that we took on notice from Senator Carr.

Senator McKIERNAN—I only heard Senator Carr asking a question about the Indian workers. I did not think he went beyond the Indian workers, although perhaps I was not listening as keenly as I ought to have been.

Mr Metcalfe—From memory, I think Senator Carr asked us to provide on notice details of cases that have been drawn to our attention as being of concern in this financial year and the two previous financial years. We do have some details here in a chart, but it may be easier if we respond to the group of issues together.

Senator McKIERNAN—What further information, if any, are you able to give the committee on this occasion, Mr Rizvi?

Mr Rizvi—I have a chart here which gives a brief summary of the cases, a summary of the allegations, the state in which the cases took place and what action the department took in respect of the cases.

Senator McKIERNAN—I have a number of other questions, not too many, related to this matter. It may be worth while if you were to give us the information you have got—that might circumvent some of the further questions I have.

Mr Metcalfe—Perhaps we could table this document. It is two pages of quite detailed information in four or five columns. Perhaps that is the best way to handle it, rather than reading through that material.

Senator McKIERNAN—I would appreciate your tabling it. Maybe I can ask the questions and if the answers are in the document that is going to be tabled you can respond with that. If they are not, there may be different responses required for information that is not there. We will see how we go; I am anxious to move the hearings along. Have those employers been placed on any departmental monitoring database so that a future sponsorship could be examined?

Mr Rizvi—Yes, the names of those sponsors are placed on a list known as the ICSE client of interest.

Senator McKIERNAN—Okay. I know what ICSE means. At the last hearing the department confirmed that 97 visas were cancelled after site visits. Can the department confirm why these visas were cancelled? Were any of these as a result of the 12 cases of alleged exploitation that came to the attention of the department? And was one of the reasons for the cancellations the fact that employees were being underpaid?

Mr Rizvi—I suspect that is a fairly detailed question and we would have to do a reconciliation of our cancellation statistics with the matters I have got here. Looking through the individual cases that I have got here, there do not appear to be many instances I can find where a cancellation took place. Some of the cases are still ongoing, and what it indicates here is that visa cancellation is being considered, so it does not appear that there is a significant overlap between the cancellation statistics we have given you and these particular cases. It is also true to say that in many instances where these sorts of issues have arisen, the individual concerned has often departed Australia, such as in the case of the Indian temple workers, and hence cancellation action was not necessary.

Senator McKIERNAN—Cancellation of the sponsorship or cancellation of the visa?

Mr Rizvi—Cancellation of the visa was not necessary because the eight workers, for example, departed of their own will.

Senator McKIERNAN—Was it the workers who were breaching the conditions of the visa or was it that they were the victims of somebody exploiting their presence in Australia?

Mr Rizvi—It was the sponsor who had not met the undertakings that they had given.

Senator McKIERNAN—Why, then, would there be a consideration for the cancellation of the workers' visas?

Mr Rizvi—In that particular instance that issue did not arise. In some of the other instances here that issue did arise.

Senator McKIERNAN—But I thought that was what you were telling me with regard to the Indian workers. You said that they had left Australia, so cancellation—

Mr Rizvi—Of their visa is not an issue.

Senator McKIERNAN—Why would it have been an issue in that particular instance?

Mr Rizvi—The cancellation of their visa would become an issue if they no longer had a sponsor in Australia. For example, if they left the employ of the person who had sponsored them, then they would need either to find another sponsor to continue their visa or their visa would be subject to cancellation. This is a visa class that requires a sponsor. Once a sponsor does not exist, then cancellation action must be initiated.

Senator LUDWIG—It is a without fault process: it does not matter whose fault it is?

Mr Rizvi—That is right. But before we would initiate cancellation action in these instances we would give the employee an opportunity to find another sponsor.

Senator McKIERNAN—For a period of time—and I am only saying this because of the publicity; I did not have an immediate involvement in the case—it would appear that the workers were in breach of their visa qualifications because, for one thing, they were no longer in work.

Mr Rizvi—That is true, Senator. It was in that context that we contacted the workers and indicated to them that they would need to find another sponsor, and we gave them a time extension to find another sponsor.

Senator McKIERNAN—Do you know if they did attempt to find another sponsor?

Mr Waters—They made no attempt to find another sponsor. In fact, I understand that, in the main, they wanted to go home.

Senator McKIERNAN—There was a resolution of their outstanding claims against the employer. What role did the department play in the negotiation of that agreement—if agreement is the right word—to talk about the resolution of the problem?

Mr Rizvi—Our role in that could not be described being a party to that agreement. We were not a party to that agreement. There were steps that we took once we became aware of the situation. For example, we visited the site, we interviewed the workers, we interviewed the employers and we took appropriate actions in that regard, including referral of the case to a number of agencies where it was possible that a breach of their legislation had taken place. So, for example, we referred the matter to the relevant New South Wales industrial relations agency, we referred the matter to the Australian Taxation Office, I think we also referred the matter to WorkCover and I think we also referred the matter to a local government body. They are undertaking their own investigations into this issue.

We proceeded to advise both the workers and the employer as to what their rights and obligations were in these circumstances and we dealt with their responses as it proceeded. In the event, we were advised that an agreement had been reached between the temple association and the workers, who were represented by the New South Wales Labor Council in this instance. Upon that resolution, we were advised that the workers would be going home and that an element of compensation had been agreed upon. That still leaves the question of the employers having breached their obligations, both in terms of immigration and possibly in respect of other laws. Those matters are still on foot.

Senator COONEY—Can I ask about one of the things in this document headed ‘Summary of cases of alleged exploitation—’ and then it says ‘invovling’ rather than ‘involving’.

Mr Metcalfe—That is a typo that you have spotted, Senator.

Senator COONEY—That is right. It goes on: ‘... 457 visa holders 2000/01’. Take the third case, the Regent Hotel. It says the allegation from the union was that:

... Indonesian and Hong Kong housekeeping staff were being employed at below award rates.

Under ‘Departmental action’ it says:

Department contacted hotel management and referred details ... for advice on whether the employer was in breach of the relevant award.

Then it says the department:

... has confirmed the employer was in breach, but has voluntarily rectified this. Nevertheless, a letter has been sent to the Regent seeking reasons why their sponsorship status should not be cancelled.

If it is cancelled, the people will have to go home, won’t they?

Mr Rizvi—Yes. If that particular sponsorship is cancelled, the workers would, as in the case of the Indian temple workers, be given a reasonable amount of time to find an alternative sponsor. If they were not able to do so, they would have to depart.

Senator COONEY—That is a courageous action for the government to take in respect of somebody who has been exploiting their housekeeping staff. The people who are going to be punished are the people who have been exploited. Is this setting up a system whereby we allow employers to bring people to Australia, use them cheaply as Senator Carr was

alleging—with O’Connors in Pakenham, I think he said—and if they complain we cancel the employers’ sponsorship status and send the employees home. That is right, isn’t it? That is how it works.

Mr Metcalfe—Many issues are involved. These issues transcend the responsibility of one authority. The example of the temple workers is a good example in that we have an interest in the ability of the sponsor to sponsor again in the future and whether or not that should occur, and we have an interest in the status of the employees in Australia given that they are the persons who the Migration Act in fact covers—the non-citizens. Whether or not there have been breaches of industrial awards, and whether there have been breaches of occupational health and safety standards or the multitude of other applicable legislative regulations that apply in workplace situations, are matters for the relevant industrial relations or occupational health and safety authorities. I think the example we have given of the way that the temple workers issue was dealt with was that we used our good offices, where appropriate, to ensure that authorities that may have an interest in breaches of their legislation were made aware of that and undertook their responsibilities.

Mr Farmer—Just to add to that, I agree with you that there is the fairness issue here and that that, in effect, is taken account of by the opportunity for the person involved to find another sponsor—in other words, someone who will sponsor them under the correct arrangements—and in those circumstances they can stay in Australia.

Senator COONEY—I am not blaming the department for carrying out the law, although I take it this arises from the act and from regulations. But this is a paper you have given us and I am just going on that. At the Regent Hotel you get an allegation from the union—and no doubt the union is doing its job trying to justify the fees that are paid to the housekeeping staff from Indonesia and Hong Kong. So it does its job and says, ‘Look, these people are being exploited.’ Then the document says, under ‘Departmental action’:

Department contacted hotel management.

It was not as if they contacted the employees—they contacted the employers. Then the letter was sent, not from any department other than from DIMA, saying that it was seeking reasons why their sponsorship status should not be cancelled. So the action taken there was one by the department writing off this letter to the management saying, ‘We are going to punish you by creating a situation where people who might give evidence against you in some civil case—we are going to deport them or send them back home or do something like that.’

