



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Budget Estimates

TUESDAY, 28 MAY 2002

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BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Tuesday, 28 May 2002

Members: Senator Payne (*Chair*), Senator McKiernan (*Deputy Chair*), Senators Cooney, Greig, Mason and Scullion.

Senators in attendance: Senators Allison, Carr, Cooney, Crane, Faulkner, Harradine, Ludwig, Mason, McKiernan, Payne, Schacht and Scullion

Committee met at 9.05 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

General Questions

Departmental Executive

Mr Robert Cornall, Secretary

Dr James Pople, Executive Adviser

Ms Kathy Leigh, A/g General Manager, Civil Justice and Legal Services

Mr Ian Carnell, General Manager, Criminal Justice and Security

Royal Commission into the Building and Construction Industry

Mr Colin Thatcher, Secretary

Ms Sheila Butler, Director, Corporate Services

Royal Commission into the failure of HHH Insurance Group

Mr Richard St John, Secretary

Mr Graham Millar, Deputy Secretary

National Native Title Tribunal

Mr Christopher Doepel, Registrar

Mr Hugh Chevis, Director, Service Delivery

Mr Marian Schoen, Director, Corporate Services and Public Affairs

Office of the Director of Public Prosecutions

Mr Damian Bugg QC, Director

Mr Graeme Delaney, Principal Adviser, Commercial Prosecutions and Policy

Mr John Thornton, Deputy Director, Legal and Practice Management

Ms Stela Walker, Deputy Director, Corporate Management

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

National Crime Authority

Mr Gary Crooke QC, Chairman

Mr Jon Hickman, National Director Corporate

Mr Adrien Whiddett, General Manager

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen, A/g Director

Mr Alf Mazzitelli, Senior Manager, Corporate Resources

Australian Law Reform Commission

Professor David Weisbrot, President

Ms Rosemary Adams, Executive Director

Office of the Privacy Commissioner

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

Ms Robyn Ephgrave, Manager, Finance and Services

Human Rights and Equal Opportunity Commission

Dr Sev Ozdowski, Human Rights Commissioner and Acting Disability Discrimination Commissioner

Ms Diana Temby, Executive Director

Ms Sally Moyle, Director, Sex Discrimination Unit

Ms Eleanor Hogan, Senior Policy Officer, Social Justice Unit

Ms Rocky Clifford, Director, Complaint Handling

Mr Stephen Duffield, Director, Human Rights Unit

Ms Robyn Ephgrave, Finance and Services Manager

Office of Film and Literature Classification

Mr Des Clark, Director

Ms Patricia Flanagan, Marketing and Development Manager

Mr Paul Tenison, Business Manager

Federal Court of Australia

Mr Warwick Soden, Registrar

Mr Alan Dawson, Senior Deputy Registrar

Mr Gordon Foster, Executive Director, Corporate Services Branch

Mr Greg Brown, Chief Finance Officer

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Ms Jennifer Cooke, General Manager, Client Services

Ms Dianne Carlos, A/g General Manager, Corporate Services

Ms Angela Filippello, Principal Registrar

Administrative Appeals Tribunal

Ms Kay Ransome, Registrar

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Lex Howard, Marshal

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive

Ms Kerry Hunting, Chief Finance Officer

Office of Parliamentary Counsel

Ms Hilary Penfold, First Parliamentary Counsel

Ms Glenyce Collins, General Manager

Mr Tony Perkins, Executive Officer

Australian Government Solicitor

Ms Rayne De Gruchy, Chief Executive Officer

Mr David Riggs, Chief Finance Officer

Australian Institute of Criminology and Criminology Research Council

Dr Adam Graycar, Director

Australian Security Intelligence Organisation

Mr Dennis Richardson, Director-General

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

Mr Mark Aspin, Coordinator, Financial Strategies

Australian Protective Service

Mr Martin Studdert, Director, Australian Protective Service

Australian Federal Police

Mr Mick Keelty, Commissioner

Mr Brian Cooney, Chief Financial Officer

Federal Agent Audrey Fagan, General Manager

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer, Border

Rear Admiral Mark Bonser, Director-General, Coastwatch

Mr John Hawksworth, National Director, Border

Mr Phil Burns, National Director, Commercial

Ms Jenny Peachey, National Director, Office of Business Systems

Ms Gail Batman, National Director, Passengers and Information Technology

Mr Alistair Cochrane, Chief Financial Officer

Ms Sue Pitman, National Manager, Trade Measures

Ms Marion Grant, National Manager, Border Operations

Attorney-General's Department**Outcome 1: An equitable and accessible system of federal civil justice.**

Output 1.1—Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure.

Output 1.2—Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.

Output 1.3—Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services.

Output 1.4—Legal services and policy advice on international law.

Output 1.5—Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services.

Output 1.6—Legal services and policy advice on information law.

Output 1.7—Legal services and policy advice on native title.

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

Output 2.1—Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for

- criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual assistance.
- Output 2.2 Legal services and policy advice on security law.
- Output 2.3 Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters.
- Output 2.4 Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.
- Output 2.5—Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities.
- Output 2.6—Facilitation of the delivery of high quality national policing information services.

Mr Mike Fish, A/g General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Sandra Power, A/g First Assistant Secretary, Civil Justice Division

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Mr Tony Ward, A/g Principal Legal Counsel, Office of Legislative Drafting

Ms Philippa Horner, First Assistant Secretary, Native Title Division

Ms Sue Pidgeon, A/g First Assistant Secretary, Family Law and Legal Assistance Division

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

Mr Bill Campbell, First Assistant Secretary, Office of International Law

Mr Paul Griffiths, A/g Assistant Secretary, Office of Legal Services Coordination

Mr Ed Tyrrie, Director, Protective Security Coordination Centre

Mr David Templeman, Director, General, Emergency Management Australia

Mr Morrie Bradley, Director Knowledge and Business Management, Emergency Management Australia

Mr John Mobbs, Chief Executive Officer, CrimTrac

Mr Stewart Cross, Deputy Chief Executive Officer and Director Operations, CrimTrac

Ms Fran Raymond, Chief Finance Officer, CrimTrac

Office of Film and Literature Classification

CHAIR—The committee will now resume this public hearing of the Senate Legal and Constitutional Legislation Committee with the examination of the proposed expenditure for the Attorney-General's portfolio, recommencing with the Office of Film and Literature Classification. I will reread the opening statement so that all those matters are on the public record. On 14 May 2002 the Senate referred to the committee the particulars of proposed budget expenditure for 2002-03 for the Attorney-General's and the Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the agencies as close as possible to the order in which they appear on the circulated agenda. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in order of the Senate dated 31 August 1999. The committee has agreed to the date of 5 July 2002 for the receipt of answers to questions taken on notice and any additional

information. I remind everyone present to please turn mobile phones either off or down whilst you are in the hearing room.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General, and Mr Cornall and officers of the Attorney-General's Department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind officers that an officer of a department of the Commonwealth or a department of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege and I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

I understand neither the minister nor Mr Cornall have any opening remarks they wish to make. We ended last night in consideration of the budget estimates for the Office of Film and Literature Classification. I think Senator Harradine was asking questions.

Senator HARRADINE—Does Mr Clark wish to conclude his answer?

Mr Clark—Don't ask me what the question was.

Senator HARRADINE—I want to ask about the Brand report and the desire that there be, as far as possible, transparency in the development of guidelines and so on. By the way, I am a bit brighter this morning. I apologise if I suggested you were playing with words. That concerned me overnight. I do apologise for that.

Mr Clark—Thank you, Senator; I appreciate that.

Senator HARRADINE—I am wondering about the Brand report, because it had fairly narrow terms of reference. In other words, he was required to assess those submissions that were made. Can we have a copy of that report?

Mr Clark—Yes. That report has been available for some time now.

Senator HARRADINE—On the Web?

Mr Clark—Yes, but if you would like a hard copy we can certainly provide that.

Senator HARRADINE—As I understand it, there are two Brand reports. One is the original that related to the summary, and I thought the other one related to recommendations as well.

Mr Clark—No, Senator, there is only one report, which is his analysis of the submissions and his recommendations.

Senator HARRADINE—Thank you, and is that on the web site?

Mr Clark—That is on the web site.

Senator HARRADINE—On the question of studies being done about the effect of computer games on those who are hooked on playing them, including children, what later evidence have you researched?

Mr Clark—The research that the office itself has is not on the effects; it is really on community opinion and attitude. The latest I personally have looked at is really a research review from Nordicom, which is the UNESCO clearing house at, I think, Goteborg

University. That summary would indicate that the research is still inconclusive in terms of effects but that there may be a very small percentage within the make-up of the personality that could be affected by it, and that other social factors across the spectrum of a person's life experience would be far more compelling than the very small percentage of evidence that would appear to be there. That is the latest I have seen, and I think it was from late last year.

Senator HARRADINE—As you know, any parent would note the difference if one of the family in a reasonably big family is more hooked than the others on computer games. One can see the difference. Could you provide the committee with what evidence the research department of OFLC has on the effects of computer games? We are talking about the interactive nature of the games and in the context of the possibility of an R-rated computer game.

Mr Clark—We do not have any evidence as such. I think there is the difference between the effects research that is carried out by others, for which the indicators that we have are inconclusive, and the work that we do, which is about community attitudes and community views. So the board is there, in a sense, to reflect the views of the community. So the research we have are things like community assessment panels, which is specifically about film, of course, but they would indicate community views. So, in giving a rating to a game, we are giving a rating not necessarily on the impact of the effects but on the impact of the content and how members of the community will gauge that, families and parents in particular, in guiding their children into games that are appropriate to their age and their experience. Therefore, parents should be steering their children away from games with violence, which are rated MA(15+). It is part of that family dialogue, as opposed to the research that can help us to say a game belongs in that category. On the other hand, there is in the marketplace a spectrum of games that have varying degrees of violence or other content.

CHAIR—Thank you, Senator Harradine.

Mr Clark—There was a question yesterday in relation to reviews of the guidelines and I was not sure on dates. Computer games were last reviewed in 1994, film and video in 1996 and there was a revision for the guidelines in 2000.

CHAIR—Thank you for clarifying that.

Senator SCHACHT—Who was the person who made the complaint to the Attorney-General that led to him referring the movie *Baise-Moi* to the review panel to review its R18 classification?

Mr Clark—I am not aware of the particular. I am aware there were some requests from individuals and organisations that went to the Attorney, but I cannot answer the entirety of that question.

Senator Ellison—It was a subject of the last estimates, I think.

Senator HARRADINE—Not this movie.

Senator Ellison—Sorry, it was another movie. I thought it was raised last estimates. I think the Attorney is on record as saying there was community concern, that a number of concerns were expressed, but I am not aware in particular of those; so I will take it on notice.

Senator SCHACHT—Is it a requirement under the act that the minister has to announce or table or indicate either who they were or what numbers of requests he got to refer a classification decision of the board to the review board?

Mr Clark—No.

Senator SCHACHT—It is very strange. I think the parliament has been very deficient in allowing a clause to go through which says the Attorney-General on any excuse—and then says it is community standards—can refer a decision of the board to the review panel. The minister has taken that on notice. Minister, do you know whether the Attorney-General got one request, five requests, 25 or 2,000?

Senator Ellison—I will take that on notice. I am not aware of that detail.

Senator SCHACHT—Mr Clark, the minister never consulted you as head of the office about his decision to put it to the review panel?

Mr Clark—No. The Classification Review Board is an entirely separate body in the sense of the decision making.

Senator SCHACHT—But when you gave it a classification of R18, did the minister at any time suggest to you he thought that that was a wrong decision?

Mr Clark—No.

Senator SCHACHT—Did any other minister in the government indicate by correspondence or phone call they thought it was a wrong decision?

Mr Clark—No.

Senator SCHACHT—How many other members of parliament, if any, wrote to you saying that the classification by the board was wrong?

Mr Clark—Not to me.

Senator SCHACHT—So there was none to the Office of Film and Literature Classification from any member of parliament?

Mr Clark—No.

Senator Ellison—I do not think that is unusual, Senator Schacht. I might just say that if a member had a concern I think they would write to the minister responsible, which would be the Attorney-General. That is a question that I am taking on notice, to see what communications he received.

Senator SCHACHT—So will you take that on notice again. Let us make sure we get this clear: the question is that you will provide details of how many members of parliament wrote. I want not just a generic answer saying he received 21 comment submissions but actually who he got them from.

Senator Ellison—I would place a caveat on that last one, because—

Senator SCHACHT—Oh, yes. Here it comes.

Senator Ellison—The people who made that might not want that to be made public. It might have been in confidence to the Attorney. There is a privacy aspect. Some of the people might have—

Senator SCHACHT—You are developing a star chamber system.

Senator Ellison—No, it is not. It is called courtesy to those people who sent communications to the Attorney-General. You asked for a number before. Now you are asking for the identities of the people. I will certainly take that on notice. There is no question of that, but whether we will provide the identities of the people who contacted the Attorney-General that is something which the Attorney-General will decide.

Senator SCHACHT—Again, this is a deficiency in the act. The parliament has passed the act and has to take responsibility for a deficiency in which unknown people or numbers of people or community organisations, under the claim of privacy, do not wish to be identified as complaining about the movie.

Senator ELLISON—I have not said anybody does not want to be identified. But we had a privacy commissioner here yesterday. He was there for a very good reason. There are some individual Australians who write to a member of parliament who might not want that to be made public, for very good reasons.

Senator SCHACHT—But they are asking for a public process to take a decision in a democracy to ban something, to prohibit something. I think it is not an unreasonable request that, for transparency reasons, the community know who is complaining.

Senator ELLISON—I will take that up with the Attorney and get back to the committee.

Senator SCHACHT—Okay. Mr Clark, several weeks ago you gave me the courtesy of taking a phone call from me and were quite forthcoming in information you gave to me about process of the office and this particular case. You told me, and it is now on the record elsewhere, that the board voted 6-5 to give it an R18 classification, which I think Senator Harradine confirmed last night. Is that correct?

Mr Clark—That is correct.

Senator SCHACHT—Can you inform us who the six were and who the five were?

Mr Clark—The practice of the office has not been to give the names of how individuals voted on the board. I would prefer to maintain that protocol. It is an issue that the board feel strongly about. In their view, they do not want to be the subject of undue pressure from any direction and therefore they prefer the actual voting pattern of individuals to be private.

Senator SCHACHT—Last night Senator Harradine raised an issue—and the minister actually responded—about the Classification Review Board. He said it should be taken as a superior ‘court’ in that you should now take note of the precedent they have set. But if it is any sort of court—using Senator Harradine’s view—judges identify themselves as to which way they vote in a decision. If it is a full bench, they identify 4-3, or 3-2. If that is good enough for Senator Harradine to raise in that argument, why isn’t it good enough for the board to identify 6-5?

Mr Clark—The board are appointed as members of the community to represent the community. They are not lawyers and they are not judges. They are community representatives there to broadly reflect community views. It is a very different situation to a court. As I say, it is their preference that that remains that way. They feel less vulnerable, if you like, to undue pressure.

Senator SCHACHT—I disagree with Senator Harradine, though he raised it as a point, about precedent. This is not a court. But you say ‘represent community standards’. I am a member of the community. There are 19.5 million Australians out there, and you are taking decisions that affect what they can see, hear and read in their daily lives. Don’t they have a right to know which members of the board are voting on various decisions and therefore make a judgment about your performance?

Mr Clark—As I say, the issue is one where it is the preference of the board. I have talked about this with them in terms of making available the names on voting, and it is something that they prefer not to do.

Senator SCHACHT—Can you take it on notice that I would ask that the board come back either on notice or at the next hearing, at which I will not be present, with a statement explaining why they think it is preferable not to identify themselves as to how they voted.

Mr Clark—Certainly. I am very happy to do that.

Senator SCHACHT—Can you tell me the names of the four members of the review board who reviewed *Baise-Moi*. I can't say the meaning in English; I got a ruling from the President of the Senate the other day that you can say it in French but if you say it in English it is unparliamentary. It is the most absurd ruling that I have seen that you cannot say it in English, but anyone can say it in French and it means the same thing. Nevertheless, I cannot say it, apparently.

Senator HARRADINE—I raise a point of order. I have not seen the President's ruling, but a reflection has been made on her. She is not here to defend herself, and it is quite inappropriate for Senator Schacht to reflect on the President or a ruling.

Senator SCHACHT—On that point of order, when the President made her statement in the Senate on the last Thursday night—the last day of sitting—I responded and made it very clear that, though I accepted her ruling, I disagreed with it very strongly as being absurd.

Senator HARRADINE—This forum is to seek information from the officers.

CHAIR—Indeed it is. Senator Schacht, I do not think it is appropriate for you to reflect on a ruling of the President. If you wish to make any imputations in relation to that—

Senator SCHACHT—I did nothing more than I did in the Senate. I will move on. Who were the four on the review board who dealt with *Baise-Moi*?

Mr Clark—The four members on the panel were the convenor of the review board, Ms Maureen Shelley; Mr Jonathan O'Dea, who is the deputy convenor; Ms Robin Harvey; and Ms Kathryn Smith.

Senator SCHACHT—With regard to Ms Shelley, from the annual report which ended 30 June—

Mr Clark—She in fact has been appointed since that time.

Senator SCHACHT—Were any of those members previously on the Classification Board itself.

Mr Clark—Kathryn Smith was previously a member of the Classification Board.

Senator SCHACHT—Minister, is there any particular reason why someone would go from being a member of the Classification Board to being on the Classification Review Board?

Senator Ellison—I have no knowledge as to that or the reasons behind it.

Mr Clark—When Ms Smith resigned from the board, she advised me that she wanted to do other things in her life. She was a part-time member, but she did not wish to continue that longer commitment to the board.

Senator SCHACHT—Has it happened before that someone has resigned from the Classification Board and then been appointed to the Classification Review Board?

Mr Clark—No, it has not happened.

Senator SCHACHT—Minister, is there a situation here where you might say that someone is at one level and then gets appointed to the review board? It is not so much a conflict of interest, but they have had one experience and then they go on to be on the review board, judging their previous peers' performance.

Senator Ellison—It happens every day in the judiciary.

Senator SCHACHT—We are not dealing with the judiciary, and I have accepted that point.

Senator Ellison—It is an administrative process. It is quite normal for that to occur. People are involved in one body and then are promoted to another body of review which is involved in reviewing the previous body on which they sat. In the administrative law, in the administrative process, you see that all the time.

Senator SCHACHT—Mr Clark, the decision of the review board was 4-0. Is that correct?

Mr Clark—That is correct.

Senator SCHACHT—Therefore, on this occasion, I know exactly how four members of the review board voted and, if it was a unanimous decision of the Classification Board, I would know exactly how the members of that board voted. So we do not have a decision where it is automatic that you refuse to divulge how people voted. If it is unanimous one way or the other, we know exactly how they voted. Isn't that an inconsistency in your position?

Mr Clark—It would appear that way, but I still express the view that the board has taken. I have taken on notice your request, and we will come back with that statement.

Senator SCHACHT—And you will take on board the obvious inconsistency that, if it is a unanimous decision of either the Classification Board or the Classification Review Board, we all know exactly how they voted.

Mr Clark—Yes, I understand that.

Senator SCHACHT—Again, Mr Clark, I acknowledge that you were very generous in the time you gave me in explaining some of the process some weeks ago. I asked you at that time—and I will ask it here because I think it ought to go on the record so that people understand it—once the review board made the decision, who passed the decision on in administrative terms to each of the states to carry it out?

Mr Clark—The obligations under the act are that the applicant be informed and the original applicant be informed. The OFLC advised the states and territories of that decision that afternoon. In addition to that, the original applicant for the classification has advised me that he advised the cinemas that day of the review board decision.

Senator SCHACHT—Who did that?

Mr Clark—Mr Spratt, who is the original applicant for the classification of the film.

Senator SCHACHT—So the person who sought a classification, once the review board had turned it over, then himself informed the cinemas who were showing it; is that correct?

Mr Clark—That is what he advised me.

Senator SCHACHT—Who are the people that you advise in each state? Do you send a letter to the Attorney-General of each state or to the censorship minister? Where do you send the message?

Mr Clark—The message goes to the censorship official in each state and territory.

Senator SCHACHT—We have a censorship official in each state?

Mr Clark—There is an officer who is involved with the classification responsibilities of the states and territories.

Senator SCHACHT—For example, in New South Wales who is that officer?

Mr Clark—In New South Wales it is Mr Andrew Osborne, who is from the Attorney-General's Department.

Senator SCHACHT—What knowledge of censorship does he have?

Mr Clark—He is the officer responsible for the New South Wales act and he is responsible for the liaison with the Office of Film and Literature Classification.

Senator SCHACHT—So has he been delegated that job by the New South Wales government?

Mr Clark—By the department, yes.

Senator SCHACHT—By the department?

Mr Clark—By the Attorney-General's Department; he is a member of the department.

Senator SCHACHT—You called him a censorship officer.

Mr Clark—It is a curious situation that there is a hangover: we haven't got to calling them classification officials yet.

Senator SCHACHT—Would you take it on notice to provide to the committee the name of the person in each state and territory who is the delegated officer that you contact to let them know the outcome of a decision?

Mr Clark—Certainly.

Senator SCHACHT—Is that officer then required—by their complementary legislation or the act they have to establish the censorship regime in Australia—to inform the police to go and check that cinemas are not showing it?

Mr Clark—The Commonwealth responsibility is finished once that advice is given to the states and territories. The procedures adopted by each state and territory will vary, and I am afraid that I would not be competent to comment on the procedures adopted at the enforcement level within the states and territories.

Senator SCHACHT—Mr Carr, the Premier of New South Wales, made it quite clear in public statements that he thought the decision of the review board was wrong; I think he made more colourful descriptions than that but let us just say that he disagreed with it. He has a piece of legislation that says his state administration has to carry out the decision of the review board.

Mr Clark—That is correct.

Senator SCHACHT—But, if he wanted to constitutionally amend that, he has every right to do so.

Mr Clark—The enforcement legislation is state legislation.

Senator SCHACHT—So, if he wanted to amend it, it might mean the end of a national system of censorship or whatever you want to call it. If one state decided to do that, which constitutionally they are able to do, that would be the end of the national system.

Mr Clark—It may not mean the end of it; I would be reluctant to see that happen. Some states have reserve powers in relation to classification matters, but not all states.

Senator SCHACHT—But, under the Constitution of Australia, no power was given to the federal parliament.

Mr Clark—Correct.

Senator SCHACHT—Other than importing. Do you inform Customs of all your decisions?

Mr Clark—Customs and OFLC have an agreement in relation to providing them advice under their legislation; we provide that advice to them on application. Additionally, they have access to our web site and our classification decisions.

Senator SCHACHT—Is there a dedicated officer in Customs who is, in generic terms, a censorship officer?

Mr Clark—No, there is not.

Senator SCHACHT—Who do you send the information to in Customs, or do you say, ‘Read the web site’?

Mr Clark—We do not directly send information unless it is a specific application; otherwise they do have access to our database.

Senator SCHACHT—Would they have the right to go and seize copies of *Baise-Moi*?

Mr Clark—They would seize copies of *Baise-Moi* if they were imported, yes.

Senator SCHACHT—Copies are already in the country. Do they have the power now to go and seize them?

Mr Clark—Not as I understand it, but once again it is really a question for Customs as to the exercise of their powers.

Senator SCHACHT—As the movie now does not have any classification at all, is it illegal for any of the distributors to still hold a copy of the movie in their possession?

Mr Clark—My understanding is that to possess a copy of the film is not illegal but to exhibit it is illegal.

Senator SCHACHT—Is that the same with X-rated videos, that you can hold a non-classified X-rated video but so long as you do not show it that is not against the law if it is not classified?

Mr Clark—If it is not classified.

Senator SCHACHT—So I can import a non-classified video and so long as I do not show it to myself or anyone else it is not illegal.

Mr Clark—So long as you do not show it to anyone else. Once again, it is up to whether the matter is seized at the border.

Senator SCHACHT—But in Australia now you will send a note to the distributor that he cannot even have a private showing of *Baise-Moi* for him and his executives.

Mr Clark—I will not be sending a note. The enforcement is a state matter.

Senator SCHACHT—I just want to get this straight. I know it is a state matter. The police can go around to the distributor of *Baise-Moi*—I forget the name of the company; you might remind me of it—

Mr Clark—Potential Films.

Senator SCHACHT—Potential Films—they have an office in Sydney or Melbourne.

Mr Clark—Melbourne.

Senator SCHACHT—I presume they have asked for all of the copies of the movie to be returned to them because it is their property—right?

Mr Clark—I assume so.

Senator SCHACHT—If they had a private showing at their private cinema to see, for example, what they could do to the movie to remove the offending parts—such as happened in Great Britain—they are then in contravention of the state law and can be charged. Is that correct?

Mr Clark—That is correct.

Senator SCHACHT—I think you might see the point that this system is ludicrous—that they can hold the movie but if the chief executive had a private showing for himself alone he now breaks the law.

Mr Clark—Sorry, Senator—not alone. But if he intends to sell or exhibit the film—and exhibit in that private circumstance apart from himself alone I would want to take more advice on—

Senator SCHACHT—I think you should!

Mr Clark—it would then be a breach.

Senator SCHACHT—From what you know of state law, would the police have the power in Victoria to go around to his office and confiscate the movie?

Mr Clark—I would really prefer not to get into state law. But my understanding is no, that it would not be the case. It really is state legislation.

Senator SCHACHT—Let us just get back to this. If someone in Australia made a movie that they clearly knew would not get classification under the rules because of the content—it had bestiality or paedophilia in it; clearly illegal—apart from the fact that making it was illegal, if they held it in their possession and showed it to no-one else but themselves, are you also saying that that is not a breach of the act?

Mr Clark—Not of the classification legislation, but it could well be a breach of other legislation.

Senator SCHACHT—Other legislation, but it is not a breach of the classification act. This just continues to show the lunacy and the ludicrous nature of some of this once you get into censorship—and *Baise-Moi* has exposed it. I want to get back to Customs. As a former minister for Customs, I was always bemused by the fact that they had certain powers. Once it is inside the country, can they use any of their warrants or standing powers of seizure to go and seize something they believe is contraband and has been smuggled in?

Mr Clark—I really cannot answer that question.

Senator SCHACHT—Surely, you must—

CHAIR—Senator Schacht, I think Mr Clark is helping to the extent of his capacity in his position as the head of the Office of Film and Literature Classification. Your questions, both in relation to state law and the application of customs law, go extensively outside Mr Clark's areas of responsibility. In relation to the customs questions, you of course will be able to ask those of Customs in this very hearing. In relation to the other issues, if there are matters you wish to place on notice, I am sure the department will follow those up for you.

Senator SCHACHT—I will ask Customs but, in the meantime, take on notice and come back to us on what you do to inform Customs of your arrangements when you make a decision that a film does not have a classification and that if it is coming through the border it should be seized.

Mr Clark—The advice is given via the web site. As far as I am aware, we had inquiries from Customs within days of that decision in relation to this film.

Senator SCHACHT—What was their query?

Mr Clark—They had encountered copies of the film being imported into the country and confirmed advice that in fact that film had been refused classification.

Senator SCHACHT—They sought your advice and then, when they got your advice, they seized those copies of the film?

Mr Clark—I cannot answer that, Senator. I am aware that they sought advice as to the final classification of the film.

Senator SCHACHT—Were they tapes or commercial quality film that were coming in?

Mr Clark—They were DVDs.

Senator SCHACHT—And you do not know whether they seized them or not?

Mr Clark—No. Once a classification decision has been made and they have that decision, on the basis of the classification they will make a decision to seize material, because it would be illegal to import it. So it is an automatic process in terms of the arrangements we have with Customs.

Senator SCHACHT—When they seize it, using your decision, do they return the seized material to you or do they keep it for themselves and destroy it? Do you know?

Mr Clark—It does not come to us. That is their process and their decision.

Senator SCHACHT—Do you know what happens in Customs?

Mr Clark—No.

Senator SCHACHT—Mr Clark, it was said in the media that between your classification—giving an R18+—and when the Classification Review Board banned it, something like 50,000 Australians, according to the distributors, went and saw the movie. Do you have any reason to dispute that figure?

Mr Clark—No.

Senator SCHACHT—It might be 40,000 or 52,000, but it is not a figure that you would dispute?

Mr Clark—I have no knowledge other than what I have read in the media.

Senator SCHACHT—Presumably, that is the correct figure. Of the 50,000, during that period of three or four weeks that it was shown, how many complaints did you receive from people who saw the movie and then said they wanted it banned?

Mr Clark—I know there were, in the total period of time before and since, a couple of complaints from people who actually went to the film. There were one or two.

Senator SCHACHT—One or two out of 50,000 people complained about the movie after they saw it?

Mr Clark—To the best of my knowledge, of those who had seen the film, I think there were one or two.

Senator SCHACHT—Do you keep records?

Mr Clark—We do.

Senator SCHACHT—So you will be able to take it on notice and specifically tell us that two people who saw the movie complained about it. So, from 50,000, that means 49,998 did not complain.

Mr Clark—Correct.

Senator SCHACHT—Does that by definition mean that the 49,998 are deviant, sexually promiscuous and violently oriented, because they did not complain?

CHAIR—Senator Schacht, I am not sure that that is a question that Mr Clark is in any position to answer. If it is an assessment that you wish to make, then that is a matter for you.

Senator SCHACHT—Mr Clark said earlier—because he has to say this; it is in the legislation—that the board tries to represent community standards. I find it interesting that two people who saw the movie complained after they saw it and 49,998 who saw it did not complain. I can make an extrapolation that maybe the Australian community believes that it is not unreasonable for the movie to be exhibited under an R18+ classification.

CHAIR—You can make that extrapolation, Senator Schacht. The point I was making was in relation to the questions you were asking of Mr Clark.

Senator SCHACHT—Mr Clark, you said before that the members and part-time members of the review board are selected to reflect community standards, and in making your judgments you reflect community standards.

Mr Clark—They are selected to broadly represent the Australian community and as such the guidelines and the legislation talk about community standards. But they broadly represent the Australian community.

Senator SCHACHT—Do you realise that more people on the review board—four of them—said it should be banned than of the 50,000 who actually saw it? That is a fact, isn't it?

Senator Ellison—You are not taking into account the rest of the population who did not see it and who might have wanted to see it banned. There was community concern about this film. Some of the reviews of it were not exactly complimentary, were they?

Senator SCHACHT—That is the very point, Minister. A man in Adelaide—one of your Liberal members—was demonstrating outside the theatre in Adelaide, wanting the film to be banned. When they interviewed people who had been in to see it, most of them said they did not like the movie but not one of them said it should be banned. They said that adults should

make up their own minds. I thought that was a pretty commonsense attitude. The people who wanted it banned had not seen it. It is a ludicrous situation.

Senator Ellison—Things are banned without the whole population having to see them. You know that; it has been the system for some time. The community has not called for a committee of 18 million people to see a film before they make a decision as to whether it should be banned or not. You entrust that to responsible individuals.

Senator SCHACHT—It is true that on most occasions you do not have any empirical evidence from the community about films that have been banned before they have even been distributed. Yes, people have to make a judgment. I understand that. There is material in Australia which under law has always been banned, and I do not think there is much argument that the community is pretty well relaxed about that. Those rules in the past have been pretty good. But we have now had the example of a sample of 50,000 Australians of which two took the trouble to complain to Mr Clark's office about the film. Mr Clark, I will put it around the other way. It might make it easier for you or for the others who want to ban it. Did any of the 49,998 people who saw the movie send you messages to say that it should not be banned?

Mr Clark—This answer is not specific to that, but there has been a large body of correspondence to the office in relation to both decisions, both for and against the decision by the board and by the Classification Review Board.

Senator SCHACHT—During the month or three weeks the movie was shown before it was banned, just out of observation did you notice whether there was any increase in Australia in sex crimes, in murder or in mayhem?

Senator Ellison—I do not think that that is Mr Clark's area of responsibility. There are others who—

Senator SCHACHT—He represents community standards.

Senator Ellison—You are not asking about community standards there; you are asking about trends in crime. We might have to get Dr Greycar from the Australian Institute of Criminology to do a paper on it or something, but that takes forensic analysis, and you are asking this witness to make a statement to this committee about trends in crime and sexual behaviour.

Senator SCHACHT—In some cases I think the parliament has badly drafted the legislation, and that has put Mr Clark and his office in a difficult position about community standards. I acknowledge that. But they are there to try to judge what relevant community standards are. In the broader picture, maybe that is why initially they gave a vote of 6-5 in favour of the movie. They thought that Australians could watch it and not go out and be, shall we say, aroused sexually or encouraged to commit violence. That is what I am interested in. If they are going to look at this broad community standard, what other evidence is there around that the 50,000 people who saw it were corrupted by it?

Senator Ellison—You have to remember, Senator Schacht, that those 50,000 people wanted to see the film and they went to see it. You are relying upon them as a sample base. You know very well from your own experience campaigning that a true sample is one that is picked at random across the community. You are relying on a base of 50,000 people who went to see the film because they wanted to see it. A lot of people did not go and see the film because they did not want to see it.

Senator SCHACHT—Good; that is choice in a democracy.

Senator Ellison—There is also the question of standards, and we have had those and you have recognised that yourself. There are laws to recognise community standards and this is a situation where the process recognised that and banned the film.

Senator SCHACHT—This is a process in which, over the last several years, during your government in particular, the law has been amended to make it more likely that this outcome would occur—that is, so that those people who have an ideological position in favour of censorship to achieve certain moral outcomes have more success. I accept that; they have had a victory. But I do not think the majority of Australians overwhelmingly accept that someone else should dictate in this sort of area what they have a right to see, read and do at this level. The parliament made the decision. I disagreed with it and I have to admit I was not successful in my own party. When these amendments were put before the parliament I thought we should oppose them. I was not successful, but that is another argument inside the Labor Party. The parliament has now made retrograde decisions that have put Mr Clark and his board in a stupid position not of his own making. I acknowledge that.

Mr Clark, I have a question about film festivals. In South Australia the new Premier has just announced funding for a major new international film festival to be held in Adelaide every two years in the alternate years to the very successful Adelaide Festival of Arts. What is the arrangement if that film festival wants to have an exhibition as part of the range of movies and show *Baise-Moi*? It has now been banned in Australia at a film festival level.

Mr Clark—That is correct, but under the South Australian residual powers the granting of an exemption for the purposes of a festival is under state legislation. In most other states and territories that exemption for festivals is given by the OFLC. In the South Australian case it is not, so it would be a South Australian decision in relation to that.

Senator SCHACHT—Thank goodness for that. The new Premier, Mike Rann, says he is a dedicated believer in people like Don Dunstan, who believed that adults should have the mature ability to make their own judgments. If he wanted to, *Baise-Moi* could be given an exemption to be shown at the Adelaide film festival next year.

Mr Clark—I am uncertain as to the exemption provisions under the state legislation.

Senator SCHACHT—It would be ironic if that happened because I think the state of South Australia put that exemption in to do the exact opposite. Is that correct?

Mr Clark—I do not know the intent, but it can work in both directions.

Senator SCHACHT—Yes. In 1981 the then Liberal Attorney-General of South Australia did not like a movie called *Bad Arse* or something which was to be shown at the then Adelaide film festival. It had something to do with drugs. He banned it of his own volition. It wrecked the Adelaide film festival and it collapsed because no director of a movie was going to put their movies through a state attorney-general's view of what was artistic or not. So he amended it. Ironically, Mike Rann now has the ability under state legislation to get round the Ms Drapers of the world who want to ban everything in sight. Is that correct?

Senator HARRADINE—Madam Chair, could I please take a point of order.

Mr Clark—Senator Schacht, I cannot comment on that.

Senator HARRADINE—Madam Chair, I raise a point of order.

CHAIR—Senator Harradine, I was just about to come to you. You wish to raise a point of order.

Senator HARRADINE—I thought you may have corrected Senator Schacht. He reflected on a member of the House of Representatives.

CHAIR—He made a comment about Ms Draper, the member for Makino, in his statements to Mr Clark. I was about to say that it would be helpful, Senator Schacht, given the discussion we had previously, if you would refrain from doing that. I take the point that Senator Harradine has raised. The members to whom you have made reference are not in a position to respond to those references in these hearings, and on that basis it would be helpful if you avoided making those references.

Senator SCHACHT—I referred to the member's ideological position; I did not refer to her personally. I said that Ms Draper—

CHAIR—I heard what you said, Senator Schacht; there is no need to repeat it.

Senator SCHACHT—Ms Draper is the South Australian federal member for Makin—

CHAIR—Could you continue with your questions to Mr Clark?

Senator SCHACHT—The question is, I would think she would be quite delighted to say that she had—

CHAIR—Senator Schacht, I do not think there is any need to canvass that any further.

Senator SCHACHT—Okay. Has any other state got an exemption for film festivals the way South Australia has?

Mr Clark—No, they have not.

Senator SCHACHT—It is only the South Australian experience which I—

Mr Clark—I am certain because I know there was an amendment in Tasmania, which I think brought it into line with most other states and territories.

Senator SCHACHT—There was an amendment in Tasmania to remove the exemption?

Mr Clark—No. There was an amendment to their act and part of that was that we would do their exemptions for festivals in future.

Senator SCHACHT—I would like to ask about the members of the board—not the review board but the board that does the classification. You have in your report that members of the board either individually or as small panels review a lot of material every week, every month et cetera.

Mr Clark—Yes, that is correct.

Senator SCHACHT—They see some, to say the least, distasteful material and a lot of awful material. Is that correct?

Mr Clark—There is a lot of material they encounter which is extremely confronting.

Senator SCHACHT—Why are those people better able to withstand watching these very confronting things every day and yet not be psychologically affected, or not become affected in a way that creates antisocial activity, but the rest of the Australian population cannot make the same judgment?

Mr Clark—Senator—

Senator SCHACHT—What is so special about you, Mr Clark, and the others that you can see all of this material, day in and day out, and yet you do not go out and commit crimes or conduct antisocial activity?

Mr Clark—I do not think it is a question of anything special. The members of the board have a significant amount of training to undertake their activities. They are affected by the material in the sense that they can occasionally require support and counselling in relation to it. They consider they are serving the Australian community—they take their responsibilities very seriously—and for a period of time in their lives they consider that to be something very special to do.

Senator SCHACHT—But they are ordinary Australians?

Mr Clark—They are very much ordinary Australians.

Senator SCHACHT—You say that occasionally or regularly they have to get counselling?

Mr Clark—That service is available to them. We do not measure that, but it is available if they wish.

Senator SCHACHT—Do you know, without naming anybody—that would be an invasion of privacy—how many times individual members have sought regular counselling?

Mr Clark—No, it is not something that we keep records on. That service is also available to other members of staff.

Senator Ellison—I think, Madam Chair, we are straying onto dangerous ground here.

Senator SCHACHT—I understand that, Minister.

CHAIR—We are straying into an area of great sensitivity; that is certainly true.

Senator SCHACHT—I just wanted to ask: the counselling is not mandatory but it is available and it is up to the individual to seek it?

Mr Clark—There are two processes: one is debriefing where they talk about the experience, and the other is that there is another service available if they wish. It is not just for board members but for other members of staff who encounter material. We do not distinguish between the two groups.

Senator SCHACHT—Is the counselling done by other people within the office or—

Mr Clark—No, we have a service provider who is available to—

Senator SCHACHT—And they are on a retainer to provide that?

Mr Clark—Correct.

Senator SCHACHT—I just want to say, Mr Clark, as one of those who have tried to argue in this place for a long, long time a different view from that which others have, I actually trust the Australian people's judgment; they themselves should be able to overwhelmingly make a decision. I think you and your staff at the Office of Film and Literature Classification have often been put in an invidious position by a very small minority who are trying to restrict what adults can make their own judgment about. I have always said that I do not blame the office and the staff that you have. I think the parliament has made mistakes in legislation. A very small minority, who do not reflect the Australian public, have put you in an invidious position. I wish you luck in the future and I hope that, at some stage in the future, the Australian parliament amends the legislation to make it easier for you to do your job on behalf of the great majority of Australians.

CHAIR—We will take that as a statement, Senator Schacht.

Senator HARRADINE—I have a couple of questions on the matter of transparency. Is it not a fact that the provisions of the legislation limit standing to a certain group of people: those people aggrieved?

Mr Clark—This is to the review board?

Senator HARRADINE—Yes.

Mr Clark—Yes, Senator.

Senator HARRADINE—In this particular case, community groups that were very strongly concerned and that wished to openly and transparently take the matter to the review board were unable to do so because of the fact that the persons aggrieved by the decision of the OFLC were the producers or the maker of the film?

Mr Clark—A normal application for a review would come from the applicant, which is usually the producer or, most often, the distributor of a film. There is a 30-day period, after initial classification, within which an application for review can be made. That application can also be made by state and territory ministers or the Commonwealth Attorney-General. There is a provision, under the recent amendments, for persons aggrieved to prove standing to the classification review board but, in doing that, they must make a formal application for a review and then establish their standing before the review board. That, to date, has not happened. But, as I say, it is only a recent amendment.

Senator HARRADINE—Once these guidelines are in, they are in for eight years—it was 1994 the last time.

Mr Clark—That was the computer games. The intent of the system is that the guidelines are reviewed in serial manner. There was to be a review of the computer games guidelines, but ministers made the decision, in the light of convergent media, to review computer games and films and videos in the same review to enable consideration of combined guidelines for the two mediums.

Senator HARRADINE—Thank you, Mr Clark. I again come back to the question of a public hearing once the guidelines are in a form to present to the ministers. You mentioned last night that that might be a matter for next time. I wonder whether you could raise this with the ministers at the meeting—or perhaps it is not appropriate for me to do it.

Senator Ellison—I will undertake to take up with the Attorney-General that you requested he raise that at the ministerial council with the other ministers. I think that is the appropriate course. I will do that.

CHAIR—Thank you. There being no further questions to the Office of Film and Literature Classification, Mr Clark, thank you very much. I thank the officers very much for assisting the committee both very late last night and first thing this morning.

Just to clarify matters to do with the program, I advise the committee and officers that the committee will work through the programs, continuing in the order in which they appear and endeavouring to reach by 1 p.m. the Australian Protective Service. Either way, we will commence after lunch, at 2 p.m., with the Australian Federal Police. If there is any part of a preceding component of the estimates that we have not examined, we will return to that after examination of the Australian Federal Police. I understand that message is being conveyed to the Australian Federal Police.