Mr Rizvi—If we just talk about the two instances we have been discussing—

Senator COONEY—The Regent Hotel one.

Mr Rizvi—In the instance of the Regent Hotel, these staff are in the employ of the sister Regent hotels in their home countries and if the sponsorship is cancelled and the individuals are unable to find another sponsorship they would return to their jobs in their home countries employed by the Regent Hotel in those countries.

Senator COONEY—What you are saying, ‘We are going to send you home even though the Regent Hotel owes you money, but that is all right because you can get a job back in your home country and the Regent Hotel will pay you there.’

Mr Rizvi—These people are still in the employ of the Regent hotels, or they are still on their staff.

Senator COONEY—How does that cure the fact that they have been underpaid, that they have been sent offshore without being properly paid? Say, I took half your wages, Mr Rizvi, and said, ‘Well, look, it is all right,’ and then you were going to take me to court, but before you took me to court I exported you to Mongolia or somewhere?

Mr Metcalfe—This goes to the issue of where it is within our jurisdiction to deal with matters and where it is the responsibility of other agencies. To have a look at the Regent Hotel case or the Indian temple workers’ case and get the whole picture, you would probably need to get quite a few regulatory agencies in front of you. That is a very brief synopsis of our involvement in the immigration aspects of a particular matter, and I am sure that a number of other authorities—if they were doing their jobs in the way that they should be—would be dealing with the issues of underpayment—if that is alleged—or other issues.

Senator COONEY—I can follow that, Mr Metcalfe, but this is your document—perhaps it is not your document, I am sorry if it is not.

Mr Metcalfe—Yes, that is right.

Senator COONEY—This is a document that somebody typed out on the word processor to give to this committee, I suppose. I said, ‘Whatever they emphasise in the departmental action, the department must reckon that is important.’ What do they think is important when these people have been underpaid? What is important is that they contacted the hotel manager and referred the details off for advice as to whether the employer was in breach of the relevant award. It was confirmed the employer was in breach and has voluntarily rectified this—no contact at this stage with the employees to see what their point of view is or what they have to say about it, none of that. Nevertheless, just in case there should be some trouble for the Regent, a letter is sent off to the Regent seeking reasons why their sponsorship status should not be cancelled. It is going to be a big hardship for the Regent to have somebody sent back home.

Mr Metcalfe—I think it is important that you not regard this five-line summary as the complete synopsis of the department’s activities in this matter. The document was prepared for the information of officers coming to estimates, because we anticipated that we may have questions about these sorts of issues. Senator Carr raised some issues about it earlier and we undertook to table relevant details and, because Senator McKiernan was interested in pursuing the issue, we thought it may assist the committee with the sorts of situations we have become aware of. In relation to chapter and verse on the department’s activities in each of these cases, we would be happy to take it on notice and provide you with a much fuller indication of what occurred.

Senator COONEY—I am just asking: why emphasise this thing? I mean, Senator McKiernan and Senator Carr are fairly hard men, as you well know, and they would understand all this.

Senator CARR—I think this is gross slander!

Senator COONEY—They are vigorous and, may I say, harsh in their approach, but I am not like that.

Senator CARR—Harsh! Harsh!

Senator COONEY—I am just trying to gather an understanding of this. I say to myself, ‘Now, why would the department sit down and type this up like this. I wonder why they have done that?’

Mr Metcalfe—I think the important point is that we asked DEWRSB, the relevant Commonwealth authority, for advice. Our responsibility is in relation to the entry, stay and departure of non-citizens. We do not have responsibility for the enforcement of industrial laws.

Senator COONEY—That is exactly right: you have no responsibilities for that but nevertheless you contacted the hotel management.

Mr Metcalfe—We do have responsibility in relation to the sponsorship ability of organisations to bring people into the country and the status of those people while they are here under those circumstances. We do have an interest, quite clearly, but no one agency has the total responsibility for all aspects of a person's occupation and daily life while they are in Australia.

Senator CARR—My concern in this area, and with the ESOS questions I raised earlier, is with this pattern—it appears to me, in any event—where it is the person making the complaint, the witness, who is deported. Action is taken against the workers who make the complaint, because they are in breach of visas. For instance, with the one relating to the Blue Elephant restaurant, it says that 'the employee is subject to possible visa cancellation as they changed employer without approval of DIMA.' With the students, it is they who leave and not the rogue company that is organising these visa scams. The action is taken against the complainant, not the person perpetrating what appears to be an injustice.

Mr Metcalfe—Senator, while you were out of the room, we made the point that we do act as reasonably as we can in relation to these matters. In relation to workers who may be affected by a situation where there is an allegation of exploitation, and where we believe that adherence to Australian standards are not present in the sponsorship arrangements, ordinarily the employee is given the opportunity to find a new sponsor and we are very happy to provide a reasonable period of time in relation to that.

Senator CARR—I did here that before, Mr Metcalfe. It comes back to this point though, you also said that they were subject to automatic breaches if they were no longer with a sponsor that clearly had acted outside its sponsorship obligations. So the onus appears to be on the worker to make complaint—that is the pattern that emerged here—through their union or some other vehicle: the CFMEU or members of parliament in the case of the temple workers. I thought you said before your knowledge of the matter arose because the matter was raised in parliament. But the action is taken against the people who are adversely affected. Is that not a disincentive for people to actually report matters that go to questions of improper actions by sponsors?

Mr Farmer—I think the facts would show that it is not, because people are in fact reporting these cases. The actions are really twofold: one in relation to the employer, where a view is formed about their fitness to be a sponsor in future cases; and, secondly, in relation to the employee where, as we have said, the employee is given a reasonable chance and reasonable time in which to find a new sponsor.

Senator COONEY—A reasonable time in the opinion of the department.

Mr Farmer—Yes.

CHAIR—Senator McKiernan was engaged in a series of questions in this area before that process.

Senator COONEY—Sorry. Can I just ask one other thing about this. If you look at case of the International Society for Krishna Consciousness, from South Australia, the table says there is a ‘general allegation of underpayment/adverse employment conditions.’ I do not like to use the word, but may I say that the departmental action has a sort of sinister undertone when it says:

Matter resolved by the employee departing Australia or changing employee. Details of employee recorded ... as ‘Client of Concern’.

This is like, bang, down goes the stamp, ‘client of concern’. Now was he a client of the International Society for Krishna Consciousness, or was he a ‘client of concern’ of the department, or who was he a ‘client of concern’ to? And has the department got the rubber stamp that has written on it ‘client of concern’?

Mr Metcalfe—I think we explained earlier the system of being able to record about sponsors, in relation to any future sponsorships, whether or not we should look in particular detail at the background to their previous record and that is what the ‘client of concern’ indicator is there. Again, that is a two-line synopsis and I am sure there is a lot more detail behind that particular situation.

Senator COONEY—Is the stamp a red stamp, a green stamp or a blue stamp or what?

Mr Metcalfe—No, it is all computers these days—it is black or white I think.

Senator COONEY—Just black and white, and bang. I am sorry, I have interrupted Senator McKiernan.

Senator McKIERNAN—We were just exploring that matter of site visits. The response to the question that we asked last time around that a number of site visits and 97 visas were cancelled and then we went into different areas from there. But are there any initiatives being introduced within the department because of what has occurred, and what has been exposed, if you like, to the many issues that are on here? There was a significant amount of public debate around the matter anyway. What initiatives has the department taken to address the matters?

Mr Rizvi—There is a range of things that we do and we are doing more of, and we continue to do more of. As we have already discussed, we do targeted monitoring of employers. That can involve a range of things. It can involve sending the employer a monitoring form requiring them to respond to particular issues, it can involve a site visit, or it can involve an interview with the employer.

We undertake extensive liaison with key bodies who inform us about these matters, including a number of unions. Where concerns do arise in particular cases, as we have indicated, employers can be listed as a client of interest. If they seek to sponsor further people to Australia, that information will be available to us and it will be taken into account in further consideration. In addition, our compliance people undertake extensive employer awareness visits, where they seek to alert employers to issues of illegal work and their obligations to report issues and also to not employ illegal workers. So we are doing a range of things, and we are continuing to increase in particular our levels of activity in the monitoring area.

Senator McKIERNAN—Is that information that is collected from the monitoring data shared overseas? Before asking that question I should ask: where is the approval for 457 visas made? Is it made in Australia or can it be made at the overseas mission?

Mr Rizvi—It can be done at the overseas mission. The sponsorship approval will generally be done in Australia, as well as the assessment of the nomination for the position to be filled. But if the visa applicant is offshore, that work will generally be done at the nearest overseas post.

Senator McKIERNAN—Generally?

Mr Rizvi—Where the applicant is onshore, it will be taken at the nearest onshore office.

Senator McKIERNAN—So the DIMA personnel approving a 457 sponsorship application will have access to that monitoring data?

Mr Rizvi—The onshore office will certainly have access to that monitoring data. The offshore office will not necessarily have access to that monitoring data but the offshore office will not generally be involved in approving sponsorships. The vast majority of sponsorships are processed onshore. Only sponsorships involved in an overseas company may be processed offshore.

Senator McKIERNAN—In one of these instances one of the companies was overseas. With respect to the Regent Hotel, I think you told Senator Cooney that the workers were working for the Regent in whatever—

Mr Rizvi—That is true, but it was the Regent Hotel in Australia that did the sponsoring.

Senator McKIERNAN—Is there any intention to make this information available to all those officers that may be in a position to grant approval of sponsorship?

Mr Rizvi—Yes, Senator. We are seeking to develop the systems for this. At the moment the systems are on what is known as a Microsoft Access database, which exists in each of our DIMA business centres. We are seeking to link those up when we can with ICSE. That would enable a wider number of staff to be able to access that data. At the moment that data can only be accessed by the business centre that holds the access database.

Senator McKIERNAN—If you come across areas where the sponsorship conditions have not been fulfilled, does the department advise the sponsor that they will be prevented from any further sponsorship or that they will be precluded for a period of time from sponsoring other workers to Australia?

Mr Rizvi—Our approach is that each sponsorship has to be considered on its individual merits. So when an application for a sponsorship is received, we will consider the case on its merits as it stands. Relevant information to that consideration is, of course, past performance. That will be taken into account when a decision is made on the sponsorship.

Senator McKIERNAN—Has that issue been addressed and examined since we have had these recent allegations?

Mr Rizvi—Certainly, the broad issues in this regard are being addressed as part of the review of 457s that the minister announced some time ago—last year—and that is being looked at in that context. Certainly, we continue to look at ways in which we can improve the effectiveness of our sponsorship monitoring.

Senator McKIERNAN—Is the review considering a preclusion period for people who have flaunted their sponsorship obligations? Is it under active consideration?

Mr Rizvi—That is not an aspect that I am aware that the review has looked at. It certainly could be an aspect that the review could look at. I suppose there are pros and cons in establishing hard and fast preclusion periods. On the one hand you send a very clear message

to the employer, which is very good; on the other hand you reduce your flexibility in being able to deal with employers who say, 'I accept I made a mistake but I've learnt and if I'm not able to sponsor people from overseas, it will affect the ongoing viability of my business.' We need the flexibility to be able to weigh up those matters and make a decision. A hard and fast preclusion period would limit our flexibility in that regard.

Senator McKIERNAN—Yes, it would, but in the case of the program for immigration to this country, which some sectors of our community do not support, that is exposed with some of the instances that are detailed on this sheet. When that is brought to public attention, it brings the whole of the program into disrepute and it provides ammunition for those who are not supporters of even a small migration program like the one we are running at the moment. So it is something that should be under consideration.

I agree with you in part that perhaps there is not a need for a mandatory ban on further sponsorship where the sponsorship provisions have been breached, but stopping any further sponsorship certainly ought to be a matter for consideration in the review or, at least, putting the preclusion period in there for the most blatant of examples where the sponsorship is indeed breached, if you take into account what Senators Carr and Cooney have said about the victims in all of this, generally speaking, being usually the workers. There were some harrowing cases with those Indian workers who were so vividly displayed on our television screens and in our print media as well, which of course has an impact on the total migration program.

Mr Farmer—Thank you for that. We will take that into account in what we are doing. I think it is well worth thinking about.

Senator McKIERNAN—Are you able to provide the committee with any details on the number of 457 visas that have been issued to workers in the building industry?

Mr Rizvi—We will take that on notice. I am sure we can provide that information.

Senator McKIERNAN—That is all I have on the matter of 457 visas. I have some more questions on 1.1.

CHAIR—Anything else on 457 visas? We will move on.

Senator McKIERNAN—Last evening we explored with Customs the matter of the increase in the passenger movement tax from \$30 to \$38; the \$8 is a 27 per cent increase in that tax. I got some information back from them, but part of the money that is raised through that tax is to offset some migration costs. Was the department involved in the considerations about the increase in this particular tax?

Mr Davis—No, we were not involved.

Senator McKIERNAN—If you have not been involved, you are probably not going to be able to tell the committee what expectations the department will have about what allocations you will get from that funding back to offset the costs of issuing short-term visitor visas to Australia, or will you?

Mr Davis—The increase in the tax does not relate to matters within our portfolio. When the passenger movement charge was originally set, part of our immigration costs were taken into account in the original calculations of the amount of the passenger movement charge, but the passenger movement charge amount is actually collected and sent back to consolidated revenue, so there is no direct linkage from the passenger movement charge back to the

resourcing of the department. The increase in the tax, again, is going back to consolidated revenue to offset costs within other portfolios. It is not relevant to the costs of our portfolio.

Mr Farmer—If I may add a footnote, to some extent, other portfolios would know the details of what was taken into account in that process. Because the money goes into consolidated revenue, and because we get our appropriations out of consolidated revenue, you can draw a link but, as Mr Davis said, it is not a direct link that we are aware of.

Senator McKIERNAN—When it was initially set up, the passenger movement tax was a direct link to offset the costs in relation to short-term visas.

Mr Davis—It was established at a rate which allowed for some coverage of immigration costs at the time. I do not know the exact details of which costs were included, but the money has always gone back to consolidated revenue and we have had appropriation separately from consolidated revenue.

Mr Farmer—And to the extent that any immigration costs were included or taken into account as part of the increase, we do not know what they were because we were not involved in the process. However, they might well have been taken into account by departments like Finance which were involved in the process.

Senator McKIERNAN—That is very unlikely, isn't it?

CHAIR—You are a cynic, Senator McKiernan

Senator McKIERNAN—I am, particularly where Finance is concerned.

CHAIR—Not that that is an indictable offence yet.

Senator McKIERNAN—How many electronic visas have been issued this year?

Mr Rizvi—Some 2.3 million ETAs had been issued to 31 March 2001.

Mr Metcalfe—We have just passed the milestone of 10 million electronic travel authorities since 1996.

Senator McKIERNAN—Have any new countries been entered recently on to the list of countries in respect of electronic visas can be issues?

Mr Metcalfe—No.

Mr Rizvi—As part of the budget announcements, the minister has indicated a commitment to explore the extension of electronic travel authorities to some other countries, but at this stage, no ETAs have been extended to any more countries. However, that matter is still being examined.

Senator McKIERNAN—Thank you. I think that finishes my questions on 1.1, but let me be sure to save me the ignominy of having to ask to return to 1.1.

CHAIR—Mr Davis, while Senator McKiernan is checking, do you want to add something?

Mr Davis—In response to the question about the passenger movement charge, page 7 of Budget Paper No. 2 states that the increase in the passenger movement charge is related directly to resourcing for foot-and-mouth disease and other quarantine risks. That was the purpose of the increase in the charge.

Senator McKIERNAN—Thank you, Mr Davis.

[9.23 p.m.]

CHAIR—Are there any further questions on 1.1 on non-humanitarian entry and stay. If not, we will move to output 1.2, refugee and humanitarian entry and stay.

Senator COONEY—I have some questions about the IAAAS.

Mr Metcalfe—This is the correct program element, Senator.

Senator COONEY—I have got six questions. If I read them off, people can tell me whether they will answer them now or later. Question 1: what proportion of the IAAAS remote detention centre referrals of asylum seekers has gone to the two main private contractors? What proportion has gone to the community providers and why?

Mr Metcalfe—We will take that on notice.

Senator COONEY—Question 2: what proportion of the total IAAAS allocation, including detention centre cases, went to community and non-profit organisations?

Mr Metcalfe—We will take that on notice.

Senator COONEY—Question 3: how many asylum seekers in the community were provided with full application assistance under the IAAAS last year and, of these, how many disadvantaged migrants? What is the per state breakdown?

Mr Metcalfe—We will take that on notice.

Senator COONEY—Question 4: what percentage of the estimated \$140 per day for an asylum seeker in detention is spent on security?