[10.07 a.m.]

Royal Commission into the Building and Construction Industry

Senator COONEY—Madam Chair, I think there is just one thing that Senator Carr wanted to ask about the matters we raised yesterday with the fees.

CHAIR—Do you have a question for the minister, Senator Carr?

Senator CARR—Senator Ellison, how are we going with the response to the questions I asked yesterday on the figures for the individual barristers and the payments to them through the royal commission?

Senator Ellison—I made that request of the Attorney-General's office and I am advised that they are looking at that question. I will relay your question this morning again to the Attorney-General's office. I note that we did give you the scales yesterday—

Senator CARR—Yes, you did, and I appreciate that.

Senator Ellison—and I think that achieved some publicity.

Senator CARR—Yes, it did.

Senator COONEY—I think one of the problems is that it did receive publicity. If the figures are wrong, the committee has been responsible for giving out wrong figures, and I think that would be unfortunate. Whether they are more or less, the accurate figures should be given.

CHAIR—The scale is the scale, Senator Cooney. I do not think that makes it a wrong figure.

Senator COONEY—No.

Senator CARR—That is quite right, Madam Chair.

Senator COONEY—No, that is not right.

CHAIR—So the scale is not the scale?

Senator COONEY—It is a matter of what they were paid. What we are asking for is not the scale but what they were paid.

CHAIR—I understand that.

Senator CARR—Will the department be coming back before the committee this afternoon for matters relating to departmental outcomes?

Senator Ellison—Mr Cornall is here for the duration.

CHAIR—Mr Cornall, of course, is with us for the duration—for the foreseeable future.

Senator Ellison—For the term of his natural life!

CHAIR—It feels like that. The department certainly will be reappearing in the examination of the outcomes there, Senator Carr, and we can follow the question up again then.

Senator CARR—That would be terrific.

Senator Ellison—We have got Attorney-General's here for—I will not tempt fate—until the department of immigration takes over.

CHAIR—We are pursuing the information for you, Senator Carr. I take the point that we will follow that up again this morning.

Senator CARR—I have some further matters I want to pursue in regard to overseas travel. Is the department able to assist me with those sorts of issues this afternoon?

CHAIR—Certainly not at this point but later, when we come back to those departmental issues, yes. I invite the officers of the Federal Court to the table.

[10.09 a.m.]

Federal Court of Australia

CHAIR—Welcome, Mr Soden. You know the committee always tries to hear you in the mornings so that you can return to your busy roles in Sydney. We have the day different this time, but we are still in the morning.

Mr Soden—Thank you for your consideration.

Senator McKIERNAN—I am seeking information on the status of the development of the new case management system in the court. In doing that, it might save time to tell us what has happened with the previous case management system or, as the case may be, the current case management system.

Mr Soden—This goes back a little way. I will start with what is happening with the existing system. We have a system in the court called FEDCAMS. It is a mainframe computer system that is presently 12 years old. It needs replacing some time in the very near future. We cannot be certain about how soon that needs to be, but it is clear that it will need to be replaced. It has a use-by date that is fairly near into the future.

In 1997 the court decided to implement its quite radical new way of managing cases, the individual docket system. At that time the judges thought it would be very helpful to them if we could produce a new case management system that would make the management of the cases more efficient. When a case is commenced under the individual docket system it is randomly allocated to a judge, and it stays with that judge from beginning to end. As I said, the judges thought that having a new case management computer system would help them manage their cases, particularly a system that enabled them to follow up compliance with directions, to communicate directly with the parties by emails et cetera.

The court undertook an analysis of what was available in Australia and overseas and called for expressions of interest. The responses produced were all prohibitive in terms of their cost, I think partly due to the fact that we at that time—and I think are still—were the only court in Australia operating under an individual docket system. Most of the systems in place were US based systems and they were going to be very expensive to purchase because the purchase price is US dollars; also, the support cost would need to be imported from the US.

We then went to the market for expressions of interest, as I have said. That was completely unsuccessful. We then decided to target some organisations. We sought detailed expressions of interest from Oracle, who had put in a bid, which we did not accept, and negotiated a contract with them to build upon an existing Australian system to meet our requirements. We took a fairly prudent approach and negotiated a two-stage contract with Oracle. Stage 1 was to produce a 'deliverable'—in computer contract terms—which would enable us to make a decision as to whether to go to stage 2 and build the system or to again go to the market. Due to some difficulties in the Oracle project, it took longer than anticipated. We did not complete stage 1 until the end of last year and we decided to terminate our ongoing relationship with Oracle. Even though we had a fixed price for the completion of stage 2, we could see at that

stage that the fixed price cost was prohibitive and we thought we might be able to do better by putting the second part of the project out to market.

While we were undertaking that project, we developed, with concurrent work, an e-filing system. We were one of the first courts in Australia to implement a facility to enable electronic filing. That is a system that enables practitioners to file their documents electronically. At the same time, we became the first court in Australia to implement eCourt, which enables parties to have matters dealt with over the Internet through our home page. Although that has not been taken up to the extent that we would like, it has certainly been a very important project as an indicator of the future.

Those two developments reinforced our view that proceeding to stage 2 of our project needed some further consideration to make sure that we could integrate what we had found out as a result of the electronic filing project and the new eCourt initiative. At the present time we are looking very closely at a new Australian system and whether it meets our needs. The other matter we are investigating is whether the Family Court's new system might be able to meet our needs with some minor enhancements. I have commenced discussions with the Family Court in relation to how we might jointly take advantage of the work that we have done in the e-filing and the eCourt environment and, with a joint venture, build on top of their system to meet both our needs. I understand that the Federal Magistrates Service has already taken a decision to adopt Casetrack, so there might be an opportunity for a consortium amongst the courts to produce a fairly good, very modern, user-friendly web based system, which could in the near future enable online access to all those courts, on a complementary new IT system. That is the history of it.

Senator McKIERNAN—That was a very comprehensive answer. It answered a number of the questions I have. I do appreciate that, because it is saving the committee's time. We have an enormous agenda still to complete, so I appreciate what you have done. There are a few questions that flow from what you have just told the committee. Is the electronic filing system, the eCourt system, being developed internally or is that contracted out?

Mr Soden—It is contracted out in the sense that we have a development licence with a company for the use of their software on a pilot basis. That is a very inexpensive licence. We are going through quite a long pilot of the eCourt under that development licence.

Senator McKIERNAN—You mentioned that you are talking with the Family Court about the possible use of their system. Is that a system that the Family Court have bought under licence, and would you have to go to the licensee were you to adopt that system, a like system or a modification?

Mr Soden—I did not mention this connection earlier. When we took a decision to go to Oracle, we knew that the Family Court had entered into a contract with Oracle for the development of the Family Court system. We can see that we can now take advantage of the contract that the Family Court has. There would be some user licence requirements that we would have to pay to use the Oracle database if we took a decision to go with the Casetrack system.

Senator McKIERNAN—In your consultations with the Family Court, are they satisfied with the system and are they happy with what they have in place now?

Mr Soden—We have not finished our analysis of whether their system meets the functional requirements of ours. I do not think the Family Court have completed the roll-out of the new system across Australia.

Senator McKIERNAN—We will address questions to that court when it appears before us. What has it cost the Federal Court so far?

Mr Soden—Over the last four years, it has cost on average \$900,000 for the work associated with developing the system, and that includes the contract price we paid for stage 1 of Oracle, which was \$866,000. That was a fixed price component.

Senator McKIERNAN—Do you have an expectation of a figure—a cost to the court—to have a case management system in place? The reason I hesitate on this is that the information is going into the marketplace and, of course, the bidding for contracts might reflect the figure you have given me. Nonetheless, I think the committee is entitled to some ballpark figure for what the expenditure for such a system is. I am thinking now that maybe we might wait and see what it has cost the Family Court to put their system in place rather than asking you, as you may be still going to tender.

Mr Soden—Yes. But could I say that what it has cost the Family Court to develop and put their system in place would not be the same as the cost that we would need to incur to do the same thing. I would expect that, if we decided to take up the Family Court system, we would not incur all of their development costs to reach the stage of implementation. I presume we would pick up the costs associated with the licence and our own implementation costs, which may not be as great as the Family Court's.

Senator McKIERNAN—Are there bugs in the system that is in place at the moment that are causing difficulties to the court and, with that, difficulties to the applicants who are seeking to use the services of the court?

Mr Soden—In relation to the second part of the question, there is no access to the system by people from outside of the court because of the nature of the old system. It was never designed with access from outside of the court in mind. Indeed, it is only in recent times that we enhanced that system to enable it to produce letters. It was always designed with the intention of just being an internal information system. It does not have the capacity to have built onto it the ability for the court to enable its users to come into the court system as we propose the new systems will.

Senator McKIERNAN—I just have a couple of final questions in this area. How well is the electronic filing system working?

Mr Soden—In terms of the way it operates, it works very well. Interestingly, the existing legislation requires that documents be signed and sealed. We were able to design a little package that enables the staff of the registry to move a seal onto a document electronically and move a signature onto that document electronically. As to the extent to which it is used by people outside of the court, that take-up has been a little bit disappointing. I think one of the reasons for that is associated with the transfer of our bulk jurisdiction—or the take-up of the bulk jurisdiction—in bankruptcy by the Federal Magistrates Service. I think if we had retained all of that jurisdiction we would have many more people using the electronic filing facility.

Senator McKIERNAN—Is the eCourt facility gaining an acceptance? What can you tell the committee about its usage?

Mr Soden—It is certainly accepted in principle. It is quite a new concept for practitioners to take up and use. The concept has taken off in other courts in Australia where there are a lot of similar matters, but in our court it has enabled practitioners—where they have been encouraged and have agreed to use it—to, in effect, appear at directions hearings without the

necessity of coming to court and to obtain orders or a judgment of the court over the eCourt, again without the necessity of coming to the court. Just for the record, I think I said that the contract price for stage 1 was \$866,000. If I did not, that is what I intended to say.

CHAIR—Thank you for clarifying that.

Senator McKIERNAN—I was sure that you did say it.

CHAIR—It is there now.

Senator McKIERNAN—I just want to move, as quickly as we can, to a couple of different areas. The two judges whose terms concluded recently—Justice Lehane and Justice Katz—have not been replaced yet. Has the court made any representations to the Attorney-General about the need for additional judges? Are you coping or is it creating difficulties? What is the situation?

Mr Soden—I think the need for the replacement of those two judges is well known. Regrettably, Justice Lehane passed away on 11 September last year, having been able to work from 21 December the year before and, coincidentally, Justice Katz became seriously ill in December last year, could not work and subsequently resigned due to ill health on 22 March this year. Neither have been replaced yet.

Senator McKIERNAN—I thought it was merely retirement. The sympathy of the committee goes to the family of Justice Lehane and to Justice Katz and his family.

Mr Soden—I am sure that record in this place will be appreciated.

CHAIR—Thank you very much for making that note, Senator McKiernan.

Senator McKIERNAN—Mr Cornall, or Minister, are you able to enlighten the committee about the replacement of those judges?

Mr Cornall—Yes, I am. The Attorney-General is well aware of the two vacancies on the Federal Court bench in Sydney and is actively pursuing the replacement of Justice Lehane and considering the situation in relation to Justice Katz.

Senator McKIERNAN—I think I will leave that matter there. In response to a question I asked about unrepresented litigants on the last occasion the estimates committee met—question on notice No. 14—I understand your answer but, nonetheless, I am disappointed. Have you examined any ways and means of putting in place systems that would be able to measure what happens with unrepresented litigants in the court? It seems to me that, if it is not already an issue, this is certainly going to be an issue with the courts. It would seem that you need to be in the position of being able to measure the impact and the effect of that, if indeed there is any, and you need to have a system in place to measure it.

Mr Soden—I strongly agree. That is one of the reasons why we have to replace FEDCAMS: it does not give us the information we need to be able to easily capture information about litigants in person. I can give you one example of how difficult it is. Often when a case commences a person will be unrepresented; they will subsequently be represented and become unrepresented again. Alternatively, they commence as unrepresented and, vice versa, become represented. It is quite difficult to catch all the precise information on that situation.

We have not finished our work on that. Within the court we have an ongoing committee dealing with the issue of how best to manage litigants in person. That committee is extremely concerned about the information we cannot easily obtain concerning the litigants in person.

There is a lot of anecdotal evidence, which can be relied upon to some extent, but it is certainly clear that the number and frequency of occasions on which applicants who are not represented appear before the court is increasing.

Senator McKIERNAN—I hope you will keep that matter under review, because I think it is an issue that will continue with the court. I will no longer be a politician after the end of next month but there are others of my colleagues who are very concerned about this, and there are certainly some advocacy groups in the community that have real concerns about the issue of unrepresented litigants. Were there to be reliable statistics in place I think it would help the situation enormously, and help the court as well. So I hope you do keep that matter under review.

Mr Soden—We intend to do so, Senator.

Senator McKIERNAN—Thank you very much. I want to deal now with migration matters. How many migration applications have been filed in the court since last year's amendment to part 8 of the Migration Act?

Mr Soden—I am sure we have that figure with us. It is a total of 654 applications plus 150 under the Judiciary Act.

Senator McKIERNAN—How many have been remitted from the High Court, if any? Do you have figures on that? I am thinking in particular of part 8 of the Migration Act.

Mr Dawson—No, I do not have details on that. For the period in question, there have been 200 matters under the Judiciary Act, and I have ascertained that, say, 150 to 160 of those are under section 39B. The other matters could be remitted from the High Court but not necessarily in relation to Migration Act matters. If you want those details, we will have to take it on notice.

Senator McKIERNAN—I am just seeking information as to when the next estimates committees are meeting. I have not put it in my diary for some reason.

CHAIR—The week beginning 18 November.

Senator McKIERNAN—Would we have the annual report by then? Would those statistics be contained in the annual report?

Mr Soden—Comprehensively, yes.

Mr Dawson—We will have had the time to analyse those details and report in detail.

Senator McKIERNAN—I do not want to give you additional work. The work is already going to be done and the information will be available, so it would seem to me that my colleagues on the committee might benefit from having that information in the annual report rather than you taking a particular question on notice in regard to it.

Mr Soden—It will be all there.

Senator McKIERNAN—How many cases have been transferred to the Federal Magistrates Court?

Mr Soden—I think we have that figure. I heard Mr May say yesterday that there were 40 matters, and that was my recollection from looking at the statistics. I think, out of interest, the majority have been remitted from Western Australia, where there has been a large influx of migration refugee cases into our court. We have got those statistics. Rather than take it on notice and come back to you—

Senator McKIERNAN—I think many would be protection cases or refugee cases.

Mr Soden—I think we have that as well. In terms of those transferred to the Magistrates Court, I am not sure we have the breakdown, just the number.

Mr Dawson—From 23 June 2000 to 23 May 2002, 293 matters have been transferred. Do you want a break-up of those?

Senator McKIERNAN—Yes, please.

Mr Dawson—Just in migration?

Senator McKIERNAN—Yes.

Mr Dawson—There have been 74 under the Migration Act, and I should indicate that there are 13 under the Judiciary Act—that is, section 39B—so, more than likely, the first act is the Judiciary Act and the second act is the Migration Act. If you add 13 and 74 together, that would give 87. I am more certain about the 74 than I am about the 13.

Mr Soden—Can I explain the figure of 40 that I mentioned? I knew I had seen it somewhere. Forty-one matters out of that total of 74 are matters that have been transferred in Western Australia.

Senator McKIERNAN—I wonder what is the reason for that. All sorts of things are happening in Western Australia—including the Eagles and the Dockers winning.

Mr Soden—I think there is an easy explanation for that. There is a large number of migration cases being commenced in Western Australia. There is an extraordinarily high number of appeals from single judges to the full court. In effect that means that it takes up to four judges of the Federal Court to deal with one matter. If a matter is remitted by a Federal Court judge to a magistrate and is dealt with by that magistrate—an appeal is subsequently lodged—it can be dealt with by a single judge. Remittals from a single judge of the full court to the magistrate might end up in only requiring ultimately one judge of the Federal Court to finalise the matter rather than four, as presently is the case.

Senator McKIERNAN—My being perplexed about the figure was related to the geographical area rather than to the numbers. It would seem to me that, in terms of litigation and within the migration area, Western Australia has not been to the fore in that in recent years; it was more some of the centres in the eastern states. There was certainly a greater volume in Sydney than there was in Western Australia. That is why I was looking somewhat perplexed about the numbers.

Mr Soden—I can give only an opinion as to the reason. I think it has something to do with the throughput of the Refugee Review Tribunal in relation to matters arising out of Western Australia compared with the throughput in other places in recent times.

Senator McKIERNAN—Thank you. That is something the committee will probably follow through. Are you able to break down the reasons given on remittal? 'Reasons' is the wrong word. Were they done by consent? Were they done on the application of the applicant or the respondent?

Mr Dawson—I do not know but I suggest they were done by the judge. In relation to the migration matters it would be a judge's direction.

Mr Soden—Or what is known as 'by the court's own motion'. I have not heard of another circumstance.

Senator McKIERNAN—I do not suppose you would know the outcome of those and the number that have been withdrawn following remittal?

Mr Dawson—No. I am not saying I cannot get into the Federal Magistrate's database but I think that is better answered by them.

CHAIR—You could put it on notice for the Federal Magistrates Service, if you wish, Senator McKiernan.

Senator McKIERNAN—I am thinking about the annual reports being available prior to the next round of estimates.

Senator LUDWIG—Will that information be available in the annual report? Usually it is not; you do not break it down to that extent. If you do not then perhaps Senator McKiernan could put it on notice and you could consider it either as an addendum to your annual report or separately to the committee.

Mr Soden—We would not usually give the results of remittals made to another court—just the number of remittals made.

Senator McKIERNAN—I would have seen it as more a question on notice to the Federal Magistrates Service. Perhaps we could do that.

Mr Dawson—I am not speaking for the Federal Magistrates Service but, within the Federal Court, by looking at any act—say, the Migration Act—over a period of time we could show a result. In other words, what it might show is that the matter is abandoned, the matter is discontinued, there has been a result by consent or it has been resolved by application disallowed or application allowed. In all probability the Federal Magistrates Service could do the same thing.

Senator McKIERNAN—That would be helpful, thank you.

Mr Dawson—You are not asking us to do that, are you?

Senator McKIERNAN—No. If you get a blast from the Federal Magistrates Service you know it is your own fault because you are the one who offered it. And I am very grateful for it. There is going to be a full bench sitting in the next period of time on one of the migration matters. It has been constituted specially to address difficulties regarding the amendments to the Migration Act that were carried last year. Can you provide details of the arrangements that have been made to date for that full bench hearing to determine the legal issues surrounding the privative clause that was inserted in the legislation last year?

Mr Soden—I am not sure what details—

Senator LUDWIG—My understanding is that there is a group that has been collected together to be dealt with as a whole.

CHAIR—A group of matters, do you mean, Senator Ludwig?

Senator LUDWIG—Yes.

Mr Soden—The last time I looked at that collection I think there were three matters.

Senator LUDWIG—I thought there were five.

Mr Soden—There is five judges; there might now be five matters. It is going to be a five-judge bench.

Senator LUDWIG—Perhaps you could tell us about that.

Mr Soden—As much as I can. I cannot recall the names or the details of the cases. It was three originally; it may well now be five. That is not surprising.

Senator LUDWIG—I am open to correction.

Mr Soden—The intent is that it include the cases that are thought to be a part and need a decision of the full court to clarify the situation. From memory, that bench will sit in the first week in June and, as I have mentioned, it will be a bench comprising five judges, and it is now publicly known who those five judges are: the Chief Justice, Beaumont, Wilcox, French and Von Doussa. They are the most senior and the most available judges at that time.

Senator COONEY—What was the second one? And most—

CHAIR—Available.

Senator COONEY—Able?

Mr Soden—Available.

Senator COONEY—I thought you said ‘able’ for a minute. I was getting very worried there.

Senator McKIERNAN—How many days are allocated for the hearings?

Mr Soden—I do not know.

Senator McKIERNAN—There is no point in taking it on notice because, by the time the committee returns, the hearings at least will be concluded. Is priority going to be given to the decision from that full court hearing? What arrangements are in place, if any, for an expedited judgment on the matters that are under consideration?

Mr Soden—There are no precise arrangements in relation to the urgent delivery of the judgment other than the bench is well aware that the issue needs determination quickly. The bench has been put together quickly, the case has been collected quickly and they have indicated they will give their decision as soon as possible.

Senator McKIERNAN—That is what I expected to hear. That was my last question to you, Mr Soden, and thank you for the assistance you have given to me personally and to the committee as a whole over the years I have been in front of you.

Senator LUDWIG—Could you on notice collect the number of cases and which cases they are that comprise the group that the five-person bench will consider?

Mr Soden—To assist, we could make that inquiry before we leave here today.

Senator LUDWIG—I thought you might be able to get it back to us relatively quickly and that way we can have a look at what those cases are ourselves and read them through. Where did that initiation come from? Was it an initiation from within the Federal Court itself to deal with 474 or was that initiated by the Attorney-General, or a request made through you?

Mr Soden—It was an initiative from within the court. There was no request to the court for that action to be taken.

Senator COONEY—I want to keep this reasonably vague. There have from time to time been some fairly pointed attacks on the judges of the Federal Court, particularly those dealing with industrial cases and also migration cases. I take it there is not a great deal of assistance coming from the Attorney-General’s Department in respect of those fairly pointed attacks on those judges. Is there any strategy within the court itself to defend them? I do not want to name names, but I will if you need to be directed to a particular person.

Mr Soden—The court does not have a strategy of defending judges. It does, when it thinks it appropriate, attempt to correct errors that have been made in the media, or attempt to correct errors that have been reported as being said by others in the media, as I said where the court thinks that appropriate to do.

Senator COONEY—When you say the court, is that the Chief Justice or the judges as a whole—or how is it done?

Mr Soden—If comments are made about a particular judge, of course it is a matter for that judge—if the judge wants to say anything about it. Our court has a reputation, I think, for operating in a very collegiate way and it will ordinarily be the case that a judge would consult with the Chief Justice in recognition by the judges that the Chief Justice would be in the best position to make a decision about whether something ought to be responded to, having information about what has been said in the past and what action has been taken in the past. Usually as a result of that consultation with the Chief Justice, a decision is taken to respond or take some other action.

Senator COONEY—Is reference ever made to the Attorney-General's Department?

Mr Soden—To be honest, I cannot recall an occasion where an approach has been made to the department as a result of comment that has been made.

Senator COONEY—Has the department ever approached the court that you know of?

Mr Cornall—I would not regard the department as having a role in this area. There are different views about the role that an attorney-general can play, but I have never heard it suggested that the department ought to be intervening in this area.

Senator COONEY—That is fair comment. Does the Attorney ever do anything in this area such as defend a judge when the judge is under attack?

Mr Cornall—As you know, for many years the Attorney has adopted the view that it is not appropriate in these times for an attorney-general who is a member of a government to take the role of what was sometimes seen, in times gone by, as the traditional role of the Attorney-General in defending judges. The Attorney has made that point so many times that it probably does not need any further explanation.

Senator COONEY—Does the court have a media unit? Perhaps that is not the proper expression. Does it have a unit that puts the case of the court out to the public?

Mr Soden—We have an officer whom we call our public information officer. That person's primary role is to assist the media with information that they need and to inform the public about the reasons for a decision or other information about the operation of the court that the public would benefit from knowing. That person is not the spokesperson for the Federal Court but may on some occasions, after consulting with the Chief Justice or perhaps another judge, provide information by way of passing on to the media an explanation or perhaps some background information in relation to an issue within the court.

Senator COONEY—But I take it from what you say that the person does not have the discrete function of making sure that the media have got it right. He or she has other functions as well.

Mr Soden—One of the roles of that person is to assist the media in getting it right. That assistance is done in a proactive way, rather than reacting in order to correct mistakes. We think it is much more helpful if the media gets the information in advance; that is why our court has taken the decision to issue in appropriate cases judgment summaries—an easy to

understand summary of what the judgment actually says—so that when the media do report they are likely to get it right rather than get it wrong.

Senator COONEY—Can you give us an idea of how much industrial work the court is doing now? I know it had a case very recently in respect of the representation at the Victorian state conference.

Senator LUDWIG—Who represented one of the parties?

Senator COONEY—I will go into that later on.

Mr Soden—The question could be answered in a number of ways. In terms of pure numbers or volume, we can extract some information about that. In terms of importance, I think it would be fair to say that we continue to do the most important industrial relations work in the country.

Senator COONEY—I think that is right. And Corporations Law has returned, hasn't it?

Mr Soden—Yes, it has. Again, numbers are not really a true indicator of the importance of that work. I suggest that you could probably reflect on the importance of what we do as a result of that return of jurisdiction from the sorts of cases that the media report that the court actually does. I think that is a better indicator of the return of the jurisdiction than the numbers.

Senator COONEY—I think you do intellectual property too, don't you?

Mr Soden—Yes, we do that work. That comes continually to this court.

Senator COONEY—How many human rights cases are you doing? I hope you are not sending them all off to the magistrate's court.

Mr Soden—A large number are sent to the magistrate's court but, again, I think we attempt to make sure that we keep the most important cases—those that need the special time of the Federal Court because of the importance of the matters as opposed to those that might benefit from probably a quicker process.

Senator COONEY—Can you tell me how many successful appeals go to the High Court? I get the impression that it is not all that many, that most cases that go there are resolved in the Federal Court system.

Mr Soden—A tiny fraction of the cases that are resolved in the Federal Court would ultimately get leave to appeal to the High Court. There is one phenomenon, which I might mention to get it on the record, that can sometimes be misleading. If one has a look at the proportion of appeals from the Federal Court that get allowed in the High Court compared to appeals from other courts, it could be assumed that it were an indication that the Federal Court might not be getting it right, so to speak. We would say that that is a false assumption. We would say that the work that we do is at the leading edge of many of the developing legal issues and, therefore, the cases are more likely to go to the High Court because they are at that leading edge of the development of jurisprudential issues in Australia.

Senator COONEY—If you were to compare the supreme courts—the ones that you would most likely compare—with the Federal Court, you would have to take all the supreme courts, because they operate in each state. Have you done that comparison?

Mr Soden—I do not have that information in my head, but when I last looked at the figures, if you combined all of the supreme courts together and then looked at that compared with the Federal Court, you could not really come to any conclusion.

Senator COONEY—In any event, I think the point you make is the important point: the leading edge cases are the ones that go to the Federal Court more and more.

Mr Soden—One of the best examples is the native title jurisdiction.

Senator COONEY—Yes. Otherwise it is going very well?

Mr Soden—It is always a challenge, Senator—which we take up.

Senator COONEY—I thought the electronic filing system that Senator McKiernan was asking you about was a fairly ambitious program. You are not going to get that right very quickly, I would not have thought. The technology seems to take a long time getting into some sort of shape.

Mr Soden—Actually, the technology is quite simple, quite easy to use. It is the embedded practices of people who do things in a way they are very accustomed to doing that are the most difficult things to change, and it will take some time.

Senator COONEY—I can follow that. When you turn up to the airport and ask for a ticket and they give it to you, you think, ‘This is not right, I should be able to go down and buy my ticket first.’ It is just the years that you live through that leaves you with that feeling.

Senator LUDWIG—I wanted to come back to Senator McKiernan’s question in relation to the records management system. Is that task force still alive?

Mr Soden—Are you asking me about the computer system or—

Senator LUDWIG—I am going to go through all of them. I am just trying to bring you back out of where you were and back to records management as a general discussion. We will deal with eCourt, the RDMS and the task force. Is the task force still there?

Mr Soden—Yes, it is. It is probably not as active as it has been in the past and it probably needs some encouragement.

Senator LUDWIG—At the moment you have the RDMS, which is the records and document management system. Is that still going?

Mr Soden—No, we have not. That is a future project, Senator.

Senator LUDWIG—Then you have eCourt, which is online but trialling. You have your case management system still in part paper based.

Mr Soden—Yes.

Senator LUDWIG—And you have a task force.

Mr Soden—Yes. The task force is looking primarily at the documents and what needs to be done with those documents in order to identify which documents may not be required to be filed or to be kept by the court. This is to minimise what needs to come in electronically or what might need to be kept by the court.

Senator LUDWIG—The changes that you foreshadow are related to whether or not you get an electronic case management system—replacing your docket system—and the development of eCourt. They are the two streams that you are currently working on; is that right?

Mr Soden—To be clear, the docket system will not be replaced. It will be supported by the new case management computer system.

Senator LUDWIG—That is what I was trying to understand. You want to retain the core idea of your individual docket system.

Mr Soden—It is a practice and a procedure as opposed to a technology.

Senator LUDWIG—You want to retain the management system that you utilise. Is that why you have had difficulty with picking up an American or overseas system—because they do not use an individual docket system?

Mr Soden—Yes. The Americans do use individual docket systems. That is where we turn to see whether we can buy their software, but the purchase prices were exorbitant because of the exchange rate.

Senator LUDWIG—I thought they used individual docket systems in some of the higher courts.

Mr Soden—They do, particularly in the federal jurisdiction in the US, right across the US.

Senator LUDWIG—But they are prohibitive in terms of cost, not system?

Mr Soden—Yes, in terms of the purchase of the software and in terms of local support.

Senator LUDWIG—So you have not turned away from an individual docket system?

Mr Soden—No.

Senator LUDWIG—It is little bit further off before you will be able to integrate both eCourt and whatever system you pick up because you do not have a system yet.

Mr Soden—That is true. But our strategy is that, whatever we get, we will integrate those components—eCourt, electronic filing—in order to fully support the practice and procedure of managing cases individually known as the individual docket system.

Senator LUDWIG—Your trial for eCourt in native title, which was back in December—

Mr Soden—The De Rose case in South Australia, yes.

Senator LUDWIG—How has that gone?

Mr Soden—That was a success in terms of proving that you could do the whole of the on-country work without using paper and, therefore, you did not have to carry huge amounts of paper for long periods of time. It used new technology, in the sense that we trialled infrared communications systems to see whether it physically could be done. In terms of cost effectiveness, I must say I have a hesitation as to whether it would be cost effective on all occasions. It seemed to be very cost effective in the large cases, because it avoided a whole lot of associated costs. Interestingly, in the Northern Territory, where there is a fairly small group of players involved, they are very interested in the eCourt component for the purpose of doing directions hearings and managing the cases rather than the actual on-site hearing if those on-site hearings are necessary. That is another development of the benefit of doing things electronically. Although we do not have a precise plan in how this is all going to ultimately end up, we are doing it in bits and pieces rather than trying to bite off more than we can chew at the one time.

Senator LUDWIG—Is that because of a shortage of available funds or a shortage of staff to meet a more combined strategy?

Mr Soden—Funds are an inhibitor to doing things more quickly.

Senator LUDWIG—Have you costed the native title matter that was dealt with?

Mr Soden—We would have all of the detailed costs, yes. I do not have that information to hand.

Senator LUDWIG—That is something I would have expected you to have done—in other words, do a comparative cost analysis against your normal proceedings to determine whether or not it was cost effective to deal with it that way.

Mr Soden—We will have that information and we will provide it.

Senator LUDWIG—In relation to native title, I was wondering whether you could get for the committee, if possible, the amount spent on native title in 1996, 1997 and for each of the four years to 2005-06, including the 2001-02 part year. Do you have that breakdown?

Mr Soden—We have that. I will just explain why we have it. Some years ago—I forget the precise year—when we first received the allocation for the extra funds for the native title work that we do, I think one of the reasons we were able to convince the Department of Finance, particularly, to support our request for funding was our agreement to acquit every dollar that we spent, which we have done since that time and can do. It is not a problem for us to provide that information.

Senator LUDWIG—That includes the forward estimates, if you can.

Mr Soden—We can give you the forward estimates.

Senator LUDWIG—On 10 May 2002 the *Australian Financial Review* reported that the court would have to cut \$2.3 million in costs over two years to absorb cuts in native title funding. Is it the case that you have had to absorb those cuts?

Mr Soden—What is said in the paper often results from someone putting a spin on something and a journalist putting even more spin on it.

Senator LUDWIG—And this is the opportunity for us to correct the record, if it can be corrected.

Mr Soden—Yes, that is true. There are essentially two reasons why the court has started to consult closely internally with all of its staff about the need to reduce expenditure. In the last few years the court has spent about the same amount as its general allocation—I will put aside the native title fund allocation—but it is predicted that, if we keep on going at that rate of expenditure, we will overspend our projected allocation. We need to take action to rein in or reduce our general expenditure by 2004-05.

Coincidentally, but importantly, the extra additional native title funding we received two financial years ago will decline in 2004-05 by about \$2 million. If we look at that on a prudent financial management basis, it means we need to start looking at what savings we need to make now in order to come within budget in about two years time. That does equate to about \$2.3 million on an ongoing basis for 2004-05. I must say that it is proposed that an evaluation of the native title funding for the Federal Court, the Native Title Tribunal, ATSIC and the Attorney-General's Department take place in order for any adjustments to the funding to be available from 2003-04. But, of course, we cannot rely on that yet-to-be-concluded evaluation in relation to our forward projections and need to start taking some action now in order to make sure that we are within budget by 2004-05.

Senator LUDWIG—So, ostensibly, the paper has got it right: you are trying to save money because of foreseeable cost increases.

Mr Soden—Plus a reduction in native title funding.

Senator LUDWIG—Yes. So those two things are working to ensure that you need to find \$2.3 million. In answer to another part, there is currently a review going on. Is it appropriate for the department to discuss that now or can we come back to that during the Attorney-General's portfolio?

Ms Leigh—I can make some comments.

Senator LUDWIG—Perhaps you can just provide some information in relation to who is on the review.

Ms Leigh—On the review specifically?

CHAIR—I am cognisant that we are very pressed for time, Senator Ludwig.

Ms Leigh—When the government announced the additional funding over the four years in the 2001-02 budget, it foreshadowed its intention to review the funding requirements for this project prior to the 2003-04 budget.

Senator LUDWIG—When will that commence?

Ms Leigh—The review?

Senator LUDWIG—Yes. You can see what is happening. It is quite clear that not only the Federal Court but I suspect others in this area would be taking prudent action such as the Federal Court is. It is receiving comment in the media—perhaps negatively—and the Federal Court does have an explanation and it is hopeful, I suspect, that the review will create a clearer path for what the funding will be. Has the Attorney-General's Department announced or sought to assure the various agencies about what is going on, how long the review will be and when the findings will be made available?

Ms Horner—The preliminary work for the evaluation has commenced. There is an intradepartmental committee, of which the Federal Court is a member. We had a meeting I think last week and the nature of the evaluation was discussed at that. The participants in that committee have already started doing preliminary work. For the purposes of that evaluation, we are collecting information from the Federal Court and the NNTT in order to feed into that evaluation.

Senator LUDWIG—When will it be completed? Is there a time line?

Ms Horner—We have a kind of informal time line. Obviously we want to make sure it is available to the government in plenty of time for the next budget.

Senator LUDWIG—Will that be a public report that is available?

Ms Horner—We have previously done an evaluation, which was required as a result of some additional funding that was provided by the government, and that was not the normal course of events. It is not normally made a public document.

Senator LUDWIG—All right. We might deal with it at next estimates then and see where we are up to. Thanks very much.

CHAIR—Thank you, Ms Horner.

Senator LUDWIG—Were these projections of the reduction projected when the court was given the additional native title funding originally? Was the reduction foreshadowed?

Mr Soden—Yes. The additional allocation went up and then went down. So, yes, it was projected.

Senator LUDWIG—Has there been any subsequent variation to that? In other words, is it tracked according to—

Mr Soden—It is tracked according to the original allocation.

Senator LUDWIG—What other actions are you taking to absorb the cost? What are you doing now? You have said you are putting strategies in place, but can you detail what they are?

Mr Soden—There is a raft of matters.

Senator LUDWIG—Is that why you are not proceeding with Oracle stage 2, because you do not have the funding? I am just trying to pinpoint it.

Mr Soden—No, that is not connected. We have a finance committee within the court which comprises judges from across each registry. That committee is supported by officers, including our chief financial officer. The committee is meeting next Monday to consider a whole lot of suggested changes we might like to make in terms of expenditure. I do not want to pre-empt any of the decisions that they are likely to make, but they do include, for example, a complete organisational review across the court.

Senator LUDWIG—I do not want to stop you answering the question, but is it easier if we deal with it at the next estimates? You are only foreshadowing what could happen rather than detailing what will have happened or how you have dealt with it.

Mr Soden—Yes. It would be easier to report on what we have done.

Senator LUDWIG—I think I will leave it at that point.

CHAIR—Mr Soden, thank you and your officers very much for your assistance this morning and for your patience in bearing with the committee through yesterday's deliberations.

Mr Soden—I must take this opportunity to place on the record our best wishes to Senator McKiernan and Senator Cooney. I think I have been one of the longer continuously appearing witnesses at this place and I thank them for their assistance.

CHAIR—Thanks, Mr Soden.

[11.10 a.m.]

Family Court of Australia

CHAIR—I welcome Mr Richard Foster and fellow representatives from the Family Court of Australia to the table.

Senator McKIERNAN—What can you add about the case management system following the discussions the committee has just had with representatives of the Federal Court? Can you provide some further information to help my understanding of the systems?

Mr R. Foster—Certainly, Senator. Casetrack is an automated registry management system which is to replace five existing systems within the court and integrate the case management system into one system. It has been under development now for in excess of 2½ years. We commenced implementation on 29 January in Newcastle. We are now working through a progressive roll-out. We have implemented in Parramatta, Sydney, Hobart and Canberra. We implemented in Dandenong yesterday and will implement in Melbourne next Monday. In effect, by Monday, we will have around about 75 per cent of the court's workload on the new

system, which means that at long last we will be able to provide the management information about which this committee has been asking for some period of time.

I would have to say that it has been a very successful roll-out to date. The application has been well received by the court. It has been a relatively painless roll-out. The total projected cost is around about \$8 million. To date we have spent \$7.132 million, but that includes internal staff costs and future hardware requirements. We have been in a contractual arrangement with Oracle over this period of time. I think, at the end of the day, it has been a very successful outcome.

We have never claimed that the system is world's best practice. It is a good, solid, working case management system. It has been explained to me that it is a bit like building a house: we have got the solid foundation and we have got some walls and rooms and a roof, but there is still some internal fit-out to take place in terms of e-filing and other advances in technology. We are optimistic that we can take advantage of the position that the Federal Court is in. Perhaps they can pick up the technology that we have got and we can develop our systems together, which I am sure would have benefits to all court users in this country. As Mr Soden explained, we are currently having discussions in that regard.

Senator McKIERNAN—Thank you very much. You have answered a number of the questions that I was about to follow through with, including those to do with costs. Out of parochial interest—I do not apologise for being parochial—will the Western Australian Family Court, which is separate from the Family Court of Australia, be seeking to enter this case management system as well? Are there any discussions going on between the two courts with regard to that?

Mr R. Foster—There was an agreement struck at the very beginning of Casetrack that the Family Court of Western Australia would be part of this process. In fact, implementation in Western Australia is scheduled for 1 October this year. They will be operating on exactly the same system as that in the rest of the country in terms of family law.

Senator McKIERNAN—Thank you very much for that information—not that I hope to avail myself of the facilities in WA. I am pleased that the courts are working together in that regard and I am very pleased to record that you are also talking with the Federal Court about sharing your systems with them. We have heard about the Federal Magistrates Service as well, which is to be encouraged. Thank you for that. What information can you or the department provide to the committee about the proportion of matters going to the Federal Magistrates Court instead of the Family Court?

Mr R. Foster—I can give you statistics over the three main areas—divorce statistics, final orders and interim orders—if that would be useful to you.

Senator McKIERNAN—That would be useful.

Mr R. Foster—I can table them if you would prefer, in the interests of time. What would you prefer me to do?

ACTING CHAIR (Senator McKiernan)—In the interests of time, tabling would be of assistance.

Mr R. Foster—They will be the statistics over the last three years and will show filings in both the Family Court and the FMS, the percentages of the various courts, and also the number of matters that have been transferred between the two courts over the last two years.

ACTING CHAIR—Thank you very much. We would appreciate the tabling of those documents. I have a couple of questions with regard to the Magellan project. The pilot project has now finished and the Monash University report judged it to be a success. What plans are there to conduct the project elsewhere in Australia, for example, being parochial again, in Western Australia?

Mr R. Foster—In Western Australia there is a similar project called Columbus, which has been established by that court in its own right but based on the methodology and the processes surrounding Magellan. That is actually happening in Western Australia. But it has been the intention of the court, subject to a satisfactory evaluation, that the Magellan project would extend to all the major registries in the country. We are about to have discussions with legal aid commissions, because they are a very important player in this whole process, and we are having discussions with the department about Magellan. It is the intention of the court wherever possible to have a similar process in every registry.

ACTING CHAIR—Will any additional funding or resources be required?

Mr R. Foster—From the court's perspective, we do not think there are, but an argument is being put forward by Victoria Legal Aid that in fact Magellan may have increased their costs. I do not think the court accepts that position. One of the reasons we are entering into discussions with the directors of the legal aid commissions around the country is that without their support we cannot proceed with this initiative.

Senator MASON—I commence by thanking you for in the past providing me, and indeed the committee, with sometimes very full answers to questions that I have asked of the Family Court. But I want to refer you this morning to two questions on notice where the answers were not as full as I might have hoped. The first, question on notice No. 22, relates to the sitting days of each member judge of the Family Court in the calendar year 1999. The second paragraph of the answer provided says:

... the Court has been in the process of reforming the collection and reporting of its management information. Information on sitting days prior to July 1999 is unreliable or misleading for the purposes of this question.

It is a fairly straightforward question. Firstly, why did a simple question like that take so long? Why did it take so long, nearly 25 years after the formation of the Family Court, to be able to provide information like that?

Senator McKIERNAN—Can I clarify the question number? Mine is different.

Senator MASON—I am sorry. This is from May 2000.

CHAIR—It is from budget estimates 2000.

Senator McKIERNAN—I did not bring those with me!

Senator MASON—I think I have copies.

CHAIR—Mr Foster knows where it is.

Mr R. Foster—I know what we are referring to.

Senator MASON—I thought that was a fairly straightforward question, yet I could not be provided with a straightforward answer because there was not, apparently, a system for providing that answer that was not unreliable or misleading. Why did it take so long for the Family Court to come up with a system that was not misleading or unreliable?

Mr R. Foster—I do not think I am really in a position to talk about why 25 years ago such a system was not put in place. I guess it was because no-one ever thought the information would be relevant. That is all I can offer, Senator. Certainly in recent times, as information systems have become more sophisticated, the Family Court has become more aware of its public accountabilities and its preparedness to willingly report on its public accountabilities. Organisationally, we have taken steps to ensure that a much wider example of judicial sitting times and other essential statistics are available. That has only been a recent innovation. These types of information have not really been sought in the past.

Senator MASON—Let me get to that in a minute. From July 1999 we are okay. How is the information now gathered? What is the reporting process that you now have in the Family Court that enables you to give this information to the committee?

Mr R. Foster—We basically have a form-filling-in process and there are definitions as to what constitutes a day's sitting times. That is put into an aggregate and that is how we report it. There is a manual component to the system; therefore, these figures are as accurate as we can make them. But I would not want to put my life on them being entirely accurate down to the last day. An awful lot of effort went into compiling these statistics and they are as accurate as we can possibly get with them, but they are based on a manual system.

Senator MASON—In that second paragraph, it says that 'information on sitting days prior to July 1999 is unreliable or misleading for the purposes of this question'. I will pass you another document, which is a question to the Attorney-General that Mr Jull placed on notice on 11 November 1998. It was answered on 10 February 1999. Mr Jull asked a question that was, I am sure you will agree, very similar to mine, but he seemed to be luckier in procuring an answer. I trust that is not just because he is in the House of Representatives.

CHAIR—It would hardly be possible, Senator Mason; it is not possible!

Senator MASON—My next question is that that information was provided to Mr Jull by the Attorney-General in February 1999. But you say in your answer to me that information on sitting days prior to July 1999 was 'unreliable or misleading'. So is the information given to Mr Jull unreliable and misleading?

Mr R. Foster—I am not sure that I am in a position to comment. Firstly, I was not at the court in November 1998. I do not know what processes were put in place to provide this information. I am quite prepared to take it on notice and get back to you on the points that you are making, but I do not really feel that I am in a position to respond to that question. I have no knowledge of how that was put together; I do not know.

Senator MASON—But you see my point, don't you? The information was provided to parliament, I assume in good faith, prior to July 1999 as a very full answer, and the answer I get is that 'prior to July 1999 the information is unreliable or misleading'.

Mr R. Foster—I am not in a position to respond now. I would like to take that on notice and respond in detail. I want to make sure that the periods are the same, that we are talking about the same sets of information—it raises a whole lot of questions for me.

CHAIR—Thank you, Mr Foster, we would appreciate that.

Senator MASON—I understand that. Going to the next paragraph on the answer to question No 22 it says:

It is not considered appropriate to provide information as to the identity of individual judges in relation to sitting days, as this would adversely affect the integrity of the court.

That is what I was told. However, if we again go to the answer given to Mr Jull, you will see, Mr Foster, that all the judges are named and the sitting days for 1996-97 and for 1997-98 are included. Again, I wonder why.

Mr R. Foster—On the same principle, Senator, I will take that question on notice and provide a detailed response.

Senator MASON—I wonder how much the process has changed for tabulating sitting days. If you look at the answer provided to Mr Jull and tally up the figures, they are not a lot different from the figures you gave me. I wonder why I could not be given answers with the same level of detail that Mr Jull got?

Mr R. Foster—I accept your question, but I do not have an answer for it. I am sorry.

Senator MASON—Given that Mr Jull was so successful in procuring that information, I ask this—I suspect you will want to take it on notice: how many days did each justice of the Family Court sit in the duty list and trial division in financial years 1998-99, 1999-2000, 2000-01 and up to 31 December 2001? I also make this clear: I would like that to include all judges from the most recently appointed all the way to the chief justice. In doing so, if the court does not wish to provide the names of individual judges, could a coding system be provided so that the sitting days of individual judges can be tracked across the years. I do not want names—just judge 1, judge 2 et cetera right through to judge 45 or whatever so that I can identify for each year what days judges are sitting. Is that clear, Mr Foster?

Mr R. Foster—Yes, I understand.

Senator MASON—Look again at question 22. The next paragraph down says:

The 38 Judges in the trial division whose appointments covered the full year sat, on average, 151 days hearing matters other than appeals during 1999/2000, which is high having regard to all the other duties and leave entitlements.

I understand that. What I want to know is this: do those 38 judges in the trial division include judge administrators?

Mr R. Foster—I will take them all on notice, Senator. These are matters I will need to discuss with the chief justice.

Senator MASON—If it does not, I want to know why it was not included in the answer. The question is nearly exactly the same as Mr Jull's. I am perplexed as to why that information is not in there—if it is not, and it does not seem to be. Mr Foster, I understand that Auscript had, until recently, a contract with the Family Court. Is that right?

Mr R. Foster—They did, yes.

Senator MASON—Is it true that Auscript charges by the hour for its transcription services?

Mr R. Foster—There were various charging and costing arrangements in the contract with Auscript. It depended on what work they were doing. Are you talking about court reporting or the transcription of a tape? I am not entirely sure what their charging arrangements were because they are no longer providing services to us. I can take that on notice.

Senator MASON—Does the Family Court keep records of invoices that they have received from Auscript? How far back would those records go?

Mr R. Foster—Again, I will take that on notice.

Senator MASON—Is it true that the Family Court did receive invoices from Auscript each month detailing hours and days judges have sat?

Mr R. Foster—Again, I will take that question on notice.

Senator MASON—Is it true that Auscript are able to provide precisely how many hours—not days—that each judge in each registry has sat?

Mr R. Foster—It is my understanding that Auscript had details of the time that the lights were on in the court room. I guess it is a matter of how you define what the sitting hours were.

Senator MASON—Right down to the hour.

Mr R. Foster—That is my understanding; I think that is true.

Senator MASON—This is a bit of parochialism, a bit like Senator McKiernan: as a Queensland senator, I have a particular interest in the Brisbane registry. I would like to know—perhaps Auscript may provide you with this—how many hours each judge—that is, all judges—have sat in the duty list and trial division in financial years 1998-99, 1999-2000, 2000-01 and up to 31 December 2001. Once again, I would like that to be coded. I do not need names; I just need a code so each individual judge is identifiable.

Mr R. Foster—I understand that.

Senator MASON—Mr Foster, I know I have given you a lot of work to do and I do apologise for that, but I am just a bit disappointed that perhaps the answers given to these questions were not full. I was slightly perplexed by that and that is why, this time, this committee is seeking full answers.

CHAIR—Mr Foster, I think it is important that I support Senator Mason's concerns. The estimates is obviously a probing process at the best of times and, to a large degree, that is its purpose. The discrepancy that Senator Mason has raised—and I say this on my own part; I have not discussed this with my colleagues—I also regard very seriously, and we look forward to seeing answers on those issues.

Senator COONEY—The Family Court is a court where people come before it in very highly emotional circumstances—is that right, Mr Foster?

Mr R. Foster—Based on my experience in different courts around the country in various states and jurisdictions, I would agree with that statement.

Senator COONEY—How many of them are unrepresented? Do you have an idea of how many people come before this court, which is an environment that is highly charged emotionally, without legal help?

Mr R. Foster—It is a difficult question to answer, but the figure that the court is using for its purposes, based on some research by Professor Dewar from Griffith University, is that around 35 to 40 per cent of litigants will be unrepresented at some stage during the process. It is very difficult to be definitive and say that someone is unrepresented all the way through, because, as discussed with the Federal Court—Mr Soden's response—people are represented for certain stages of the process, et cetera, so the position can change. But our position—and the clearest way we can find to describe it—is that at any stage during the process up to 35 to 40 per cent of litigants are self-represented.

Senator COONEY—Is that of concern to the Chief Justice—indeed, to all the justices of this court?

Mr R. Foster—It is of significant concern and, to that end, the court has taken significant steps to address the issue with a project chaired by Justice Faulks in relation to self-represented litigants. It is an ongoing strategic approach to this issue. I can elaborate on the things that it has achieved to date, if you would like that.

Senator COONEY—That would be good to have on the record.

Mr R. Foster—The project, as I said, is chaired by Justice Faulks. Its goals are to develop a consistent national approach to providing services to litigants that are sensible, effective, understandable and conscious of the requirements of self-represented litigants; to improve services in practices and procedures, protocols and pro formas; and to evolve deliveries that are clear, consistent and understandable. Much has progressed since the project began in late 2000. New plain English information products are now available in a number of areas. Consultations have been undertaken with individuals and other services that provide assistance to self-represented litigants. Open communication with all stakeholders has been set up through the existing web site and regular project newsletters. A new web site to deliver online, step by step, comprehensive guidance with links each step to relevant resources will be available to people going through the Family Court. That is well under way.

With the assistance of a group of innovative experts from outside the Family Court, work has also begun on developing our proposal for a new approach to litigation that will level the playing field for self-represented litigants, whether the other party is represented or not. These deliberations and outcomes will be put to government for consideration in due course. There has been much work done on development of new rules of court that are fair, clear and understandable. That work is being performed by the rules revision committee.

So there is a significant commitment by the court. The project has a budget of around \$80,000 per annum. We have already expended something like \$25,000 on the development of the prototype web site and we have the dedicated resource—0.5 of an APS level 5 officer—of about \$25,000. So you can see that the court is very serious about doing whatever it can to make its services better available to self-represented litigants.

Senator COONEY—Is the court at its full compliment? Have you got enough judges at the moment?

Mr R. Foster—Currently we have 47 judges, including the Chief Justice. There is one vacancy vice Justice Smithers, who retired in March in Melbourne. There will be a vacancy on Thursday because Justice Jerrard has been appointed to the Queensland Court of Appeal and he commences there on Thursday. So we have two vacancies—or we will have on Thursday.

Senator COONEY—Does the full court have its full complement all around Australia now?

Mr R. Foster—I understand that there is still an appointment to be made to the full court—I think there is only one.

Senator COONEY—So there were two until the appointment in Queensland and now there is one?

Mr R. Foster—On Thursday we will be two judges short of our complement of 48 judges, which includes the Chief Justice.

Senator COONEY—And one judge in the full court?

Mr R. Foster—Yes, one judge in the full court.

Senator COONEY—What places does the court go on circuit to? I think Melbourne services Tasmania, doesn't it?

Mr R. Foster—There is a judge based in Tasmania. Melbourne would provide relief to that judge as and when required. The court circuits to a large number of places in rural and regional Australia. In fact, it is the stated policy of the court that we will go wherever there is work. The court believes that it is very important that judges actually go on circuit to rural and regional areas and that we should not become a capital city based court—we should be out and about in rural and regional areas.

Senator COONEY—That is the philosophy of the Chief Justice?

Mr R. Foster—That is exactly right. We are maintaining our circuit commitments throughout the country and, in fact, in some places we are increasing them.

Senator COONEY—There is still plenty of work, I take it, in this area everywhere?

Mr R. Foster—Interestingly, there seems to have been an increase in family law work across the country to the order of about 10 per cent. That might be because of unmet demand and because the establishment of the FMS attracted more work. There has certainly been more work transferring from local courts into the federal system. So there is no shortage of work at all for either court.

Senator COONEY—How long is it since there has been an increase in the number of judges allowed? I am not talking about the number of judges that you have but the number of judges that are made available by the system.

Mr R. Foster—I cannot answer that question. I can take it on notice, if you wish. I would think that it would be some significant time.

Senator COONEY—The Chief Justice, from what I can gather, goes around Australia looking at the courts.

Mr R. Foster—He thinks that it is absolutely essential that he visits courts not only to sit but also to have discussions and meetings with a whole range of people who have an interest in the court, both practitioners and community based organisations who are now providing services to us and our mediation area. He sees that, as the rest of the court does, as a very important part of its work so that it actually stays connected with the community.

Senator COONEY—Does he give public addresses to show what the court is doing?

Mr R. Foster—The Chief Justice specifically?

Senator COONEY—Yes.

Mr R. Foster—He gives many public addresses in various places. When visiting rural and regional areas I would not say it was so much public addresses as meetings and discussions with groups of people, which seems to be a much more effective way of getting your message across in that environment.

Senator COONEY—Including islands such as the Torres Strait Islands?

Mr R. Foster—The Torres Strait Islands, yes.

Senator COONEY—What about the other judges, do they do a bit of that?

Mr R. Foster—Most judges would go on circuit, at some stage, as part of their normal duties. Judges talk to groups of people. They would regularly have meetings with key stakeholders and with service providers to the court. So it is not something that the Chief

Justice would keep to himself; judges and also senior executives of the court would do the same.

Senator COONEY—Do you know whether or not they do work in the community in addition to their work as judges? Do any of them work with other bodies as well?

Mr R. Foster—I do not have any direct knowledge of that.

Senator COONEY—Could you find out? I do not want to intrude in this; you can tell them that if they do not want to tell us, I am very happy. But I would be interested to know how much public service they do outside their actual work in the court.

Mr R. Foster—That is something that I am quite happy to take up with the Chief Justice.

Senator COONEY—All right. Thank you.

CHAIR—Are there any further questions for the Family Court? Mr Foster, thank you very much for your assistance this morning and for the assistance of your officers. We look forward to some responses on those questions that were raised which you have taken on notice.

Mr R. Foster—Thank you. Can I echo the comments of my colleagues in relation to Senators McKiernan and Cooney. I have only been in the Family Court for two years—so that is not a long time to be appearing before this committee; people who preceded me spent a long time in this chair—but I wish both senators, on behalf of the staff of the Family Court, all the very best for the future.

Senator COONEY—Thank you.

Senator McKIERNAN—Thank you.

CHAIR—Thank you, Mr Foster. I appreciate your expressing those sentiments. I have a document which has been provided by Mr Warwick Soden, Registrar of the Federal Court, in response to a question raised by Senator Ludwig. I want to note for the record that Mr Soden has tabled that document.

[11.42 a.m.]

Administrative Appeals Tribunal

CHAIR—I welcome Ms Ransome, Registrar of the Administrative Appeals Tribunal. We will begin questions in this area with Senator McKiernan.

Senator McKIERNAN—I do not have a large number of questions for the Administrative Appeals Tribunal. I thank the tribunal for providing the information for question on notice No. 19 that I asked at the last round of estimates hearings. I note that the total number of staff in the tribunal was 95 at 1 July 1999, it had gone down to 89 at 1 July 2000 and at 1 July 2001 it had gone down to 77. What is the number of staff now?

Ms Ransome—As at today, the total number of members of the tribunal is 76. There have been two resignations since the information was provided to the committee following the last estimates process.

Senator McKIERNAN—Thank you very much for that. Where is that figure, the one less, going to show up? Will it be in the number of judges, full-time staff or part-time staff?

Ms Ransome—As at 15 February, it was 78 members; it was 77 as at 1 July. So there have been two resignations. One of those was a full-time deputy president in Queensland and the other one was a part-time member in Queensland.

Senator McKIERNAN—Thank you. The matter of the Administrative Review Tribunal was subject to some questions during the course of the last estimates hearings. Has any work been done within the tribunal as a prelude to the formation of an ART?

Ms Ransome—Within the tribunal itself, no. We have no further information to present to the committee other than that which was given at the committee meetings in February.

Senator McKIERNAN—Is there any specific work being undertaken within the tribunal that would lead to the formation of an administrative review tribunal that is the amalgamation of the AAT with the SSAT and the RRT and MRT?

Ms Ransome—No. There is some work being done on some aspects of co-location, particularly with the SSAT, but that is the maintenance of the two separate organisations—the AAT and the SSAT. That is particularly occurring in relation to Brisbane.

Senator LUDWIG—Has the AAT done any work in respect of unrepresented applicants, similar to the program the Family Court has started to deal with self-represented litigants? Has the AAT addressed that issue, or do you not find it a problem?

Ms Ransome—The AAT has always had a significant portion of self-represented applicants. In dealing with those people, processes have been built in from a very early stage. For example, any applicant who is unrepresented shortly after their application is lodged with the tribunal will receive a telephone call from an officer of the tribunal, who will take that person through what the processes will be once they get to the tribunal. They can then ring that person if they have any further questions about process. The conference process that the tribunal has in place is also an opportunity for the conference registrar to explain to the person what is happening and what will happen, what evidence is needed et cetera.

Senator LUDWIG—I just noticed on your web site that you do not have any kits like the Family Court has to help unrepresented litigants or applicants to follow the process through.

Ms Ransome—We have a video which is provided to unrepresented applicants. Either they can view that at the tribunal's premises or we send them a copy with an addressed return envelope so they can send it back. We have a series of pamphlets that explain aspects of the tribunal's process and, as I mentioned, the contact from an outreach officer.

Senator LUDWIG—Thank you.

Senator COONEY—Is there still as much work as ever coming through the Administrative Appeals Tribunal?

Ms Ransome—Yes, there is. We have had a continuing increase in workload. We have had a huge spike over the last 18 months. That has mostly related to some 6,800 tax applications which were lodged.

Senator COONEY—So there are still a lot of tax cases coming through?

Ms Ransome—Yes, I think you need to treat the 6,800 somewhat separately from the normal tax work. Those applications were in relation to mass marketed schemes.

Senator COONEY—Who was handling those cases? Were they permanent members, part-timers or what?

Ms Ransome—You are referring to the mass marketed ones?

Senator COONEY—Yes. The people who tend to the tax cases.

Ms Ransome—There are certain members of the tribunal who are specifically appointed to the Taxation Division. I can take your question on notice and give you details about who those members are.

Senator COONEY—Are they permanent members, do you know?

Ms Ransome—It is a mixture of part-time members and full-time members.

Senator COONEY—What about social security appeals? Are they coming through in big numbers still?

Ms Ransome—There has been a slight decrease in the number of social security matters that are coming through. In fact, the tribunal's largest jurisdiction at the moment would be in workers compensation, where there has been a steady increase.

Senator COONEY—Does the same thing happen with the Social Security Appeals Tribunal as happens with the tax cases, where you have a group of people who do those cases because they have particular expertise in them?

Ms Ransome—All members of the tribunal are appointed to the General Division, which is the division in which social security matters are heard. So potentially all members can hear social security matters. Of course, there is an expertise that is built up in the tribunal over time or through previous work history, and those members are more likely than not to deal with social security matters.

Senator COONEY—Who allots cases to the tribunal member? Who is in charge of the Administrative Appeals Tribunal at the moment?

Ms Ransome—The president of the tribunal is Justice Garry Downes.

Senator COONEY—Does he allot particular cases to particular people?

Ms Ransome—His powers in relation to constitution of tribunals have been delegated to members in each of our registries who will constitute tribunals for listing.

Senator COONEY—I am not quite following it. You have the judge, and he delegates work to whom?

Ms Ransome—Under the AAT Act, the president has several powers in relation to how tribunals are to be constituted to hear cases. It is those powers that he has delegated to what we call listing coordinators in each place.

Senator COONEY—Do they tend to allocate cases to the same people in the particular list or is it almost a matter of random choice as to who gets a case?

Ms Ransome—It would be a combination of factors including particular skill and expertise but also, of course, availability of members.

Senator COONEY—There are the tax and social security appeals. Are these Comcare appeals?

Ms Ransome—That is right, Senator.

Senator COONEY—Does that particular division take a lot of time and work?

Ms Ransome—That is true to a certain extent. It is, however, a jurisdiction in which there is a high settlement rate prior to matters going to hearing. In hearing terms, it probably does not take as much time as you would think it would.

Senator COONEY—Does that operate all around Australia?

Ms Ransome—That is right.

Senator COONEY—What other areas are there besides those that you have told us about?

Ms Ransome—The other major jurisdiction would be veterans' appeals that come to the tribunal from the Veterans' Review Board.

Senator COONEY—Are there any heritage claims?

Ms Ransome—The tribunal has jurisdiction under in excess of 370 pieces of legislation. There are some heritage matters but I cannot recall when the last application was made. We deal with some immigration matters, some corporations matters—the list is endless. I do not think we have ever had an application under the nashi pear regulations, but we do have jurisdiction.

Senator COONEY—Is there a great deal of learning and experience within the tribunal now?

Ms Ransome—There are certainly a number of members who have been with the tribunal for some time. There are new members who have brought their skills and experience from elsewhere to the tribunal.

Senator COONEY—Do you know how many permanent members there are now?

Ms Ransome—What do you mean by permanent? Do you mean full time?

Senator COONEY—Yes; those who are full time and have tenure.

Ms Ransome—I am sorry, Senator, I could do a quick count but it may be easier for me to take it on notice.

Senator COONEY—No, do not worry about it. I was trying to get an impression of how the tribunal is operating and what the level of learning and experience is.

Ms Ransome—As at today, the number of full-time members, including the president, is 19 and the number of part-time members, excluding judicial members, is 46. Of those 18 members who are full time, there is a handful who are appointed to an age—that is, they have tenure. The rest of the membership is appointed for a term.

Senator COONEY—How quickly are cases dealt with?

Ms Ransome—That varies from jurisdiction to jurisdiction. We aim to dispose of all matters within 12 months. Our current workload statistics indicate that in social security matters we are certainly disposing of them in less than that period of time. With compensation and veterans' matters, that period of time is somewhat lengthier. In compensation matters, for the year to 31 March only 66 per cent of matters were completed within 12 months. There are certain delays that we experience in relation to matters where there is medical evidence.

Senator COONEY—Have the resources available to the tribunal increased or decreased over the last two years?

Ms Ransome—In financial terms, the resources are pretty well static. As you will have gathered from the questions from Senator McKiernan, there has been a change to the structure of the membership of the tribunal, particularly following the round of appointments which occurred in the middle of last year. It is difficult to assess whether those member resources are adequately meeting the needs of the number of applications that we have, but that is a process upon which we will be embarking.

Senator COONEY—Senator McKiernan also asked you, and I would like to ask you again: is the Administrative Appeals Tribunal looking forward to staying in operation into the extensive future or into the foreseeable future, or what? Is there a mood about the place?

Ms Ransome—As was stated at the last estimates committee, the government is still considering the future of the AAT and the ART. Internally within the tribunal, I think we take the view that we are there to do the best job that we can and we will continue to do that for however long we continue to exist. To a certain extent, to be distracted by what might or might not happen is not a good thing; that will impede our existing functions.

Senator COONEY—Would it be a fair thing to say that people are conscious of the discussion about the future of the AAT that is taking place in parliament?

Ms Ransome—Since the *Better decisions* report was made at the end of 1995, the tribunal has been dealing in an environment where something may or may not happen. So yes, the tribunal is conscious that something might happen. We do not know what that might be.

Senator McKIERNAN—This is not a question to you, Ms Ransome. If I am not in the right area I will be pleased to be directed. The issue of mass marketing of taxation systems arose. I am just wondering if either the minister or Mr Cornall can tell me what action, if any, has been taken against the promoters of these schemes? As parliamentarians we are getting constant responses from constituents who have the tax office after them—and they have just been given an extension on that. I have not heard of any action against the promoters of those schemes. Is there anything on foot that you can answer at this time, or can you direct me to an area within the portfolio where I might raise that question at a later time?

Mr Cornall—I do not think it really comes within this portfolio unless it is a matter raised by the tax office with the AFP and then in turn the DPP. It is not an issue that we are directly involved in.

Senator McKIERNAN—I thought that might be the case but I figured I might ask the question just in case there was something within the portfolio that would help me with it.

Senator Ellison—You could ask the AFP when they come if they have had any dealings with it.

Senator McKIERNAN—I will consider that suggestion, Minister. I am not sure that I will ask it but I will consider it.

Senator Ellison—That is about the only possible relevance.

CHAIR—Thank you for clarifying that. Ms Ransome, thank you very much for your assistance to the committee this morning.

Ms Ransome—I would also like to echo the sentiments of my colleagues and to thank both Senator Cooney and Senator McKiernan for the interest they have shown in the tribunal over the year and the courtesy that they have always shown to me and my predecessors. I wish them well.

[12.01 p.m.]

National Crime Authority

Mr Cornall—Madam Chair, yesterday we said we would provide the committee with a paper on the transformation of the NCA which, you might recall, Mr Carnell said drew out the essential matters from the Palmer-Blunn report. That is available now and we could table that for the committee's consideration when the committee wants to reach it.

CHAIR—Thank you. I will have that distributed.

Mr Carnell—I just have one or two comments to make the status of the paper clear. That is the document as it went to the states at the end of February. Obviously there have been further negotiations. When I looked at the paper this morning I noted there are a couple of elements in there which are not as agreed by the leaders. By that I mean two things. One is the composition of the board. You will note the leaders agreed that it would include a representative of each state and territory. That is not the model that was in that paper. The second is the question of an investigation that takes the matter through to arrest and prosecution. This paper gives the ACC effectively no role in that sort of work. What emerged from the leaders summit was an agreement that the ACC would keep some capacity to take matters through in that way. That is a longwinded way of saying: be conscious that that is a paper that was done at a particular point in time.

Senator McKIERNAN—I am very appreciative of what you are trying to do, but I am concerned that if you are providing us with a document that is not complete at this stage that document might be misrepresented. I am wondering if you might consider withdrawing the paper for now and adding to it those comments that you have just made to the committee. It will be a document that will be seen in its own right, not necessarily in conjunction with the *Hansard*. In that sense, it could be misused—not that I or my political party would misuse it, but I do have a concern that that might happen. I am just putting it as a suggestion to you to consider perhaps withdrawing it and adding those further points to it as a matter of clarification, maybe even by way of appendix.

CHAIR—Senator McKiernan, I certainly accepted the document as a tabled document.

Mr Carnell—Could I, later this week, provide the committee with a letter which sets out what I have just said, which would be attached to the document?

CHAIR—Yes. Thank you, Mr Carnell. I note Senator McKiernan's concerns. I think that will assist in the process.

Mr Cornall—The point to make clear is that this document was distilling the essential elements of the Palmer-Blunn report. That was what we discussed yesterday: what was in the Palmer-Blunn report. This is the essential elements of the report. Negotiations with the states have moved on since then, as Mr Carnell has indicated, but that was the document at that point in time. If it simply is clear that it was prepared at a date and reflects information at that date, that might help us.

CHAIR—We now have quite a bit of information on the record in relation to the document, and if we have a clarifying letter as well from Mr Carnell that would be extremely helpful. Before we begin in the area of the High Court, I want to say that I am not really in a position at this stage to give the ACS an idea of when they might be appearing. We have a number of large agencies before that, and I apologise for not being able to give more guidance. If I do find myself in a position to pin that down, Minister, I will provide that information.

Senator Ellison—Just to clarify, we know that we are going to run the order from the High Court, the Insolvency and Trustee Service Australia right down to the APS, but that will come after the Australian Federal Police or whatever is left over at lunchtime.

CHAIR—That is right.

Senator Ellison—That will give Customs some idea that they are still down the list.

[12.05 p.m.]

High Court of Australia

CHAIR—Welcome, Mr Doogan and staff of the High Court. We will start with Senator McKiernan.

Senator McKIERNAN—McKiernan is in a broken record phase, Mr Doogan. I am going to ask again about the public information officer. I do not know how many times I have addressed officers of the court on the matter of the public information officer. I am going to do it again, but I think on this occasion, from media reports, I am going to get a markedly different answer from those I have had on previous occasions. The floor is yours.

Mr Doogan—We are in the process of engaging a public information officer. We recently advertised for one and applications closed as of last Friday, with a few stragglers coming through. There was an excellent response, if I might put it that way. We have in the order of 60 applications for the position.

Senator McKIERNAN—Thank you. That is pleasing to hear, because it is something that I think the court has been wishing to happen for quite a period of time. We have been asking as a means of exposing the gap that is in the court processes, so we are pleased that it has come to this. What will this position cost on an annual basis?

Mr Doogan—That will really depend upon who it is that we appoint. We advertised the position at a salary range that went from the lower end of the scale through to the top of the scale that is currently used in other courts and government agencies. So, if the most experienced person were to be appointed at the highest salary point, that would be around the \$86,000 mark, plus on-costs of superannuation, a bit of money for computing equipment and so on. So, to answer your question in a ballpark way, it would be around the \$100,000 mark.

Senator McKIERNAN—Thank you. How was the money found to create this position?

Mr Doogan—Going back to the 1999-2000 year, there was a conversion process, you will recall, from cash budgeting to accrual budgeting.

Senator McKIERNAN—We have not forgotten.

Mr Doogan—I am sure not. In the course of that conversion the finance department made an error, the result of which was that some of the funding that should have come to the court did not come to the court. It required some stop-gap measures until the error was corrected, and it has now been corrected by the department.

Senator McKIERNAN—And the money has been put to good use. How has the court been dealing with the media until the occasion when you appoint this public information officer?

Mr Doogan—They have been ringing me, predominantly.

Senator McKIERNAN—Who will this new officer report to when he/she is appointed?

Mr Doogan—It will depend on what the person is actually doing. We have a range of duties in mind for this person. On the issue of the court's judgments, the person will report to the Chief Justice and the justices of the court. On other matters, for example, the development of education kits and whatnot for schoolkids and so on, it will be to me.

Senator McKIERNAN—Is the court giving consideration—and this is linked with the appointment of the public information officer—to live broadcasting of the handing down of judgments?

Mr Doogan—Yes, that is in fact something that we have mentioned in past reports. That is being considered.

Senator McKIERNAN—Do you have an indication of when the first one might occur?

Mr Doogan—No, we have not as yet.

Senator McKIERNAN—So no decision has been taken?

Mr Doogan—No decision has yet been made, the reason being that this is rolled, if you like, into a range of discretionary expenditure items. For example, one of the other items—one that we have had in mind for some time and which is currently under way in terms of development—is expanding our case management system in such a way that people outside the court, mainly barristers and instructing solicitors, are able to access externally, through the Internet, cases that they have an interest in within the registry. Instead of sending a runner to the registry counter around the country, as happens now, or ringing up to ask specific questions about filings, they will be able to go onto the Internet themselves and see the latest documents that have been filed and be able to sit at a desk in their office or chambers reading summaries of argument, for example, that have been filed.

Senator McKIERNAN—The centenary celebrations are going to be quite a birthday party, with \$900,000 allocated over two years for the special sitting and the related conference. Can you provide the committee with some details of what is planned within these celebrations?

Mr Doogan—The actual 100th anniversary is Monday, 6 October 2003. On Friday, 3 October, the chief justice will deliver the Australian Institute of Judicial Administration oration in Melbourne. On the Monday the court will sit in Melbourne in the Banco Court, in the same room where it first sat on 6 October 1903. Later in the week, a conference will be held here in Canberra with delegates from around the world including, it is expected, a large number of chief justices from around the world. It is being run by the court in conjunction with the Australian Bar Association and the Australian National University. It will commence on Thursday, 9 October and run through until the weekend. Quite a variety of matters are being planned. Not all of them have been finalised but it is hoped that, for example, there will be a number of special publications. Discussions have also taken place with the National Archives about an exhibition to be run by them in conjunction with the High Court. The main aim of the celebrations is not so much the birthday party to which you referred but more a range of activities which, if you like, emphasise the greater knowledge and education on the part of the Australian population at large about the role of the High Court as the third arm of government.

Senator McKIERNAN—When I said birthday party I did not mean it in a derogatory sense. One hundred years is a significant milestone to reach and I do not see anything wrong in celebrating that milestone. I just wonder why the figure of \$900,000 was arrived at. Do you have any details of what makes up that figure?

Mr Doogan—Yes, the figure is in fact a rounding. The actual figures are \$164,000 in the coming financial year and \$706,000 in the following financial year. The reason for the gap between the two—the much smaller figure—was that it was thought that, in the coming financial year, there will be the need to make deposits on things such as accommodation, transport and so on.

Senator McKIERNAN—Is it that the High Court, through this allocation, will be paying the accommodation costs of the chief justices and justices who will be coming for the conferences?

Mr Doogan—Yes, that is the case—in essence, providing exactly the same facilitation as has been provided in the past by other countries, the last two being the Philippines and Canada.

Senator McKIERNAN—Will air fares be a consideration in this as well?

Mr Doogan—No, air fares will be met by the people travelling to Australia.

Senator McKIERNAN—I wish all those involved in the court all the best wishes for the celebrations. It is a very significant milestone, which probably I will not reach, and I do wish you well.

Senator COONEY—Can I get an idea of how the work is coming through. How much work is now coming through by way of prerogative writs? Has that increased in recent times?

Mr Doogan—Yes, it has, the majority of which are immigration matters. Looking back over three financial years and then coming into the current year, in 1998-99 the number was 82; in 1999-2000, 90; in 2000-2001, 81; and in the year to date it is 194—the current financial year to the end of April.

Senator COONEY—How does the court handle those? Does a single judge look at them and make a decision? What happens? It must be a time-consuming exercise, although I might be wrong about that.

Mr Doogan—Yes, it is. Predominantly they come before a single judge and are dealt with in the annual report in table 30, page 83. That shows a breakdown of matters heard before a single justice.

Senator COONEY—This is a funny question but I just want some impression. How long would the application before the single judge take? You might not be able to answer that. What I am trying to find out is how much of a single judge's time this is taking up. You have seven judges and I am wondering whether this is a significant taxing of the resources of the court.

Mr Doogan—Yes, it does mean that there are regular hearings before single justices. Comparing it, for example, to the previous year and in the last published annual report, in 1999-2000 there were 282 matters that came before a single justice. These may take an hour or two or there may be several hearings by that same judge over a period of time. There are two matters, for example, which are migration matters, that had a series of hearings over a few years—in fact, before the matters were ready for hearing by the full court.

Senator COONEY—Where are they heard—all around Australia?

Mr Doogan—Yes, they are.

Senator COONEY—Is there a demand on judges to travel more than they might otherwise do but for these writs coming up?

Mr Doogan—No, not really, because they are often dealt with by video link. For example, if there is a full court sitting in Canberra, it may be that the matter is dealt with by video link between Canberra and a remote locality either before or after court. The majority of the work of the court emanates from Sydney and Melbourne, and there are resident judges in both of those locations as well as in Queensland.

Senator COONEY—You have got onto a tender spot. There is only one in Melbourne. I do not want you to comment, but I might ask Mr Cornall to comment on why there is only

one High Court judge in Melbourne. And this one is the first appointed since about 1982. Do not comment, Mr Cornall, but it is a very significant thing, is it not?

Senator Ellison—You have a Western Australian there, Senator Cooney.

Senator COONEY—Yes, you have.

Senator Ellison—Not now.

Senator COONEY—Has Toohey gone, has he?

Senator Ellison—Yes, Toohey has gone.

Senator COONEY—It is outrageous!

Senator Ellison—If you are feeling a bit cheesed off, just remember Western Australia.

Senator COONEY—It is worse than the cricket. It is worse than the test side. It is quite outrageous.

Senator McKIERNAN—It is not as bad as the AFL, because you do not have to put up with the umpires.

Senator COONEY—I would like to get an idea of appeals from the superior courts—from the federal courts and from the supreme courts. I was asking about this before. Do you have an idea of how many appeals come up from the supreme courts of the states as a whole and how many come up from the Federal Court?

Mr Doogan—Yes. Again, if we go to the last annual report, page 75, table 20A, there is a breakdown between Federal Court, Family Court, Supreme Court and so on, with a further breakdown by registries around Australia. Sixty per cent of the appeals allowed during the last financial year were from the Federal Court in comparison with 50 per cent from the Family Court and 54 per cent from the collection of supreme courts.

Senator COONEY—What sorts of matters are they? Are the Supreme Court matters mainly criminal matters generally?

Mr Doogan—They are both criminal and civil. There are different tables that show those.

Senator COONEY—I was just trying to get an impression of where they are coming from. You could hardly the 100 years celebration a celebration on \$900,000, I would have thought. This is a very important occasion. When we celebrated our centenary, we did it in more style than the High Court seems to be about to do. I was wondering about that. It is very pleasing that you are going to have a sitting in Little Bourke Street or 'law court place'. Are you going down to that, Mr Cornall?

Mr Cornall—I hope to.

Senator COONEY—What about other states? We are not going to go around to them?

Mr Doogan—We do have circuit sittings as a routine every year, so the court will certainly be sitting in Queensland, Western Australia, South Australia and Tasmania, and it sits regularly in Sydney and Melbourne for special leave applications.

Senator COONEY—How many dignitaries from overseas are we going to have?

Mr Doogan—A total number has not yet been determined, but I would think there will be quite a lot. I cannot give you a precise figure at this stage but, judging by similar celebrations in other countries, it is usually quite a large number.

Senator COONEY—We would not want to disappoint them with the style of our celebrations. We would not want them to think we are muting it too much. Do you think there is some danger of that?

Mr Doogan—I do not think so. I think they will be quite pleased.

Senator COONEY—I do not want to make a political point, but yesterday we heard about a commissioner who was being paid \$660,000, and today we hear that the High Court is attempting to celebrate on \$900,000. It does not seem to be the sort of celebration that would be called for.

Mr Doogan—There will be funds in addition to what is coming from government. We are planning to impose a charge on people who are coming to the conference.

Senator COONEY—Thank you.

Senator LUDWIG—Turning to migration, how many migration applications have been filed in the court since last year's amendments to the Migration Act? Do you have a breakdown of those figures by month and type? There are obviously different migration matters; I am just not sure what statistics you keep.

Mr Doogan—In the period between 1 July and the end of September, there were 53 migration matters filed in the original and appellate jurisdictions of the court. In the subsequent period from the beginning of October 2001 to April 2002, that number has increased to 195.

Senator LUDWIG—Are they matters originating in the High Court?

Mr Doogan—It is a combination of appellate matters and those in the original jurisdiction.

Senator LUDWIG—Do you have a breakdown of appellate and original jurisdiction?

Mr Doogan—For the original jurisdiction, there were 36 between July and September; 145 between October and April. For the appellate jurisdiction, there were 17 between July and September, and there were 50 between October and April.

Senator LUDWIG—Do you have a view about the enormous increase in original jurisdiction matters that have come forward in the migration area in the last couple of months?

Mr Doogan—Only to the extent that there are some matters which previously would have been brought under an umbrella of one or two matters which are now being filed as individual matters. For example, there are two cases that have been heard by the full court in which judgment has been reserved. In round figures, 7,000 people will be affected by those two cases. They in fact were dealt with as schedules of persons that have been progressively added to those two cases over a period of years. Subsequent to the hearing of the cases, judgment was reserved on 10 October 2001, and subsequent to that date there have been 62 individual matters filed which otherwise might—I can only say might—have been added to those two cases had they come to the court prior to the date of the judgment being reserved.

Senator LUDWIG—Are they migration matters?

Mr Doogan—They are, yes.

Senator LUDWIG—In respect of protection visas, can you say how many of those cases that you have referred to deal with protection visas?

Mr Doogan—No, I cannot say that. We would have to examine each of the cases to determine that.

Senator LUDWIG—We might not put you to that task. Of those cases in which judgments have been made, matters have been dismissed or leave to appeal has not been granted, do you keep statistics and are they readily available, or how many of those have been remitted to another court?

Mr Doogan—I can tell you in relation to matters that have come before a single judge, which is in fact the bulk of them, that in the 2000-01 financial year there were 11 matters that were discontinued, two matters that were remitted to the Federal Court, 19 matters where the relief sought was refused and eight matters where the relief sought was granted. In the year to date, being 1 July 2001 to—

Senator LUDWIG—I am sorry to interrupt you, but those relate to the first number of 53 that you gave me? That makes it a little bit easier when someone is reading this transcript.

Mr Doogan—No, these are decisions in that particular year. The problem with the statistics is flowing from one category, filed in one year, dealt with in the next and so on.

Senator LUDWIG—You do not have a system which tracks each individual case?

Mr Doogan—No. We have a system that looks at matters filed in a particular year and so on.

Senator LUDWIG—I have gathered that. Perhaps we can finish those statistics.

Mr Doogan—Yes. Finishing the statistics for the year to date up to 30 April, two were discontinued, none have been remitted to the Federal Court, three have been refused, and in 30 relief has been granted.

Senator LUDWIG—I do not know whether you were here when the Registrar of the Federal Court, Mr Soden, was here, but he referred to a five-bench court which is to hear matters dealing with the privative clause, 474. Apparently it was an own-motion decision to deal with that. Does the High Court have a similar procedure to deal with a subsequent appeal, if any, to the High Court or are there matters that the High Court has now seized of its own motion to deal with in respect of the privative clause?

Mr Doogan—It remains to be seen what happens with that five-judge matter. It is possible that will come to the court later. In terms of the workload that currently exists of matters filed in the court, there are eight matters where we understand that the validity of the legislation will be called into question.

Senator LUDWIG—And they are currently filed?

Mr Doogan—Yes, they are currently filed but they are not yet ready for hearing. They are in various stages of going from just filed through to ready for hearing.

Senator LUDWIG—If it is not too much trouble, I wonder whether I could get a list of those eight cases so that we can subsequently track them as they go through?

Mr Doogan—Yes.

Senator LUDWIG—Thank you very much.

Senator SCULLION—Mr Doogan, if I could pass you a document, you might be able to assist me with it. I apologise for the quality of the document. I understand the document

purports to be a chronology of various freedom of information requests for Justice Kirby's Comcar records. Have you seen the document before?

Mr Doogan—Was it published? If it has been published in a newspaper, I probably have seen it.

Senator SCULLION—No, it has not. Have any of your officers seen the document?

Mr Howard—No, I have not seen it before.

Senator SCULLION—Perhaps you could help me with it, even if you have not actually seen this particular document. As I said, it is a chronology of the various freedom of information requests for Justice Kirby's Comcar records. You cannot recall having knowledge of a document that actually marked out the chronology of those requests?

Mr Doogan—No, Senator, I am not familiar with the chronology.

Senator SCULLION—Can you recall having any discussions with department of finance officials with regard to a document that may have related to freedom of information requests in this matter at all?

Mr Doogan—I believe that on one occasion I had a discussion with a department of finance official, yes.

Senator SCULLION—Could you share with us the nature of that discussion? What was that about?

Mr Doogan—I recall that I was informed that there was a chronology circulating, the authorship of which was unknown to the department of finance.

Senator SCULLION—In that conversation or just through other information you may have, you have no idea who perhaps prepared that document that was circulating?

Mr Doogan—No, I have no idea.

Senator SCULLION—Clearly this is the document that they were referring to.

Mr Doogan—I would imagine so.

Senator SCULLION—It appears to be, I am not sure how many documents—

CHAIR—I am sorry, Mr Doogan, what was your response?

Mr Doogan—I can only accept what you are saying to me.

Senator SCULLION—Obviously, if that would follow, one would think that you would have no understanding about how that document came into the hands of the federal opposition?