Mr Metcalfe—That is strictly output 1.3, but we will take that on notice, all the same.

Senator COONEY—Question 5: how many breaches of the performance agreement did ACM incur last year, and what were they?

Mr Metcalfe—We will take that on notice.

Senator COONEY—Question 6: how many asylum seekers from remote detention centres were released on bridging visas on account of torture/trauma last year? Question 7: how many overseas police clearance requests for asylum seekers in detention have disclosed a criminal conviction? Question 8: how many 200 visa class refugees did Australia accept from Burma in 2000-01 and what proportion of the overall program is this?

Mr Metcalfe—We will take those three on notice as well.

Senator COONEY—How long will the answers take?

Mr Metcalfe—It will certainly be well within the committee's time limit of 9 July.

Senator COONEY—Thank you very much.

Senator McKIERNAN—How many applications for protection visas were lodged onshore during the current financial year and, of those, how many were lodged by unauthorised arrivals?

Mr Illingworth—There were a total of 1,137 lodgments in April, giving a total of 10,553 applications made for protection visas onshore this year, as at the end of April. We might keep looking for the figure for unauthorised arrivals and will come back with it during the evening.

Senator McKIERNAN—Okay, I am happy with that. What were the top 10 source countries of successful onshore protection visa applicants within this financial year? Figures have been published for previous years.

Mr Metcalfe—We will take that on notice.

Senator McKIERNAN—Are you in a position to tell the committee what the average processing time is for applications for permanent protection visas lodged in Australia? Are you able to distinguish between an application for a permanent protection visa and a temporary protection visa at the application stage or just after the application stage?

Mr Illingworth—We can determine what sort of visa they would be eligible to get during the application processing, but, although it is technically possible, there are some points in our reports where it is difficult to discern that difference—we can do it.

Senator McKIERNAN—Is it possible to get a response to the question I asked about the average processing time for an application for a permanent protection visa onshore?

Mr Metcalfe—We will take that question on notice. It sounds like something we should be able to produce, given that those applications will be coming essentially from detention cases—non-authorised arrivals. We will come back to you with that detail.

Senator McKIERNAN—I notice that on the last occasion the minister provided the committee with details of the number of temporary protection visas granted so far in 2000-01 and he was able to give the committee a further breakdown of those figures. Are you able to provide an update of those figures now?

Mr Illingworth—Yes, we can do that.

Mr Giuca—Since the temporary protection scheme was introduced, 5,036 TPVs have been granted. This program year to date, 4,165 have been granted.

Mr Metcalfe—To be precise, that is at 25 May.

Senator McKIERNAN—Can you break down the figures further? You will recall that on the last occasion I asked a series of questions about unaccompanied minors. I was pleased that more detailed information was provided to me. Is it possible this time to provide an update of the number of TPVs that have been granted to unaccompanied minors?

Mr Metcalfe—We have a figure for minors, but we may have to take unaccompanied minors on notice and come back to you.

Senator McKIERNAN—What is the figure for minors?

Mr Giuca—It is 806 this program year.

Senator LUDWIG—Are those figures for attached minors or unattached minors?

Mr Giuca—That is all minors. Most of those would be with family members.

Mr Metcalfe—In responding on notice, we will pick up the disaggregation as required by Senator Ludwig.

Senator McKIERNAN—If he had not been so quick, I would have asked the question! I appreciate your response to Senator Ludwig. Is that not a high figure? It is almost 20 per cent of the total.

Mr Giuca—The 806 minors?

Senator McKIERNAN—Yes.

Mr Giuca—As I have said, most of them would be predominantly family members; they are not unaccompanied. As at 11 May, 147 unaccompanied minors had been issued with TPVs.

Senator McKIERNAN—You have taken the further detailed question on notice. What is the average processing time for applications for a TPV? I guess that this would be for persons who are in detention centres, so it would be relevant to later discussions on 1.3.

Mr Illingworth—We measure in two ways. Our normal way of measuring is against the performance standard, which is an 80 percentile mark, which at the moment is running at around 13 to 14 weeks from date of entry into the detention facility until the visa decision. Eighty per cent of the applications are resolved in that time. Taking a straight average, the figure comes down and it is a bit misleading. Between 50 and 60 days has been the average time for finalisation for almost all of the cohorts of applicants that have lodged applications over a three-month period from December.

Senator McKIERNAN—So it is between seven and nine weeks?

Mr Illingworth—At the moment 80 per cent will get a decision within 13 to 14 weeks but, on average, when you are looking across a larger percentage of the decisions finalised, it is actually a lower average figure. But that does not take into account the small percentage that is unfinalised. These decisions take a substantially longer time, in some cases because of difficulties with security issues or offshore penal checking and the like.

Mr Metcalfe—That represents a significant decrease in processing times compared with, say, a year ago. There are a couple of reasons for that. The application of resources has had an impact, and so has the re-engineering of the process that we have discussed previously, in which many of the checks are done concurrently rather than consecutively. Essentially, health checking, character checking and visa merits processing in relation to the refugee status determination all happen at the same time and hence we are getting quicker decisions.

Senator McKIERNAN—Thank you. Are you able to differentiate between the various detention centres as to whether a given detention centre performs better in processing than another detention centre? Does distance come into effect on this at all?

Mr Illingworth—Yes, we can differentiate and we regularly run reports looking at the age analysis and timeliness of decision making at the various centres. But the process is set up in such a way that the distance of the centres from the East Coast, for example, where most of our processing resources are located normally, does not have an impact. The department responds by deploying teams of people, first through an entry process. These teams usually will be ready to start the initial interviewing—finding out who these people are and why they are here—within days of their arrival on the mainland. We have a timetable which follows that very closely. As soon as that process is completed, where people enter the PV process, we have teams ready to deploy essentially immediately. The IAAAS providers are put on stand-by while the entry process is going on, so that they go straight in in a matter of one or two days after the completion of the entry process. The protection visa interviewers essentially start work interviewing applicants as soon as the IAAAS providers finish writing their applications and lodging them.

Senator COONEY—Where do the IAAAS people come from? Do they come from Eastern Australia and go over to the West or what? You were saying that some of the detention centres are somewhat remote.

Mr Illingworth—There is a range of providers who are on the panel and are available for work in the IRPCs.

Senator COONEY—What are the IRPCs?

Mr Illingworth—The immigration reception and processing centres. Some of them are East Coast based and one, at least, is West Coast based.

Senator COONEY—And do the East Coast people fly over to the West?

Mr Illingworth—Yes.

Senator COONEY—What time of night do they fly over?

Mr Metcalfe—They take commercial aircraft, I think.

Senator COONEY—Do they wear a uniform?

Mr Metcalfe—They wear a lawyer's uniform.

Senator COONEY—If they are doing IAAAS stuff, they should not be wearing a lawyer's uniform, should they?

Mr Illingworth—A migration agent's uniform.

Senator COONEY—The people who are doing interviews, do they go straight in and do the interviewing?

Mr Illingworth—Say a boat of 100 people arrives. Maybe one, two or three days after the people have arrived in the detention centre, the entry process would start. That might take a week to find out who the arrivals are. Following that, there may be a break of between one day and maybe three or four days, depending on the logistics involved and access to interpreters and interview rooms and the like. Then the IAAAS providers would start their work interviewing their new clients, preparing applications and lodging them with the department. Notionally that would take perhaps another week. The day following the completion of that process our interviewing officers would commence their work and the IAAAS providers would then stay on. They would be away for the two-week block: the first week would be spent preparing applications and the second week would involve sitting in on our interviews.

Senator COONEY—Can IAAAS people speak the same language as the clients or do they have to get interpreters?

Mr Illingworth—They do not need to, that is not a requirement of the IAAAS contract. They are required to be able to communicate with their client. As a general practice they, like us, use interpreters. We assist in the organisation of those interpreters.

Senator COONEY—But you do not have to have an interpreter? In the scheme of things, you can fill out the form without having an interpreter, if you are willing to do it.

Mr Illingworth—If an applicant wishes to proceed without an interpreter, that is their judgment.

Senator COONEY—If the IAAAS people said to you that they did not need an interpreter because a person had indicated to them, through some sort of sign language or some other way, that he or she did not need an interpreter, do you say, 'Fair enough. Fill that out. Give us a look at the form'? Would you do it on a computer? You would not fill out the form, would you? What do you do?

Mr Illingworth—The IAAAS provider actually completes a form. They would have computers. It would not be a template as far as I am aware. They would be filling out an application and lodging it.