Mr Doogan—I have no idea, Senator.

Senator SCULLION—As part of your discussions with the department of finance, did you perhaps touch on the accuracy of information in that document?

Mr Doogan—Actually, I just cannot recall. I would have to check to see what records I have available.

Senator SCULLION—Perhaps you could take that on notice: the details of the conversations that you and your staff may have had with the department of finance on that matter, particularly any discussions you may have had with regard to the accuracy of the alleged document. That would be very valuable.

Mr Doogan—Just let me be clear, Senator. What you are asking me to do is to take this document away, examine it and respond as to whether or not at any stage I have discussed with the department of finance the accuracy or otherwise of this document that you have given to me?

Senator SCULLION—I just thought you may need the time to further recall that particular conversation. I know it must be difficult with the amount of conversations you must have, but that would be of great interest to me. Perhaps at the same time you can again clarify or establish with your staff, if it turns out that members of your staff had seen that document, who actually had access to it, if any copies were in fact made of the document and those people to whom that document may have been circulated. I think that would be of use. Perhaps I can get that on notice.

CHAIR—Do you have anything further, Senator Scullion?

Senator SCULLION—No, I do not.

Senator McKIERNAN—As a member of the opposition, can I just say that I am unaware of the document that has been spoken about during this recent intercourse between Senator Scullion and the representatives from the High Court. I am unaware of any opposition action seeking, through freedom of information or any other means, any documentation relating to Justice Kirby's travel. I am unaware of any usage or purported usage of any such document around the place. It was mentioned that members of the opposition did in fact have some copies. Quite frankly, I do not want to see a copy of the document. I find it difficult enough to track my own Comcar usage, never mind having a look at other persons' Comcar usage. Had such a document fallen into my hands, I think my first course of action might have been to have taken it to law enforcement officers so that, if there were any purported breach in the law, that could in turn be rectified. I thought I might put those few remarks on the record.

CHAIR—Thank you, Senator McKiernan. I was also unaware of the document until it was raised here now.

Senator LUDWIG—Whilst we are doing that, may I agree with Senator McKiernan's remarks and indicate that the same would go for myself.

CHAIR—Thank you very much. If there are no further questions for the High Court, I thank Mr Doogan and his officers for assisting the committee and would appreciate their assistance in returning responses to those matters which have been taken on notice.

[12.43 p.m.]

Insolvency and Trustee Service Australia

CHAIR—I welcome Mr Gallagher from the Insolvency and Trustee Service Australia.

Senator LUDWIG—Mr Gallagher, could you outline as far as you are able the investigation into a Mr Robert McDermott by your organisation?

Mr Gallagher—I am able to advise that the McDermott matter has been the subject of investigation by officers of our bankruptcy regulation staff. Those investigations have been directed towards the actions of the trustee in relation to that matter and those matters are ongoing.

Senator LUDWIG—Can you say who the trustee is? I am not asking you to say anything that you cannot ordinarily say; only the information that you can give to the committee about that. Then I have got some follow-on questions in relation to that area. I give you the scope: it

is only what can be provided about the investigation and where it is at which might assist the committee.

Mr Gallagher—It is a matter of public record who the trustee of that administration is, so in that sense, yes, of course: the trustee is Mr Marchesi.

Senator LUDWIG—The status of the investigation is that it is currently still under investigation. Is that where you are at the moment?

Mr Gallagher—Correct.

Senator LUDWIG—Has any decision been made to refer it to the Director of Public Prosecutions?

Mr Gallagher—It is a matter under investigation, Senator .

Senator LUDWIG—When do you expect the task force report into lawyer bankruptcy to be completed? ITSA is a member of that task force, isn't it?

Mr Gallagher—ITSA was a member of the task force. I think it would be appropriate if I referred that question to the department because it was the department that convened the task force.

Mr Griffiths—I will probably disappoint you by saying that I do not think we can advance the information that I provided the last time we appeared before this committee. The report, as I think I mentioned on that occasion, was provided to the Attorney-General and to the Assistant Treasurer in early January, maybe the middle of January, this year. The report is still under consideration by both ministers.

Senator LUDWIG—Has there been any feedback? Has there been any discussion between the Attorney-General and your office about the report?

Mr Griffiths—The Office of Legal Services Coordination chaired the task force and it comprised officers, as you know, from the Insolvency and Trustee Service, the Family Law and Legal Assistance Division of the Attorney-General's Department, the Department of the Treasury and the Australian Taxation Office. Speaking from the perspective of the Office of Legal Services Coordination, there has been considerable dialogue between ourselves and the Attorney-General's office about the report. No doubt there has been similar dialogue between the Attorney-General's office and the other elements of the department that were involved in the task force and have the carriage of some of the recommendations in the report, though it will be the responsibility of the Attorney.

Senator LUDWIG—And you cannot tell us anything about the report at this point in time?

Mr Griffiths—I can take on notice any questions that you wish to ask and will refer those to the Attorney-General's office.

Senator LUDWIG—All right. Firstly, why has the report been delayed? Secondly, does the Attorney-General regard the report to be of less significance in the sense of maintaining public confidence in the personal insolvency system? Additionally, does the Attorney-General not believe that the release of a report of that nature would assist ITSA in carrying out its investigatory and regulatory functions in ensuring that bankruptcy is not used for other than legitimate reasons? Will the government implement the recommendations, if any, in the report? They are the general questions that, you can imagine, I have an interest in—and a few others around that area as well. It is difficult to foreshadow all of the questions I might have, but it is a matter that we will obviously come back to in the additional estimates.

It is extremely disappointing to find that this matter has been going on, from my recollection, since September 2001 and earlier and we are now in 2002. The promised report was due out shortly before Christmas 2001, if I recall correctly. It was then promised some time early this year and it is now significantly advanced from earlier this year. We still have not got a report. We do not have any legislation. As far as we are aware, the government does not have an interest in bankruptcy by lawyers or those seeking to avoid bankruptcy legislation. Is that the case? I am happy for ITSA or you to answer.

CHAIR—I am not sure that the question is appropriate for Mr Griffiths, Senator Ludwig. Did you wish to direct it to the minister?

Senator LUDWIG—I am happy for anybody to try to answer it.

Senator Ellison—If Senator Ludwig is drawing a conclusion from what he sees as a delay in the delivering of the report, perhaps he can give us some further information as to how he comes to that conclusion. I can then take those matters up on notice, if need be.

Senator LUDWIG—Perhaps you can provide another reason why there has been such a long delay in the process, other than that you do not have an interest. I am happy to explore other reasons.

Senator Ellison—There is another reason, I am advised by the secretary.

Mr Cornall—One of the reasons why the report has not been released is that it does contain information which could be useful to people in finding loopholes in the legislation, and we need to correct that before those loopholes attract any public attention.

Senator LUDWIG—Yes, that was the explanation given last time.

Mr Cornall—It was.

Senator LUDWIG—The difficulty I had with that was that it becomes a catch-22. Whilst we do not know whether or not those loopholes are being exploited by some, we do not know whether or not those loopholes, were they to become aware of them, would be exploited while there is no report or legislative backing to deal with those loopholes. We then do not know how widespread the problem is or whether it is confined to a couple of individuals, because if we ask you what the loopholes are and then ask you to identify the clients that might be associated with it then, as you say, Pandora's box opens. That is the difficulty. I understand the answer that you have given, but it does not provide an explanation. Are you then saying that those people who might be utilising the loophole now, if there are any, are simply getting away scot-free and the government is happy to accept that on the basis that it is better to have a few do it than many? That does not seem to be a practical solution either, in my mind.

Mr Cornall—We have taken on notice the questions that you raised and we will refer those to the Attorney-General.

Senator LUDWIG—Perhaps we will try a long-handed way to see if we can break the deadlock from catch-22. If there are recommendations to the report, will ITSA be charged with the carriage of the matters or the overall implementation of the recommendations, if any, and will the Insolvency and Trustee Service be provided with additional resources to assist them in dealing with these areas, which might create additional work for them? We will leave it at that. I do not really require an answer at this point. You are going to take those on notice and see if you can ask the Attorney-General where it is all at.

Mr Cornall—Yes, we will do that.

Senator LUDWIG—In relation to ITSA, then, I understand that there was a cafe owner in Queensland who complained that, when ITSA and, allegedly, its trustee in bankruptcy entered the cafe, they closed the business down without notice, removed stock, did not issue him with receipts under the Bankruptcy Act and a range of other things. I have only put it as high as that which was alleged. What I am trying to ascertain is: did that happen? Does ITSA normally raid premises, remove the stock, not issue a receipt and close the business down, effectively, because of those actions? It seems a surprising thing for ITSA to do. I was wondering if you could provide some details about that incident and perhaps clear the air about what happened.

Mr Gallagher—I am not aware of the particular matter that you are raising. If I were to provide information, I would have to have some details as to the matter. I imagine in the circumstances to which you are referring ITSA would have been acting in its role as an official trustee and would have acted in accordance with the requirements in the Bankruptcy Act of a trustee.

Senator LUDWIG—Are they the normal powers ITSA would have as a trustee—to be able to enter premises, remove stock, and not issue a receipt?

Mr Gallagher—Well—

Senator LUDWIG—You do have broad powers, I understand, under the Bankruptcy Act.

Mr Gallagher—There are a range of powers in the act for trustees to take over businesses.

Senator LUDWIG—Please do not take me incorrectly: I am not suggesting there is anything illegal or inappropriate in the sense of what you did. I am just trying to understand how you operate and in this particular instance how you operated. I understand it was a cafe run by Tim and Nigel Franklin.

Mr Gallagher—I would have to take that on notice. I am not aware of the case. If there has been a complaint raised or if the matter is brought to our attention, we will certainly respond to the matter and make sure it is investigated.

Senator LUDWIG—Could you take it on notice to the extent of identifying how you operated in that instance in relation to a cafe. If you need any further information to identify in your records, please come back to me. The basis of the allegation is that as official trustee—although I accept that you have broad powers—you did not provide any notice. That may be a wise thing to do, but I wanted an explanation as to how you would normally operate when you assume those powers and act in that way. I suspect it can be quite traumatic to a person operating a business to suddenly find an official trustee there who then requisitions all the goods and chattels in the store and effectively shuts them down with little explanation. There may be a lot of lead-up to that. The person might not understand what is going on. I am just wondering how you then deal with those sorts of issues, or whether the type of operation that you have to have calls for that. I do not know, and perhaps you could help me. I am happy for you to take that on notice. Then, perhaps, you could give an explanation of when you would seize goods and chattels. Is that an ordinary course of dealing? What do you then do with them after you seize them? Or am I wrong in my assumptions?

Mr Gallagher—I would rather take on notice the detailed requirements of a trustee. But, in general terms, if a person is made bankrupt then all of the assets of the debtor vest in the trustee and the trustee takes responsibility for all of the assets of the debtor and deals with them in accordance with the act to ensure they are protected for the interests of creditors. That is a broad answer to the underlying principles of bankruptcy administration. But if there are

concerns that relate to a particular matter then they need to be addressed in the context of that particular matter.

Senator LUDWIG—Do you have a complaints handling system? If people felt aggrieved in how they were handled by ITSA, do you have a system where they can complain at first instance?

Mr Gallagher—We do. We provide information to debtors about our complaints procedures. We have a separate part of ITSA, our bankruptcy regulation unit, which is tasked with responding and investigating complaints made by trustees, whether they are the official trustee or registered trustee.

Senator LUDWIG—In relation to part X bankruptcies, do you have any statistics on what the settlement rate is, what the return would be either in percentage or dollar amounts, where part X arrangements are entered into—and additionally part IX?

Mr Gallagher—There is information provided in the annual report on promised returns in terms of cents in the dollar under debt agreements. I can refer to the information in our annual report for the 2000-01 financial year: the amounts proposed in debt agreements proposals accepted by creditors averaged 73c in the dollar return to creditors. That same information is not available as readily in relation to part X matters, the reason being that all part IX proposals are submitted to ITSA for processing and in fact ITSA conducts the vote on them so we have that information. Part X proposals operate in a different way. They are ultimately filed with us, but we would not necessarily have the information about the return in the dollar. I can take on notice what information we can provide about part X proposals.

Senator LUDWIG—If you would not mind. How many complaints have been lodged against ITSA in relation to their conduct under part X or part IX arrangements? Do you keep statistics on the number and type of complaints you receive for batch operations?

Mr Gallagher—We do have statistics. They are published in the annual report. I do not have them readily at hand, but I could provide that information.

Senator LUDWIG—If you would not mind. Are they broken down as to the type and nature of the complaint? I could go to your annual report, but I imagine it contains 149 or something—that is hypothetical.

Mr Gallagher—You are correct: the information in the annual report does not break it down by type of administration.

Senator LUDWIG—Is that readily available?

Mr Gallagher—Can I take on notice to see what sort of breakdown we have.

Senator LUDWIG—All right. I am not asking you to go to extraordinary lengths to resift through all the complaints, but if the type and nature of the complaint is easily identifiable it would be helpful. If not, perhaps you can just give us the total number and let us know that the search might prove too exhaustive.

Mr Gallagher—Certainly. Can I make one point of clarification. The act does not currently provide for the inspector-general to investigate the affairs of debt agreement administrators. So complaints made which the inspector-general has powers to investigate only relate to those relating to trustees.

Senator LUDWIG—Is that being addressed or is that a power that you do not want?

Mr Gallagher—The legislation currently before the parliament proposes to give a power to the inspector-general.

Senator LUDWIG—That is right; so you will be able to keep the figures then, should that legislation pass. Have you provided any reports to the Attorney-General in relation to the growth of lower end bankruptcies? There seems to be a growth of small bankruptcies in consumer debt.

Mr Gallagher—There is a requirement for the inspector-general to report annually through the minister to the parliament on the operations of the act. That information is provided. The report distinguishes between business related bankruptcies and consumer bankruptcies or non-business related bankruptcies. The information is available in the annual report.

Senator LUDWIG—But I was wondering if you had addressed, from an internal perspective, recommendations for ways of dealing with lowering the rate. As I understand it, the rate has increased over the last couple of years.

Mr Gallagher—I do not think it is the case that it has increased over the last couple of years. It has certainly been the case that the growth in bankruptcy numbers over the past decade has been largely in the consumer bankruptcy area or the non-business area. Business related bankruptcies have remained reasonably steady over that period.

Senator LUDWIG—I think that is what I said, but I am happy to take your correction. So what has ITSA been doing about it?

Mr Gallagher—I was just referring to the last couple of years. Bankruptcies have actually fallen over the last couple of years. That was my point.

Senator LUDWIG—But not in relation to consumer? Over the last four or five years has it been growing or decreasing in relation to consumer?

Mr Gallagher—It increased pretty consistently up until 1998, when it peaked at 26,000. The figure is back down to about 24½ thousand.

Senator LUDWIG—In your view, is that acceptable? From ITSA's perspective, is that an acceptable figure? What is ITSA doing about it?

Mr Gallagher—ITSA is responsible for administering the bankruptcy system. The number of bankruptcies is not really a matter for ITSA to be making an observation about it.

Senator LUDWIG—So you do not have an observation about it.

Senator COONEY—Following on from that, we have discussed before that when a company is liquidated that is done by ASIS, not by you?

Mr Gallagher—It is done by private liquidators, yes.

Senator COONEY—But the Australian Security Investment Services would have some sort of supervision over that. Isn't that right?

Mr Gallagher—They would have the supervision of the liquidators.

Senator COONEY—I suppose it is a matter of policy as to whether or not we ought to bring them together, but do you discuss with, say, Mr Knott things such as the number of insolvencies, whether corporate or personal, that are taking place in this area or do you just administer the bankruptcy system and not take it much beyond that?

Mr Gallagher—Essentially, it is the latter, but we do have regular liaison with ASIC over a number of issues.

Senator COONEY—I do not want to anticipate anything, but I think what Senator Ludwig was trying to get at is whether there is a pattern of companies and people going insolvent. You might not have talked about that issue with ASIC but, in having conversations with ASIC, does that issue arise? If so, do you discuss it at all? If you discuss it, can you give us any sort of pattern as to how insolvencies are taking place?

Mr Gallagher—Generally we do not discuss that because issues going to the number of insolvencies or the number of bankruptcies are more to do with economic circumstances, which are not our responsibility. They are the responsibility of other agencies.

Senator COONEY—What I am getting at is that you are in a position to collect statistics of them.

Mr Gallagher—We collect the information, yes.

Senator COONEY—Yes, which is what I think was being put to you, but I rather gather that you do not do that. You do not gather statistics and you do not talk about issues of insolvency generally, whether it is a company going into liquidation or a person going bankrupt. You do not talk about that as a concept. What you are about is making sure that the bankruptcy is carried out according to law and in the proper way. Is that a fair summary of what you are saying?

Mr Gallagher—Yes, I think that is a fair summary.

CHAIR—As there are no further questions, Mr Gallagher, thank you very much for assisting the committee and for bearing with us as we maintained our lengthy deliberations yesterday. We are very grateful.

Mr Gallagher—Thank you.

Proceedings suspended from 1.09 p.m. to 2.12 p.m.

Australian Federal Police

CHAIR—I welcome Commissioner Keelty and officers of Australian Federal Police.

Senator FAULKNER—I was interested in understanding a little more about the role of the AFP in countering people-smuggling but more particularly I suppose the resources that, as a result of the last budget, are being applied to that task. I take you to page 202 of the PBS. I think it would be fair to say that the PBS does give a lot of emphasis to countering people-smuggling. Is that reasonable, Minister?

Senator Ellison—Yes.

Senator FAULKNER—In outcome 1 on page 202 I note the dot point which says ‘countering and otherwise investigating organised people smuggling’. I assume this is an indication of the current priority of that particular task for the AFP. Would that be right, Commissioner?

Mr Keelty—That is correct, Senator.

Senator FAULKNER—On page 209 of the PBS I read, in relation to the LECP:

The Government will provide additional funding of \$47.0m over four years to expand the Law Enforcement Cooperation Program (LECP). The additional funding comprises \$43.0m over four years for expenses and \$4.0m over two years for capital.

Commissioner, could you or one of your officers indicate to us, given that there is some detail there, how this program works? It is not entirely clear from reading the PBS. I am

concentrating on the expansion that is relevant for this area that I am looking at—the people-smuggling role.

Mr Keelty—Yes. The expansion of the Law Enforcement Cooperation Program is built upon the success of the program that was commenced under the National Illicit Drugs Strategy in 1998, and it has resulted in a large number of narcotics seizures. In fact, 6.5 tonnes of narcotics have been seized since the commencement of that program. This funding will be for an additional 16 AFP officers to be placed in strategic positions overseas and some 18 support staff in Australia. It will also be used to further enhance cooperation with the overseas law enforcement agencies and to increase the flow of intelligence information through cooperation with overseas law enforcement authorities.

Senator FAULKNER—Could I take you to the second last paragraph on that page, the second last sentence. It says:

There is also a well documented increase in the incidence of unauthorised arrivals, particularly those aided by people smugglers.

I was wondering to what extent this expansion was actually going to counter people-smuggling. You may not be able to completely identify it, but I wondered if it was an important element of the expansion of the program.

Mr Keelty—It is an important element of the expansion of the program in the sense that the previous Law Enforcement Cooperation Programs were largely directed at narcotics trafficking. With this program, insofar as it extends to the investigation of people-smugglers, there are a number of law enforcement agencies that we have historically had relationships with through work in the area of narcotics. That does not necessarily spill over into the area of people-smuggling, because some of the routes are different, some of the agencies involved are different, and some of the countries of source are different. So it is intended to address those issues.

Senator FAULKNER—Are you able to say, in relation to the 16 additional officers for the AFP, whether there is a particular focus with people-smuggling?

Mr Keelty—The work of those officers, as far as it extends to people-smuggling, will be to engage cooperation from the law enforcement agencies in source countries but also to identify methodology. One of the difficulties with people-smuggling is that, with the large numbers of people globally attempting to cross borders illegally each year, there tends to be a displacement effect. You may have law enforcement activity in a particular country or region that might stem the flow and displace the flow to somewhere else. So part of this is about understanding those sorts of issues. Part of it is about understanding where, for example, counterfeit documents are created for travel—which is a large part of this. Some of it is about understanding the money flow. So it is a whole raft of initiatives.

Senator FAULKNER—Are you able to say where those 16 officers are going to be placed? It does say here that you are going to place them strategically. Could you indicate where?

Mr Keelty—It would be inappropriate for me to identify the individual countries until such time as we reach agreement to allow a liaison officer to operate in that country. We need to engage those countries first and foremost. To put it in general terms, it will be central Asia, parts of South-East Asia and parts of Europe.

Senator FAULKNER—If I understand you correctly, once the officers have been placed, those constraints do not apply to the answer? You would not be having any problem in answering my question if those discussions had been concluded?

Mr Keelty—That is correct.

Senator FAULKNER—So you would be able to tell me now—it may be publicly available and if it please excuse my ignorance—how many AFP offices are currently placed overseas and where they are placed?

Mr Keelty—That is correct.

Senator FAULKNER—Is that sort of material in the annual report, which I did peruse? I would be lying to you if I said I read it thoroughly. I simply have not had the time.

Mr Keelty—I can give you that answer now.

Senator FAULKNER—Before you do—and this is obviously a standard question for a Senate estimates hearing—is it something that is published normally in the annual report or whatever?

Mr Keelty—It is. In the current annual report of the AFP it is found at output 1.3, International services, on page 49. The only thing I would point out to you is that it is a bit of a movable feast in the sense that we do close posts as much as open posts in a given financial year. As their relevance diminishes we move on.

Senator FAULKNER—So you would be happy to give me the updated figures?

Mr Keelty—Certainly. Currently there are 40 liaison officers in 24 posts in 23 countries. Since 1 July 2001 we have made some changes to the network. We opened Beirut and closed Nicosia. We closed Rome, opened Phnom Penh, opened Dili in East Timor, reduced Manila by one, increased Kuala Lumpur by one and opened in Fiji. We have an additional officer placed in Port Moresby. We have sent two officers to Vanuatu and one to the Solomon Islands. That is in addition to officers we have in London, the Hague, Los Angeles, Washington, Bogota, Brazilia, Bangkok, Islamabad and Singapore. I think that covers the range, but if I am wrong I will give you some more detail.

Senator FAULKNER—So what would be the biggest post in size—the top half-dozen?

Mr Keelty—I am sorry; one of the posts I did not mention was Hong Kong. Bangkok and Hong Kong would be by far the busiest posts.

Senator FAULKNER—And after them?

Mr Keelty—After that, Jakarta and then Islamabad.

Senator FAULKNER—Which are the countries—and there may only be one or two—that have more than one post?

Mr Keelty—Currently we have more than one in Indonesia, Hong Kong and Bangkok.

Senator FAULKNER—In Thailand.

Mr Keelty—Yes.

Senator FAULKNER—Would you be able to say where in Indonesia your posts are?

Mr Keelty—We have a post only in Jakarta.

Senator FAULKNER—I thought you said you had more than one post in Indonesia. Perhaps I misunderstood you.

Mr Keelty—It might be my misunderstanding. There is more than one officer in Indonesia. When you said ‘offices’, I thought you meant persons.

Senator FAULKNER—I did not intend to put an ‘r’ in it. I meant ‘offices’ without the ‘r’. I should have said ‘posts’.

Mr Keelty—In Indonesia there is only one post. In Thailand there is only one post currently.

Senator FAULKNER—But there must be some country that has more than one post.

Mr Keelty—The United States is perhaps the only one.

Senator FAULKNER—Okay.

Mr Keelty—Sorry; we are in Beijing and Hong Kong in China.

Senator FAULKNER—I appreciate that. If that is the case, that adds up. Are you able to say to us—and this would be more relevant in some of these posts or countries than in others—what sort of amount of time might be spent on countering people-smuggling? I expect, for example, in the post in Jakarta that that would be more significant than it might be in some of the European posts that you mentioned. Would that be right?

Mr Keelty—That is correct. In the AFP we have a thing called time attribution, which is similar to the way a legal practice might work in that we require our people to document the time that they spend on any particular line of inquiry or investigation. So I can give you quite accurate figures on that, except that I do not have those figures here. But your general description is quite correct.

Senator FAULKNER—Would you be able to take that on notice?

Mr Keelty—Certainly.

Senator FAULKNER—So there is logically a geographical interest, if you like. Is that a fair way of describing it?

Mr Keelty—That is correct. I accept your proposition that our people in Indonesia, whilst they might have initially gone there with a narcotics focus, have largely now focused their efforts on people-smuggling. Similarly in Bangkok, we are there largely for narcotics trafficking but there is a raft of activities that occurs in Thailand to do with counterfeit documents and so forth. We have a person placed at their transnational crime centre dealing with people-smuggling. The post in Manila was initially to do with narcotics trafficking but it now also looks at some elements of people-smuggling.

Senator FAULKNER—Let us take Indonesia, for example. Are you able to say how many agents you currently have in Indonesia?

Mr Keelty—Yes. We have two.

Senator FAULKNER—Are there any other descriptors of AFP personnel? You say Indonesia has two agents; what about other AFP personnel? Are there any other AFP personnel?

Mr Keelty—In Indonesia? No.

Senator FAULKNER—I see. Let us go back to the 16 new additional AFP officers. What were the other 18 that you were speaking about? I may have misunderstood. I thought there was another category.

Mr Keelty—The other category of 18 are support staff based here in Canberra.

Senator FAULKNER—That is what I meant. I was not sure whether there were any support staff at the posts. That was the purpose of my question. So the additional support staff are all Canberra based or based here in Australia?

Mr Keelty—That is correct.

Senator FAULKNER—I was not clear on that. I am focusing on countering people-smuggling in this questioning. As to the \$47 million, the \$43 million over four years for expenses and the \$4 million over two years for capital in the Law Enforcement Cooperation Program, are you able to say to us in any more detail what that is going to mean in terms of enhancing our capacity to counter people-smuggling?

Mr Keelty—I have already touched on the substantial increase in counterfeit identity documents. Some of it is in the area of money laundering. A lot of it is to do with the start-up costs of establishing new posts. As an example, take Indonesia. If we were to seek to open an office in Kupang, for instance, which has been identified as a large trafficking route, there would be a lot of start-up costs in initiating that office. In some places, for example, Colombia—not that this is to do with people-smuggling, but it gives you an example of what I am talking about—

Senator FAULKNER—I do appreciate that. I suppose it is the break-up between expenses and capital that I see in relation to the \$47 million that is not clear. Some people might say that a lot of the start-up costs might be capital costs, for example, but that is quite a small proportion of the \$47 million—well under 10 per cent.

Mr Keelty—We are talking about 34 additional staff. The travel expense is a considerable amount. Those start-up costs I talked to you about—office furnishings, those sorts of issues—are included in that.

Senator FAULKNER—They are included as expenses, not capital?

Mr Keelty—That is correct. I am advised that some equipment costs would be considered capital. I should point out that the expansion of the Law Enforcement Cooperation Program is not only to do with people-smuggling; people-smuggling is one element of it.

Senator FAULKNER—I do appreciate that. That is helpful. On page 210 of the PBS there is mention made of double the strike team capacity of the AFP. Does that extra funding of \$47 million also have a people-smuggling component?

Mr Keelty—Not specifically. It is for 116 federal agents to be deployed around Australia who will be doing some people-smuggling work here, but it also includes terrorism and politically motivated violence and a continuation of the success of the drug strike teams.

Senator FAULKNER—This is all onshore, isn't it? This is all based in Australia itself. In the third or fourth sentence there it says: 'The strike teams respond to crimes such as people-smuggling ...' Again, I am just wondering, in the broad, what this will mean. I do not want chapter and verse; I am just trying to get the picture of it.

Mr Keelty—If I compare it with the line of questioning that you took up previously, obviously one of our aims has been to take the fight offshore and stop crimes at their source. The other angle is to attack the crime domestically. The crime of people-smuggling is sometimes perpetrated from inside Australia or, if not perpetrated inside Australia, it is carried out by people from within Australia, and that is what those teams would be looking at. There is also the issue of unlawful arrivals in a remote location. For example, we have had arrivals

in Cairns, we have had arrivals from off the east coast of Australia and, of course, we have had the ones up north and to the west of Western Australia. The Darwin office of the AFP had been almost entirely focused on people-smuggling for about the last 18 months. So a lot of this is about being able to put the teams where the investigations are.

Senator FAULKNER—Are you able to say in broad terms, again in relation to this particular new funding, what proportion of that \$47 million for doubling the strike team capacity—I will not hold you to it, but just give me a rough idea—might at the end of the day be used to combat people-smuggling?

Mr Keelty—I am not avoiding the question, but the way our strike teams work is that they are not necessarily specialists in a particular field. They are often generalists who will be deployed to attack the particular crime that has been committed. So it is difficult to try to apportion or accurately predict how much time they will be able to spend on people-smuggling. At the moment you would say that, if there has been no unlawful arrival of any vessel since November last year, a lot of their effort will be focused on things other than people-smuggling if that trend continues. Or, as often happens when you attack crime in a particular way, it is like a balloon: you can depress the balloon in one part and it expands in another.

One of the things that we are unaware of at the moment is what sort of displacement effect the current strategies have had, and whether there will be a continuation or a more determined effort to bring people to Australia using other methodologies. For example, we have seen in Europe the use of containers; one would think that that would be difficult in Australia given its remote location, but some countries are our near neighbours. To be able to give you an accurate picture now of how much work they will be doing on people-smuggling, the issue is that they will be available to do that work, they will be able to do counterterrorism—which is not a role that we have previously had—and they will continue the work that we have done on narcotics trafficking.

Senator FAULKNER—You are saying that to look at any proportion of the funding is basically a dopey question, which is fair enough. On the same page of the PBS, the extension of project Axiom again is talking about funding enabling the ALP—

CHAIR—The AFP, I suspect.

Senator FAULKNER—What did I say?

CHAIR—You said ALP.

Senator FAULKNER—Did I? I did not even know I had said it. There you are. It just shows what terrible things are in your subconscious, doesn't it?

Mr Keelty—Someone might have something to say if they thought I headed up the ALP.

Senator FAULKNER—I can only apologise most profusely if I said ALP and not AFP.

Senator McKIERNAN—My levy might reduce!

Senator FAULKNER—You should not have told me I said it, because the *Hansard* could have gone uncorrected for a century and even fewer people would have known what I was talking about.

CHAIR—They would have been concerned about the \$21.4 million for the ALP, though.

Senator FAULKNER—Any donation is gladly received and we would declare it. Again, in project Axiom, there is funding for people-smuggling. Is it a similar story to what you were saying to me in relation to the strike team capacity?

Mr Keelty—Yes, it is. Transnational and organised crime syndicates do not often only deal in one commodity. Often they are involved in a range of commodities. At this stage, it is hard to predict the actual percentage. It might well be that you put your efforts into a particular syndicate that is involved in all of those types of activities.

Senator FAULKNER—On page 214 of the PBS, there is a commitment of \$1.5 million over four years to the AFP for the supply of five boats to the Indonesian National Police. Again, from what we see in the PBS, this seems to be quite direct. This is assistance for Indonesian efforts to curb people-smuggling. Could you perhaps provide a little more detail than what we see in the PBS? It seems very direct and very clear that it has a particular focus. Would that be right?

Mr Keelty—That is correct. This initiative arises out of work that we commenced with the Indonesian National Police who, through cooperation, established a number of investigation teams, particularly in the eastern sectors of Indonesia, where the people-smugglers were gathering their boats to depart Indonesia. One of the problems that has emerged in the methodology used by the people smugglers is that—again in direct response, it would appear, to law enforcement activity—instead of gathering large numbers of people in one position, what they have been doing is gathering them in a number of positions. They go and collect these people and at the last minute put them at the point of departure. The Indonesian National Police do not have a capacity in that area, particularly where there are small boats used, to gather these people up and take them to the point of embarkation. So this is to further assist those teams. If my memory serves me correctly, it might have been an outcome of the ministerial summit on trafficking in human beings that was conducted recently in Denpasar.

Senator FAULKNER—Will that fully cover the costs of these boats? I assume we are talking about smaller type boats here.

Mr Keelty—Yes, they are. They are a little bit bigger than a runabout.

Senator FAULKNER—You say this is an outcome of the conference. Was that because it was identified by the Indonesian police as a requirement?

Mr Keelty—I stand corrected, Senator. I think the way this happened was that the Prime Minister visited Indonesia and flagged with the government that we were prepared to provide these boats. Then it became one of the outcomes of the ministerial summit and, I think, was signed off by the Minister for Foreign Affairs.

Senator FAULKNER—Was this identified by Indonesian police as a requirement?

Mr Keelty—As a shortcoming. And perhaps I should put some context around this, as well. I might have the figures slightly wrong, but I think I am close. There are 200,000 police in the Indonesian National Police. They are spread across some 7,000 islands in the archipelago. There are significant challenges facing the Indonesian National Police in terms of the equipment that is available to them and the training that they receive. To seek their assistance to, in effect, provide an outcome for us in Australia means that we are actually asking them to put their resources towards an outcome for Australia that might not necessarily be seen as an outcome for them, which was obviously largely one of the issues that has been discussed at another level. One of the things we look at through the cooperation is how best to

assist both of us to work together. Obviously the provision of these boats was one of the outcomes of that.

Senator FAULKNER—I see. I take you to the second last paragraph on page 219 of the PBS. It says:

The AFP will be increasingly called upon to assist neighbouring law enforcement agencies with institutional strengthening to enhance their capacity to address transnational crime.

I assume this also has, at a minimum, a people-smuggling component. Would that be right?

Mr Keelty—That is right.

Senator FAULKNER—I do not know whether I have picked up every reference to people-smuggling in the PBS but I have picked up all those that hit me in the eye. The second last dot point overleaf says:

... improving the ability to combat transnational crime threats to Australia by disrupting and dismantling such activities in source and transit countries ...

Does that have a people-smuggling component, and what is actually meant?

Mr Keelty—People-smuggling, as I mentioned earlier, is considered part of transnational crime and it also reflects—and these initiatives reflect—that transnational crime syndicates do not necessarily specialise in one type of crime or commodity. Their motivation is money. If they see money and a way to make money, that is where they will direct their attention. That might involve in one activity the importing of narcotics to Australia; in another type of activity it might be to assist people-smuggling. It is largely covered by the description ‘transnational crime’.

Senator FAULKNER—How do you go about organising the disrupting or dismantling of such activities in source and transit countries?

Mr Keelty—Once we have identified the syndicate we look at the area of least resistance that will actually disrupt the syndicate’s activities. For example, if it is a drug matter, rather than look at the people who courier the drugs to Australia—you can imagine there would be no end of people who would volunteer their services as drug couriers—the effort is focused upon the facilitators, the people who know how to obtain the narcotics, launder the money and have the contacts, vessels, planes or couriers. Removing the facilitators from the syndicate disrupts the syndicate because many of these facilitators work with more than one syndicate. We do have a very strategic approach to whom we actually target. More often than not these people are people who are positioned overseas so we need a lot of work done here in Australia to establish the contacts and who these people are, and then a lot a work overseas with our partner agencies to identify the people. We try to dismantle the syndicate rather than just focus on the individual.

Senator FAULKNER—Yes, but you would need a lot of cooperation from the local police or other agencies in order to be able to do that, wouldn’t you?

Mr Keelty—That is right, and that is why part of the package is the expansion of the Law Enforcement Cooperation Program.

Senator FAULKNER—For that program you work in close liaison with all local authorities, whether they be police or other agencies, do you?

Mr Keelty—That is right.

Senator FAULKNER—Is that the cornerstone of it, basically?

Mr Keelty—That is right. Not all police agencies have the same role as police agencies in Australia. For example, sometimes the role of immigration and border protection is within the police agency of a country and sometimes it is spread amongst a number of agencies, as we have it here in Australia. Sometimes you will engage principally one agency and sometimes you will need to engage a number of agencies to seek their cooperation. We do not work operationally overseas; we have no jurisdiction to work operationally overseas. We must engage the services of the law enforcement agency that has jurisdiction in a particular area that we are focusing upon.

Senator FAULKNER—So how does that work? For example, how do you, with the Indonesian authorities, work out the need for five extra boats? How do you get to this? How do you work the cooperative arrangements through?

Mr Keelty—We commenced a memorandum of understanding with the Indonesian National Police in 1995, I think it was, although I would stand corrected on that. We commenced that memorandum of understanding to work with them on narcotics trafficking. As part of that program we identified areas of training that we could help them with—it is not dissimilar to Defence cooperation programs in that regard—and equipment.

I will take it out of the Indonesian context and just mention to you very briefly the operation we did in Fiji. It was the largest offshore seizure we have had of heroin destined for this country. The head of the drugs squad in Fiji had not seen heroin. In some places some of the constraints on the police capacity are quite high, so what we try and do is work with them to overcome those capacity problems.

With this particular matter we would have been working with the Indonesian police now for two years, I would say, on people-smuggling. The fact that they actually commenced these task forces in their own country at our request was a very good sign of faith on their part and it was also a building of the relationship that we have established since we commenced the memorandum of understanding in 1995. Through identifying the workload that we had created by working with them, we identified the need for these boats. Hence, the quantum and the kind of vessel that was required was worked out.

Senator FAULKNER—Is the MOU still in existence?

Mr Keelty—Since the ministerial summit on human trafficking and transnational crime in Denpasar we have agreed to revisit the memorandum of understanding because, as you can appreciate, the AFP has had a number of commissioners since that first MOU was signed and so, too, has the INP. So we are about to sign a new MOU next month.

Senator FAULKNER—But up until then I assume that the other one is still operating? It may not be—

Mr Keelty—There has been some suggestion that we now need to work through their equivalent of our Department of Foreign Affairs and Trade, which put the existing MOU to one side until the ministerial summit. That is what has now turned our attention toward signing a new MOU. In the interim, the Indonesian National Police have agreed to continue to work cooperatively with us despite the existing MOU being dated.

Senator FAULKNER—Right. So the existing MOU has been put aside—those are your words.

Mr Keelty—That is correct.

Senator FAULKNER—When did that happen?

Mr Keelty—From my recollection, it happened last year about midyear. I think it was as a result of their Deplu, which is their equivalent of the Department of Foreign Affairs and Trade, having discussions with the commissioner. I think as it transpired the Indonesian National Police either had not lodged a copy with Deplu or, if they had, were not aware of the current working arrangements.

Senator FAULKNER—They had not lodged it since 1995?

Mr Keelty—Yes. I think it is more to do with a departmental arrangement rather than anything else.

Senator FAULKNER—It is laid aside by agreement, is it?

Mr Keelty—That is right.

Senator FAULKNER—Is there anything in its place in relation to these sorts of activities? I accept that is broad, overarching—and an MOU can probably be only give you that anyway in terms of some cooperative arrangements and the like—but is there anything in its place after that is laid aside?

Mr Keelty—There is the outcome of the ministerial summit that actually identifies working groups which have already commenced to work together.

Senator FAULKNER—Yes; but when did the ministerial summit occur?

Mr Cornall—It was 27 February this year.

Senator FAULKNER—I knew it was around that time. What was governing Australian and Indonesian police cooperation between midyear 2001 and the aftermath of the ministerial summit in late February? This was a period where there was a lot of focus, including a policy focus as far as this parliament was concerned, on approaches to countering people-smuggling.

Mr Keelty—There is now an ambassador for people-smuggling responsible for coordinating Australia's contributions to the outcomes of the ministerial summit.

Senator FAULKNER—When did that person kick off?

CHAIR—That would be Mr Buckley.

Mr Keelty—I do not have the date that he started. I do recall it was an outcome of the summit.

Senator FAULKNER—Yes, it was post summit.

CHAIR—I think Mr Buckley was appointed in March.

Senator FAULKNER—I appreciate the chair's intervention. What I was looking at, Commissioner, was what occurs from midyear last year when the MOU is laid aside and then the ministerial summit which is late February of this year. Of course the ambassador and a range of other issues are outcomes from the summit. I am just trying to understand what happens after the laying aside of the MOU and then other initiatives that might come out of the summit. What governs your cooperative work with the Indonesian police?

Mr Keelty—I guess what has governed it is the relationship that had been built up in the previous years. The Indonesian National Police have continued to cooperate with us and we have continued to cooperate with them in the absence of an MOU. Nothing has arisen that has required us to go back to our respective departments of foreign affairs—as far as I am aware from the Indonesian side.

Senator FAULKNER—But the Indonesians took the initiative effectively to lay the MOU aside? I think that is what you said to us: this was not an Australian initiative; this was an Indonesian initiative.

Mr Keelty—That is correct.

Senator FAULKNER—Given that has governed for such a long period of time your cooperative work with the Indonesian police, which you have said in evidence to us previously is important, you would not underestimate its significance, I would imagine, Commissioner. It is important, isn't it?

Mr Keelty—It is important but it is not a prerequisite. We do not have MOUs with every country in which we have an overseas post. Because we were working so closely together it was considered. Oftentimes an MOU can be a sign of good faith more than going into the detail of how operations will be played out. I guess what I am saying is that whilst the MOU was important it is not a prerequisite to cooperation.

Senator FAULKNER—No. I accept that; I take that on face value. But it is at least something to measure your own activity against. It is a framework, isn't it?

Mr Keelty—Yes, it is. To be fair, when the MOU was laid aside it was around a time of intense negotiation at the political level as well as at the agency level. As far as we were concerned, whilst ever the INP was prepared to continue to cooperate we were prepared to work with them.

Senator FAULKNER—Yes. I do not expect you to comment about the negotiation at the political level but I would just ask you about the intense activity at the agency level. How is that working? Who is doing it? Who are they doing it with? When are they doing it? Why are they doing it? What are we expecting from that intense level of agency activity?

Mr Keelty—It is occurring largely through our officers in our liaison office in Jakarta—

Senator FAULKNER—That is your two agents there?

Mr Keelty—two officers, yes—and those elements of the INP that are relevant to the issue being investigated.

Senator FAULKNER—But you described it as 'intense'. Is that fair?

Mr Keelty—By 'intense' I mean the volume of work.

Senator FAULKNER—Intense on what—people-smuggling or more broadly?

Mr Keelty—It has been intense on people-smuggling and there has been other work. There has been narcotics work that we have been doing. We have also been doing some other sharing of information intelligence on people who are transiting the region to do with counterterrorism.

Senator FAULKNER—So your two agents in Jakarta are tick-tacking with Indonesian police through this period at an intense level. There is a lot going on as we both know. Who do they report to?