Senator COONEY—How do you know that that is correct? Do you have any quality controllers or do you just say, ‘These are honest looking migration agents. Even though we have MARA operating, whatever they fill out must be right’? Is that the approach you take?

Mr Illingworth—There are a range of controls. Firstly, to go back to the issue of the interpreters, as a matter of practice I am not aware of any instance where particularly a boat arrival of the nationality composition that we are dealing with now has had an application prepared without an interpreter.

Senator COONEY—What is the nationality composition?

Mr Illingworth—Iraqi, Afghani, Syrian, Palestinian Authority.

Senator COONEY—All of those sorts of people from the Middle East or that area.

Mr Illingworth—Yes. There are very few who, even if they speak English well, would even think of passing up the opportunity to have the assistance of the interpreter we offer them. As I mentioned before, DIMA cooperates with the IAAAS providers: we coordinate the acquisition of the interpreters and it is a shared resource for both functions. It is an element that they built into their planning—that is, that they would have an interpreter.

Senator COONEY—Say they have a disease, how would you find out? Would you have to rely on the IAAAS people?

Mr Illingworth—The health management of the individuals would be a matter for ACM.

Senator COONEY—Who is the ACM?

Mr Illingworth—The detention services provider to the department.

Senator COONEY—So Australia’s health depends upon the officers of the ACM?

Mr Illingworth—The health and care of the individual would be—

Senator COONEY—Yes, but from what you have just told us, our health and care, too, depends upon the ability of the ACM officers.

Mr Illingworth—Part of the broader entry process involves screening of the arrivals. That happens at a number of stages. Essentially, as soon as Australian officials make contact with a group of unauthorised arrivals—for example on Ashmore Reef—information starts to be gathered about their health and wellbeing. Obviously, if people are looking ill or are injured or members of a boat report that a person needs particular care, that is when Australian officials would start hearing about the health care needs. On arrival in the detention area, ACM would take it further.

Senator COONEY—But they are mainly interested in taking them into custody and putting them into the detention centres.

Mr Illingworth—And there is a thorough and staged screening of all detainees.

Senator COONEY—By ACM?

Mr Illingworth—Yes. But it is not correct to suggest that the administration of the health requirement as part of the visa process is undertaken by ACM.

Senator COONEY—I haven’t as yet heard of anybody else who is doing it.

Ms Godwin—The process that Mr Illingworth described is, as he mentioned, an incremental one. When people are first located, the customs officers, who are generally the first officers to make contact with them, would make a very immediate assessment of whether someone is ill. We have had situations where people have had to be medivaced off the customs vessel or off navy vessels. So that is the first immediate sort of assessment.

Senator COONEY—I want to take this in stages. Does the customs officer look at a person and say, ‘He looks a bit ill. He might have a communicable or a contagious disease’?

Ms Godwin—At that point it is a question of whether—

Senator COONEY—Of how he looks. Do they ask them to poke out their tongue or hold out their hands to see if they shake? What do they do?

Mr Metcalfe—It is a medical assessment. It is natural commonsense as to whether a woman is nine months pregnant and about to give birth, for example. There have been instances of women in advanced stages of pregnancy being medivaced off.

Senator COONEY—Pregnancy, at least for men, is not contagious, so we do not have to worry about that.

Senator Ellison—There was a recent case on Christmas Island or Cocos Island where the AFP assisted. These people had been at sea and were very much in dire straits. It did not take much observation to know that they needed to be put in hospital as soon as possible, and they were. Some of these people are not in great shape.

Senator COONEY—Do you think the AMA would be happy if we ran our medical system on what customs officers thought we looked like? Should they come in here and say, ‘We think Mr Metcalfe is looking a bit green around the gills, so we better give him an Aspro or something’?

Senator Ellison—I think it is a bit more than green around the gills; I think it goes to something which even transcends the AMA, and that is the fact that if people are in danger at sea they have to be rescued and given assistance—which they are. I can tell you that we have done it in cases where I think we have even saved lives. In one particular instance, customs officers went into the surf to save some people. They did not stop and call the AMA in that case.

Senator COONEY—I am talking about the first step. With respect, Minister, when I asked about what happens if there is a contagious disease and who ascertains that, the answer I was given was that, first of all, the customs officers look at it. If someone said that to you, you would certainly say, ‘Hold on, there has to be more to it than that, surely.’

Ms Godwin—Perhaps I could go on with what I was going to describe. What you have just described is the most immediate reaction. After that people are transferred to the mainland or, as Minister Ellison has just mentioned, to Christmas Island. Once they have been transferred from Ashmore Reef to the mainland, there is an immediate assessment, usually by a nurse or a doctor, of obvious illnesses.

Senator COONEY—I want to stop you just there. Where do the doctor and nurse come from?

Ms Godwin—On Christmas Island it is the local medical officer.

Senator COONEY—So all these people who are taken off the boats are looked at by the local doctor on Christmas Island or by a nurse?

Ms Godwin—There is an immediate assessment at that point of whether someone is immediately ill.

Senator COONEY—Do they get out a stethoscope or do they do this by looking?

Ms Godwin—I am not sure. I would have to take the specifics on notice, but certainly at that point we have identified people, for example—

Senator COONEY—Ms Godwin, you are in charge of this area. How many years have you been in charge of this part of the system?

Ms Godwin—Sixteen months, Senator.

Senator COONEY—Sixteen months and you have not yet ascertained whether there is an examination by stethoscope when these people—

Mr Metcalfe—We rely upon the medical professionals to do what medical professionals are meant to do.

Senator COONEY—That might be pretty dangerous.

Mr Metcalfe—That is what they are paid for, Senator.

Senator COONEY—So your proposition is that as long as people are paid for doing a job, they will do it properly.

Mr Metcalfe—No, I think that doctors clearly have many years of training, as do nurses, and that they have a set of ethical and professional responsibilities. It is our expectation that they undertake those responsibilities properly.

Senator COONEY—Have your expectations in life ever been disappointed?

Mr Metcalfe—We have not been disappointed—

Senator COONEY—Never been disappointed?

Mr Metcalfe—on any occasion that the medical professionals have done anything other than what would be appropriate in the circumstances.

Senator COONEY—So your experience of the medical profession is that your expectations of them have always been realised?

Mr Metcalfe—We are attempting to describe to you the process as people initially come to notice and are then brought to facilities. I was talking about the first contact they have with facilities, whether it is at Christmas Island, Broome, Darwin or wherever they are brought to the mainland. We were about to describe a more detailed process once people are settled into accommodation.

Ms Godwin—After arrival on the mainland, people are moved to the detention centre, unless there is something requiring immediate medical treatment. There have been many instances where people have been admitted to hospital at the point of arrival on the mainland because they have had some immediate, significant illness.

Senator COONEY—That is at Port Hedland?

Ms Godwin—At Port Hedland, if that is where they have arrived, or Darwin, Christmas Island or, indeed, as I have mentioned, occasionally we medivac people to Perth. It depends on the nature of the condition. For those people who are, generally speaking, okay, when they get to the detention centre they are first of all given a detailed assessment by the ACM

medical staff, to ensure that if there is anything requiring treatment that can be immediately attended to.

Senator COONEY—The ACM medical staff; these are medical staff employed by Australian Correctional Management?

Ms Godwin—That is correct.

Senator COONEY—I wonder what they pay their doctors.

Ms Godwin—I do not know what they pay their doctors.

Senator COONEY—You do not get the feeling that they would be ready to leave there and go to Collins Street?

Mr Metcalfe—I am sure that the medical staff meet all relevant registration and other requirements, Senator .

CHAIR—I am not sure that even this committee can cast aspersions on them from there, Senator Cooney. What I would like to see happen, if it is possible, is for Ms Godwin to at least complete her answer.

Senator COONEY—But there are all these assumptions made. You would not want me to wait until the end.

CHAIR—I would actually, Senator Cooney.

Senator COONEY—All right; I will wait until the end.

CHAIR—I was going to ask Ms Godwin to complete her answer, complete the discussion that Senator Cooney was having with Ms Godwin—somewhat optimistically perhaps, on my part—and then go back to Senator McKiernan. But if you want to stop now, Senator Cooney, we can do that.

Senator COONEY—I will not ask any further questions. I will be silent, and let Senator McKiernan have a go. I have not asked many questions.

Senator LUDWIG—I have a question for Mr Metcalfe in relation to the answer that he just gave.

CHAIR—We might pursue that when we pursue the whole thing.

Senator COONEY—I was just concerned about our health—to see that diseases were not spread throughout Australia.

CHAIR—I am touched by your concern, Senator. Perhaps we can return to the order in which we were examining the estimates and then come back to this issue at the appropriate time.

Senator McKIERNAN—I was actually just exploring in the refugee area which I think is of very great importance. I would like to just conclude a few matters in that area and then I have a couple of other issues in the 1.2 area as well. How many applications for permanent protection were lodged offshore during the current financial year?

Mr Metcalfe—Senator, can I just interpret that question as how many applications were lodged under the offshore humanitarian program?

Senator McKIERNAN—Under the offshore humanitarian program.

Mr Giuca—Since the beginning of this program year, 42,500 people have lodged applications offshore.

Senator McKIERNAN—How many applications are outstanding? Is the pipeline a correct term to use in regard to this matter?

Mr Giuca—Yes. There are some 52,000 people in the pipeline.

Senator McKIERNAN—Is that on top of the 42,500 or—?

Mr Giuca—No, that includes the 42,500.

Senator McKIERNAN—How many offshore protection visas have been granted so far in this current financial year?

Mr Giuca—The number of offshore grants in the refugee and special humanitarian and special assistance categories at the end of April was 6,409.

Senator McKIERNAN—That is 6,409 out of a total of 52,000.

Mr Giuca—In the pipeline.

Senator McKIERNAN—What is the expectation that will be granted by the close of the financial year?

Mr Giuca—In the offshore component of the program, we expect about 8,000 to be granted.

Senator McKIERNAN—Is 8,000 the program target?

Mr Giuca—No. The total program is 12,000 plus unused places from last year. We have something in the order of about 15,000 places and that includes onshore.

Senator McKIERNAN—Can you please explain that?

Mr Metcalfe—The figure Mr Giuca used of around 15,000 is 12,000 for the program this year together with 3,000 unused places from last year. This is the global total that includes both the offshore visas available as well as those visas required onshore because of the level of protection visas and temporary protection visas granted in Australia.

Senator McKIERNAN—How many places will be rolled over into next year's program? Has any decision been made on that or are there any expectations of a decision?

Mr Giuca—That will depend on the number of total grants onshore. I think we expect between 5,500 and 6,000 to be granted onshore so the balance between the 15,000 and whatever comes in, in terms of total grants offshore and onshore, will be rolled over into next year.

Senator McKIERNAN—Is there any expectation of when the 52,000 applications that are offshore might be cleared? What are the processing times for applications at a sample number of posts—say one in Asia, one in Africa—and are we taking any from South America?

Mr Giuca—We have taken a few from South America. About 91 per cent of all cases in the humanitarian pipeline are under 24 months old.

Senator McKIERNAN—The applications are under 24 months old?

Mr Giuca—24 months old.

Senator McKIERNAN—A number of my constituents who are seeking to sponsor their family members into Australia under the refugee and humanitarian program are actually waiting a lot longer than 24 months. I can think of Kurds who are currently in Greece and another one that is in Holland and that is only one nationality that my office is acting on behalf of but I think it is a lot more than 24 months.

Mr Giuca—It depends on which post we are talking about.

Senator McKIERNAN—That is why I asked for an average of perhaps a European post and perhaps an African post. I also thought South America but there is not a great number coming from South America.

Mr Giuca—No.

Mr Metcalfe—Senator, could we take that on notice and we will provide you with an indicative sample of posts and a more detailed advice on the processing times at those posts.

Senator McKIERNAN—Part of the explanation given to me and my office for the delays in the processing of the relatives' applications from the sponsors, who are my constituents, is the fact that some of the onshore places have been rolled into the offshore places—or the offshore allocation has in part been taken up by the onshore. So there are fewer places available for those offshore places.

Mr Metcalfe—That is certainly the case in that the overall program has been determined at 12,000. There was a carryover from last year, but the minister has made the point on numerous occasions that the very large increase in onshore grants is essentially at the expense of places offshore.

Senator McKIERNAN—My difficulty with all of this is that my constituents, who do not have a tremendous amount of money themselves, on top of not having a great deal of resources are actually subsidising their relatives. Sometimes those people cannot even work in the countries where they are currently domiciled. There is no way they are going to get the money together to pay for a boat to get to Australia to have their application processed in some seven or eight weeks.

Mr Metcalfe—I think you are hitting on the point of one of the great dilemmas in relation to this issue. The minister has used language as strong as saying that people who are paying people smugglers to come to Australia are stealing the places of people who are perhaps often more in need overseas. The global incidence of illegal trafficking of people has the potential to threaten the overall protection system. These very real human situations are matters that the government has great sympathy for. But, at the end of the day, there is an overall program and the onshore places are being filled because people are arriving illegally.

Senator McKIERNAN—Are you in any sort of position—even as a result of the budget and the many initiatives contained in that—to give comfort to those constituents of mine that their relatives will get to Australia quicker than they are now? One of them is being processed through our embassy in Greece. What would the waiting times be for processing in Greece, just as a case in point?

Mr Giuca—It depends on which humanitarian category we are looking at, but 50 per cent of cases from Athens are done within 72 weeks.

Senator McKIERNAN—That is a year and five months.

Mr Giuca—That is for refugees.

Senator McKIERNAN—What about the other humanitarian areas? There would be no special assistance category out of Greece.

Mr Giuca—No, there is no SAC out of Greece. That is 52 weeks for SHP cases.

Senator McKIERNAN—What is the processing time out of Nairobi?

Mr Giuca—For SHP, 50 per cent of cases are done within 83 weeks; for refugees it is much quicker—50 per cent of cases are done within 27 weeks.

Senator McKIERNAN—I will just ask one more question: what is the case in Islamabad, which is another post that my officers have contact with?

Mr Giuca—For refugee cases, 50 per cent are done within 53 weeks; for SHP, 50 per cent of cases take 86 weeks.

Senator McKIERNAN—Some of my constituents' cases are possibly not in the 50 per cent box. If they are not there yet, I do not know how I can advance their cases more from this particular forum. I am not going to use names, but it certainly does concern me that those people are waiting. Let me reinforce this again: it is having an impact on their relatives here in Australia, their sponsors. In a lot of cases those people do not have a great deal of money. In actual fact, one of the constituents acts as an interpreter from time to time at the Port Hedland and Curtin detention facilities. He earns money but also subsidises his relatives overseas. His wife is looking after some younger children. There is one income in the family. They are doing it tough and hurting at the same time because they cannot get their constituents in. I suspect I have laboured the point. I am leaving that particular subject of the refugees for the moment—at least until the next estimates.

Mr Illingworth—Senator, I could answer two questions you raised earlier. There were 4,926 onshore protection grants at the end of April, of which 3,978 are temporary protection visas. In terms of timeliness of our community permanent visa processing, just under 77 per cent of decisions made at primary stage on the community caseload were made within the service standard of 90 days.

Senator McKIERNAN—I am not going to wish on the public record that my constituents' relatives were in those positions. There was an initiative contained in the budget which sought to address the situation of displaced Afghani and Iraqi refugees. What resources and staff have been allocated in the current financial year for that initiative? While I do not have the PBS statement open in front of me, I recall that not all the money is going to be expended in this particular financial year. There will be a rephasing, I think that is the term, into next year. I prefer the word 'carryover' as I understand it a lot better.

Mr Davis—Page 35 of our portfolio budget statement shows that \$5 million was allocated in the last budget. In the 2000-01 year, the estimate in the budget document is \$5 million, and \$3 million was the estimated outcome at the time of the budget. Mr Okely may be able to update us on that. Indeed, the other \$2 million was rephased into future years.

Mr Okely—We have a strategy of negotiation with both Iran and Pakistan in particular. These are the major countries of first asylum from which many of the illegal arrivals are coming. The discussions we have had with both of those countries have involved a package of measures designed principally to achieve readmission of illegal arrivals in Australia back to Iran and to Pakistan. Part of that package involves incentives for policy changes in both of those countries. Certainly we would be looking at the monetary allocations that we have been talking about as part of the incentive package to obtain a pretty important change in policy in both Pakistan and Iran.

Senator McKIERNAN—What was the reason that the full allocation for the current financial year was not able to be expended?

Mr Okely—The minister has in fact allocated some of the funding for humanitarian relief in Afghanistan. Part of the \$5 million we are talking about has been kept back as part of our negotiating strategy with those two countries.

Senator McKIERNAN—Thanks very much. I had some questions on the South Lebanese Army during the last estimates committee hearings. Since we last met, how many applications, if any, have been lodged under this special category which was created for members of the South Lebanese Army?