Mr Keelty—They report to what we call the Director of International Operations here in Canberra.

Senator FAULKNER—And anyone else?

Mr Keelty—That is their first line of reporting. There is also the General Manager, International Operations, who sits above the director.

Senator FAULKNER—But that is also an AFP position.

Mr Keelty—That is correct.

Senator FAULKNER—Is there any broader reporting beyond the AFP?

Mr Keelty—Internally within the embassy in Jakarta they would have reporting lines to the ambassador.

Senator FAULKNER—But that would be it?

Mr Keelty—That is correct.

Senator FAULKNER—Did monitoring of that sort of activity become difficult when the MOU was laid aside? Was this a challenge for the AFP?

Mr Keelty—It has not become difficult but it has become something to focus upon in order to continue the relationship.

Senator FAULKNER—What was the relationship like during this period?

Mr Keelty—It was good. We have had considerable success in stopping a number of vessels leaving the shores of Indonesia and also large numbers of people leaving Indonesia.

Senator FAULKNER—Yes, but you work that out with non-AFP personnel based in Indonesia, I assume. Is that the way it works? I assume it is not just your agents running around doing this.

Mr Keelty—No, this is through the efforts of the INP.

Senator FAULKNER—So you are working with the Indonesian police.

Mr Keelty—That is correct.

Senator FAULKNER—And other agencies?

Mr Keelty—That is correct.

Senator FAULKNER—Can you identify the other agencies?

Mr Keelty—I cannot, but it would be the raft of government agencies involved in—are you talking about from the Indonesian side or the Australian side?

Senator FAULKNER—I was wondering who your agents were working with on the Indonesian side.

Mr Keelty—They work with the Indonesian National Police and whatever other agency they need to work with on the issue that is before them. For example, if there is an immigration department or a department that deals with identity documents they would deal with those departments, through the Indonesian National Police in the first instance.

Senator FAULKNER—But are you able to identify any of the other Indonesian agencies, Commissioner, that your agents work with?

Mr Keelty—If you will allow me to take that on notice, I can get that answer from Jakarta.

Senator FAULKNER—Thank you very much, and the names of the Australian agencies would be helpful. Do you work at all with Australia's Department of Immigration and Multicultural and Indigenous Affairs? Do your agents on the people-smuggling issues work closely with DIMIA?

Mr Keelty—Yes, they do. There is a joint People Smuggling Strike Team.

Senator FAULKNER—Where does that operate from?

Mr Keelty—Canberra.

Senator FAULKNER—Is that its name: the joint People Smuggling Strike Team?

Mr Keelty—Yes, it is.

Senator FAULKNER—So that includes the AFP and DIMA?

Mr Keelty—Yes, and DIMIA.

Senator FAULKNER—I can tell you, Commissioner, it is very hard to keep up with all these acronyms, but you are absolutely right.

CHAIR—You ain't seen nothin yet, Senator Faulkner.

Senator McKIERNAN—The Commissioner knows about acronyms.

Senator FAULKNER—Well, I always tell my story about when I became Defence personnel minister many moons ago, in the good old days. I got hit with a couple of briefs that had all these acronyms in them, and I said to Defence, 'I don't know any of these acronyms.' I was given 10 ring folders of acronyms in alphabetical order, so I gave it away.

Senator McKIERNAN—And they were the good old days.

Senator FAULKNER—Yes. So I am not sure about that, Madam Chair. So, back to the joint People Smuggling Strike Team, which includes you and DIMIA. Is there anyone else involved in that?

Mr Keelty—No.

Senator FAULKNER—Are you the lead agency for that?

Mr Keelty—It reports to a board of management and the AFP chairs the board of management.

Senator FAULKNER—I see. Is that a way of saying you sort of are the lead agency? That is how it normally goes in these joint things, isn't it? The chair gets lumbered with the responsibility.

Mr Keelty—That is right. For the purposes of treating people-smuggling as a crime and for prosecuting, we would be the lead agency.

Senator FAULKNER—How many AFP officers or officials would you have dedicated to the join the People Smuggling Strike Team?

Mr Keelty—I have just asked for that information to be provided. I have given it here on previous occasions, but I do not have it here with me today.

Senator FAULKNER—I apologise if I have asked a question that someone else has asked at some point. How often does the board of management meet? Who chairs this thing, first of all? Who is the officer who chairs it?

Mr Keelty—If you do not mind, I will take that on notice and get the answer for you shortly.

Senator FAULKNER—I would appreciate that. What we know is that someone from the AFP chairs it, and you will find out for me who it is.

Mr Keelty—That is correct.

Senator FAULKNER—And you will find out for me how many of your staff are involved in that.

Mr Keelty—That is correct.

Senator FAULKNER—No doubt the chair will quickly pull me up if someone else has asked this question, but are you able to tell me what the terms of reference of the strike team and the board are? That may have been asked before; if it has, just point me to that and it will be more than adequate.

CHAIR—I suspect it is contained in answers to questions on notice given in previous estimates. We can either repeat the question now or we can provide you with copies of those answers.

Senator FAULKNER—If it has been asked and answered, that is fine. That is why I was seeking your guidance. I plead guilty for not reading through every single transcript of this estimates committee—

CHAIR—I cannot understand why you would not have done that, Senator Faulkner.

Senator FAULKNER—It is quite simple: I have got to read through so many others.

CHAIR—But if you were choosing quality over quantity, we would imagine you would come here first.

Senator FAULKNER—I would not presume to make a comment.

CHAIR—If you would indicate which of those issues you wish to pursue, we do have copies of those answers here.

Senator FAULKNER—They are issues in relation to the joint People Smuggling Strike Team and how it works—and who does it report to, Commissioner?

Mr Keelty—To the general manager of national operations, who reports to the deputy commissioner. Senator, I have some answers for you now.

Senator FAULKNER—Thank you.

Mr Keelty—The people-smuggling team has 10 AFP people and four DIMIA people.

Senator FAULKNER—All Canberra based?

Mr Keelty—That is right. The chair is Federal Agent Tim Morris, and it meets monthly.

Senator FAULKNER—Did it continue to meet monthly through the latter half of last year when there was a lot of activity with the suspected illegal entry vessels? Or did it meet more often through that period?

Mr Keelty—I would have to check the records on the frequency of those meetings for last year.

Senator FAULKNER—Did that play a role in working out the basis for cooperation with the Indonesian police? Was this just a question of your agents in Indonesia reporting through to that body or was it that body determining operational imperatives and priorities and that filtering back through to the agents in Jakarta?

Mr Keelty—From my understanding, it was a combination of both: that the people-smuggling team had considerable contact with the office in Jakarta on operations and it was a proposal developed out of the information gathered as part of those operational activities.

Senator FAULKNER—But through this period there is no real basis for formal cooperation, is there? It seems more informal because the MOU is not operative.

Mr Keelty—Prior to the putting aside of the MOU, the people-smuggling team was working with the MOU—or working on the back of the AFP's MOU, I should say—

Senator FAULKNER—Yes.

Mr Keelty—but since that time it has just been working on the relationship developed with the AFP.

Senator FAULKNER—But there is a lot of people-smuggling activity when the MOU is put aside. For example, I am a member of a Senate select committee into what is described as 'a certain maritime incident'. The committee has been looking at a whole range of SIEVs—suspected illegal entry vessels. In relation to those ones that have been examined by that committee, all of the SIEVs have sailed from Indonesia during this time period after the MOU was put aside and before the end of the year. Hence, they have sailed from Indonesia before the end of last year, before the ministerial summit was held and before the outcomes of the ministerial summit were put in place. I am just worried that there is a bit of a vacuum there. I am not suggesting it is 'anything goes', but I am wondering what governs the AFP operations in that period.

Mr Keelty—As I said, the MOU was not a prerequisite to the cooperation and the cooperative operations.

Senator FAULKNER—I am not suggesting that it was necessarily a prerequisite, but what have we got? You or your predecessor would want to be satisfied about AFP operations, wherever they were, and I am sure you would try to measure those against appropriate standards, requirements and agreed activity with the Indonesian authorities, would you not? I assume that is how your organisation would work. I am just trying to understand how this happens when there is no overarching guidance in place.

Mr Keelty—I think I said to you before, Senator, that the MOU is not a prerequisite to cooperation. The overarching principles are the law in each of the respective jurisdictions.

Senator FAULKNER—Is there someone who can talk to me a little bit about what happens at the joint People Smuggling Strike Team?

Mr Keelty—From my understanding of it, they discuss the intelligence that is flowing in to both agencies from a variety of sources. From that intelligence they identify targets to be investigated and from those target identification activities they commence their joint investigations.

Senator FAULKNER—That is it in the broad. For example, did they play a role around the time of the *Tampa* when the *Palapa* sailed from Indonesia? Can someone help me with that?

Mr Keelty—The role that I suspect they played there was one of monitoring.

Senator FAULKNER—Are you able to be a bit more definitive than suspecting that? Did you directly receive reports from this strike team?

Mr Keelty—Not as a matter of course. Because it is operational I leave it with the deputy.

Senator FAULKNER—Let me seek your advice, Commissioner. I would like to explore the role of the joint People Smuggling Strike Team further. I could do it here; I suppose I

could do it in the Senate select committee. I assume you would agree that it is appropriate for a parliamentary committee to scrutinise the strike team's work. Would you accept that?

Mr Keelty—Not necessarily. If the strike team's work resulted in the commencement of a prosecution, then I can see that it would be perhaps necessary to consider the impact of discussing a prosecution currently before the courts in a committee such as this. Having said that, outside of that the accountability and the operations of the strike team would be an area of scrutiny here and it has been. I do not mean to be disrespectful, Senator, but it has actually been discussed at some length within this committee over the last couple of months.

Senator FAULKNER—I am aware of some of the background and I have read some of the material in the estimates. I do not believe the committee has gone to where I intend to go with this—in fact I know it has not. I am also very interested in exploring what occurs onshore in Indonesia in relation to the suspected illegal entry vessels. I am not saying that we have to do that today at this committee, but I do intend to progress it—always having in mind, as I think even Senator Ellison would acknowledge, that I am always very careful about the sort of issue you raise and operational questions in the broad. I do try to be careful about not trampling into areas where I feel it is inappropriate for a parliamentary committee to go. But I would like to know more about the role of the strike team in relation to the suspected illegal entry vessels—not only the numbered vessels, SIEVs 1 to 12, but also SIEV X—and a range of other issues which I think is entirely appropriate. So my question went in the first instance to what, if any, the role was of the strike team in relation to the *Palapa*, the occupants of which ended up on the *Tampa*.

Mr Keelty—I would have to take on notice the question as to their involvement, if any, in the matter of the *Tampa*.

Senator FAULKNER—Do you have an officer available who could assist me with the role that the strike team played with the SIEV vessels?

Mr Keelty—Again, it would depend on the line of questioning. As to the previous question you asked—whether it is best to be examined before this committee or another committee—I suspect it is not up to me to tell you. I have not got my deputy commissioner here today; he is overseas.

Senator FAULKNER—I think it is fair to say that we are trying to work out a time when the deputy commissioner would be available for the select committee. I appreciate the importance and your proper insistence—I think it is absolutely appropriate and I do not question it for a moment—that the officials that you want to represent your organisation do appear before the Senate select committee. That might mean that a little bit more time is involved, but I think that is quite appropriate; it is certainly accepted by me. I think that means that we have got a bit of difficulty in actually nailing down a date, to be honest with you, but we are doing our best.

Mr Keelty—My apologies for that. I was only informed on the Friday before I left for Darwin for the Australasian Police Ministers Council Senior Officers Group meeting that you might have required our presence.

CHAIR—Senator Faulkner, I seek your guidance and that of the commissioner. Where does this leave your line of questioning on this issue with the commissioner now?

Senator FAULKNER—It means that it will probably be concluded more quickly than would otherwise have been the case, because the commissioner and I are both saying that there are some issues that might be more appropriately addressed if other witnesses were at

the table. I think the commissioner is saying to us that they are not available at the moment. We might be able to address those issues at a later stage. I do have a few more questions.

CHAIR—Certainly. I was seeking guidance for the committee.

Senator FAULKNER—The good news is that it means that you will be able to get rid of me a bit more quickly than otherwise would have been the case, I suspect. Everyone looks very happy about that.

CHAIR—We are just happy that you are here, Senator Faulkner.

Senator FAULKNER—In relation to the Indonesian police, after the MOU was laid aside in the middle of last year, would it be correct that no other MOUs or agreements of any description were put in place until those matters that you have spoken to us about arose out of the ministerial summit? This is governing the AFP's involvement with Indonesian authorities on people-smuggling.

Mr Keelty—From my memory, a protocol was established that used the MOU as the head document and the protocol was a subpolicy, if you like, of the head document. Whilst the head document was laid aside, my understanding is that there might have been an agreement with the INP to continue to work towards the outcomes outlined in the protocol which were specifically designed to deal with people-smuggling.

Senator FAULKNER—So the status of the protocol is that it was in place? I am not 100 per cent clear from what you are saying. I think you are qualifying the status of the protocol.

Mr Keelty—If I am wrong, I will correct the answer, but my understanding is that the protocol has been in existence despite the fact that the MOU has been put to one side. In other words, the spirit of the protocol might not, in the legal sense, be the policy and law of the protocol, but the spirit of the protocol has been followed by the INP.

Senator FAULKNER—See if I have this right: while the protocol might underpin the MOU, while the MOU is put aside, the protocol effectively is ongoing, at least in spirit. Is that the situation?

Mr Keelty—That is correct.

Senator FAULKNER—Is it possible to get copies of the original MOU, which may well have been provided on umpteen occasions—I understand it is laid aside anyway—and that protocol? If you have provided them to the committee before, let me know and I will hunt through the papers. I will have a paper war and find them. There is no need to do that work; I will do that work if it has been provided.

Mr Keelty—I am not sure that they would have been tendered.

CHAIR—I do not believe that it has been provided to this committee.

Mr Keelty—Can I take that on notice, please.

Senator FAULKNER—Yes.

Mr Keelty—The other consideration I have on my mind is that it is an MOU with Indonesia, so I would need to turn my mind to the release of that from their perspective, I would imagine. We are only one party to the agreement.

Senator FAULKNER—Does that concern also apply to the protocol?

Mr Keelty—It may. I would like to take that on notice. I am not trying to be difficult; I am just trying to think of other issues.

Senator FAULKNER—Would that protocol indicate what you might engage Indonesians to do in relation to the AFP objectives in whatever your tasking is—combating people-smuggling, something in the area of narcotics or whatever? Is that the way it works?

Mr Keelty—I believe so.

Senator FAULKNER—I would be very interested in understanding what the guidance was in relation to Indonesians and the Indonesian end of the operation? That would not just be the Indonesian police, though, would it?

Mr Keelty—As far as I am aware, it is, because it was our agreement with them. I think that is right. If I am wrong, I will correct it.

Senator FAULKNER—Do you have any intelligence officers working on people-smuggling as opposed to agents? Is there any separate category of AFP officer who does not quite fit the bill of agent?

Mr Keelty—I understand there are two intelligence officers in the people-smuggling team. For the sake of completeness, they are still federal agents. One performs an investigative role; one performs an intelligence role.

Senator FAULKNER—That is what I was wondering—whether you still basically describe your intelligence officers as agents. Are they Canberra based?

Mr Keelty—That is correct. They are part of the team that I just gave you the numbers for.

Senator FAULKNER—They are part of the joint DIMIA-AFP People Smuggling Strike Team?

Mr Keelty—That is correct.

Senator FAULKNER—I will check this with you again, Commissioner: do you have anyone with you who can give the detail of the work of the strike team? Do you prefer to do that at the select committee?

Mr Keelty—I would prefer to do it at the select committee because there will be a lot of issues, I would imagine, you would need to examine that require the detailed knowledge of the individuals involved.

Senator FAULKNER—Depending on the nature of the material that comes back from the questions on notice—and I might, Madam Chair, try to conclude this is in reasonably short order so that you can get on with your other work; there might be one or two other general questions that I might consider placing on notice that you, Commissioner, could consider responding to before the select committee meets—that might save a bit of time there. I am trying to get a general understanding, as you can see, of the way this works. I have had some understanding of some of what you have said; I think some of it is new material. I will continue to progress this in the other forum. If I do place one or two questions on notice in the process area, I would appreciate it if you could look at those.

Mr Keelty—Certainly.

Senator McKIERNAN—I want to go back to traverse one of the areas of questioning by Senator Faulkner: the issue of the five boats to Indonesia. Is Australia equipping those boats and, if we are, what are they being equipped with? In particular, are they going to be armed vessels?

Mr Keelty—The specifications for the vessels are yet to be settled.

Senator McKIERNAN—Who will be responsible for their maintenance? Will that be an Indonesian thing or will the boats come back regularly to Australia for refits? Is that part of the agreement about the handing over of the vessels?

Mr Keelty—As I understand it, once they have been handed over it will be up to the Indonesians to maintain them. Again, if I am incorrect with that, I will advise you.

Senator McKIERNAN—Is it planned that they would operate solely in Indonesian waters?

Mr Keelty—Certainly from our perspective it is. It is only a small runabout type vessel, so I would not imagine that they would have any offshore capability whatsoever.

Senator McKIERNAN—To go back to one of the earlier questions about equipment, would there be any facility for them to liaise with and operate in conjunction with Australian Customs vessels or other vessels that are engaged in the protection of Australia's coast and borders?

Mr Keelty—Perhaps not in a physical sense—because the vessels are not that large—but in an intelligence sense, yes.

Senator FAULKNER—Does the protocol we were discussing go to financial assistance?

Mr Keelty—I am sorry, I will have to take that question on notice. I do not think so, but I will take it on notice just in case.

Senator FAULKNER—The other thing that might help, Minister, are the outcomes of the actual ministerial summit on 26 or 28 February. There has been some public discussion of those and you would be aware of that. Now that we are three months on, is there any more detail that can be taken on notice about the way those outcomes have been progressed as background to this sort of issue that we have been discussing? I appreciate that at the time there was some information made public and there has also been some other material in the public arena. As I say, we have moved on a bit and I wondered if some of those outcomes—including any arrangements with the Indonesian police and all that sort of thing—would be able to be tabled at the committee?

Senator Ellison—Certainly, the Indonesian government has proposed to the Minister for Foreign Affairs that a further regional conference be co-hosted by Indonesia and Australia on money laundering, which is a relevant consideration. The department has had discussions—and I understand by the department that is the department of immigration.

Senator FAULKNER—I am talking about this from an AFP perspective. Have there been any further developments in the AFP's work with Indonesian authorities since then in terms of substantive nuts and bolts outcomes of the ministerial summit that could be provided? Could you or the commissioner take that on notice and provide any further details?

Senator Ellison—There certainly are a number of outcomes and they are developing as we speak. We can take that on notice and provide that information to you.

Senator FAULKNER—I am interested in the level of agreement between the forces.

Senator Ellison—In October last year, during the period you mentioned, an Indonesian delegation attended the Heads of Narcotics Law Enforcement Agencies conference in Sydney. That was a very important conference and I met with some of the delegates then. They were an important delegation at that conference. Agreement was reached late last year between Indonesia and Australia to hold a people-smuggling conference. So there was action during

the time that you mentioned which dealt with law enforcement cooperation with Indonesia. But we will take the outcomes on notice.

Senator FAULKNER—I am talking about the cooperative arrangements between the AFP and others. It is three months down the track now and I wonder if anything can be reported about those agreements—any protocols or MOUs. We have heard the commissioner talk about the draft MOU. It is that sort of thing I am talking about.

Senator Ellison—Yes, we can do that.

Senator FAULKNER—I did not mean to cut across you, Senator McKiernan, but you raised that important point and I knew you would not mind.

Senator McKIERNAN—You can read my mind. I certainly do not mind at all. I have a couple of questions to finish with regarding the provision of boats to Indonesia. Will any training be provided by the Australian authorities to the Indonesian crew of those boats?

Mr Keelty—The answer is yes.

Senator McKIERNAN—Can you provide further detail on the extent of the training?

Mr Cooney—I understand that two trainers will be provided for about 30 days to help the new crews acclimatise to the vessels.

Senator McKIERNAN—Would that be in the operation of the vessels?

Mr Cooney—That is correct.

Senator McKIERNAN—Thank you. Bearing in mind that the sum we are talking about is \$1.5 million and it is for five vessels, why is the money allocated over a period of four years rather than a one-off payment?

Mr Cooney—The initial allocation is for the construction and equipping of the vessels, and some initial training. We would expect some ongoing costs related to operating the vessels and we have made some provision for maintenance of the vessels. The maintenance is expected to be in Indonesia, but we have made some provision there.

Senator McKIERNAN—Where will the vessels be constructed? Has that gone to tender yet?

Mr Cooney—No, it has not gone to tender yet.

Senator McKIERNAN—There is still a chance it could happen within Western Australia. I am being parochial yet again, but we do build very good boats in Western Australia. That is the end of that particular matter on the vessels.

CHAIR—Is there anything further in that area?

Senator McKIERNAN—This morning I asked a question of one of the other sets of witnesses and it was suggested to me that I might direct the question to the AFP. Are there any possible actions against the promoters of mass marketed tax avoidance schemes? The matter had been raised and it was not the appropriate body to ask the question of. It may not be now, but are you able to help in any shape or form?

Mr Keelty—Certainly, Senator. The Commissioner of Taxation, Mr Carmody, and I have had some conversations about targeted activity in this area. I am meeting with the tax commissioner again next week to look at revenue fraud and the future for investigations of revenue fraud, on the back of a meeting of heads of Commonwealth law enforcement agencies recently. There is a joint Australian Federal Police, Australian Taxation Office and

DPP working group looking at that specific issue of the promoter schemes. There are several schemes currently under investigation.

Senator McKIERNAN—I wish you well with those investigations. Those particular individuals, apart from what they have done or might have done to individuals who have invested in the schemes, have created a heck of a lot of work in my office from the persons who are being targeted by the Taxation Office. I hope that the promoters can be brought to heel on these matters. On another matter, there was a press report in the *Canberra Times* on 21 March this year indicating that the New South Wales police had referred the matter of the alleged fraud of Commonwealth car travel docketts in the Justice Kirby allegations to the Australian Federal Police. Are you in a position to tell the committee about that? Can you confirm that there has been a matter referred to the AFP?

Mr Keelty—Yes, I can confirm that the matter was referred to the AFP. The AFP has concluded its investigations and the matter has now been lodged with the DPP for consideration.

Senator McKIERNAN—Thank you. Jurisdiction in detention centres is a matter I want to move to now. When a criminal offence takes place within an immigration detention centre, and there are a number of them around Australia, what action takes place following that offence? Is an AFP inquiry required to investigate allegations of criminal conduct within Australian detention facilities?

Mr Keelty—This is the subject of discussion at the senior officers group, which is a subgroup of the Australian Police Ministers Council. We are talking about the policing arrangements of detention centres in the new environment, shall we say. Previously they were subject to memorandums of understanding that had been struck between the Department of Immigration and Multicultural and Indigenous Affairs and the individual policing agencies and, on occasions, ourselves and the policing agencies, given the diversity of the detention centres. For example, in New South Wales the detention centre at Villawood is in the CBD; in South Australia the detention centre at Woomera is in an area where there are only two South Australian police officers; and in Western Australia there is a similar situation.

On the first part of your question about the law, depending on the type of offence committed, the Commonwealth application of state laws legislation can and does apply, allowing state police officers to investigate offences committed inside the detention centres. But by agreement and arrangement the AFP will, largely, investigate those matters if they are Commonwealth property prosecutions such as a detention centre employee being assaulted by a detainee or a similar type of offence. We largely find jurisdiction through consultation with the agencies involved.

Senator McKIERNAN—You mentioned the ‘new environment’. What action distinguished the old environment from the new environment, as you so described?

Mr Keelty—All I meant there was that previously most work in detention centres for the AFP arose out of Villawood. Since we now have detention centres in a number of areas, it has become an issue that the state police, DIMIA and we are trying to work through.

Senator McKIERNAN—I am not so sure I am getting the answers I require on this one. I am aware that the Port Hedland facility has been in existence now for some 10 years. It is hardly what one would describe as a new environment. Maribyrnong has been in existence for a considerable period of time as well, and that is in the CBD as well. There have recently been very serious disturbances at a number of detention facilities around Australia, and I will be

addressing further questions on this when we come to the immigration department later in the week.

CHAIR—We may never get there at this rate.

Senator McKIERNAN—But I am concerned that charges are not being laid as a result of these disturbances. It would appear from the outside that there is almost a state of lawlessness in some of the detention facilities in Australia and that quite considerable damage can be done to private property and there is no follow-through on it. If similar things were to happen in the community, I am sure that there certainly would be charges laid as a result. Whether or not there would be convictions is a matter, of course, for the courts. At the moment, I do not think we are seeing charges arising out of those major disturbances. What is the role of the Federal Police with regard to that?

Mr Keelty—By new environment I simply meant the volume of complaints. In relation to Woomera itself, we have had 23 referrals that have been investigated. There are 11 ongoing investigations and a further five referrals are being evaluated. I am trying to get a sense of a period of time for you. I understand that, since the beginning of this financial year, we have had a total of 89 referrals from Woomera. So the referrals are occurring and some investigations are occurring. In previous evidence before this committee I think we may have discussed some of the outcomes of some of the prosecutions arising from those referrals. Going around the different detention centres: Curtin has a total of six referrals and four of those have been finalised; Port Hedland has a total of 16 referrals, 12 have been finalised; and Villawood has two referrals. If I add on the Woomera figures, that makes a total of 113 referrals.

Senator McKIERNAN—Can you explain again what a referral means?

Mr Keelty—That would be an allegation of an investigation of a Commonwealth offence.

Senator McKIERNAN—A Commonwealth offence, as distinct from a criminal offence that may be under the laws of a given state?

Mr Keelty—That is correct. I think the class of offences you are describing are offences against the person—for example, where one detainee might assault another detainee. So, in answer to the question, the matters we have been investigating are those that find their jurisdiction under Commonwealth legislation.

Senator McKIERNAN—There have been six referrals from the Curtin detention facility since 1 July last year. Do any refer to the very serious disturbances that occurred in Curtin very recent weeks? I do not have the exact dates?

Senator Ellison—I think they were in April.

CHAIR—I think you were acting immigration minister, then, weren't you, Minister?

Mr Keelty—The AFP has investigated a number of referrals in relation to Curtin, including the riot that resulted in damage to the value of \$500,000.

Senator McKIERNAN—Do these six referrals relate to that damage of half a million dollars?

Mr Keelty—Five of the six do.

Senator McKIERNAN—Shortly after that, there were again serious disturbances in Port Hedland. You told us a short while ago there have been 16 referrals from Port Hedland during the financial year to date, 12 of which have been finalised.

Mr Keelty—In relation to Port Hedland?

Senator McKIERNAN—Yes.

Mr Keelty—Twelve have been finalised, one was rejected, and three are ongoing.

Senator McKIERNAN—Can I just go back to Curtin again. You told the committee there were six referrals—four of which have been finalised—and five of those referrals relate to the disturbances at Curtin in April.

Mr Keelty—There were six referrals: four have been finalised, one was rejected and there is one other. So I am assuming the one other plus the four relate to the answer that I just gave about the five referrals relating to the riot.

Senator McKIERNAN—Where will the finalised ones go now? Are they referred to DPP?

Mr Keelty—I do not have a break-up of the figures. Some would be referred to the DPP; some would be determined as incapable of being proved. I do not have that break-up of the figure here.

Senator McKIERNAN—How long would it take you to get that break-up? Because I am going to pursue this matter with the department of immigration when they appear before the committee later in the week. I do not actually want you to do it at this moment. Would it be possible for us to get that information, say, before this time tomorrow? Is that an impossible request?

Mr Keelty—I will undertake that before lunchtime tomorrow we will give you a detailed breakdown of those investigations.

Senator McKIERNAN—Could you include in that the information on the referrals in regard to the very serious disturbance? I do not want to deal with just minor ones but I do want to deal with very serious disturbances such as Curtin, with half a million dollars worth of damage. I do not want to put a ballpark figure on it but I guess the immigration department, or indeed the AFP, would have some factor which would distinguish serious from non-serious or not quite so serious. I would include within that cases where physical harm has been done to a person, be that person a detainee, an officer, a visitor or indeed an immigration department person. Is that too much information to ask for in such a short period of time?

Mr Keelty—I think that will be possible.

Senator McKIERNAN—I do have a couple of other questions in regard to detention centres. Last evening I addressed some questions to HREOC, the Human Rights and Equal Opportunity Commission, about serious allegations that were made about child abuse in Woomera earlier this year. HREOC undertook some examination at the time of those allegations, and those results were 'not found to be proven', I think was the term used by the commissioner last evening and during the course of the previous Senate estimates scrutiny. Since that time, another body has gone in and investigated those allegations of child abuse. Specifically, the allegations were that there may have been adults involved in the lip sewing incidents of children in Woomera. Have any referrals on that matter been made to the Australian Federal Police?

Mr Keelty—The answer is no. As I understand it, they were treated as child welfare matters and dealt with by the state police.

Senator McKIERNAN—Would the involvement of an adult in the lip sewing of a child in detention constitute a criminal offence in the Commonwealth sphere of law?

Mr Keelty—No, it is more of an offence against a person, and jurisdiction would really be with the state. I can see where you are coming from in terms of the technicality about their being on Commonwealth land and in Commonwealth detention at the time. But essentially it is an assault of one detainee upon another so it is not an assault against a Commonwealth officer and it is not something we would normally take as a referral—which is obviously why they have gone down the route of the state police.

Senator McKIERNAN—Some of the children, it is alleged, were unaccompanied, so they did not have parents with them. In that sense the minister for immigration would be their legal guardian. Would it constitute an offence against the Commonwealth if an unaccompanied minor in detention had their lips sewn while accompanied by an adult or with an adult involved in that lip sewing incident?

Mr Keelty—I am just trying to take it out of the particular example and think of a person who is in the custody of the Commonwealth being assaulted. I am not aware of a provision, but we will have a look at that. I am not aware of a provision under Commonwealth legislation that would cover those circumstances. If I could take it out of the context of detainees—and I certainly do not want to infer that detainees are prisoners—in the normal course of events Commonwealth prisoners are actually housed in state prisons, and offences within state prisons are dealt with by the state police. So I have never had to turn my mind to the question you have just asked. If you will allow me, I will take it on notice.

Senator COONEY—I think one of the reasons—and it might be an apocryphal reason that the Commonwealth police set up—was that someone threw an egg or a tomato at Billy Hughes way back in 1917, I think in a state that had a Labor government. Anyhow, the police did not come forward to right the wrongs done to the Prime Minister. I do not know whether that is apocryphal, but it is a great story, don't you think?

Mr Cornall—It is written up in the history of the Australian Protective Service, so it may be apocryphal but it has certainly been published.

Senator COONEY—Thank you for that, Mr Cornall. That is what I have always heard and understood.

Mr Keelty—We actually took part in a re-enactment of that event last year in the Queensland town of Warwick, which is on the border of New South Wales and Queensland.

CHAIR—Can we go back to the proceedings?

Senator McKIERNAN—I will conclude on the children and the lip sewing incident. I was disappointed. I have had the benefit of a briefing from the immigration department about the incidents of children involved in lip sewing—that was a confidential briefing and we will keep it confidential—and I am concerned that the matter has not been cleared up. However, I am now encouraged: last evening, during the course of senate estimates committees, HREOC confirmed that they have investigatory powers and that they will use those powers to further examine the incidents at Woomera in the course of their inquiry into children in immigration detention centres in Australia. So I am pleased that it is moving on afoot. Perhaps I will just leave it at that at the moment. I do have some different questions in the area for the Australian Federal Police and I would appreciate if that information could be provided to me in preparation for some scrutiny of the immigration department later in the week. Thank you very much.

CHAIR—Thank you, Senator McKiernan. I know that Senator Allison has some questions and has to be at another committee. Senator Cooney and Senator McKiernan have finally acceded to Senator Allison asking those questions—

Senator ALLISON—Very generously.

CHAIR—We will come back to the other senators in a moment.

Senator ALLISON—I wanted to ask some questions about information provided in answer to a question earlier this year about the number of documents requested by various agencies to be provided through section 282 of the Telecommunications Act. It appeared from that answer that the AFP sought the disclosure of information or documents on 24,903 occasions during 2001. I wonder if it is possible to get a breakdown indicating the sort of information that was disclosed or the documents that were disclosed during that period.

Mr Keelty—I might have to take that on notice.

Senator ALLISON—Can you indicate how many telephone records were disclosed? Is it possible that you could tell the committee whether there were any emails disclosed as part of that group? Can an answer to that be provided today?

Mr Keelty—Could you point me to the area of evidence in the previous hearing?

Senator ALLISON—It is a question on notice put by Mr Brereton, question No. 150 on 18 February. I do not think it was part of the previous estimates question process.

CHAIR—Is it a question on notice in the House?

Senator ALLISON—Yes, to the minister for communications.

CHAIR—The commissioner may not have the material with him that pertains to that.

Senator ALLISON—The answer to the question is simply a total number for various agencies. There is nothing more relevant in the question other than the number of instances when the AFP sought to have documents or information disclosed. It should not be necessary to see that question because it does not say any more than I have just mentioned.

Mr Keelty—If it is possible to answer your question at all, I certainly do not have the details with me today. I apologise but I was not anticipating this question. I will undertake on notice to answer the questions.

Senator ALLISON—It is the information or documents that were disclosed, including whether they were emails, whether it was telephone information or whether they were telephone accounts or even SMS messages. Can you check whether any of those were sought to be disclosed?

Mr Keelty—I will take it on notice.

Senator ALLISON—Can you also tell the committee how the data that is obtained under section 282 is being stored?

Mr Keelty—There are some strict caveats. Section 282, by way of clarification, only covers call charge records and subscriber details; it does not cover the contents of the communication.

Senator ALLISON—Yes. Could you answer the question about data and how it is stored?

Mr Keelty—I can possibly answer that now. Call charge records are requested by investigators as part of an investigation, and before they are forwarded to the telco operator

they have to be vetted by a commissioned officer. They are entered onto a register contained on our IT system with access restricted to only those persons involved in the investigation. They are subject to an audit as part of the audit conducted, as I understand, by the Ombudsman's office of our telecommunications interception holdings.

Senator ALLISON—That does not answer the question as to how the data, when obtained, is stored. Do you develop a database? Is it stored electronically?

Mr Keelty—It goes onto our information technology system.

Senator ALLISON—You told me about the process. This is about what you do when you have the information. How do you manage it?

Mr Keelty—The information comes back from the telco operator to the requesting investigator, who places it on a file that relates to the investigation being undertaken. Access to that file is limited to those persons involved in that investigation.

Senator ALLISON—So there is no central record, no central database, kept?

Mr Keelty—The answer is no—but I do not want to deceive you. Our information management system is where we store all our working files. There is no central repository for all the CCRs. They are deposited with the individual jobs.

Senator ALLISON—But they would be accessible if one went to those individual jobs?

Mr Keelty—If you had access, and access is limited to those persons immediately involved in the investigation.

Senator ALLISON—How many arrests and convictions resulted from those 24,000 requests for disclosure?

Mr Keelty—That might be a difficult figure to obtain, but I will obtain a response for you in terms of the direct link between the 24,000 and any individual arrest. For example, information might be obtained from a call charge record examination that identifies the activities of an individual that is not actually arrested because there is insufficient evidence to mount a case because of the other requirements of the elements of the offence. So you might in fact have a large number of inquiries without any prosecution. Alternatively, you could have a prosecution that might have used the telephone record along the way but it does not form part of the evidence. Hence the difficulty in the direct link between the CCR check and the outcome of the prosecution.

Senator ALLISON—I understand. Is it possible to give some indication of whether, of that 24,903, the vast majority were multiple—in other words lots of disclosures for an individual or a particular charge—or whether they were spread over a large number of cases? I would like just some indication of how that is spread.

Mr Keelty—Again, the nature of the type of inquiry makes it difficult to link that. But I will give you a comprehensive reply on the obtaining of CCRs, the storage of CCRs and the usage of CCRs.

Senator ALLISON—As I understand it, where information is provided under section 282(1) there is no requirement for a certificate to be issued by an authorised officer stating that the disclosure is necessary. What checks are undertaken to ensure that the disclosure is reasonably necessary for enforcement of criminal law?

Mr Keelty—There are a number of ways. One is we conduct postoperational reviews of the conduct of a proportion of investigations. Secondly, that sort of issue can be picked up through the audit process.

Senator ALLISON—Are those operational reviews publicly available?

Mr Keelty—No, they are not. They are to do with the internal adherence to policies. We tend to do all of ours under section 282 by way of certificate. I do not have section 282; I have been caught in this position before, before this committee. We do not generally do ours unless they are done by certificate. The provision I think you are referring to, 282 subsection (1), is not widely accessed by members of the AFP.

Senator ALLISON—Okay. Who are the operational reviews for and who has access to them?

Mr Keelty—The reviews are internal. Access to them is for the management teams in each individual area.

Senator ALLISON—Minister, do you call for those reviews? Are you aware of them? Do you see them for any reason?

Senator Ellison—Those reviews are internal, as I understand it. But the Ombudsman's report is tabled in the parliament.

Senator ALLISON—Would the Ombudsman have access to them?

Mr Keelty—The answer to that question is no. I might have misled you. The Ombudsman does not in fact audit the CCRs. The audit is conducted by our internal audit area within the AFP, so that is not reported on in parliament.

Senator ALLISON—Minister, is this review something you would be interested in? Can I suggest this might be a matter for you to at least take some interest in?

Senator Ellison—This is not an area like a telephone intercept. It is information which I am advised is often on the public record. I think that the internal auditing is sufficient. The AFP is a very professional body and I have every faith in it. I do not think that you need to have ministerial involvement at that level.

Senator ALLISON—I think you said, Commissioner Keelty, that none of your 24,903 requests was done without a certificate. Can you confirm that?

Mr Keelty—That is correct. Can I perhaps help you by pointing out that a telephone intercept that might be on a mobile phone, for example, where a person has on previous occasions—and I think the figures you are talking about are dated figures; I cannot remember the year that you are talking about—

Senator ALLISON—They are 2001.

Mr Keelty—That would be 2000-01. Since that time the government has amended the legislation, under the telecommunications interception legislation, and an important part of that legislative change was to allow warrants on the person rather than the phone. The modus operandi of a number of people was to change mobile phones or to change the SIM card of a mobile phone and, if we had an existing warrant, that negated that warrant on that phone. So it meant we had to find out what phone that person was then using. The way we do that is through a call charge record. That call charge record then allows us, in evidence provided under affidavit, to obtain the telephone intercept and to 'connect' the number to the individual. Hence there are a large number of these. No doubt that is why you asked the question. A large

number of these are through the operation of the previous legislation. I would anticipate there would be a significant reduction in call charge records for the financial year since the new legislation.

Senator ALLISON—Are you suggesting this is an unusually high number? If we went back a previous year it would not be as high and subsequent years are not going to be of that order?

Mr Keelty—I do not know about previous years. What I am projecting is that in future years it will reduce because of the changes to the legislation.

Senator ALLISON—You have agreed to take on notice my question about the sort of information and the documents that were disclosed. Could I ask about, in particular, public servants and investigations that you were undertaking—at least a couple of years ago you were; I am not sure whether or not you are doing it now—into public servants and leaks? Would that be a category of persons about whom you would be seeking disclosure of information or documents?

Mr Keelty—It might be from time to time, depending on the circumstances of the investigation. The use of call charge records is often to identify the method of communication being used by an individual under investigation. It might not be possible to say how many telephone intercepts, for example. Subsequent issues over telephone intercepts have been related to a leak inquiry, but we could probably attack it from the other way around by looking at the leak inquiries we have done to see what records we have approached the telcos for.

Senator ALLISON—Have there been any prosecutions for leak inquiries in the last year?

Mr Keelty—In the current financial year, 10 matters have been referred for investigation. Nine other matters were carried over from the previous year. Six of those matters have been finalised, one is before the court, and eight are still active under investigation, and there are another four matters being finalised.

Senator ALLISON—The six that were finalised: were they finalised through court action?

Mr Keelty—I have not got that detail in front of me. I will have to take that on notice.

Senator ALLISON—Is it possible to provide information about those in terms of the departments involved?

Mr Keelty—Yes. The Civil Aviation Safety Authority has two matters carried forward from 2000-01; the Department of Employment, Workplace Relations and Small Business has one active investigation; the Department of Foreign Affairs and Trade has one carried forward from 2000-01 and another investigation that has been referred during 2001-02; the Department of Immigration and Multicultural and Indigenous Affairs has referred two matters during 2001-02; the Department of Communications, Information Technology and the Arts has referred two matters during 2001-02; the Department of Defence has referred one matter during 2001-02, and we carried forward three other matters from 2000-01; the Department of Transport and Communications has referred one matter during 2001-02; the Office of National Assessments has referred one matter during 2001-02; the Department of the Prime Minister and Cabinet has referred one matter during 2001-02, there is one matter carried over from 2000-01, and there is another matter carried over from 1999-2000. Then there is one from a non-Commonwealth government department.

Senator ALLISON—Has information been sought under the Telecommunications Act about parliamentarians' records and other information?

Mr Keelty—With regard to those figures I just spoke to you about?

Senator ALLISON—No, 2001—the subject of the 24,903. Yes, I will ask the question about both. We can have an answer about the 24,000 and more generally speaking.

Mr Keelty—I am trying to think whether we have in fact had cause to do that. I am thinking through where we might have a threat against a parliamentarian or where there might be a matter that I am not thinking of in terms of leaks. I am not sure that I can give you that answer today. I will take that on notice.

Senator ALLISON—Has this information also been sought from detention centres and phone calls made by detainees, bearing in mind the investigations being conducted into so-called people-smuggling?

Mr Keelty—Perhaps we can separate the two issues: people-smuggling might be considered as different from detainees. The answer is: in relation to the detainees, not to my knowledge, but I will correct that record if it is not right; in relation to people-smuggling, yes.

Senator ALLISON—We do have some people-smugglers, or people charged with people-smuggling, in detention.

Mr Keelty—I would expect that people charged with people-smuggling would not be in a detention centre but in a remand centre.

Senator ALLISON—Today's *Age* has a big story about one in Maribyrnong. He is also an asylum seeker.

Mr Keelty—I have explained my views about newspaper stories to this committee before, but I will take that on notice.