Mr Giuca—There have been a number of applications lodged. I do not have the exact number lodged, but some 289 persons have been interviewed in relation to applications that have been lodged in that area.

Senator McKIERNAN—When was the special allocation announced?

Mr Giuca—These cases are being processed as part of the normal special humanitarian program. While up to 200 cases have been set aside, it is not a special program per se; it is part of the normal program we have for people in that area.

Senator McKIERNAN—It is not a special process per se, but it is a special process, isn't it? It is a targeted allocation of visas, so there is something special about this particular allocation.

Mr Giuca—It is no different to applications from Iraqis that might be processed out of that part of the world or other groups from that part of the world.

Senator McKIERNAN—How many positions then for Iraqis?

Mr Giuca—I can give you allocations of places by posts.

Senator McKIERNAN—No, we are asking you something separate here. There is something special about the South Lebanese Army, is there not?

Mr Giuca—We do have notational allocations for Iraqis by posts. I do not have it with me at the moment but I can provide it for you.

Senator McKIERNAN—How many, then, for the west Burmese army? How many other categories where former army personnel would be specifically allocated?

Mr Giuca—The applicants in relation to supporters or former members of the SLA are from Lebanese who have got temporary protection in Israel, face human rights abuses if they return to Lebanon and have close family links in Australia. You referred to the Burmese. We do have a Burmese program.

Senator McKIERNAN—Yes, but I asked about a Burmese army program and I categorised it even more in asking about a west Burmese army. There is, despite what you said, something special about the South Lebanese Army personnel.

Mr Metcalfe—I think what we are talking about here, Senator, is a group of people who have temporary protection in Israel and may face return to Lebanon and, if so, may face human rights abuses. That is exactly what the special humanitarian program is about. There has been reference in the media to a certain number of places. The fact is that we are looking at applications; some grants have occurred; and, if there are issues of association with the South Lebanese Army, those cases are obviously being looked at very carefully in terms of character and other issues. There is certainly no intention to admit military officers or people of that ilk. It is an issue that fits into the overall definition of the special humanitarian program, in the same way that Burmese in Thailand are dealt with under that program.

Senator McKIERNAN—You do not have a special allocation for former Burmese military persons who are now in Thailand?

Mr Giuca—There is for Burmese.

Senator McKIERNAN—There is for the Burmese, but not for Burmese military.

Mr Metcalfe—The point here is that that we are talking about Lebanese who are in Israel. The reason the Lebanese are in Israel is because they were in the South Lebanese Army or supporters of that force. There has been a focus on the issue of the South Lebanese Army, but the reality is that they are people who have temporary protection in Israel and who, if forced to return to Lebanon, may be in a human rights area of concern.

Senator McKIERNAN—There are millions of people in the world in that position, right throughout the world—on the African continent as well as in Asia and in Europe. But there has been something special about the personnel from the former South Lebanese Army. There has been an allocation made and you have just said, Mr Metcalfe, that there have been some applications approved. How many?

Mr Giuca—33 people.

Senator McKIERNAN—What security checking goes on for these particular people? As they are former military personnel, is there an enhanced security check for those applicants?

Mr Metcalfe—I might answer that, Senator. Security checking is undertaken by ASIO. It is up to that organisation to undertake its responsibilities, through its liaison partners and through its own resources. In addition we have other checking arrangements in place.

Mr Giuca—With other countries.

Mr Metcalfe—Senator, I might just confirm whether it is appropriate to put that particular arrangement on the public record. If we can, we will come back to you on notice; if not, we will consult with the minister as to whether he would like to provide a private briefing to you on that issue. The reason I hesitate is to ensure that we do not endanger any of those processes.

Senator McKIERNAN—All right. I understand that there are certain sensitivities and it is possible that what might be put on the public record in regard to this might have an impact and repercussions on other things. At this stage I would be happy to accept a private briefing, but I put a caveat on that. If, following a private briefing on the matter, I feel the need to come back here—or, indeed, in the chamber itself—and address further questions on the matter, I will choose to do so at a particular time. I am not closing off any future options of further addressing the matter. I do have concerns in regard to it. I do not pretend to know everything about what is associated with it. But, with the offer that you have made, Mr Metcalfe, I think probably enough has been said for now on that particular matter. Senator Ludwig, did you have a question on output 1.2?

Senator LUDWIG—It arose out of questioning by Senator Cooney and an answer that Mr Metcalfe gave.

CHAIR—We will come back to that when the appropriate moment arrives, Senator Ludwig, I promise.

Before we move on, Mr Metcalfe, when we were discussing the 457 issue earlier, you and Mr Rizvi were offering the committee a document. The committee is happy to receive the

document that has been submitted. But, before we include it in our records, we would be very grateful if the department would remove any identifying information in that document.

Mr Metcalfe—That is an excellent suggestion. We might take the opportunity to correct the typographical error at the head of the document as well.

CHAIR—Indeed. There is more than one, so perhaps you could pick up the rest as well while you are there.

Mr Metcalfe—I will blame the computer!

CHAIR—Don't we all!

Senator McKIERNAN—I missed them—where were they?

CHAIR—I will ask the committee to collect those copies from committee members and from Senator Carr, who was also here at the time, on the understanding that further copies without identifiers will be provided to them tomorrow morning.

Mr Metcalfe—Thank you, Chair. I mention again—as I mentioned this in discussion with Senator Cooney—that that document is nothing more than a synopsis that was prepared for briefing for departmental officers, and we thought it may assist the committee in this issue. If members of the committee would like a detailed briefing on any of those particular issues, then clearly there is much more information than lies behind three or four lines in a table.

CHAIR—Thank you for that offer. The committee will discuss perhaps taking it up at some stage. I would suggest we begin output 1.3, which is an area of great interest to a significant number of members of the committee, and go as far with that as we can by 11 o'clock this evening. I understand we have undertaken to hear from the Refugee Review Tribunal first thing tomorrow morning and, once we have completed the Refugee Review Tribunal, we will then resume with 1.3.

Senator McKIERNAN—I am conscious of the time with an allocated 40 minutes to go. Senator Cooney, who has got a deep interest in the detention issue and matters associated with that, is not with us.

CHAIR—I have indicated to Senator Cooney that he will be able to ask questions tomorrow morning.

[10.21 p.m.]

Senator McKIERNAN—I was going to suggest that there is another matter I want to pursue in this output 1.3 area. It is the newspaper story of last Friday, and Monday of this week, regarding the High Court and the Federal Magistrates Service.

CHAIR—Shall we start there?

Senator McKIERNAN—I might seek to explore that for the remainder of the evening.

Senator Ellison—I think that is a good idea, but I just ask if other officers could go and we leave all those here for the area that Senator McKiernan is going to be asking questions about.

CHAIR—Are you amenable to that, Senator McKiernan?

Senator McKIERNAN—That was part of the reason I was suggesting it. I just think it is cleaner, when we are dealing with the detention issue. We can just keep it flowing, because when you get breaks in the dialogue and the questions and answers, it does not lend itself to the greatest understanding of the whole of the issue.

CHAIR—I thank the officers who are now leaving for their assistance to the committee this evening.

Senator Ellison—Is Senator McKiernan going to ask any questions on detention at all? What was that about the High Court and the Federal—

Senator McKIERNAN—The Federal Magistrates Service and the initiative about moving litigation from the High Court to the FMS.

CHAIR—The one that we discussed at length with Attorney-General's.

Senator Ellison—Can we just do that and then adjourn, and leave all detention questions until tomorrow?

Senator McKIERNAN—I just think it would be a lot cleaner for all of us.

CHAIR—Yes. That has the committee's agreement.

Senator McKIERNAN—I trust that the DIMA officers were monitoring proceedings yesterday when I had a series of questions to the Attorney-General's Department and to the officers of the High Court of Australia regarding two separate newspaper articles. One appeared on 26 and 27 May in the *Weekend Australian*—it is a small article entitled 'Help for High Court'—and a much larger article appeared in yesterday's *Australian* entitled 'Little appeal in justice strained by heavy migrant load'. Am I correct that there was some monitoring going on of those questions or do I have to start from the beginning with the questions that I put to the officers of the Attorney-General's Department yesterday?

Mr Farmer—We were monitoring.

Senator McKIERNAN—You were monitoring. I suspected so! You did not know the cap was coming though, did you?

Mr Farmer—No, we did not know the cap was coming.

CHAIR—It is okay, you have been spared the family references.

Senator McKIERNAN—Has the department of immigration got a response to where this initiative is at?

Mr Farmer—In general I can say that obviously the minister has had a discussion with the Attorney-General and he has asked us to provide some advice to him on this matter. We are really right at the beginning of this issue from the point of view of this portfolio. We have not provided advice to the minister yet, but we will be consulting with the Attorney-General's portfolio and within our own portfolio on the issue.

Senator McKIERNAN—I appreciate that there are some sensitivities about asking for advice that is given to the minister in a particular area and whether or not matters are before cabinet and so forth. However, this is something that is now in the public arena. I said yesterday that to me it represents a major shift in the direction, focus and policy of DIMA as it approaches litigation in the migration area. You can stand behind the policy and cabinet protection, but it is in the public arena and the debate will go on. You may not answer the questions here but no doubt there will be further items in the media about the direction and it might be better if information were given freely, rather than it being sought to be squeezed out of you, or even provided by incentive.

Mr Farmer—In this case I do not believe there is anything to be squeezed. The idea was discussed between the ministers. Officials were not there. Our minister has asked us for advice on the concept and we have literally only had that request. So I think the answer is that

we are not in a position to say anything about a departmental view because we have not yet begun turning our minds to it in anything but a very preliminary way. We have had the request from the minister only for a matter of days. We have certainly formed no view and put no view to the minister.

Senator LUDWIG—The Attorney-General, to be fair, referred me to page 7 of their annual report. From reading that report, there was not an excess of workload or capacity in relation to immigration matters. Because the High Court is not a court of original jurisdiction, how would the FMS then seize that workload at the point of being able to deal with it? The person would have a choice of jurisdictions and they would continue to have a choice of jurisdictions unless a privative clause was placed within the Migration Act. Of course, we all know that privative clauses are notorious for not being privative clauses at all, if the High Court manages to seize the matter. You are only looking at that issue in toto now, and they are the matters that you would have to contemplate. How could the FMS be—to use the ART example—speedy so that it would at least attract the business to the FMS, rather than have the lawyers lodge in the High Court in the first instance?

Mr Storer—As Mr Farmer said, we have only had the advice from the ministers a day ago. We have made some preliminary contact with A-G's to get together and talk about what it is that the ministers expect. Obviously, that would be one of the matters that we would talk about. We could give you statistics regarding the numbers that apply in the original jurisdiction to the High Court, which obviously could not be affected by our Federal Magistrates Service because they go direct, in its own jurisdiction.

Senator LUDWIG—It could indirectly, in the sense that if you make it more palatable they might choose to go to the FMS before they filed above that court and used that original jurisdiction.

Mr Storer—Yes.

Senator LUDWIG—But that does not prevent appeals to the Federal Court and then appeals to the High Court as well.

Mr Storer—Yes. We could you the statistics that currently exist but this would be part of the examination between us and the A-G's officials in looking at the information in order to flesh out what it is that the ministers were anticipating might occur.

Senator LUDWIG—What your answer provokes is, 'What are the statistics?' In terms of the original jurisdiction, what is the potential workload that could be seized by the FMS, if there is a workload that can be seized, because of course there may not be a workload that can be seized in the sense of being able to be directed to the FMS with any degree of certainty?

Mr Farmer—Certainly it would be premature of us to talk about what might or might not be seized by the FMS. We have not had an opportunity to form a view on what and in what circumstances, if any, might be appropriate for such a referral.

Senator LUDWIG—I understand that.

Mr Farmer—I am not being evasive. I am simply saying that I do not think that we are in a position here to speculate about things. We are really in the process of formulating views now to prepare advice to the minister.

Senator LUDWIG—I understand that it is quite complex.

Mr Farmer—I would not want you to hear any views from us before we had actually given them to the minister.

Senator LUDWIG—Then we will not probably hear from you anyway once you have given a view.

Senator McKIERNAN—In cases like that it should be reciprocated as well. We would have like to have heard it first from the minister rather than from the pages of the *Weekend Australian*.

Mr Farmer—We did hear it first from the minister.

Senator McKIERNAN—Did you? You had more than a day to think about it then?

Mr Farmer—But the request for us to do things was very recent.

Senator McKIERNAN—I found it an extraordinary article and an extraordinary change in direction and policy. Among other things, apart from what Senator Ludwig mentioned a little while ago, it is now, on the face of it, accepting that there will be a tier of judicial review over merits based decisions of the migration program. At the moment, matters of law that are in dispute can go on to the Federal Court of Australia. Merits based decisions cannot. A person who has got a dispute on a decision in the refugee area for example, can go, and indeed many do, to the High Court in its original jurisdiction. If there is going to be a referral of those cases back to the magistrates service, that is providing for a tier of judicial review which is something that has been resisted by a series of governments over a period of time, certainly in the last decade.

That is why I was somewhat astonished when I read the very brief article in the paper on Saturday. I addressed some questions on Monday morning, prior to receiving the much larger article by Mr Haslem whom I commended yesterday for seeking details and statistics directly from the High Court. I thought that it was a very significant change in direction for the immigration portfolio in the area of judicial review. I will conclude with this comment that there is on the notice paper of the Senate a judicial review bill which seeks to further constrict the access to the judicial process from those number of cases that can get before the courts at the moment. Indeed, there is also a measure in another bill which further seeks to restrict access to the High Court.

What we have got is quite a dramatic indicator of a shift in policy. I will watch with interest the developments as this proposal is outlined. I would ask, however—and I understand about giving advice on policy matters and the fact that you have got to give your advice to the minister first—that this committee be kept informed on this because it is something that has been raised in the committee process. With a closing date of 9 July for responses to answers, you may be in a position to provide the committee with some more detail on the initiative. After discussions with the minister and after you have provided advice to the minister, it may be possible to do that. I would ask you to take the matter on notice. I am not asking any specific questions on the matter because I know you are not in a position to answer, but I would ask that the committee be kept further informed by way of taking the matter on notice and responding in the timeframe that the committee sets for the return of questions that are taken on notice.

Mr Farmer—Senator, I really cannot foreshadow whether it will be possible to say anything in that timeframe, but to the extent that the minister is in a position to respond, I will take it on notice. But you understand that I have said nothing about a view from the portfolio on this matter.

Senator McKIERNAN—I understand, and the record will prove that. I have not pressed you on that matter because I know that you are not in a position to saying anything. Can you

inform the minister that when he reads my words in the *Hansard* I actually used my most Irish brogue in order to beseech him to provide some further information on this matter.

Senator LUDWIG—I assumed that the minister had made a fundamental shift in policy away from a merits based review to a judicial system in terms of our offshore and onshore programs. If he is considering the FMS, I know that you cannot answer that, but by at least raising that in the paper, that seems to be the import of it now. One would expect that the Attorney-General will at least read these words and provide us with a better informed position than we are adopting at the moment, because that can only be the import that can be deduced from those articles. I do not ask you to comment on that.

Mr Farmer—I am not sure how far any of us should go in reading things into the press reports.

Senator LUDWIG—No, that is always a danger.

Senator McKIERNAN—I appreciate what you have said. We saw a classic example of this on the last occasion that this committee considered estimates. Something was taken up, allegedly incorrectly, by the media, and the minister—and he shall be nameless—very quickly issued a press statement in regard to that. This particular piece has been in the public arena since Saturday and to date I have not seen a retraction, a denial or any distancing from either minister—the Attorney-General or the Minister for Immigration and Multicultural Affairs. So I do think there is some substance to it, but I will not press any further.

Mr Farmer—I think our minister is in the process of asking for advice on the matter.

Senator Ellison—I think this was raised at the other estimates hearing involving A-G's. It is good that I have been here for both of those hearings, so I will convey it at a ministerial level to both ministers.

Senator McKIERNAN—I will not breach my commitment by asking questions on the detention matter while others are not here. In moving along to discuss the specific portfolio I did indicate that I would have some questions in regard to grant programs in the portfolio during the course of our deliberations. Could you—not necessarily now but perhaps in the morning—direct me to the particular programs where grant programs would be allocated under those outputs. I do not want to waste the committee's time in scouring through all of them, but I put you on notice that I will be asking some questions about grant programs, as indeed we are doing across the other portfolios that are currently being examined by the variety of estimates committees.

Mr Farmer—Certainly, Senator. If we could confab for 30 seconds before the meeting tomorrow, we could get that straight.

CHAIR—When we resume tomorrow morning we will begin with the Refugee Review Tribunal, provided that the officers are here. If not, we will begin with 1.3. Once we have concluded the Refugee Review Tribunal, we will continue with 1.3. We will reconvene at 9 o'clock tomorrow morning.

Committee adjourned at 10.40 p.m.