Senator ALLISON—He is an asylum seeker and he has just been to court on people-smuggling charges, so I do not think you can say that he is not a people-smuggler.

Senator McKIERNAN—Has he been convicted?

Senator ALLISON—Yes.

Senator McKIERNAN—He has been convicted of people-smuggling and he is in the Maribyrnong detention centre?

Senator ALLISON—Yes.

CHAIR—According to the *Age*.

Senator McKIERNAN—I am looking at my colleague Senator Cooney. I am sure he would have a copy of the *Age* with him.

Senator COONEY—I think I have a copy of the *Age* here.

Mr Keelty—I will try to get an answer for that. I will certainly stand qualified on my previous views about newspapers.

Senator ALLISON—I will add another category, if you like. Could you also provide information about whether there were whistleblowers about whom information was sought?

Mr Keelty—I am not sure that we would reasonably be able to identify those, but we will come back with an answer.

Senator ALLISON—At what point, or on what grounds, does the AFP consider a request under section 282 or related sections as justified?

Mr Keelty—Within the constraints of the legislation.

Senator COONEY—I have some information which may help. It is in the *Age*. He got a four-month suspended sentence. So the Magistrates Court would have given him a four-month suspended sentence and taken him back to Maribyrnong.

Senator ALLISON—He has always been in Maribyrnong; he has never been elsewhere. I was asking: at what point and on what grounds does the AFP consider a request to be justified?

Mr Keelty—In general terms we understand that this is, and can be, an invasion of privacy. That is why we have some of the internal safety nets, if you like, particularly the sign-off by a commissioned officer. There is also the safety net provided by the legislation itself in terms of the serious nature of the matter under investigation.

Senator ALLISON—I will ask the question a slightly different way. The legislation says ‘reasonably necessary for the enforcement of criminal law’. I was wondering if you could just expand a bit on how that is actually applied.

Mr Keelty—First and foremost, there would be an offence identified. The requirement for the call charge record would be considered necessary by the investigator for the furtherance of the investigation into the criminal matter. The investigator would then put a request through to a commissioned officer, who would either accept or reject the request. From that point it goes to the telco which, under the legislation, is also obliged to make sure that the requesting agency is requesting from within the provisions of the legislation. The material would then be returned to the investigator.

Senator ALLISON—I think that is a process answer rather than a general question about how the interpretation is made of what is ‘reasonably necessary for the enforcement of criminal law’. It is a question about what is reasonable, I suppose. I am just asking you to expand on that.

Mr Keelty—Each case would be judged on its own merits. Certainly, there would have to be a link between the request and the criminal offence that is under investigation. It is not a fishing expedition, but it is a direct link between the matter under investigation and the requirement for the record.

Senator ALLISON—There is a protocol or some sort of guideline that has been developed so this can be determined?

Mr Keelty—That is right.

Senator ALLISON—Is it possible to provide the committee with a copy of that protocol?

Mr Keelty—Yes, we can. If my memory serves me correctly, I think we have provided that once before but we can do that again—

Senator ALLISON—My apologies if I am asking for something that has been provided.

Mr Keelty—as part of this series of answers.

Senator ALLISON—Thank you very much.

Senator COONEY—It may be embarrassing to Senator Crane, who is sitting next to me, but can I ask this question either of the minister or of Mr Keelty. When we were here last time

we raised the issue of the proceedings against Senator Crane and it seems still not to have been resolved. From time to time questions are raised here in I hope an appropriate way and answers are given. There is no doubt that a case in particular involving a person who went on to be a minister was disposed of very quickly. I am wondering what has become of Senator Crane's case. Senator Crane has been through a preselection process where he was not successful. You would always wonder whether a difference was made because of an unresolved matter. If a person is guilty of something and is convicted and dealt with, that is only proper and right, but should people be hung out to dry in effect and suffer consequences which I do not think it was the intention of the law they should suffer? I am just wondering where the matter has got to and why it has not been resolved one way or the other by now.

Mr Keelty—At my last appearance before the committee I did update to some degree where the matter was at. Further to that, the matter, since it has been back with the AFP, is still the subject of investigation. We are still working with the Department of Finance and Administration and we are obviously trying to conclude it as quickly as possible. We are working as best we can with the Department of Finance and Administration to conclude the matter.

Senator COONEY—I am speaking now from an abysmal ignorance of how investigations are carried out, but you would imagine that there is some sort of finite time—I myself am about to face finite time in terms of my presence in the Senate—in circumstances like this where there must be some sort of border, you would reckon, when people say, 'Look, there is no evidence there,' or 'The evidence is not such as would justify prosecution,' or 'The evidence is such as would justify prosecution,' and on we go. I do not want to go into the details of how the decision is made. All I am saying is that you would reckon there is a point at which a decision is made. Perhaps I ought to ask Senator Crane to go through the details. This has been under investigation since when?

Senator CRANE—Nearly four years.

Senator COONEY—Nearly four years.

CHAIR—Senator Crane, are there matters which you wish to raise?

Senator CRANE—I have a number of matters. They relate to procedural matters. I am fully aware that it is not appropriate to raise operational matters here. If in the moment I do stray, please tell me they are operational matters, but that is not my intent. The first question I would like to ask is: on what date was the complaint against me lodged with the AFP? We have been informed now by the DPP that they were informed in approximately the middle of August 1998.

Mr Keelty—Madam Chair, I would like to raise a point of order.

CHAIR—Yes, Commissioner.

Mr Keelty—Senator Crane is currently under investigation by the Australian Federal Police. I am the Commissioner of the Australian Federal Police. Any questions asked or answers given by me are protected under parliamentary privilege. However, they are also subject to limitations in their further use by either a prosecutor or a defence counsel. Under those circumstances, I think it is inappropriate that the person who is under investigation by the Australian Federal Police is asking the Australian Federal Police any question at all about the investigation that is currently under way.

CHAIR—Commissioner, I take the point that you are making. I listened with interest to questions which also pertained to this matter that the senator was asking of the DPP yesterday. I might perhaps seek Senator Crane's response to the matter that you raise. It is, as we acknowledged earlier, an extremely sensitive area but, as Senator Cooney also indicated, a matter of concern not just for the individuals but for the Senate itself as to how such matters proceed.

Senator COONEY—I can understand what Mr Keelty is saying. I wonder whether it would be appropriate to get some sort of ruling—I think this is important—from the Clerk.

CHAIR—I can certainly seek advice from the Clerk on the matter, Senator Cooney. I think that is a very good suggestion.

Senator CRANE—I have taken advice about what I can do and what I cannot do. It is not my intent to go outside the standing orders and what I am allowed to do. I do not think it is appropriate also that a point of order should be upheld which would stop me in total from asking questions on procedural matters that have been involved now over almost four years. There is no doubt that I was maliciously and vexatiously damaged in my preselection as a result of what has occurred. I have lodged, as you are aware, a counterclaim. I do not think you can call it a counterclaim, but I have asked for the matter to be investigated with regard to certain documents that surfaced in the press et cetera. Madam Chair, if the name of the person—and I think this is the real test—with regard to these procedural questions I wish to ask were anything other than Senator Crane, there would be no restriction whatsoever in my asking those particular questions. I think that has to be the test in the situation, because I think they are important questions and I think procedure is incredibly important. I sat with my colleague here on the inquiry into search and entry, and we obviously made recommendations. I just put my case that these questions are to do with procedure. I would ask that they should be allowed on the basis that I am not going into operational matters.

CHAIR—Senator Crane, I do not for one moment dispute the importance of the matters that you raise but, at the same time, I am very conscious of the concerns that the commissioner has raised, and I think they are genuine and serious concerns also.

Senator CRANE—I understand.

CHAIR—I would like to seek the advice of the Clerk on this matter. I will ask the secretary to facilitate that as a matter of priority—urgency, in fact. The committee has further questions for the Australian Federal Police, and I suggest that we will continue with those as we seek some advice. I know that both Senator McKiernan and Senator Cooney have further questions, and we will come back to this matter before the conclusion of the Australian Federal Police's appearance today.

Senator CRANE—Thank you. I am chairing another committee, as you are aware.

CHAIR—I do understand that difficulty, Senator Crane.

Senator CRANE—Can you notify me before you make the decision so that I am in the room to hear it.

CHAIR—Of course.

Senator CRANE—Thank you.

CHAIR—If we return to questions of the nature that were previously being pursued, I think Senator McKiernan had the call.

Senator McKIERNAN—The Australian Bureau of Criminal Intelligence, the ABCI, has received funding of \$11 million over the next four years in the 2002-03 budget to upgrade its criminal intelligence database. What additional information can you put on the record with regard to this matter, Commissioner?

Mr Keelty—The funding for the Australian Bureau of Criminal Intelligence is for an enhanced analytical and predictive crime capability. It is for the implementation and management of an automated screening and crime recognition facility within the Australian law enforcement and targeting system known as ALERT. The facility will allow ALERT, which is an IT system, to automatically compare intelligence data with information held in the Australian criminal intelligence database. The cost-effective automated screening and crime recognition facility will allow new intelligence to be automatically and continually compared to existing information on the ACI database. It will enhance the analytical and predictive crime capability of the ABCI and provide intelligence officers and investigators with the capacity to evaluate search results at district, regional or national level.

Senator McKIERNAN—How long has the ABCI been looking for this additional funding?

Mr Keelty—I will take that on notice. I am not sure. I have not discussed that with the Director of the ABCI. I will get back to you.

Senator McKIERNAN—Thank you. If you would do that, Commissioner, I would be grateful. The committee spoke yesterday about some proposed changes for ABCI in the light of the establishment of the Australian Crime Commission. Will the establishment of the ACC have any impact at all upon this new funding going to ABCI?

Mr Keelty—Not that I am aware of. The new initiative is largely to do with the increased capacity through investment into database technology, which I am presuming—given that we do not have an Australian Crime Commission yet—will enhance the capacity of the ABCI within the Australian Crime Commission.

Senator McKIERNAN—I appreciate we have not got it yet but there are some very firm proposals on the table about that. We know that Mr Overland is involved in that, too, so I think there is a real chance that it probably will go ahead. I want to follow up on some questions that were asked at the last round of estimates regarding Mr David Hicks, who is an Australian citizen being held in Camp X-Ray in Guantanamo Bay in Cuba. We understand there has been a number of developments on this, none the least of which has been the fact that some AFP agents and ASIO representatives have been to meet with Mr Hicks and with another Australian citizen, Mr Mamdouh Habib, who has also been apprehended and detained in Camp X-Ray since the last round of estimates. Is the AFP in a position yet to indicate to the committee what actions may be appropriate in terms of possible prosecution of either Mr Hicks or Mr Habib under Australian law?

Mr Keelty—At this point we are still investigating whether Mr Hicks has committed an offence against Australian law. It is true to say that he has been interviewed by the AFP in company with ASIO at Guantanamo Bay in Cuba between 13 and 17 May. We are still assessing the outcomes of that investigation and interview. There was a Department of Foreign Affairs and Trade officer also present looking at the health and wellbeing of Mr Hicks. In relation to Mr Habib, again the delegation visited Guantanamo Bay between 13 and 17 May. It was made up of AFP officers and ASIO, as well as DFAT who were there to check on Mr Habib's health and wellbeing. Again, in relation to Mr Habib, we are going through the

material to determine whether in fact Mr Habib has committed any offence against Australian law.

Senator McKIERNAN—As a result of those interviews, has either agency—obviously I have to direct it to you, Commissioner—been able to establish whether or not Mr Hicks is indeed a member of Al-Qaeda and/or of the Taliban?

Mr Keelty—I cannot comment on that because it is an ongoing investigation.

Senator McKIERNAN—How long has Mr Hicks been interned at Guantanamo Bay? It is now some three months since we met as an estimates committee where we last addressed questions on this matter. It was an ongoing matter then and there has since been this interview and Mr Hicks remains detained, deprived of his liberty.

Mr Keelty—Was the question: how long has he been detained?

Senator McKIERNAN—No, the question was a follow-up on the earlier question as to whether or not Mr Hicks was a member of Al-Qaeda or the Taliban. You said that you could not comment because it was ongoing. I was making the comment that, yes, it is ongoing, but it was ongoing in February when we met and addressed questions on this matter. When are we going to be in a position to find out some facts surrounding the internment?

Mr Keelty—It is obvious but it probably needs to be stated that he is not being detained by Australian authorities on matters to do with Australia, at the moment, in terms of Australian criminal law. We have the information provided from the interview and we are working as quickly as we can to determine whether any offence has been committed against Australian law.

Senator McKIERNAN—I heard your response. In the additional estimates in February in response to a question from Senator Cooney, Commissioner, you indicated that the AFP had approached the DPP in relation to Mr Hicks. Are you yet in a position to tell the committee whether there have been any further approaches to the DPP in relation to Mr Hicks?

Mr Keelty—Given the recent return of the investigators from Guantanamo Bay, I expect in the near future further discussions with the DPP arising out of the visit.

Senator McKIERNAN—Have you had any discussions with or any approaches to the DPP in relation to Mr Habib?

Mr Keelty—Mr Habib, in the context of the recent visit to Guantanamo Bay, will be the subject of further discussions between ourselves and the Director of Public Prosecutions.

Senator McKIERNAN—I have here a comment, and I will not repeat it now, from a newspaper article dated 22 May that indicated there was a school of thought that Mr Hicks and Mr Habib could spend the rest of their lives in prison in Guantanamo Bay. Are you able to indicate a position on this statement? Is it likely that an Australian citizen could spend the rest of their life, however long that may be, imprisoned in another country without charges having been laid against them—under either Australian law or the law of the country that holds them or any other international law?

Mr Keelty—In their specific case, I do not think the AFP is in the position to comment on their detention or the future of their detention. In general, however, I think these are extraordinary circumstances resulting in the detention of these people. In ordinary circumstances where people are detained and the law is clear, steps are taken to either extradite the person or initiate action under mutual assistance treaties. This is an extraordinary situation and the AFP in these individual cases is not in a position to take it any further.

Senator McKIERNAN—Minister, do you have any comment on that, because there are extraordinary circumstances?

Senator Ellison—I think it is more a question for the government, and the Attorney-General and also the Minister for Foreign Affairs have had some involvement in this. While it is of concern that someone is held in custody without a charge, these are extraordinary circumstances. I think Mr Cornall has some information which might assist the committee.

Mr Cornall—I think we need to go back and re-examine how this situation has arisen because, as the Commissioner indicated, it is a most unusual situation. We have people who are, firstly, held by the United States; they are not held by Australia. They are amongst a group of several hundred battlefield detainees from up to 30 countries. I think the Americans are in the process of holding as many of those people as possible at Guantanamo Bay but in a newly constructed facility called Camp Delta, not in the original facility which was known as Camp X-Ray. I understand that the new facility is a much better facility, although it is still a detention centre.

The great difficulty is that this is not a situation where they are being charged with a criminal offence; they are being treated as people who have been taken into custody on a battlefield. The American position is that they are battlefield detainees or unlawful combatants and they are being held outside the environment of the normal criminal law and the normal criminal law processes. That leads to all sorts of uncertainties about the future. The Australian government does not, at this stage, have a clear answer to the questions you are raising, but I would think that, with so many people held in detention and so many countries involved, the matter would have to be resolved long before Mr Hicks reached the age that you are suggesting he could be held there until.

Senator McKIERNAN—Are there any precedents for these extraordinary circumstances that we find ourselves in at the moment?

Mr Cornall—I am not aware of any. This is a situation which is treated as a war situation but it is not between nation states. For example, the Geneva Convention contemplates nation states. So you have conflicting situations where the Americans say they will apply the spirit of the Geneva Convention in relation to the detention of the battlefield detainees but they are not treating them as prisoners as war. You have these situations that are hard to reconcile because of the very unusual circumstances which have arisen which do not squarely fit with the assumptions of the Geneva Convention.

Senator McKIERNAN—Mr Cornall, you indicated in that response that Mr Hicks had been moved from Camp X-Ray to Camp Delta and that the conditions there were much improved compared to what had been reported to be in existence at Camp X-Ray. Yet in an article in the *Sydney Morning Herald* last weekend Mr Hicks is reported to have claimed that he has been kept ‘all day stuck in a small cage’. The article also said that Mr Hicks has been told that if he tells everything he knows he will be sent back to Australia. Can you comment on the conditions, or is anybody at the table able to comment on the conditions, that this person is being kept in at Camp Delta now?

Mr Cornall—Obviously the facilities were observed by the visiting team that went to Cuba recently. My understanding is that the building, for example, has a solid external wall, which was not the case with Camp X-Ray, and is an airconditioned building. But they are still held in areas which are segregated by internal fences of wire, and they have facilities that are appropriate for a cell. That would probably be similar to a lot of detention centres around the

world. Obviously, it is not a place you would go by choice but it is, I understand, considerably better than Camp X-Ray.

Senator McKIERNAN—Detention is not a place that you would go to by choice. Would there be any facility in Australia that would be similar to the conditions existing in Camp Delta?

Mr Cornall—I am not able to answer that question; I am not able to make that comparison.

Senator McKIERNAN—Would you be able to help me with that question, Commissioner?

Mr Keelty—No, I have not been briefed.

Senator McKIERNAN—Are the investigators that visited Mr Hicks and Mr Habib able to comment on their welfare? Are they both well, physically? Are they receiving and eating culturally appropriate food?

Mr Cornall—I understand that Mr Hicks says he is well and appears to be well. I understand that the food and the other facilities that are provided within the detention centre are suitable and appropriate for people of their faith and that there is no, as I understand it, particular concern about those aspects of their current detention.

Senator McKIERNAN—Do either of the individuals have any medical conditions that require ongoing treatment?

Mr Cornall—Mr Habib has a pre-existing medical condition which he is being treated for at Camp Delta.

Senator McKIERNAN—Are you, or is anybody at the table, able to provide any information on any legal advice they may be receiving, if indeed they are receiving any advice at all?

Mr Cornall—It is my understanding that the United States authorities have precluded any country visiting any detainee from providing legal advice to those people.

Senator McKIERNAN—Have there been any requests by representatives of the Australian government to the United States authorities that these Australian citizens ought to be allowed to receive legal assistance and advice?

Mr Cornall—That is my understanding, but I would appreciate it if I could confirm that answer. We were not anticipating getting into all these issues at this point in the Senate estimates hearing. I would appreciate the opportunity to confirm that with other officers of the department.

Senator McKIERNAN—Thank you. I accept that and I understand that you will come back to the committee as soon as you possibly can. A foreign affairs official went to Camp Delta in that recent round of interviews from 13 to 17 May. Could that be described as consular assistance?

Mr Cornall—No, it could not. It was not consular assistance. The Americans have refused any consular visits. We were able to have a DFAT representative as part of the visiting team. Obviously, in the course of the interviews that took place with Mr Habib and Mr Hicks, our visiting team was able to form an assessment about their health and the way they were being treated simply by observing them and by asking them questions.

Senator McKIERNAN—The article in the *Sydney Morning Herald* of 25-26 May 2002 which I mentioned earlier indicated that Mr Habib had claimed that he had been kept blindfolded for eight months. Were the investigators able to confirm that this was the case or, indeed, are they able to refute that allegation?

Mr Cornall—I think Mr Habib was referring to the time he was held in Egypt, and we do not have any knowledge of what occurred when he was held in Egypt.

Senator McKIERNAN—So it is not in Camp Delta or Camp X-Ray as it was where he was held previously, if, indeed, Mr Habib was held in Camp X-Ray at all?

Mr Cornall—On my understanding, Mr Habib only arrived in Cuba eight days before the investigating team, so I am not sure that he was ever in Camp X-Ray. We do not have any knowledge relating to the matters other than the matter asserted by Mr Habib prior to his being in the Americans' control, and we are unable to comment on those things. The Attorney has said that if, in fact, those things occurred, it would be a matter of grave concern.

Senator McKIERNAN—In the transcript of the interview with the Attorney in his recent visits to the United States, he indicated that he had relayed a request from the family of both Mr Hicks and Mr Habib to the authorities in the United States. Are you able to inform the committee whether there has been a response to that request on behalf of the families?

Mr Cornall—Sorry, I had trouble hearing that question. Could you repeat it?

Senator McKIERNAN—When the Attorney was recently in the United States, he indicated—in what might be described in Australia as being a doorstep—that he had made a request on behalf of the families of both individuals to the authorities in the United States. Do you know whether there has been a response to that request? The interview I am talking about was on 1 May at the Australian embassy in Washington. The Attorney is quoted in that transcript as saying that there had been no response from the United States at that time to the requests from the family and the lawyers.

Mr Cornall—What was the request from the family about?

Senator McKIERNAN—I am not sure of the specifics of it.

Mr Cornall—I will have to deal with that question later because I am not sure what the request is.

Senator McKIERNAN—I am quoting from the transcript:

We have reiterated the Australian Government's request to the United States for access to Hicks and to Habib by their respective families and lawyers.

Mr Cornall—I am not aware of any agreement by the United States to that request at this stage; however, I should point out that there have been exchanges of letters between the families and the two gentlemen in Cuba. That exchange of letters has, I understand, been facilitated by the international committee of the Red Cross.

Senator McKIERNAN—Thank you. I know the system you use for monitoring the costs of various things that the AFP is involved in but it is not coming to mind. I have been acronymed out during the course of these hearings. Are you calculating the costs to the AFP because of your involvement in the detention of Mr Hicks and Mr Habib?

Mr Keelty—Yes, Senator.

Senator McKIERNAN—Are you in a position to provide the committee with any indication of costs to date?

Mr Keelty—I cannot tonight, Senator. I will take that on notice.

Senator McKIERNAN—Thank you.

Senator COONEY—We have an extradition treaty with the United States. Have we investigated whether that would operate in these circumstances? I understand that they are extraordinary circumstances. When I ask that question I mean not from a technical point of view but from the point of view of the reality of us asking the Americans to extradite people now. There are a few issues involved in that: first of all, we would have to have some idea of whether there is at least the colour of an offence, that there is some evidence of that; and, more importantly, whether the Americans would even entertain such an application. Do you have any impressions about either of those issues? If I can anticipate this, it seems to me that what is being said by the Americans is: ‘We are going to coop Mr Hicks and Mr Habib as long as we want. There is not much you can do about it.’ Is that the reality of the situation? Is there much point in interviewing them anyhow to work out whether an offence has been established against Australian law?

Mr Cornall—There is some point in that investigation. There is also some point in Australian officials visiting Mr Habib and Mr Hicks to ascertain that they are in good health and reasonable conditions, which we were able to do. The issue of appropriate charges, if any, under Australian law and United States law is a very difficult question, as everyone has conceded. The Attorney-General commented on it as recently as last Friday in a doorstep interview in his Perth office. I think the issue of extradition would come to the fore only when there was an issue of charges to be faced, and that would be an issue that could be taken up with the United States authorities at that time.

Senator COONEY—I would have thought that it would be a lot easier for the police to investigate this further if the two people were on Australian soil. Is that right?

Mr Keelty—I am not sure that is right. The offences, if any, would have occurred in another place altogether.

Senator COONEY—Having them here available to be interviewed at whatever reasonable times the Australian Federal Police wanted would be a much easier way of investigating than to have them in Cuba.

Mr Cornall—We have to start on the premise that the people concerned are being held by the United States under conditions that are controlled by the United States, and our access to them and so on is by arrangement with the United States.

Senator COONEY—Why was the decision made to investigate whether they had committed a crime against Australian law at this stage? The fate of these two people depends upon what the Americans are going to do. If the Americans were minded to release them, wouldn't that be the time that we would look at them to see whether they should be investigated?

Mr Cornall—No, I think there was a lot of concern to ensure that investigations were undertaken immediately, and that has certainly been the case since we became aware that the two gentlemen concerned were in fact being detained.

Senator COONEY—It seems to me, and please stop me if I go into operational matters, that the only evidence you can really obtain from them while they are there is by way of admissions. Would that be a fair comment?

Mr Cornall—Any evidence would have to comply with Australian rules of evidence for Australian criminal trials. That is clear and that is acknowledged.

Senator COONEY—Senator McKiernan has been through all this, so I will not go through it again. The reality is that we have two people who are our citizens about whom we have concerns. We are concerned that they should not be imprisoned if they are not guilty. We have also got concerns that if they have broken Australian law there ought to be proper steps taken. But the reality seems to be that we are not able to do either of those things or, indeed, take any other alternative because of the position taken by the United States. Would that be a fair summation of our position?

Mr Cornall—Our position is that the government is concerned to find a resolution of this matter, but it is a very difficult situation, as the Attorney-General has outlined in several press conferences. And, as a factual matter, it is a very difficult situation to investigate.

Senator COONEY—It really depends upon the good graces of the United States. That is the reality, isn't it?

Mr Cornall—I think all of the countries who have their nationals in the American facility are largely dependent on the arrangements they can negotiate with the United States.

Senator LUDWIG—Have any other nationals from other countries been released to their own governments that you are aware of?

Mr Cornall—I do not believe so.

Senator LUDWIG—Could you just check that to make sure?

Mr Cornall—We will confirm that later today. Certainly it is my very clear understanding that no nationals have been so released.

Senator COONEY—I think there has been some attempt, actually. Could you find out?

Senator LUDWIG—I was going to come to my next question, which was: has there been any attempt—

Senator COONEY—I am sorry.

Mr Cornall—The one qualification was the issue about the American person who was detained and then charged. I am not sure whether you would include Walker Lynd, which I think was his name.

Senator LUDWIG—That is the next area I was going to explore with you: whether you are aware of attempt, or whether any governments have attempted or made representation, to have their people released back to them or whether the US has released or attempted to release them?

Mr Cornall—I am not sure that we would necessarily know who has made requests—

Senator LUDWIG—I understand you may not necessarily know, but—

Mr Cornall—but it is my understanding, and we will confirm this, that as far as we know no-one has been released back to their home country.

Senator LUDWIG—It is simply one of those arguments, of course, that you would use. If you were seeking to do that you would see whether any other country had achieved it.

Mr Cornall—I do not believe that to be the case. As I understand it, the development of Camp Delta increases the facilities in Cuba so that the Americans are able to consolidate the people who have been detained on the battlefield in one place.

Senator LUDWIG—Are you aware of what steps would have to be put in place for the Australian government to repatriate Hicks or Habib? Have you gone through the scenario of what it would actually take, with the US or internally?

Mr Cornall—I think that requires a resolution of what if any charges are to be brought against Mr Hicks, Mr Habib or anyone else who is detained as a result of the conflict in Afghanistan or any association with that conflict. The other way the matter can be looked at is that if in fact they are, broadly speaking, to be treated in the same way as people under the Geneva Convention then, as I mentioned at last estimates, the Geneva Convention permits people to be detained until the end of conflict or the cessation of hostilities—however you define that. But it has other consequences and they are that they cannot be charged for criminal offences for acts they undertook in the course of those hostilities and they must be repatriated at the end of their period of being held.

Senator COONEY—How many people have been seconded from the AFP to the royal commission on the building industry?

Mr Keelty—There is one SES officer, one grade 16 employee, three grade 12 employees and three grade 10 employees.

Senator COONEY—What does that mean? Are they agents?

Mr Keelty—Yes, they are all federal agents. There is one at commander level, if you like, one at superintendent level, three at sergeant level and three at investigator level.

Senator COONEY—Three are on investigation. Do they answer to the Australian Federal Police or do they answer to the commissioner?

Mr Keelty—Under an MOU with the commission, they answer to the commission on the day-to-day operations of the commission, but they still belong to the AFP as employees.

Senator COONEY—Who are they paid by?

Mr Keelty—There is a cost recovery arrangement in place. Under the memorandum of understanding, invoices are issued on a monthly basis until the completion of the commission's activities.

Senator COONEY—Is the work they are doing the sort of work they would be doing if they were still operating under your jurisdiction? Is that the understanding? In other words, are they carrying out police-like duties?

Mr Keelty—That is correct, as I understand it.

Senator COONEY—I know you cannot go into operational details, and you will just have to correct me if I go too far. Do the investigative tools include telephone tapping or the interception of communications? I will tell you the background to that. There is a perception by people in the union movement and amongst the workers, I understand, that there is telephone tapping or interceptions of communications going on. People have said they did not think it was; nevertheless, there is some perception that there is. I am going to ask the AFP and I am going to ask ASIO when they turn up whether they are able to tell us if that is happening.

Mr Keelty—I think we might have traversed this ground before. As I understand it, the royal commission does not have its own power to tap telephones. It would therefore rely upon the identification of a Commonwealth offence subject to the provisions of the telecommunications interception legislation. I think the answer I gave on the last occasion was that there were no intercepts that I was aware of at that time, and that was correct. I can tell you that there are no telephone intercept capabilities provided by the AFP. To the best of my knowledge and within the purview of the Australian Federal Police operations, the answer is that there have been no telephone interceptions.

Senator COONEY—I was told that I did not ask the question firmly enough and that I should have really pressed as to whether or not you knew or did not know. I thought I had done a reasonable job.

Senator LUDWIG—Do not leave out mobile phones. It was only telephones.

Mr Keelty—Mobile phones come within the ambit of the legislation.

Senator COONEY—I am asking about all the sorts of things that would come under the description of telecommunications, of whatever nature. I am asking you as firmly as I can, Mr Keelty, whether or not the Federal Police are intercepting those sorts of things, in the context of the building industry and as far as the unionists are concerned—or people working on the site.

Mr Keelty—On the advice that has been provided to me, the answer is no.

Senator COONEY—Thanks for that. When people are seconded to the commission, if there is any evidence of criminal activity it would come back to the Federal Police, wouldn't it? Would that be a fair summation of the situation? I would not mind if you took that on notice, but that is what I am trying to find out.

Mr Keelty—I will try to get an answer for you. I am just not conversant enough with the MOU. I think that the commission, within the powers of the letters patent, would only be in a position to provide recommendations to the DPP for prosecutions. My assumption is that any prosecutions—and I am not saying that there will be any—would be the result of the work of the police attached to the royal commission to put a brief of evidence together and refer the brief to the DPP, at which time they may seek further assistance from the AFP. That is purely hypothetical at this point.

Senator COONEY—At this stage there is no such brief? Or is that a question I should not ask?

Mr Keelty—I am not in a position to answer that. I am not briefed on the day-to-day operations of the royal commission. Once our people are seconded there, they work for the commission.

Senator COONEY—Do we know the cost of having those officers working with the commission? How much is it costing the taxpayer to have those officers working with the royal commission?

Mr Keelty—The total cost to the AFP for our involvement in the royal commission to 31 March 2002 is \$348,539.

Senator COONEY—What about with the royal commission into the HIH matter? Are there any federal agents seconded to that? I might ask the same sort of question for purposes of comparison.

Mr Keelty—The answer to that is no.

Senator COONEY—There were no agents seconded?

Mr Keelty—No agents were attached.

Senator COONEY—Thank you. May I say, Mr Keelty, that the answers you gave were typical of the answers you have given over the years: very candid, very straight and ones that can be relied on.

Mr Keelty—Thank you, Senator.

Senator LUDWIG—What role does the AFP play in terms of security at Sydney airport, as far as you are able to tell me?

Mr Keelty—We do not have a role in relation to security at the airport. We have a role to work with partner agencies such as Customs for the monitoring of persons of interest to the AFP entering and leaving the country.

Senator LUDWIG—Well, that chilled that one.

Senator McKIERNAN—During the recent inquiry by the committee into security legislation, the matter of a company or music shop in Melbourne named the Shining Path came to the fore. There were some questions addressed to the AFP during the course of the hearing. We are sure today that the AFP did attend these hearings but we were not so sure yesterday—if you make a mistake you should be humble and admit it. During the course of the inquiry—I am not going to revisit the whole of the inquiry or, indeed, the security bills—there was some confusion about the chronology of events surrounding the Shining Path and the freezing of the accounts. Part of that confusion has been brought to the fore by correspondence the committee received from the Commonwealth Bank, which was the institution that the company had their accounts with. The committee published that letter; it is in the public domain. Have the AFP seen that particular correspondence and are you now in a position to make further comment with regard to the freezing of the accounts of that company or music shop so as to help the committee clear the confusion around the chronology of the events?

Mr Keelty—On the issue of whether we have seen the correspondence sent by the bank to the committee, to my knowledge we have not seen that. The Commonwealth Bank denied access to Mr Mile on 27 December 2001, based on the similarity between the account name and the proscribed terrorist organisation Shining Path. The bank advised the AFP of its actions on the same date, which was 27 December. On 28 December 2001, the AFP commenced inquiries to establish if there was any connection between the Melbourne based business and the terrorist organisation. These inquiries identified that there was no connection between the two entities. On 31 December 2001, which was the first business day after the AFP were advised of the CBA's actions, the AFP advised the CBA contact officer of the result of the inquiry. The CBA has implied that we failed to notify them until 13 February, but that is not correct.

CHAIR—Commissioner Keelty, I am not sure that concurs with what we were given at the time of the inquiry. The Commonwealth Bank letter was provided to the AFP at the request of the AFP and, as a result of that request, was made a public document of this committee. So the AFP most definitely have a copy, as I understand it. I am having a copy brought up to the committee so that we can clarify the advice we have, which appears to be conflicting.

Senator LUDWIG—Madam Chair, that chronology does not gel with what we were told by the AFP during the inquiry. The information provided by the AFP was not as succinct or as specific as that, in my recollection.

Mr Keelty—I can probably clarify that. Obviously we have seen the letter, because it is implied in the letter and I am sure we are going to get a copy of it here.

CHAIR—You made a reference to it in that chronology.

Mr Keelty—Yes, that is right, but we were not advised until 13 February 2002. I can say that the advice that I have received is that on 31 December 2001—which was the first business day after we were advised of the CBA's action—we advised the CBA contact officer of the result of the inquiry, which was that the bank account belonging to the organisation in Melbourne was not the same as that belonging to any terrorist group.

Senator LUDWIG—It would be helpful if we could sort this out, in fairness perhaps to the committee at least, because at the time of the hearing I think I drew an adverse inference in respect of the role of the AFP in those actions. It did not appear to me to be one of your brightest times. So if in fact it can be corrected I would be only too grateful to have sorted out exactly what happened. I do understand that following that there was a committee that was going to have a look at that. Is the AFP represented on that committee?

Mr Keelty—I am not quite sure what committee you are referring to.

Senator LUDWIG—I have used the word committee, but I understood they were going to have a look at least at an interagency model. Mr Cornall might be able to help us with that.

Mr Cornall—My briefing note says that an interdepartmental committee chaired by the Department of Foreign Affairs and Trade has met with representatives of the banking sector and continues to liaise with them to minimise the risk of the incorrect freezing of accounts in future. I do not appear to have a note of all of the agencies who are on that interdepartmental committee, though, at this stage.

Senator LUDWIG—I was wondering whether the AFP is on that.

Mr Keelty—Yes, we are. The committee comprises the Department of Foreign Affairs and Trade, the Attorney-General's Department, ASIO, Treasury, the Department of the Prime Minister and Cabinet, ourselves, the Reserve Bank and the major financial institutions.

Senator McKIERNAN—We are searching for the letter. Part of the difficulty we as members of the committee have is that some of the information we received during the inquiry on this matter was sent on a confidential basis and was given confidentiality by the committee. So we would want to be pretty careful from this end that we do not put on the public record matters which should not go on the public record. It might be easier for now, Chair, to leave this matter for a few minutes until we get a copy of the Commonwealth Bank correspondence and then perhaps return to it. These are matters that caused the committee concern at the time, and it would be useful if it were to be cleared up.

Senator LUDWIG—You will recall that at the last additional estimates a number of questions were asked by Senator Sherry and me in relation to Kevin Enniss. In response to that, I understood that you were conducting an investigation or were about to conduct an investigation. If it is an operational matter, I do not have to remind you of what you can and cannot say, but could I get a progress report about where that is presently—so far as you can? I understood that you were going to seek assistance from the Indonesians to conduct an investigation into what we could perhaps call the Enniss affair.

Mr Keelty—That is correct. The committee might be aware that subsequent to my appearance before the committee another program went to air, on 19 February 2002. Sorry, the first program went to air on 17 February 2002; I gave evidence before the committee on 19 February 2002; on 24 February 2002 the *Sunday* program broadcast further material in relation to the matter alleging that my evidence to the Senate committee differed from the statements made by the AFP on the initial program. It also cast doubt on the integrity of the investigation to be launched by the AFP as announced by me before this committee. Whilst the claim that my evidence to this committee contradicted previous information is erroneous, I will not pursue that at this time. The AFP investigation into the specific allegations raised by the *Sunday* program is well advanced. It is a comprehensive investigation being conducted with the utmost integrity, and I have invited the Commonwealth Ombudsman at the outset of that investigation to oversee the investigation, given the concerns raised by the *Sunday* program. As I say, the investigation is well advanced. Until it is finalised I am unable to comment on the findings of the investigation, but I undertake that I will advise this committee in due course, subject to any constraints that the minister might raise with me.

Senator LUDWIG—I understand that.

Senator Ellison—I point out that the *Sunday* program did publish a partial retraction of that story. It stated that there had been two unauthorised landings, as I recall, in the far north of Western Australia. It was stated that the witnesses—and this is in no way related to what the commissioner is talking about but about border control—

Senator LUDWIG—I am not sure whether you are making a statement or answering a question if it is not related to the question.

Senator Ellison—I am making a statement; I am putting this on the record. This issue was raised before. It brought into question the efforts for border control in the country as carried out by a number of agencies. The *Sunday* program has since stated that the witnesses who said that unlawful landing had taken place had fabricated their evidence and had been paid for it. It should be noted by the committee that, despite the beat-up by that program in relation to border control, they have retracted what they said.

Senator LUDWIG—Thank you, Minister. It is always helpful to have the record corrected. I am sure that would be extended to the committee if we were ever in the same position. This is the sixty-four dollar question, but I was just looking at the time line: do you anticipate when the report may be finalised? I do understand that because of operational reasons it may not even be made available to the committee. It would be helpful if it could be. The report would, as I understand it, go to the minister first.

Mr Keelty—The investigation is almost complete. I will make it available to the Ombudsman. I thought it important, given the nature of the allegations raised by the *Sunday* program and their questioning of the integrity of the AFP investigation ahead of that investigation taking place, to have that oversight by the Ombudsman. I would expect the full report will be made available to the Ombudsman some time this week. It would be a matter for the Ombudsman as to when we were in a position then to more formally report on the outcome.

Senator McKIERNAN—The AFP has a copy of the letter from the Commonwealth Bank. It is not dated, but the committee's receipt date is 8 May, and the date is on the bottom of the fax of the letter. Attached to the letter is the media statement from the Minister for Foreign Affairs, a joint media release with the Attorney-General—No. FA185/21 December 2001—which is about the gazettal of terrorists and terrorist organisations. Also attached to that—and

hich is about the gazettal of terrorists and terrorist organisations. Also attached to that—and this is probably where we are getting confused—is the letter from the AFP addressed to Group Security and Investigations, Commonwealth Bank of Australia, Parramatta. I will not give names. This letter is dated 13 February, which would concur with the information that is on the letter from the Commonwealth Bank and would probably put it in dispute with the information you put to the committee just a short while ago.

Mr Keelty—I think I actually ran through that scenario. If I can just repeat it: on 28 December 2001 the AFP commenced its inquiries to establish if there was any connection between the business and the terrorist organisation. Those inquiries identified that there was no connection. On 31 December 2001, which was the first business day after the AFP was advised of the Commonwealth Bank's actions, the AFP advised the bank contact officer of the result of the inquiry. This verbal advice from the AFP to the CBA was in accordance with the procedures agreed to by the stakeholder agencies at the committee that I just described to Senator Ludwig. That verbal advice was followed up by a letter, which is attached here, dated 13 February. I guess the issue in dispute is that the bank are saying that they were not advised until they received the written letter. What we are saying is the bank was advised on 31 December. They were advised orally in accordance with the agreed method of contact arising out of the stakeholder meetings.

Senator LUDWIG—The difficulty seems to be—and I probably differ from your version ever so slightly—the bank states:

During January 2002, the Bank made several attempts to raise this matter with the Australian Federal Police—

they do not say in what manner they made that attempt—

to determine the position with the accounts.

Mr Keelty—Yes.

Senator LUDWIG—Then they say:

On 13 February 2002, the Bank received confirmation—

they say at that point they received confirmation—

from the Australian Federal Police that no connection had been established ...

They went on to say:

On receipt of this advice, the Bank removed the freeze on the account.

That is where it differs from your account as to what happened on 31 December.

Mr Keelty—Yes. I am not in a position to identify the contact person in the bank who was identified by our person. Obviously it was a communication breakdown. It would seem to me the bank has relied on written advice from the AFP. If it has relied on written advice from the AFP, perhaps the AFP activities would have been approached differently. But on the advice provided to me the agreement reached between the stakeholder agencies and the Commonwealth agencies was that verbal advice would be passed to the financial institutions. That agreement was made during a meeting in November 2001, prior to this occurring.

Senator LUDWIG—I am not asking for an answer, but we do not know whether the Commonwealth Bank understood or knew that was in place. I am wondering if, rather than continue to labour the point without the Commonwealth Bank, you could take it on notice and have a look at the issue that they raise in that penultimate paragraph as to what the confusion

was and whether or not the interdepartmental committee is able to address that specific issue about verbal and written confirmation, or whether in fact it is simply a breakdown in communication and, I suspect, some follow-up correspondence to confirm people's positions.

Mr Keelty—Yes. I will undertake to, at a more senior level, resolve the issue with the Commonwealth Bank and come back, hopefully, with a combined reply. Obviously that will be up to the bank, if they want me to come back with a combined reply. That might cut to the quick in terms of the committee's deliberations.

CHAIR—Thank you.

Senator LUDWIG—That is what I was suggesting. I did not really want to go into it too deeply. I just think it needs to be resolved. If you cannot resolve it, I think we understand from the committee's perspective. It is only that we drew—at least I drew—a perhaps not positive view of the AFP's role in all of this and I would not mind being put straight.

Senator McKIERNAN—The committee during that inquiry were working under fairly strenuous pressures with the time lines that we had to meet. Because of that we were not able to undertake all of the inquiries and investigations related to this matter, which was causing us concern. If those matters can be put to rest early, that would be appreciated. Just one question in relation to it: you have advised the committee that advice was given to the Commonwealth Bank at the end of last year—on the second last day of the year in fact. Did the AFP make contact directly with the organisation, the Shining Path music store, that you are aware of?

Mr Keelty—No; I guess because in a sense the AFP was a third party to the activity. The freezing of the account was not at the request of the AFP, nor was the AFP involved in the freezing or the unfreezing of the account in one sense. I take it that what the bank are saying is that after the letter they received on 13 February they unfroze the account. In a sense we were a third party to the activity.

CHAIR—Much to the consternation of my colleagues, I have a couple of questions. As you would be aware, the committee has in a number of recent inquiries considered the application of access to telecommunications interception material in, for example, civil proceedings and so on. We have some advice from the Attorney in an initial inquiry relating to the proceeds of crime legislation that these matters are the subject of ongoing review of the Telecommunications (Interception) Act 1979. I understand that review is to be carried out by the Information and Security Law Division of the Attorney-General's Department on an ongoing basis. Can you advise the committee what role the Australian Federal Police have in that ongoing review?

Mr Keelty—As I understand it, the committee is chaired by Mr Ford from the Attorney-General's Department.

CHAIR—That is also my understanding.

Mr Keelty—The AFP has a representative on that committee.

CHAIR—Is that in a formal capacity—it is not an informal role?

Mr Ford—The AFP is formally represented on the Interception Consultative Committee.

CHAIR—I was hoping to get the advice from the AFP, but if the advice is going to come from the Attorney-General's Department then that is another matter. Can either Commissioner Keelty or Mr Ford advise me when the last meeting of the Interception Consultative Committee was held and whether the AFP was present?

Mr Ford—From memory, it was about a month ago. There is another meeting in about a week.

CHAIR—Yes, I understand it is scheduled for 7 June.

Mr Ford—Yes. I am just not sure when the last meeting was. It was not that long ago. The AFP was present. I cannot remember who was there from the AFP.

CHAIR—Can the AFP assist the committee with any advice on which jurisdictions in Australia do use telecommunications interception material or have access to the use of TI material in civil forfeiture proceedings?

Mr Keelty—I think Western Australia and New South Wales do, but I would need to take that on notice.

CHAIR—I would appreciate that. The issues which have been discussed with the committee in hearings in relation to both the proceeds of crime bills and the security legislation have raised a number of differences perhaps between the approach of the AFP and other organisations in the area. Is the AFP raising these issues in the Interception Consultative Committee process?

Mr Keelty—We had not until now, because the option of the group headed by Mr Ford was not considered the most appropriate option for voicing concerns about the proposed bill, but it would seem that that is now the option that is open to us.

CHAIR—Are there any other options?

Mr Keelty—I met with the head of the DPP and the Attorney-General today. That is the preferred course of the Attorney. I am not sure how to express this.

CHAIR—I do not expect you to put on the public record details of your meetings with the Attorney-General.

Mr Keelty—There was an expectation that this committee might have come back with a stronger finding, I suspect, one way or the other.

CHAIR—On whose part?

Senator Ellison—On the part of the government, I think.

CHAIR—Let me just respond to the commissioner for a moment.

Senator Ellison—Can I just clarify what the committee said. Was it a recommendation by the committee?

CHAIR—The committee has made a couple of recommendations in this area which are matters for the legislation inquiries that we conduct. I understand that. But indicating that there is some expectation that the committee might make or not make a recommendation would mean that the committee would need either adequate information or appropriate advice on which to base such a recommendation. I would say, after some lengthy consideration, that I do not believe the committee has been equipped to do that, and you might find that that is why the committee has made the decisions it has, although I do of course speak on my behalf, not on behalf of all members.

Senator Ellison—But the committee said in the report that it supported TI for the proceeds of crime.

CHAIR—Indeed, in relation to the proceeds of crime, and the Attorney indicated—

Senator LUDWIG—I think Labor might have said no.

CHAIR—Yes—correction.

Senator Ellison—According to the report I read, it did not. There was support. It was not in a box called ‘Recommendation’ but it was support.

CHAIR—The committee is trying—and it is not necessarily appropriate to consider it at length here—to get the best advice it possibly can from the agencies that come before us at various times on how to make decisions in this area. I do not imagine that discussions on the use of telecommunications intercept material are going to go away, particularly when we are at some stage going to consider in the Senate the security legislation and other legislative matters. Thank you. I appreciate the clarification.

Commissioner, in our previous discussions I raised with you the upcoming event in October this year of the Women and Policing Globally conference, which is being held here in Canberra and hosted by the AFP. I understand that in March senior North American female police officers connected with that event visited Canberra—I assume to inspect facilities and to monitor the progress of preparation. I understand this is the first time a conference of this nature has been held outside the Northern Hemisphere and I wondered whether you or Ms Fagan could update the committee on preparations.

Mr Keelty—Yes, it is the first time that the conference of Women and Policing Globally will be held outside of the United States. We did have a visitation from the International Association of Women Police executive committee here in March to inspect the facilities. The co-host is Chief Commissioner Christine Nixon from the Victoria Police. Chief Commissioner Nixon and I met with the committee two weeks ago, and we were given an update on the preparation for the event. Perhaps it is best at this point to hand over to Federal Agent Audrey Fagan, who is on the committee. I will add, though, that at this point in time we have 432 delegates who have registered and about 400 of those have paid. Going on previous conferences, they have not reached those sorts of figures before and we are still five months away from the conference. So it is looking very promising for the AFP, for Australian policing and for women in policing in Australia.

CHAIR—Thank you, Commissioner. Ms Fagan, do you have anything to add to the commissioner’s responses?

Ms Fagan—Delegates are attending from 16 countries as well as Australia. They are from as far and wide as Africa, Argentina, Canada, China, Germany, Japan, New Zealand, Norway, the Philippines, Papua New Guinea, Romania, Sweden—there is a large delegation coming from Sweden—the UK, the USA and the West Indies. As the commissioner said, there are 432 delegates at this point. Our target is around 600.

CHAIR—Are there any representatives of female police officers in East Timor attending?

Ms Fagan—We are currently examining that to look at bringing them over from East Timor. We do not have any registered at this point.

CHAIR—In terms of the number of Australian delegates participating, do those police officers come from both the state and federal police and in what number?

Ms Fagan—There is a mixture from all jurisdictions. It is in the order of 200.

CHAIR—There are 200 Australian police?

Ms Fagan—Registered at this point, yes.

CHAIR—Thank you.

Senator COONEY—Is part of the conference being held in Melbourne?

Ms Fagan—It is being held in Canberra, at the National Convention Centre, in October.

Senator COONEY—And no part of it at all is being held in Victoria?

Ms Fagan—There is no plan for this one to be. There has been one in Brisbane. Maybe the fourth one could be in Melbourne.

Senator COONEY—Nevertheless, all the very best. It sounds very exciting.

Ms Fagan—Thank you.

Senator McKIERNAN—Commissioner, at previous estimates hearings—not the last one—there was a series of questions addressed to the AFP regarding alleged leaks of classified Defence information concerning events in East Timor in 1999. Are you aware of the leaks that I am talking about? We went through some extensive questioning in regard to that, probably two or three committee hearings ago. Do you recall those events?

Mr Keelty—I think so, yes. It was around the time of the Olympics.

Senator McKIERNAN—It was probably just after.

Mr Keelty—Yes, I think I recall the issue.

Senator McKIERNAN—Have those investigations been completed?

Mr Keelty—Yes, they have.

Senator McKIERNAN—Were any persons prosecuted under the Crimes Act as a consequence of those investigations?

Mr Keelty—No, they were not.

Senator McKIERNAN—What was the total cost incurred by the AFP—that is, salaries and other costs—using the PROMIS system that you have in place, in pursuing this investigation?

Mr Keelty—Can I take that question on notice, please?

Senator McKIERNAN—I would not expect you to do otherwise. Thank you, Commissioner.

CHAIR—I am momentarily in an invidious position insofar as I am waiting for advice from the Clerk on the matters which were discussed earlier.

Senator LUDWIG—We have more questions.

CHAIR—I am saved by my colleagues from an invidious position.

Senator LUDWIG—It is one of the highlights of my day, asking the AFP questions.

CHAIR—And theirs, I am sure, Senator Ludwig.

Senator LUDWIG—In relation to East Timor—

Senator McKIERNAN—I have asked that.

Senator LUDWIG—You have done that—while I was not watching. I will go to my next favourite topic, which is e-security. I will hold my questions on NOIE—regarding the national information infrastructure system—for the department. But I want to concentrate on the AFP's involvement and its expenditure in that area. I think \$6.8 million is allocated to the

AFP to be spent on national information infrastructure—that area of computer intelligence. Could you describe the national information infrastructure from your perspective and what you would use it for so that I can get an understanding of that area?

Mr Keelty—The AFP is aware that Australia is becoming increasingly dependent on the information environment, which has given rise to new threats and vulnerabilities. The AFP is aware of the exploitation of information and communications facilities for traditional crimes, fraud and drug trafficking and that it contributes to both the methods and opportunities for further criminal activity—impacting on national security and, as you say, the functioning of Australia's national information infrastructure. We are aware that the incidents adversely affecting the information environment have the potential to cause significant damage to the economy. The Commonwealth established the framework to facilitate the strategic role in creating a secure and trusted electronic operating environment. The AFP has been participating in the multiagency collaborative framework to assist in the protection of the information infrastructure. These are the e-security coordination group and the critical infrastructure protection group.

Another key element is the effective coordination for the protection of the national information infrastructure. In that, our role is to analyse and respond to incidents and issues. This capacity involves incident analysis and response, intelligence collection and forensic support. I have moved the computer crime investigations area underneath the control of the head of our forensic science centre—so it is in the forensic services area—giving recognition to the fact that a lot of the e-crime requires a different forensic response. We are also involved in the identification and assessment of threats and vulnerabilities to the NII.

The funding received in 2001-02, of \$200,000, was for our role in that coordinated approach. It supplemented funding from the previous year, when we received a similar amount. The new funding we receive in 2002-03 will ensure that we continue to meet our obligations under the e-security national agenda. Specifically that means that we will provide additional staff in the national information infrastructure incident analysis and response area, additional staff for e-security intelligence analysis, and additional staff for electronic forensic support and tools development. The staffing component will be supported by a complementary investment in equipment, training and research and development.

Senator LUDWIG—On page 67 of Budget Paper No. 2 where it announces the security response, it notes that it would be A-Gs, the AFP, ASIO and Defence, and the National Office for the Information Economy will contribute \$1 million. So the total, as I understand the figures, is about \$24.2 million, which comprises \$1.7 million over the next five years to the AFP to contribute to that overall e-security program. Is that sufficient to achieve the overall purpose?

Mr Keelty—At this point in time, given the level of threat and the known incidents that we have had to respond to, I would say yes.

Senator LUDWIG—I do not want to severely disagree with you, but it just seems a low amount when you make overseas comparisons. When you look at it on a per population basis, \$24 million spreads pretty thinly—although we are a small country on a per head basis compared with Ireland, England, France, Germany and Canada. It does not seem to compare particularly favourably, given the amount of e-crime that is alleged to occur. In Australia I understand that it has doubled and that 67 per cent of organisations have suffered at least one e-security breach since 1999, which outstrips the USA. That was from the 2002 Australian computer crime and security survey. I am not sure whether their survey data would stand up,

but it is indicative of the rise in computer crime. In other estimates you have also alluded to the fact that e-crime or computer crime is rising in the community. Can you take the question on notice as to how you intend to spend the \$1.7 million over the five years? You say it is adequate, but when you look at it \$24.2 million comes to about 32c per head of population. Compared with the US expenditure of \$28 per head, there seems to be a significant difference.

Mr Keelty—I will break down those figures for you and take that question on notice. The one thing I will say, though, is that it is difficult to get accurate figures on the impact or the number of e-crime incidents. I am aware of the publication that you just referred to and, in fact, I am a member of the Australasian Police Commissioners E-Crime Steering Committee. One of the things that troubles me, and I think you have alluded to it, is that some of these figures are used by people who are trying to get into the business of investigating these matters.

Senator LUDWIG—I am not trying to encourage them either. I am trying to ascertain—and I think you have answered part of it—the level of threat, what we need to address and how much we need to spend on that area. Of course, the more critical thing from our committee's perspective is that the money provided is spent in the relevant areas and is sufficient to meet the known threat.

Mr Keelty—I will provide an answer to you on that.

Senator LUDWIG—Thank you very much.

CHAIR—Thank you, Senator Ludwig. The committee will now have a very brief private meeting to consider the advice received from the Clerk of the Senate. We will resume after that. Senator Scullion has a couple more questions for the AFP. We will keep the meeting as brief as we possibly can.

Proceedings suspended from 6.07 p.m. to 6.13 p.m.

CHAIR—The committee will now resume its public hearing and I appreciate the assistance of the minister and officers in enabling the committee to have its private meeting. As you know, earlier in these proceedings, Senator Crane began to ask some questions of the Australian Federal Police in relation to a matter and the commissioner raised what he termed a 'point of order' with the committee. I would indicate now that it was not in fact a point of order, and I will rule that way, but it was a process of raising the commissioner's objections to the line of questioning that was being pursued. I sought advice from the Clerk, and I am grateful to the Clerk for providing comprehensive advice in a short period of time which, with the committee's concurrence, I would like to read into the record. I indicate that the Clerk, in his advice, has indicated it is not appropriate for questioning to continue in this area. The advice reads:

Dear Senator Payne

You sought advice on the point raised during the estimates hearing this afternoon by the Commissioner of the Australian Federal Police in relation to a question asked by Senator Crane about the police investigation of him.

Paragraph (10) of Resolution 1 of the Senate's Privilege Resolutions allows any witness to object to answering any question on any ground, and requires the committee to consider the objection.

The Commissioner objects to answering such questions from Senator Crane on the basis that the questions and the answers would be protected by parliamentary privilege and this could cause difficulties for the prosecution or the defence in any future legal proceedings arising from the investigation.

This problem has occasionally arisen in relation to other Senate committee proceedings in the past, and I have counselled caution on the part of committees in those cases.

The problem is that questions and answers in a Senate committee hearing, because they are protected by parliamentary privilege, are unexaminable in any legal proceedings. This could cause difficulties in those proceedings, and could easily cause them to miscarry. For example, if the police were to answer questions in a committee hearing, in a subsequent trial the defence could claim that the police answers provide evidence favourable to the defence, and the defence's inability to adduce them in evidence before the court prevents the defence properly presenting its case and therefore prevents a fair trial, and that, on that basis, the prosecution should be dismissed. There is precedent in civil cases for the proceedings being stayed on the basis that material protected by parliamentary privilege could not be examined and this prevented a proper trial of the matter in issue. The courts are more likely to dismiss a criminal case because of material which may be relevant in the case but which is unexaminable because of parliamentary privilege, given the greater reluctance of courts in criminal matters to allow any unfairness to the defence.

The problem is likely to be exacerbated where one of the participants in the parliamentary proceedings is the likely subject of any subsequent criminal proceedings, as in this case. The knowledge of such a person of what the case is about makes it more likely that material will be incorporated in the parliamentary proceedings which goes directly to matters likely to be in issue in any prosecution. A potential defendant could deliberately seek to create privileged material which would hamper the conduct of any subsequent trial.

On this basis, I recently strongly advised a committee not to take evidence from a person who was to be a defendant in a criminal matter.

Where a prosecution has been initiated, it is a relatively easy matter for a committee to avoid canvassing of questions which are likely to be at issue in the criminal proceedings and the canvassing of which might prejudice those proceedings.

In the circumstance now before you, however, it is impossible for the committee to tell whether any of the questions or answers could cause a subsequent trial to miscarry because of the significance of those questions and answers to the evidence presented at the trial.

The committee could be severely criticised for subjecting the investigating police to questions which may give rise to privileged material inadmissible in any subsequent criminal proceedings, and thereby causing difficulties for the prosecution if not causing the trial to miscarry. The committee could be criticised even more justly for requiring the police to answer questions put to them by the potential defendant in any subsequent criminal trial.

It would be extremely unfortunate if the committee's proceedings caused a criminal prosecution to fail; it would be doubly unfortunate if the prosecution was that of a senator.

Taking the questions on notice would not necessarily solve the problem, as such questions and any subsequent answers would also be unexaminable in subsequent legal proceedings.

Senator Crane has indicated that he wishes to ask questions about "procedures" and not "operational matters", but police procedures are often at issue in criminal trials and could well be in this case.

There is a further problem of allowing the potential defendant, through questions put to the police, to ascertain lines of inquiry, which knowledge could allow the frustration of the police investigations.

For these reasons, I recommend that the committee accede to the Commissioner's request that he not be required to answer questions about the investigation of Senator Crane which he considers could give rise to the problems identified.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

(Harry Evans)

The committee has met and acknowledged the very serious nature of the issues that were before the committee for discussion and indicates that we as a committee have resolved to follow the Clerk's advice.

Senator CRANE—Madam Chair, could I ask two questions of you, please. I am not disputing the ruling; I am not challenging that at all.

CHAIR—Yes, Senator Crane.

Senator CRANE—Firstly, I hope there is no misreading, conjecture or insinuation in the paragraph which reads:

On this basis, I recently strongly advised a committee not to take evidence from a person who was to be a defendant in a criminal matter.

I have not been charged with anything; I have not been interviewed—and I want to make that quite clear. I have been through a lot of processes with this very carefully. So I make that point.

CHAIR—I understand that, Senator Crane. I am advised that that refers to a completely different matter.

Senator CRANE—Yes, I know. Secondly, I have prepared a series of general questions, which I would like to hand to you for the committee's consideration as to whether or not they can be placed for answering on notice, in the short time we have had. I am not asking to ask these questions now, but I am asking for the committee to examine them and if they consider them appropriate—which I believe they are—to place them on notice. They are all procedural matters of a general note.

CHAIR—As I indicated in accepting the Clerk's advice, the committee also accepted the Clerk's advice in relation to questions on notice. I would like to indicate to you that, if you would retain the questions that you have, the committee will consider that point further and come back to you.

Senator CRANE—All right. If you do not want to do it, tear them up.

CHAIR—Thank you, Senator Crane. I thank the committee and the witnesses for their assistance in the process this evening. I also thank the Clerk for his advice, provided in a very expeditious manner.

Senator SCULLION—Yesterday, in a response to a question from Senator McKiernan, Mr Crooke from the National Crime Authority shed some doubt on the capacity to maintain an investigative corporate sense by alluding to the fact that the National Crime Authority may lose some people or that the corporate history of the National Crime Authority may not be caught up in the ACC. Can you tell me whether that is the right thing to draw from that?

Mr Keelty—It occurred to me that at a time when the AFP is in fact recruiting quite heavily we could inadvertently create a situation where we were going to place the National Crime Authority in a difficult position, given its current workload and the fact that until such time as it is replaced by the Australian Crime Commission it still has work to do. In addressing that I sought a meeting with the Chairman of the NCA during the senior officers group meeting in Darwin last week. During that meeting I said to him that the AFP needed to ensure that the criminals were not the people to benefit from the current uncertainty. I undertook that, if he were to lose staff from critical investigations, I would seek to backfill those staff as best we could, given the priorities we have but also understanding that most of the work undertaken by the NCA is important work, so that the wheels do not fall off the

NCA in this transitional period. My organisation and I are committed to making sure there are no criminals who prosper from the current transitional arrangements.

Senator SCULLION—Thank you. You gave an answer to Senator McKiernan about the jurisdictional arrangements in detention facilities. I have recently visited detention facilities, particularly Port Hedland, where I was able to discuss with some of the ACM guards some of the challenges facing them. They were quite focused on the fact that whoever was going to be in charge—whether it was the AFP or the local police—needed to have the capacity to do it in an expeditious sense. In a management sense that is very important. They told me that, if this takes a long time to happen, the people within the community of the detention facility would feel that they were not being protected because those individuals who may seek to harm or damage were not being removed. In terms of efficiency, I would have thought that the state police have all the facilities to deal with the nature of these allegations—the property damage, violence and those sorts of issues. Do you think the AFP should be going to places like Port Hedland or do you think the state police should be handling these matters—in terms of efficiency and effectiveness?

Mr Keelty—Where the state police have the resources to deal with the matter expeditiously, there are a lot of advantages in doing that. If the problem overflows, it generally overflows into the community, and that would need to be addressed by the state police in any event. In terms of suppressing the issues and getting the issues dealt with expeditiously, the state police are probably best placed to deal with offences against a person or damage to property. That is why the Commonwealth application of state law legislation is in place. Having said that, extraordinary circumstances such as what we saw at Woomera over the Easter holiday weekend meant substantial diversion of police resources from other Easter activities. As we all know, it is traditional at that time to have a focus on road safety campaigns. The focus for us is on cooperative arrangements that will suit the jurisdictions. That is why we have moved to the memorandums of understanding with our state counterparts. Obviously, DIMIA is the important stakeholder in all of that because of its position with the detention centres. I do recognise that it is a difficult issue.

Senator SCULLION—How do the state jurisdictions at the Australian Police Ministers Council feel about their role in that? Do they have a fairly fixed line about what you do and what they do or do you think they are going to be happy to perhaps change a role somewhere?

Mr Keelty—The matter is on the agenda for the Australian Police Ministers Council meeting on 17 July in Darwin.

Senator COONEY—Apropos what Senator Scullion has been asking about, is there going to be proper time taken to nurse the various components of the new body that is going to replace the NCA together? For the sake of a few months it seems to me that it might well be worth while waiting to make sure that everybody meshes in well together. Are there any problems in that area or do the people that go to make up that particular body all get on so well together now that there will be no problems at all in coming together in January next year?

Senator Ellison—I think the longer it goes the more uncertainty you have for the staff, as we said yesterday. I think it is better to move things along at a expedited pace—for a number of reasons: (1) because of the need to get the new body in place, and that is law enforcement, which is very important; (2) for that reason, to have a shortest possible transitional period; (3) to give that certainty to staff; and (4) because I do believe the people concerned do have a common will for this to work—and I think that is the beauty of it.

Senator COONEY—Are all the governments taking notice of what their law enforcement agencies are saying to them?

Senator Ellison—I believe they are. I can say that there is support for the formation of the ACC from police commissioners from around Australia, that I have seen. In fact, I think it was a subject of the communique from the Police Commissioners Conference in Adelaide.

CHAIR—Commissioner, can I thank you and your officers for your assistance this afternoon. We are very grateful and appreciate your coming at two o'clock to assist the committee with its deliberations on your area.

Mr Keelty—Thank you, Madam Chair, and thank you to the committee for the deliberations and understanding the situation I found myself in during the hearings. I would also like to pass on to both Senator McKiernan and Senator Cooney our best wishes from the AFP and our sincere thanks for the work of the committee and your roles on the committee during my time as commissioner but also prior to that. Certainly it is much appreciated, and we wish you both well in your retirement.

Senator COONEY—Thanks very much.

Senator McKIERNAN—Thank you, Commissioner. I probably will never get the opportunity to question the Federal Police again, and I hope you never have the opportunity to question me, but thank you for your good wishes.

Senator COONEY—I do not know whether this is proper, Mr Keelty, but I would like to pass on my regard for the Australian Federal Police which I think is a truly great force, but also for the association. I think that has played a very honourable and great role over the years. Would it be all right for me to ask you to pass that on to the association?

Mr Keelty—It would be my pleasure, Senator.

CHAIR—Thank you very much, Senator Cooney and Senator McKiernan. Thank you, Commissioner.

[6.30 p.m.]

Office of Parliamentary Counsel

CHAIR—Welcome, Ms Penfold.

Senator McKIERNAN—On the matter of the antiterrorism bills, how many people in the office of the OPC were involved in the drafting of the bills and how many hours were spent in that drafting?

Ms Penfold—I can give you a rough idea of the numbers. How far back do you want to go? I say that because there was some work done very early on, before the election, which involved I think one or two people. The bulk of the work was done in the last two months and that has involved I think five or six people working on different aspects of the package—maybe even eight, but not eight full time for any length of time. I could not tell you now the number of hours and I would be very hard pressed to make an estimate even if I took that question on notice.

Senator McKIERNAN—I would have to say, in response to your question, go back to the beginning because you have the advantage of me. I have not seen the work that was done prior to the election. I am not in a position to compare that work with what eventually came into the parliament. Do you not have any tracking system to cost work that comes out of the OPC?

Ms Penfold—No, we do not. We do not charge people either properly or notionally for our work.

Senator McKIERNAN—How do you measure productivity, then, within the OPC? I know I am going off at a tangent, but the only reason I am going off at a tangent is that there seems to me to be an opening perhaps within the OPC.

Ms Penfold—When you say ‘how we measure productivity’, what we look at is whether we get the bills that the government wants more or less when they need them. It is a bit hard to work out an absolute scale against which to test whatever it is that we produce. Apart from those end results—whether the bills are there when they are wanted and whether they do what they are supposed to do—there really is not any other sensible way of assessing what we are doing. We could measure pages or we could measure numbers of drafts turned around or any of those things, but none of those necessarily represent productivity.

Senator McKIERNAN—No. And drafting instructions can change.

Ms Penfold—Do change, I think.

Senator McKIERNAN—Do change. I am making an assumption because I am not privy to that information, particularly in relation to the question I have just asked on this particular matter. But there are also occasions when legislation is drafted outside of the OPC. Am I correct in that assumption?

Ms Penfold—When you say ‘drafted outside’, there are two or three former members of the office who work on contract who work physically outside the office, but when they are drafting for the government they are drafting under contracts put in place by us. So they are, as it were, kept within the system. I am not sure if that is what you mean or if you are thinking of legislation drafted, as it were, further outside.

Senator McKIERNAN—What I am trying to get to is the number of hours that were spent on the drafting of the antiterrorism legislation which is currently before the parliament. We have gone off somewhere away from that, but in order to understand and get an appreciation of how we arrive at a total I have had to ask these additional questions. If you are contracting someone outside of OPC to draft a bill, how will you arrive at a negotiated figure for the bill with that individual or group of individuals? Will it be the size of the bill?

Ms Penfold—Yes, you are absolutely right. The contract drafters do charge by the hour. I would expect to get invoices—for some of them, I actually see these invoices but for the ones that are paid by other departments I generally do not—that show how many hours they have spent on each bit of legislation that they have been working on. So, yes, for a bill that happens to have been drafted by one of those contract drafters, it would be possible to work out the hours. I do not think there were contract drafters involved in any of the counter-terrorism legislation; in fact I am sure that there were not.

Senator McKIERNAN—The point I was trying to establish was that you are able to establish the cost of a bill when it is done outside.

Ms Penfold—Yes.

Senator McKIERNAN—Why then are you not able to track the workload within OPC and therefore arrive at the cost of the drafting of that particular piece of legislation? At this point in time I am not necessarily just talking about the antiterrorism legislation.

Ms Penfold—Because we do not require the drafters to record what they are working on hour by hour or minute by minute.

Senator LUDWIG—Don't you find it a little unusual that you do not?

Ms Penfold—It may well be unusual.

Senator LUDWIG—From a supervisory capacity. I am not suggesting this in the least, so I will raise it in the hypothetical: how do you know if they are just sitting at their desk or if they are working?

Ms Penfold—Because I know whether the work is coming through. I know whether the work is coming through and, more particularly, their clients know whether the work is coming through. On the very rare occasions that we have been unfortunate enough to be landed with someone who does just sit at their desk, we have known about it fairly quickly.

Senator LUDWIG—But how do you assess whether or not you are getting equal performance from the range of employees that you have working with you? In other words, how do you assess that the workload is fairly shared and the output is at least equivalent from the relevant officer depending on their status, the bill that they are working on and its complexity? If I may say so, in a previous career many, many years ago we were put to this task by employers and they told me that there is not a piece of work that they cannot track and work out a performance criterion for. So I find it curious that I have found one agency that seems to have missed the world.

Ms Penfold—We are aware of the world outside and we have, over quite a long period, struggled with the requirement that we do this. It comes up in particular in the context of performance management and performance appraisal, and we do have in place performance management programs covering all of our staff. I would have to admit to you, though, that it is extremely difficult to produce anything that looks like a measurement of what people are doing. The way the office operates is that the drafting teams are all led by a senior executive service drafter or statutory officer, so they are all reasonably senior. The only way that we can function is that they are allocated drafting jobs and they work on those drafting jobs with their assistant drafters, who are the non-SES drafters. I have to give them responsibility for getting that job done.

Senator LUDWIG—It is not job and finish.

Ms Penfold—I am sorry, you have lost me.

Senator LUDWIG—A 'job and finish' is an industry description which hardly exists anymore, I suspect. In the garbage collection industry, a person started early and, when the job was finished, they went home. That was taken away from employees many, many years ago. What you are describing is effectively that. I am not suggesting that you have to actually use a management technique whereby you have a time clock and a sheet of paper to measure someone, but there are more sophisticated measures, in the broader sense, available to call upon to establish performance and output in an office environment. I am amazed that none of it has been applied. Do departments have to use all of your services to develop legislation or can departments outsource?

Ms Penfold—I am not sure what you mean by all of our services. We really provide one service.

Senator LUDWIG—I think it is more broad than that. Certainly you provide a service in drafting. I do not think you just provide the pen and the paper. I think you provide experience and competency and error correction in terms of a holistic approach, but we will not go there

just at the moment. If I want a bill drafted and I am a department, do I have to use your service?

Ms Penfold—Effectively, yes.

Senator LUDWIG—Effectively. Is it yes or no, or what is the exception?

Ms Penfold—The exception is that you have to use drafting services organised through the Office of Parliamentary Counsel. As I was explaining earlier, they might in some cases be the services of a contract drafter.

Senator LUDWIG—Yes, outsourced, and they are paid an hourly rate. What hourly rate is that? Is that available to the committee?

Ms Penfold—It varies. I would prefer not to identify individuals.

Senator LUDWIG—Why does it vary?

Ms Penfold—The real answer for why it varies is that I am a lot tougher than some of the departments that persuade me to engage contract drafters for them to pay.

Senator LUDWIG—How do we know you are that tough?

Senator McKIERNAN—As a Senate estimates committee looking at the appropriation bills, what yardsticks can you give the committee so that we can test what you have just said about how tough you are in terms of delivery for these taxpayers' dollars that are going to your office?

Senator LUDWIG—Give me an hourly rate and I might give you a quick assessment.

Ms Penfold—All right. The contract drafters who are engaged in effect on a retainer for my office and who work on bills assigned by me are paid a rate which is very close to the figure you would get if you worked out an hourly rate for the package of a band 2 drafter—a band 2 SES person.

Senator McKIERNAN—How much is that?

Ms Penfold—It is very roughly \$100 an hour. I think that you will agree that that is not a particularly generous amount.

Senator McKIERNAN—Can you be a bit more specific on that, rather than very roughly? Is that productivity just a rule of thumb yardstick as well? It seems to me that you ought to be in a position to be able to tell the committee precisely those details that have been asked of you.

Ms Penfold—I think that one is \$100 an hour plus GST.

Senator McKIERNAN—For a 40-hour week?

Ms Penfold—For whatever hours they work.

Senator McKIERNAN—That is not as much as a royal commissioner but it is still pretty generous. To come back to the first question on the antiterrorism bills, you are not in a position to tell the committee how many hours were spent by how many people in developing those bills?

Ms Penfold—I am not.

Senator McKIERNAN—Why?

Ms Penfold—I could go back on a retrospective basis and get people to roughly estimate how many days or weeks they spent, by going through files and diaries and so on, but that would still be a very rough estimate.

Senator McKIERNAN—Would you be able to tell the committee how many people—as broad as that?

Ms Penfold—I did mention some figures for people. I can get more detailed information on that if you want me to. My feeling is that there were three drafting teams, which equals six people. Perhaps we could clarify this first: exactly what do you regard as the counter-terrorism legislation? From where I am sitting, there are I think three bills that had terrorism in the title but there were several other bills that were, on and off, regarded as part of the package. There were some telecommunications interception—

Senator McKIERNAN—With due respect, Ms Penfold, would it matter whether it was four bills or seven bills or 15 bills?

Ms Penfold—It would matter to me telling you how many people were working on it.

Senator McKIERNAN—You have already admitted that you are not in the position to give us the details.

Ms Penfold—I am completely not in a position to give you hours. I have said I can tell you which people.

Senator McKIERNAN—With due respect, does it matter? You tell us you have no tracking system in place in OPC.

Ms Penfold—That is right.

Senator McKIERNAN—You have asked me a question. Give me the ability to reply to the question. I will just narrow the question down for you. There were specifically four bills referred to the Senate Legal and Constitutional References Committee for inquiry which I think are colloquially recognised in the community as being the antiterrorism bills. The ASIO bill has been separated from that. Can I deal with those four bills and ask you to narrow your responses down to those particular bills. I have not got the names of them in front of me at the moment, but I can certainly get them if you need more information.

CHAIR—I can assist, but I am sure Ms Penfold knows which bills we are referring to.

Ms Penfold—No, I do not. If you give me the names, I can go through in my head who drafted them.

CHAIR—The [Border Protection Bill 2001](#), [Suppression of the Financing of Terrorism Bill 2002](#), [Criminal Code Amendment \(Suppression of Terrorist Bombings\) Bill 2002](#), [Security Legislation Amendment \(Terrorism\) Bill 2002 \[No. 2\]](#), and—

Senator McKIERNAN—We will have to go to the Internet.

Ms Penfold—Security Legislation Amendment No. 2?

CHAIR—It was called No. 2 because in its introduction there was an error in the House and it had to be reintroduced as No. 2.

Ms Penfold—I remember that one.

CHAIR—They are a matter of some public debate—the package of bills.

Ms Penfold—I am sure they are a matter of some public debate.

CHAIR—I am just trying to assist my colleague.

Ms Penfold—Those are not necessarily the same descriptions that I get when people ring me up and say, ‘Quick, quick, we need another draft of the terrorism bill’.

CHAIR—They are called variously the antiterrorism package, the security legislation package.

Senator LUDWIG—There are five in all.

CHAIR—And there are more disparaging terms applied.

Ms Penfold—There are also the proceeds of crime bills, and there was some telecommunications interception legislation.

CHAIR—There is the [Telecommunications Interception Legislation Amendment Bill 2002](#) as well. That is in fact the other bill in the package, Ms Penfold, and that should clarify that for my colleague.

Senator McKIERNAN—Thank you, Chair. Does that help?

Ms Penfold—I think the answer is that each of those bills was worked on by a different drafting team. One of them, I think, was worked on by a single person rather than a pair. One of them was possibly worked on by two different drafting teams or a team involving three people. Without my lists in front of me, I would say somewhere between seven and 10 different drafters would have been involved.

Senator McKIERNAN—With \$100 per hour per drafter and that number of people, are you now in a position to help the committee find out how many hours were involved in and the cost of the drafting of those particular pieces of legislation?

Ms Penfold—Senator, if you wish, I can go back to the office and ask all the drafters to make an estimate of how many hours they spent on all the bills. I should point out also that most of the people involved do not get paid anything like \$100 an hour, even taking account of their superannuation and so on.

Senator McKIERNAN—On notice then, how much do they get paid? I am surprised we have not asked these questions before.

Ms Penfold—I am perfectly happy to bring that information back, but it is all available on our web site. You will find it in our certified agreement, which is on our web site.

Senator McKIERNAN—You have taken it on notice and will supply the information to the committee.

Ms Penfold—The information you want is how much all the drafters get paid?

Senator LUDWIG—How many employees—a breakdown.

Senator McKIERNAN—Where did we start? Do you remember where we started? How many personnel from OPC were involved in the drafting of the terrorism bills and how many hours were spent on that? From that, because we were not able to get the answers to those questions, we have now moved into the realm of the cost per hour of a drafter working in OPC, or working out of OPC. Regrettably, we have gone off at a tangent to find out the total costs involved in the drafting of this legislation. There are five pieces of legislation that were part of the inquiry by the Senate Legal and Constitutional Legislation Committee, and we have a copy of the names of all of those bills here. I am asking for those details, but I am going to add one more bill to it because there was one bill introduced and then withdrawn

which would have had to have been drafted as well. If you could add that No.1 bill in as well, there was the [Security Legislation Amendment \(Terrorism\) Bill 2002](#). I think it was named No.1, but that happened in the other place, so I am not sure about the title. I am sure we can get the information and clarify that for you if you are not able to chase it down through your office.

Ms Penfold—That one did not actually take any new drafting. It was the same bill as the one that had been introduced the night before. The reason it had to be reintroduced was that the long title of the bill was changed very late in the piece and the notice that was given for that bill had the old long title in it. There was no redrafting involved in introducing the second one. In fact, we did not even have to reprint that bill to introduce it a second time because there were enough spare copies available.

Senator McKIERNAN—Thank you for that information. It will probably save you from providing the material you have taken on notice. Returning to this confusion about how you operate. In your role as head of the office, when you are handing out work in the form of drafting instructions to a team of drafters within OPC, do you give them time lines as to when that draft has to be finished? How do you estimate in your own mind what will be required to produce a piece of legislation from that drafting team?

Ms Penfold—When I hand out a draft, I do make a very rough estimate, based on the instructions, of what that bill is likely to involve in terms of time. I can say, looking at a bill, roughly whether it is going to take two days, two weeks, two months or two years—or at least, I should be able to. The two-day ones are usually fairly reliable. Anything more than that and it is almost impossible to make a sensible estimate, because as soon as the drafters start looking at things they will often find problems in the policy that has been developed. Or, irrespective of what the drafters discover, the public servants and the ministers involved are quite likely to start changing their minds, changing the policy as the drafting progresses. Perhaps I can give you an example of a bill we started drafting two or three years ago which initially seemed to be a job that might take a single drafting team two or three months. It has now taken the best part of two years, and I have had up to eight people working on it from time to time. The first bill in the bundle has finally been introduced, and it looks as though there are two more bills to come and probably up to another six months work for a couple of drafting teams.

Senator McKIERNAN—I think that information is helping my understanding, but I see one big problem in all that has been discovered here this evening, and that is the high regard in which you personally are held by this committee and by the parliament as a whole. Senator Cooney has referred to this on a number of occasions, and I endorse those views. But were something unfortunate to happen to you—or indeed something very fortunate such as getting promoted outside—and you removed yourself from the OPC, what form of templates, what form of organisation, is left behind—other than what is contained within you and the experience you have? I am very surprised there is no shell of a framework of an organisation that would enable a pricing mechanism, a workload mechanism, some measurements to be in place to provide the information which was first requested when we opened up this section of the hearings today.

Senator COONEY—The reality is you cannot be replaced.

Ms Penfold—It is very kind of you to say so, Senator Cooney. But to deal with the question more seriously, I do not have any doubt that, if something either unfortunate or fortunate happened to me, there are worthy successors within the office who would also

manage to run an efficient operation that produces the bills when they are needed without still having to count how many hours drafters spend on particular bits of legislation.

Senator McKIERNAN—I admire your confidence. I would love to see what would go on the job description for it and how that could be measured. You could through the performance pay, for want of a better term—

Ms Penfold—We do not have performance pay anymore.

Senator McKIERNAN—Not in OPC at all?

Ms Penfold—I personally and the other two statutory officers have suddenly found ourselves susceptible to performance pay under the principal executive office arrangements put in place by the Remuneration Tribunal.

Senator McKIERNAN—What is the measuring stick for that performance?

Ms Penfold—I have a performance agreement with the Attorney-General.

Senator McKIERNAN—Is that a public document?

Ms Penfold—It is not—in the sense that it has not been made a public document. I would not personally have any problem with making it public.

Senator LUDWIG—There is the Performance Management Program for SES staff, which sets out the process of performance management for SES staff at OPC, isn't there?

Ms Penfold—That is right.

Senator LUDWIG—And that includes standard performance agreements and descriptions of various standards of performance?

Ms Penfold—That is right.

Senator LUDWIG—So what do you say about a parliamentary draftsman—that their standard of performance is as you require it?

Ms Penfold—Do you have the Performance Management Program open there?

Senator LUDWIG—I would not be so computer literate. I have some of it.

Ms Penfold—You might want to look at the standard performance agreement, which is in about schedule 2, I think.

Senator LUDWIG—I am familiar with those types of documents.

Ms Penfold—No, I mean our standard performance agreement, which indicates the things that we look at when we are assessing performance.

Senator LUDWIG—In truth I suspect it would be similar, depending on the program you follow—whether it is Cullen, Egan and Dell or whether it is a Hay or whatever system. I am sure Mr Cornall would understand what I am talking about.

Ms Penfold—I would not necessarily assume that.

Mr Cornall—We have not adopted those systems but there is a similarity.

Senator LUDWIG—I am saying they are alike. The similarities would be there, and I am sure I would be familiar with the performance appraisal mechanisms. I have seen hundreds—in fact, more than I need to. The real question is that, in utilising performance appraisal, they do have to have some benchmark or base to start from. They do have to understand what work is required, the direction the work is going to take and the nature of the work and then form an

assessment as to the worth of the work and whether or not it adds to the organisation. At some point someone has to make an assessment. Someone has not only to make an assessment but also to make a verifiable assessment—in other words, that your assessment can be checked. So how could management check that your assessment of someone who is a draftsman is accurate and correct? Do they have to take your word for it?

Ms Penfold—I cannot see how they could check without engaging in the same sorts of inquiries. They would probably have to go further than engaging in the same sorts of inquiries that I would engage in. This, I have to admit, is a fundamental problem that we run into—

Senator LUDWIG—It seems to me.

Ms Penfold—in running the performance management system—not just the performance management system but in monitoring our performance. I have yet to find anyone who can tell me what is a good bill and what is a bad bill.

Senator McKIERNAN—It is easier when you are in government.

Ms Penfold—It is easy enough to pick a bill and say, ‘That bit’s no good’—

Senator LUDWIG—I think they are the ones we voted against.

Ms Penfold—but it is very difficult to list a set of indicators that you can test a bill against. I have been looking for nine years and I have not got very far.

When doing performance appraisal we do look at a number of what might be semi-objective matters. We send out a client feedback form for every bill we do, asking our clients for quite a lot of information about the drafting process and for a bit of information about what they think of the final bill. But, again, there is a fundamental problem in asking our clients just after a bill is introduced what they think of it because, necessarily, they have to say it is a good bill and that it does exactly what they want, because if it did not do that they should not have let it be introduced. So when I go through those client feedback things when doing performance appraisal, I tend to discount the bit that says, ‘Yes, this is a terrific bill,’ and I focus—

Senator LUDWIG—What do you do when the High Court knocks one of them over? Do you go back and say to the draftsman, ‘You got it wrong and you should not get a good review or performance appraisal’?

Ms Penfold—That will depend on whether the drafter might have strenuously advised the clients that the thing was constitutionally suspect, which is not at all uncommon in the case where things do fall over.

Senator COONEY—I think I have raised on other occasions the issue of strict liability and absolute liability. What were the answers?

Ms Penfold—Senator Cooney, I think you were asking why there seemed to be so many more absolute or strict liability offences created in Commonwealth legislation and—

Senator COONEY—Particularly with the terrorist legislation. It is not the criminal code issue; it is the strict and absolute liability provisions in the terrorist legislation.

Ms Penfold—if the question is why there are so many of them—

Senator COONEY—I will put it this way: the bill sets out offences bearing maximum sentences of life, 25 years. I would have thought it very unusual to have offences with those sorts of penalties with elements of them that are strict, and I think in a number of cases absolute, in their liability.

Ms Penfold—I would have to say that the first part of the answer is as you have identified—that is, the criminal code requirement that strict liability offences or absolute liability offences are expressly identified as such. So I guess that is why it is so obvious that there are number of strict or absolute liability offences in those bills. The second part of the question—namely, why are there so many strict or absolute liability offences—is a matter of criminal law policy. So I think that probably needs to be addressed to the department.

Senator COONEY—So the answer is, really, that it is a policy issue in respect of those elements.

Ms Penfold—If there is an unusual number of them, yes.

Senator COONEY—I cannot think of any criminal offences that visit a penalty of life, or up to 25 years, upon a person who commits them, the elements of which are absolute. Can you think of any?

Ms Penfold—I do not think I can think of one, either.

Senator COONEY—There is another issue of concern that I want to raise with you. As one of the great silks of the common law world, I notice in some of this legislation that you are leaving out apostrophes. Have you got any explanation for leaving out apostrophes in the legislation that you draft?

Ms Penfold—Senator, you are not the first person to have noticed this. I saw a letter not so long ago in which an interested member of the public claimed to have discovered that we had abandoned the use of apostrophes and indeed suggested that this was the end of civilisation as we know it, which it pretty much would be. I am relieved to be able to tell you that we have not in any sense abandoned the use of apostrophes. We still try to use them properly, and by and large we succeed. But on the Parliament House web site, which has copies of all introduced bills, one of the versions—I think it is the HTML version—for some reason strips out the apostrophes. If you were to open, in particular, the counter-terrorism legislation—this was the one that it came up on—in the HTML version from the Parliament House web site you would find right from the beginning a rather shocking absence of apostrophes. I can assure you that it is nothing to do with us and it is not a problem in the real versions of the bill.

Senator COONEY—It does not emanate from your office?

Ms Penfold—I think it emanates from somewhere in your organisation.

Senator COONEY—I wanted to note how brilliant you have been over the years. I was going to do that, this being my last time here, and I wondered whether there had finally been a chink in the brilliance of Hilary Penfold. When I saw there were no apostrophes there, I thought that was a pretty disastrous situation.

Ms Penfold—They are certainly there in the version of the bill that we produce, and still in the hard copies which are handed around when bills are introduced. You can rest easy.

Senator COONEY—I can go away and rest assured that the brilliance is still there.

Ms Penfold—The apostrophes are still there, anyway.

CHAIR—So that is the matter of moment dealt with?

Senator COONEY—Yes.

Senator McKIERNAN—There was some delay in the presentation of these bills to the parliament and we talked earlier about them arising prior to the election. Were those delays attributable to difficulties drafting the bills?

Ms Penfold—Which bills, Senator?

Senator McKIERNAN—The package of five antiterrorism bills that we identified before.

Ms Penfold—Delays before they were introduced?

Senator McKIERNAN—Yes.

Ms Penfold—It would have been a combination of simply the drafting work to be done and the policy development. They certainly were not, as you might imagine, bills where the policy was all absolutely clear and finalised before they came to us so that it was just almost a scribing exercise. There would have been a lot of toing-and-froing between the drafters and the policy makers.

Senator McKIERNAN—Were there many changes to the drafting instructions? That might help me get an understanding of your response to that question.

Ms Penfold—My feeling is that there was a fair bit of written material revising and adding to the drafting instructions. We generally get a set of written drafting instructions first up. After that we do sometimes and from some organisations get a stream of further instructions, usually coming in as faxes. They are all supposed to go across my desk, which is one of the ways I keep an eye on what is happening and who is doing what and what sort of work they are being expected to do. A lot of other instructions come orally, either over the phone or in meetings with the drafters. Those ones obviously I do not see or hear about, except in normal weekly reports and so on. My understanding is that, as with a lot of bills, there were a lot of further instructions that came in really right up until the last minute. That does not distinguish the counter-terrorism bills from most of the other work that we do.

Senator McKIERNAN—I understand better how difficult it would be to put an hourly total on the development of it; nonetheless, I hope you will persist and help the committee in providing that earlier information we sought. Were any precedents consulted or adopted in the drafting of the bills?

Ms Penfold—The only one I am aware of is the UK counter-terrorism legislation. There may well have been others that were referred to, but not that I have come across. If we get a 15-page set of instructions, I would not necessarily read the whole 15 pages before I hand them out to someone. Certainly, if other legislation was simply mentioned or handed over to the drafters to look at, I would not know about that at all.

Senator McKIERNAN—One of the matters that was continually raised with the committee during the course of our inquiry was the proscription clauses included in at least one of the bills. The precedent was drawn as the anticommunist legislation during the reign of Prime Minister Menzies. Would the drafters have looked at that legislation, which was brought before the parliament and then went to the High Court?

Ms Penfold—There was some discussion about the significance of the Communist Party bill, but whether at any point the drafters pulled out that bill and had a look at it, or whether both the drafters and the instructors simply discussed the basic constitutional principle, I do not know.

Senator McKIERNAN—In regard to that, do you know if any advice was given, either by the drafters or through your office, that there was a possibility that the contents of at least some of these bills might be unconstitutional?

Ms Penfold—I cannot remember seeing such advice either going out or coming in. I should have seen it if it came in or out of the office in written form, and I do not remember

seeing it. On the other hand, there are times when there is an awful lot going out or coming in and I do not necessarily remember every last page of it.

Senator McKIERNAN—Could you talk with your colleagues and perhaps have a search and see if there was indeed any advice of that nature raised during the course of the development and delivery of those bills?

Ms Penfold—I will take that on notice. This is advice on—

Senator McKIERNAN—Regarding the constitutionality of the particular bills we are talking about. They are colloquially known as the antiterrorism legislation.

Ms Penfold—That is probably more appropriately directed to the policy officers, the instructors, who will be in front of you in due course.

Senator LUDWIG—In response to my question on how you would check if the High Court were to knock one off on the grounds of it being unconstitutional, you indicated that—on strong advice—you would check with the drafters and, if they advised that it might be unconstitutional, you might look at it differently. It suggests to me that the drafters from the Office of Parliamentary Counsel did give advice to people requesting bills about whether the bill was constitutional or not. That certainly was raised in regard to some parts of the antiterrorism legislation, to my recollection anyway.

Ms Penfold—I would be surprised in this context if there had not been some discussion of constitutionality. But what would normally happen these days is that, if the drafters have any concern about the constitutionality, they would raise it with the instructors, and either the drafters or the instructors would then seek advice from the Australian Government Solicitor. We would be unlikely to provide formal advice about the constitutionality of the bill. We would possibly be the ones who raised the issues and expressed a concern, but we certainly would not expect that the final decisions on whether and how to proceed would be done on the basis of our advice. We would expect that the Australian Government Solicitor would be brought in.

Senator LUDWIG—Do you keep track of where concerns are raised?

Ms Penfold—We keep files.

Senator LUDWIG—Only to the extent—and perhaps I can be fuller in my question—that if you do find an issue, or an issue is raised by a drafter about whether a bill is constitutional or not constitutional or sound, then in every instance is the solicitor's advice sought or is it not, or who makes the decision?

Ms Penfold—If the advice were not sought for some reason, if we had raised what we saw as a serious constitutional issue and our clients resisted seeking advice, then we would do two things: one is that we would certainly make a file note, and the other is that probably, when the bill came to be considered for introduction, we would raise our constitutional concerns in the memo we prepare which goes to PM&C and then to the Parliamentary Secretary to the Prime Minister for final approval before introduction.

Senator LUDWIG—Could you go back and have a look to see whether any of the antiterrorist bills had such a file note, and advise the committee of that?

Ms Penfold—I could check that. I should say, again, that I would expect to know if matters had come to that pass, because although I do not actually monitor people's hours I do have close involvement in the work they are doing.

Senator LUDWIG—Yes, I do not expect you to recall it, but—

CHAIR—I understand Senator McKiernan has one more question, so could you take Senator Ludwig's question—as you have—on notice?

Senator McKIERNAN—Perhaps I could give a very short explanation, Chair, in regard to the antiterrorism legislation, as it is colloquially known. The community would include within that package the ASIO bill, which was not in front of the Legal and Constitutional Legislation Committee; it is subject to inquiry by another parliamentary committee. Because I have no knowledge of the contents of that bill or that particular inquiry I was not including that in my references, but I would invite Ms Penfold to give us any information she has regarding that bill—and regarding the development of that bill as well; the committee would appreciate receiving that information too.

Ms Penfold—Is that request for information about the file notes on constitutionality or information about who worked—

Senator McKIERNAN—About the development of the bill and the number of hours spent on it as well.

Senator LUDWIG—And the file notes.

Senator McKIERNAN—And the file notes, if you could. Sorry, but when we got into that earlier discussion I confined my remarks to the area that I had some knowledge of, and I did not have much knowledge of the ASIO bill. My final question is: is your office currently working on redrafting the bills? I am talking now of the five bills—minus the ASIO bill, which has not had a report to the parliament done on it yet.

Ms Penfold—I am not sure that anyone is working on them as we speak, but it is not very long since I have seen drop copies of covering notes sending out new drafts or possible drafts of things. When I say it is not very long, work was certainly being done last week. I am not sure if I have seen this week's drop copies; I have mainly been here, so I cannot tell you whether work is going on this week. I am sure there was some work being done last week.

Senator McKIERNAN—Could you take it on notice and respond to the committee. Perhaps on notice as well, because we all do want to finish, could you explain what a 'drop copy' is?

Ms Penfold—I am sorry. A drop copy is just what was in the old days a carbon—except it is presumably a photocopy these days. When bills get sent out of the office, or, indeed, anything else gets sent out of the office, I see a copy of the letter, the covering note, or whatever goes out.

Mr Cornall—I want to put an issue on the table. It seems to me that that the issue of what advice has been given about constitutionality may well come into the area of legal advice given to the Attorney-General—

CHAIR—Which we have discussed before.

Mr Cornall—in the preparation of legislation or the formulation of policy, which I think has always been accepted as an area where the committee does not have access to advice.

Senator McKIERNAN—It was worth a try, though!

Mr Cornall—I think we ought to be very clear that if the answer to those questions constitutes an infringement of that well-accepted principle then the questions cannot be answered.

Ms Penfold—That is why it had to be taken on notice.

CHAIR—Well, Mr Cornall, can I suggest that Ms Penfold provide the answers that she believes are appropriate in the circumstances, and the committee will examine it further from there. Thank you for making that point.

Proceedings suspended from 7.20 p.m. to 8.22 p.m.

Australian Government Solicitor

CHAIR—Before we begin I should report the arrival of the newest member of the Payne family: my new niece, who was born 15 minutes ago, so I was slightly delayed communicating with my brother about Sally Lillian's appearance in the world. The committee will resume with the consideration of budget estimates for the Australian Government Solicitor. I welcome Ms De Gruchy and Mr Riggs.

Senator McKIERNAN—I am going to ask some questions regarding the royal commissions. I have got the same questions in relation to the HIH Royal Commission and the building industry royal commission. We are very delayed in our processes. I wonder if it might speed up the proceedings were I to ask questions with regard to both commissions rather than duplicating the questions by asking them separately. Would that be okay with you?

Ms De Gruchy—Senator, it is at your discretion to ask whatever question you would like to. Perhaps if we knew what the questions were, we would have a better sense of whether we were able to answer them.

Senator McKIERNAN—They are the same questions regarding both commissions. We will test it with the first one: how many AGS personnel are working on the HIH Royal Commission? I would like a breakdown of lawyers and administrative staff.

Ms De Gruchy—You are asking how many AGS lawyers are working at the commission?

Senator McKIERNAN—Yes.

Ms De Gruchy—The questions that relate to our legal services to the commissions are a question of deployment of staff at the request of a client. It concerns me to answer a series of questions, not knowing where they might be leading, as to what is being sought of what services we are providing to the commission. We provide those services at the request of a client. We vary the number of personnel depending on what the request is from the client.

Senator McKIERNAN—With due respect, I am a member of the estimates committee asking a question about the expenditure of public funds through the office of the Australian Government Solicitor. I am not so sure that you can qualify why I want that information. You are almost telling me that you will or will not respond depending on what I want that information for. Is that what you are saying?

Ms De Gruchy—The Australian Government Solicitor is in a slightly different situation as a government business enterprise providing legal services to government clients. The AGS as an organisation can be placed in a difficult position, depending on the types of questions that are asked of it by senators. That was the subject of the letter that the Attorney-General sent to the President of the Senate about the different role that AGS plays post its transition to a statutory authority and government business enterprise. It is not so much a question of not wishing to answer your question or that you should not receive answers in relation to the expenditure of public monies. What I am querying is whether the answers to the questions should appropriately come from the Australian Government Solicitor or from our client in relation to legal services being provided to a client.

Senator Ellison—I think what we are seeing here is that there would have to be a waiver of privilege, because Ms De Gruchy is saying that the question should be asked of the client and not of the person representing the client. I think that is the situation.

Senator McKIERNAN—Does that privilege extend to administrative staff of AGS?

Ms De Gruchy—I would not think so, Senator.

CHAIR—By ‘administrative’, do you mean support type staff?

Senator McKIERNAN—I have asked the question: how many personnel from the AGS are working with the HIH Royal Commission? I asked specifically how many administrative staff were involved.

CHAIR—That is a question of fact; it is perfectly within Ms De Gruchy’s capacity to answer. What I would suggest for this process—it is an issue with which the committee grapples occasionally—is that Senator McKiernan ask the questions and, if there comes a point, Ms De Gruchy, where you feel you are not in a position to answer the question, for whatever reason, then let us grapple with that one when that happens, but let us begin the process in the most cooperative manner in which we can.

Ms De Gruchy—You are asking me how many administrative staff we supply to the HIH Royal Commission?

Senator McKIERNAN—I think I have asked that question twice now.

Ms De Gruchy—One.

Senator McKIERNAN—How many administrative staff does AGS supply to the building industry royal commission?

Ms De Gruchy—Two.

Senator McKIERNAN—How many lawyers does the AGS supply to the HIH Royal Commission?

Ms De Gruchy—I would prefer not to answer the question on the basis that we discussed before.

Senator Ellison—I think the numbers are okay, that is not a breach of privilege, but once you get into the terms and conditions of the appointment that is perhaps a different story. So I think that answer should be given.

Ms De Gruchy—I understand at the moment we have five solicitors with the HIH Royal Commission.

Senator McKIERNAN—How many solicitors or lawyers does the AGS supply to the building industry royal commission?

Ms De Gruchy—We currently have 24, but a number of those are on a short-term basis.

Senator McKIERNAN—Thank you. In regard to the HIH Royal Commission, firstly with the lawyers or solicitors, how many of those persons—I think you said one—are full time or is that person full time or part time.

Mr Riggs—In relation to the admin staff, that person is full time.

Senator McKIERNAN—What about the lawyer?

Mr Riggs—There are five lawyers, and they are all full time too.

Senator McKIERNAN—Thank you.

Ms De Gruchy—One of those is working on a four day a week basis.

Senator McKIERNAN—The same question, but I suppose for the record I had better repeat the question: how many lawyers are working full time on the building industry royal commission?

Ms De Gruchy—The AGS lawyers are all full time.

Senator McKIERNAN—And are the administrative staff full time or part time?

Ms De Gruchy—They are all full time.

Senator McKIERNAN—At the HIH Royal Commission, what are the classifications of the administrative staff?

Ms De Gruchy—We have a senior secretary working with the AGS team at the royal commission. AGS does not have similar classifications to an APS classification, but it would be what you would call a senior experienced secretary.

Senator McKIERNAN—What are the classifications of the administrative personnel from AGS associated with the building industry royal commission?

Ms De Gruchy—I will have to take that question on notice. I know that one of them is a legal secretary. I am not quite sure what the other person is.

Senator McKIERNAN—Regarding the administrative personnel that are engaged with the HIH Royal Commission, can you tell the committee what the period of their engagement with the royal commission is?

Ms De Gruchy—We understand it is expected to be for the duration of the royal commission unless the services of that person are not needed for the full duration.

Senator McKIERNAN—Is the engagement in the form of a contract or some other form of agreement?

Mr Riggs—There is an agreement between the parties as to the financial and other terms, agreed between the secretary to the commission and our local manager of AGS.

Senator McKIERNAN—In regard to the lawyers that are engaged with the HIH Royal Commission, what is the period of engagement for those personnel? Is it similar to that of the administrative personnel?

Mr Riggs—It is similar, but as the commission complete their hearings and move into report writing we expect that their needs will change and there may be a change in the requirement of AGS at that point.

Senator McKIERNAN—What is the period of engagement for the administrative staff with the building industry royal commission?

Mr Riggs—It is expected that the individual will be with the royal commission for a considerable period of time, but as the needs of the commission change then it may be that the services of those individuals may no longer be required in the commission at that point.

Senator McKIERNAN—What is the period of engagement for the lawyers engaged with the building industry royal commission?

Mr Riggs—Precisely the same.

Senator McKIERNAN—Precisely the same. So there is a great deal of flexibility about both groups of persons. In regard to the lawyers on the HIH Royal Commission, are you in a position to inform the committee what practice groups those personnel come from?

Ms De Gruchy—They come from a range of backgrounds. At the time of putting forward to the commission the personnel to be assigned to the royal commission it was up to the commission to decide whether the background of each of those lawyers was suitable for the purposes of the royal commission.

Senator McKIERNAN—What was that range of backgrounds?

Ms De Gruchy—Probably it could be put into two broad areas of a litigation background and a number who have insolvency experience.

Senator McKIERNAN—What practice groups do the lawyers that are assisting the building industry royal commission come from?

Ms De Gruchy—Broadly from a litigation background, but also in relation to the Royal Commission into the Building and Construction Industry we have a number of workplace relations experts.

Senator McKIERNAN—Is there a workplace relations practice group operating within AGS?

Ms De Gruchy—We have a network which we call a ‘practice network’—in other words, people who often work in an area of law. One of those networks relates to employment law, both public sector employment law and workplace relations law.

Senator McKIERNAN—With regard to the building industry royal commission and those lawyers from AGS who are serving on that, were any of those personnel employed by AGS specifically to work with the royal commission?

Ms De Gruchy—Yes, a small number in relation to both royal commissions.

Senator McKIERNAN—To both royal commissions. You say ‘a small number’. Can you be more precise than that?

Ms De Gruchy—I would have to take the question on notice, Senator.

Senator McKIERNAN—In taking it on notice, would you also find out the practice group background of the individuals. For example, did those that were engaged specifically to work on the royal commissions have a workplace relations background or a litigation background or an insolvency background, which I think was the other area that you mentioned? Would you answer that on notice, thank you very much. How many of the lawyers on the HIH Royal Commission are still physically located within AGS?

Ms De Gruchy—All of the people who are working on the HIH Royal Commission are physically located with the royal commission.

Senator McKIERNAN—With the building industry royal commission, how many are physically located with the AGS and how many are physically located with the royal commission?

Ms De Gruchy—With all of the people that I mentioned before who are working full time with the royal commission at the commission premises, we are able to provide services to the royal commissions as they need it where it could relate to a reference for advice from AGS on a matter that is not necessarily part of the full-time deployment of people to the commission.

Senator McKIERNAN—Thank you for that information; that adds to the question that I asked. I come back to my earlier question about additional services: do you send an account or a bill to the royal commission for the provision of additional services?

Ms De Gruchy—We provide our services for a fee to the royal commission. That would include when we provide additional services in the way of provision of people to the royal commission.

Senator McKIERNAN—The question I specifically asked was to do with the physical location of the lawyers who are located with the building industry royal commission. Are all of those personnel physically located with the commission or are some of them located in AGS premises?

Ms De Gruchy—Perhaps I was unclear in my answer. The people who are assigned to work on the royal commission are people who are there physically with the royal commission and work full time. On occasion, depending on the needs of the commission, there may be a need to seek advice from AGS in relation to some aspect of the royal commission's proceedings. In that case a lawyer may provide advice but is not assigned physically to work with the royal commission. In that case that lawyer would not physically be at the royal commission's premises but would be at AGS premises, providing advice from AGS premises.

Senator McKIERNAN—With regard to the very early question that I asked about the numbers of lawyers working with the royal commissions, how does this further information you have now provided go into the tally of the number of lawyers that are working with the building industry royal commission?

Ms De Gruchy—The numbers that I gave you before are the numbers of those who are full-time engaged on commission premises, engaged on commission work.

Senator McKIERNAN—Are you in a position to inform the committee how many of your AGS lawyers would be working in some form of part-time capacity with the building industry royal commission?

Ms De Gruchy—I would feel constrained by client confidentiality as to how many other people provide advice that are not those people whom we have assigned to commission premises.

Senator LUDWIG—I am curious in relation to your answer about client confidentiality. I understand that it can be invoked in certain circumstances. I have difficulty with that. I will read you an extract:

A core legal team of 18 lawyers has been assembled to provide the bulk of the day to day legal services for the Building and Construction Industry Royal Commission.

Do you recognise that phrase from anywhere? Perhaps I can help you. It is from the *AGS News*, Issue 5, April 2002.

Ms De Gruchy—That is correct.

Senator LUDWIG—So what secrets are being kept from us that can then be printed in your *AGS News*? I just find it a little bit astonishing. I could read on. It has got pictures of the staff and their names and I am sure that, if I asked you to dig back through past copies, you could probably then find their names in the *AGS News* where you have provided an overview of their background and the type of work they do. In fact, I might even put you to that task in relation to those people, because I am sure they are in the AGS. So what you are now saying

to us, as I understand it, is that it is all right to print this information in the *AGS News* and for us to go and find it, but for us to ask legitimate questions—

CHAIR—For it to be sent to us, I might say.

Senator LUDWIG—Yes. But, for us to ask questions here, we invoke client confidentiality. But you are quite happy to waive client confidentiality when you want to write about it in the *AGS News*. Is that seriously what you are trying to tell this committee?

Ms De Gruchy—Senator, I take your point and I think it is well made. I accept that there is an element that clearly it is out there in the public domain that we have a number of lawyers working with the commission.

Senator LUDWIG—You tell us 18 and you have their pictures there. I have not counted them all but it looks close to 18.

Ms De Gruchy—I have given you information that currently that number is 24.

Senator McKIERNAN—You have given it, but you did not really give it willingly, did you? It actually took pressure from the committee and the intervention of the minister. Your appearance here tonight really does not reflect very well on AGS.

Senator LUDWIG—I can then go on and describe HIH Insurance. You said in *AGS News*: AGS has assembled a team of experienced lawyers from its national practice to work on the royal commission into the failure of HIH.

And it goes on to say:

AGS is assisting the Royal Commission into the failure of HIH Insurance Group, being jointly appointed with Adelaide law firm Fisher Jeffries. AGS is also providing the primary legal services for the Royal Commission into the Building and Construction Industry.

That is what you have in your magazine. I do not know whether now, quite legitimately, client privilege really attaches when you quite happily publish that information in your magazine and you provide that sort of advice and that sort of detail in these magazines, but you come along here and it is like trying to extract teeth to get the same information out of you that you put in there. Are you serious about this? Were you aware of the newsprint? Do you write for it? Have you provided an article for the solicitors' news?

Ms De Gruchy—No, Senator, but I am aware of all of the contents.

Senator LUDWIG—I take it you read it?

Ms De Gruchy—I do.

Senator McKIERNAN—Why did you respond to my initial questions, when I was trying in the best interests of the committee to get information—and after a very long day; and yesterday was another long day—the way you did?

Senator Ellison—I think, in fairness to Ms De Gruchy, that she perhaps thought you were going to go straight into an area of detail of client—

Senator McKIERNAN—She has no right to think that, Minister, with due respect.

Senator Ellison—The point has been made, Madam Chair. Perhaps we can move on with the questions and attempt to assist the committee as best we can.

CHAIR—I recognise that the point has been made, and I was going to in fact make that observation myself, but I did hear from Senator Ludwig, and I think from Senator McKiernan, a question to Ms De Gruchy in relation to the publication and her responses this evening. She

may or may not wish to respond to that. I invite her to do so and then ask senators to continue with their questions.

Ms De Gruchy—Yes, if I may. In relation to the content of *AGS News*, we specifically obtain our clients' consent where we mention a client matter in *AGS News*. I take the point that once that has happened we have disclosed, in what is not a totally public document but obviously is in wide circulation and therefore is at least within the Commonwealth community as a document, that we do have a number of lawyers working at both of the royal commissions. In a sense, information that is published in *AGS News* is only current as at the date that it is published and things change. The number of lawyers we have at a commission changes. Again, the issue of client confidentiality and what is appropriate for us as a legal services provider to be supplying in this situation is of concern. Perhaps it would have been better for me to answer that it has been noted in some forum that we had 18 solicitors at that time. I felt constrained to answer the question because things have changed since the time of that publication. I have not had the benefit of seeking the acknowledgment of our client in the matter that those matters are not of sensitivity from a client confidentiality perspective.

Senator LUDWIG—That is, in part, accepted. But if you were doing a new article you would update the information in it. You would not keep old information and keep regurgitating it, so I do not fully accept the explanation in that sense. Perhaps you would not mind also providing some back copies of *AGS News* so that we can at least have a look to see whether or not you have mentioned in there in a more primary sense some of the information that we have been trying to seek from you today. That would be helpful to the committee. I might have back copies myself in my office, but I suspect they are back in Brisbane.

Senator McKIERNAN—The question I asked, for which you claimed client confidentiality, was about the number of lawyers who would be working on a part-time or an occasional basis—numbers, not names—for the building industry royal commission.

Ms De Gruchy—Again, my concern is that at any time a client could ask AGS to provide advice, and a client would include the royal commissions. For me to indicate that one lawyer was engaged for one hour to provide advice in relation to a question—it would be possible to provide that kind of information but I have a concern that that goes across the line, as it were, of client confidentiality in that acknowledging that we are providing advice of that nature could be on the wrong side of the line of client confidentiality.

Senator McKIERNAN—You are making that statement in light of the fact that you, without prompting or without questioning from committee members such as me, have already put that type of information into the Commonwealth public arena.

Ms De Gruchy—I have indicated that there may be occasions on which the commission seeks the advice of lawyers in AGS who are not the lawyers who are assigned full time to the commissions.

Senator McKIERNAN—I am going to persist with the question once again, you will give me a response to the question and then we will move on. I am going to ask you yet again. I am going to give you a third opportunity to answer the question of how many lawyers within the AGS are engaged on a part-time or an occasional basis for the building industry royal commission.

Ms De Gruchy—And I would prefer not to answer that question on the grounds of client confidentiality.

Senator McKIERNAN—I think that response is a matter the committee will have to address in another forum—that is, because of the lateness of the hour I am not of a mind to put the committee through that matter. But it may be that, when we ourselves seek advice on your response in the course of these estimates, the advice might be for us to take other action to ask you again for that information. I accept that you as the representative from AGS have got responsibilities. I too have got responsibilities. My responsibility is as a member of the Parliament of the Commonwealth of Australia and as a member of the Senate estimates committee here scrutinising things. I think I have a right to ask those questions and I particularly think I have a right to ask the questions in light of the information that the AGS itself has published in the document here. I must say I will be taking advice on this matter, and I do not know where that is going to go. It will be a matter for the committee to deliberate on.

Senator Ellison—Madam Chair, I suggest we take that question on notice. There are some other matters on notice too which I am endeavouring to sort out with the Attorney's office in relation to legal fees.

CHAIR—Were those matters for Senator Carr?

Senator Ellison—Yes, as if we could forget. If we could take this one on notice. I appreciate Senator McKeirnan has mentioned the advice that the committee would be minded to obtain, but let us take that on notice to see what we can do in relation to the question. We will take advice as well. We are doing that in the spirit of cooperation.

CHAIR—Minister, the committee appreciates your offer very much.

Senator McKIERNAN—Yes, I appreciate that, Minister. I also appreciate your earlier intervention which led us through that very tortuous path of getting the information that could have been readily provided, or would have been more readily provided, had I known about this other information my colleague here has. The difficulty we have, though, with the advice—and I thank you for the effort to cooperate—is that this round of estimates is scheduled to be completed by 11 p.m. on Friday night this week. I am not seeking to put any time frames on your cooperation and assistance—

Senator Ellison—Five to 11 on Friday night?

Senator McKIERNAN—But I think that the matter is of enough importance for me, as an individual member of the committee, to seek advice on this matter—where a question has been asked and we have not got a response—and we will do that. It may be that we might seek to revisit this earlier rather than later. If the minister, having taken that on notice, is able to assist in that process, that would be greatly appreciated.

In regard to the lawyers that are working with, firstly, the HIH Royal Commission, are any of those personnel working in the field as investigators, as it were, or are they engaged in an office situation?

Ms De Gruchy—While our people are working with the commissions they work under the direction of counsel assisting both commissions. The role they play, from our perspective, is the role of a solicitor assisting the royal commission, and what they do in that professional role is at the direction of counsel assisting.

Senator McKIERNAN—You have responded to that question as if it were in the form of a question to both commissions, and I will take it in that sense because it will save us time. In

regard to part-time solicitors with the commission who are engaged from time to time by the commissions, do any of them undertake the role of investigators in the field?

Ms De Gruchy—I would not expect them to, in the sense that what we provide are services as lawyers, which I do not regard as including the services as an investigator in the sense that I think you mean it, Senator. In another sense, in a broad sense, all solicitors carry out some aspect of investigation simply in the work they do, but they do not act as investigators in a forensic sense.

Senator McKiernan—Thank you. Was the AGS involved in the drafting of the discussion papers recently released by Commissioner Cole, the commissioner for the building industry royal commission?

Ms De Gruchy—Again, Senator, that would be a matter of what the lawyers do under the direction of counsel assisting and the royal commissions, and the AGS would not be in a position to provide an answer to that question.

Senator Ellison—I think we could take that on notice and refer it to the secretary of the commission and see if he can answer that, because it is more a question—

CHAIR—On the operations of the commission.

Senator Ellison—Yes. That could be a way of doing that.

Senator Ludwig—I am happy to proceed down that path, because the difficulty we keep having is that you keep telling us in the *AGS News*:

As solicitors assisting the Commission, AGS is involved in the gathering of documents and other evidence concerning the collapse ... of HIH.

In relation to this issue, you do the bulk of the day-to-day legal services, so you are certainly heavily involved as far as what you are telling us in the *AGS News*. It also tells us:

The Commission's inquiries require detailed examination of complex legal and factual issues including those associated with insurance—

that is, HIH. In relation to the building industry, *AGS News* says:

The lawyers are working in a number of teams headed by Senior Counsel Assisting, to investigate matters relating to the Terms of Reference. They also interview people who can provide information to assist the Commission and prepare and present evidence at hearings of the Commission.

So you are not providing legal advice in the strict sense that we would understand that term—for example, if I were to go to a solicitor and ask for legal advice and they write me advice, or a barrister gives me a brief. You are in fact doing day-to-day work as solicitors assisting the commission and addressing the terms of reference, both in HIH and in the building and construction industry, in quite an in-depth, varied and involved manner, in which case I think we are entitled to ask a series of questions and elicit responses. If you cannot provide them, I do thank the minister for at least finding another way to assist the committee in endeavouring to establish what the facts are that Senator McKiernan is seeking.

If the building and construction industry royal commission can provide the answer, well and good. Alternatively, if an inquiry were made as to whether the solicitor-client privilege could be relaxed for some of these questions, that might be another way around it. It just seems to be a very strange situation—you have got a publication providing this level of detail and we cannot ask questions about it.

Senator Ellison—I am saying that the correct point of entry on this matter is from the commission end, not the AGS end, because you are dealing with the directions of the counsel assisting and that is not really an area of responsibility of Ms De Gruchy. I will take that on notice and take it up with the royal commission.

Senator McKIERNAN—I thank you for your assistance, Minister; it is most helpful and most appreciated. Regrettably, we got off on the wrong foot in regard to this matter, but I do not take the blame for that from this side of the table. I will ask you some questions regarding this publication. Is it produced as a marketing tool for the AGS? What is its role? Let me be more specific because, regrettably, I forget that the *Hansard* cannot record what I am holding up. It is *AGS News*, the document which Senator Ludwig mentioned earlier and which I think you addressed in response to some questions from Senator Ludwig. What is the purpose of such a production or pamphlet?

Ms De Gruchy—The purpose of the publication is to provide information to our clients about what AGS does and, in that sense, it is a marketing publication.

Senator McKIERNAN—But you also send it to members of parliament.

Ms De Gruchy—We have quite a broad distribution for *AGS News* within the Commonwealth.

Senator McKIERNAN—In producing this glossy, colourful document, the AGS are happy to provide that information, that marketing tool, to members of parliament, but we are not necessarily—certainly I am not; let me just speak for myself and not verbal my colleagues—going to be seeking to engage your services. Why then would you be sending it to me, for example?

Ms De Gruchy—We have a broad distribution, as I say, Senator. We believe that members of parliament like to receive *AGS News*. We would certainly not send it to anyone who did not want it sent to them. In a sense, all people engaged in service for the Commonwealth may, on occasion, have some influence in seeking advice from the Australian Government Solicitor.

Senator McKIERNAN—But it is a marketing tool, is it not? Isn't that what it is about? Isn't it about promoting and later selling the services of the AGS?

Ms De Gruchy—Yes, it is a promotional publication.

CHAIR—As a recipient, Senator McKeirnan, I take it as a tool of information also, which assists—

Senator McKIERNAN—Thank you, Chair, because that is the next point that I was going to come to: it has also been a very useful tool of information to persons like me, members of parliament, who do from time to time have contact with the AGS.

Ms De Gruchy—That is correct, and I would hope that many people would read it from that perspective.

Senator McKIERNAN—I am pleased that at least one of my colleagues has read it and digested it, because it certainly has assisted the procedures here tonight. But is it not strange—

Senator LUDWIG—I apologise for withholding it from you.

Senator McKIERNAN—It is better than giving me the wrong information, like somebody did last night.

Senator LUDWIG—I do not know who that was.

Senator McKIERNAN—That is a different matter. Let me not delay the committee. But do you not find it a bit strange, Ms De Gruchy, from the position where you are sitting, that on the one hand you and your organisation are quite willing to disseminate detailed information in a publication like this to persons such as me, yet on the other hand when I come to you seeking information, some of which is on the public record, you claim client privilege?

Ms De Gruchy—The information that is in both those articles is, in one sense, not particularly detailed. It is not saying exactly what it is that any of our people is doing at any particular time in relation to the royal commission.

CHAIR—Indeed.

Ms De Gruchy—It describes things in general terms.

CHAIR—Senator McKiernan, it is possible that we have dealt with this point. I understand Senator Cooney also has some questions and his questions are on this issue, so I would like to go to those and then, if we can, particularly given the pressures of time that are upon us this evening, move on.

Senator McKIERNAN—I understand. But, with due respect, I do not think the cause of the delay was on this side of the table.

CHAIR—I am not suggesting it is but I am suggesting we are now repeating ourselves.

Senator McKIERNAN—I don't think we are. You have not heard what I am going to say so you can't accuse me of repeating myself.

CHAIR—I meant before. I am not prescient—you are right.

Senator McKIERNAN—When I asked the question I asked it with the best will in the world to try and curtail the dialogue between us—to deal with both commissions at the same time. I met with the barrier that was put up at that time, to put it kindly. I then had to laboriously go through a list of questions to each commission—the same question to each commission, repeated commission by commission. It was only at the conclusion of that that my colleague, Senator Ludwig, brought the information contained in *AGS News* to the attention of the committee. At no time during those proceedings did you inform the committee that this information, at least part of the information that I was seeking—and seeking quite legitimately, I would argue—was already on the public record, through the officers of the AGS, did you?

Senator Ellison—I think it—

Senator McKIERNAN—The information that I have asked for—

CHAIR—Which I said—

Senator McKIERNAN—Although I think you were trying to pre-empt the questions that I was going to later ask, at no time during the proceedings in all my questioning did I ask for the names of any of the individuals involved in the legal teams to either royal commission. But I note that the legal teams are photographed here. Not only that; they have put their names here as well. Yet, in answer to my questions at the beginning, until the minister's intervention you were claiming client privilege.

Ms De Gruchy—I accept—

Senator McKIERNAN—Thank you.

Ms De Gruchy—your views, Senator, but I do emphasise that the information is not fully current as of today, even to the point of the names.

Senator McKIERNAN—But you are not volunteering to the committee, even now as we sit here at five past nine on Tuesday night, any additional information, are you?

Senator COONEY—Ms De Gruchy, I want to be as peaceful as possible about this, but I am going to carry on from where Senator McKiernan and Senator Ludwig left off. Who do you feel is your client in these circumstances?

Ms De Gruchy—The commission itself.

Senator COONEY—Yes, not the Attorney-General but the commission itself. I think we have asked the minister at the table a couple of times now whether the commission would waive privilege. If the commission waived privilege you would have no difficulty in giving us information—is that a reasonable assumption? It is not your privilege, is it, that you are standing behind?

Ms De Gruchy—No, it is the client's privilege. If the client requested us to provide information to the committee we would provide the information.

Senator COONEY—With the greatest respect, can I suggest you are putting that the wrong way. It is not that the client would ask you to provide information but that it would waive privilege. Isn't that how it is done? In a court case, the client waives privilege. It does not direct the solicitor to give information, as I understand it. Is that a right understanding?

Ms De Gruchy—I believe the understanding would be correct: if the privilege were waived and there were a compulsion to answer the question, the privilege having been waived then it would be in order to answer the question.

Senator COONEY—When the commission approached you to become its solicitor, did you understand that it was going to expend public funds, or public funds were going to be expended upon it—that your client was a client who was financed out of public funds?

Ms De Gruchy—We would be generally aware that the source of the funds would be public funds.

Senator COONEY—Were you aware on this occasion that both royal commissions, the one with HIH and the one into the building industry, were going to be funded with public funds?

Ms De Gruchy—Yes, we would have been aware.

Senator COONEY—And that indeed the commissioner himself was going to be paid by public funds and that the solicitors and barristers engaged on the task of servicing the commissions were going to be paid by public funds?

Ms De Gruchy—That would have been our general understanding.

Senator COONEY—When that client approached you, did you give them any warning that you might have to surrender information about the expenditure of those funds and on what they were expended to a Senate committee? Did you tell them that?

Ms De Gruchy—At the time we were in the early stages of discussion concerning the possibility of AGS providing services to the commissions, we were in discussions with people who were familiar with the Senate estimates procedures and procedures relating to—

Senator COONEY—No, that is not the question I asked you. I said: did you warn them that questions might be asked about the expenditure of funds on their activities?

Ms De Gruchy—No, we did not.

Senator COONEY—Did you tell them that there was a law and resolutions of the Senate which might well make them liable to having their funds revealed in public?

Ms De Gruchy—There was no specific discussion of any of those matters, as it was in the context of people who know those procedures.

Senator COONEY—So you did not tell them, for example, about the resolutions of the Senate in these areas?

Ms De Gruchy—We did not discuss those.

Senator COONEY—Do you think it might have been a responsible thing to do to tell both commissions about that, as your clients? Can I just use a comparison: do you understand that, if you go to the doctor and the doctor suggests to you a particular procedure, the law is that the doctor has to tell you the consequences of taking that procedure? Do you understand that?

Ms De Gruchy—Yes, Senator, but—

Senator COONEY—Did you understand that, if you go to a private solicitor, the private solicitor has to give you an idea of the costs and warn you of the risks involved?

Ms De Gruchy—Senator, we have the—

Senator COONEY—No, do you understand that?

Ms De Gruchy—We comply with the same obligations that a private sector lawyer would comply with under the Judiciary Act.

Senator COONEY—Right. Can I just read out to you these resolutions. I will then ask you whether you either directly or indirectly referred either of your clients to these matters. I read from the estimates committee *Hansard* of the estimates of 7 November 1978, the Department of Trade and Resources. It says:

While the Committee commends both the Attorney-General and the Minister whom he was representing for acceding to the request, it nonetheless emphasises the attitude long held by the Senate that the ground of commercial confidence does not prima facie override the higher principle of public accountability for funds expended.

That is one not directly in point, because that talks about commercial confidentiality, but it does take into account the public accountability of funds expended. Did you refer either of your clients to that resolution or to that statement?

Senator Ellison—Senator Cooney has alluded to the fact that that deals with the separate issue of commercial-in-confidence and we are talking about another area.

Senator COONEY—Yes, I know. It is background.

CHAIR—I understand Senator Cooney to be setting out the basis for his question.

Senator COONEY—Yes. With respect, I am saying that it is the public accountability. Can you follow? I know it is commercial confidentiality.

Senator Ellison—I suppose you could cut to the chase and say there is absolutely no requirement on the AGS to divulge to a royal commission the purview of a Senate estimates committee because there is constructive notice that anyone who is worth their salt at all in

public administration in this country would know of the Senate estimates committees and that a body such as AGS would be subject to it. If anybody needs to be told that then they should not be collecting a dollar at the end of the week for the public administrative job they are in.

Senator COONEY—With respect, Minister, I am going to go through this because it is a very big issue.

Senator Ellison—I agree. You can go through it, Senator Cooney, but can I just say this: a royal commission should not need to be told about the purview of a Senate estimates committee—a royal commission set up by the Commonwealth government. If there is anyone in a royal commission that pleads that they did not know about Senate estimates committees then in my view they are totally incompetent. They should not need to be told.

Senator COONEY—Minister, your problem there is that the Australian Government Solicitor is now acting in a way which is very consistent with her realising that she had not warned these people of it and is now protecting her position.

Senator Ellison—I can see the point, but you are dealing with people in public administration who know about the problems you are talking about. I would say very strongly that you can take it as read that they would know about these things. If you were dealing with a client who is in the private sector and not well versed in public administration, then it is a different story. But I think you can be forgiven for not raising all these issues with a client when they have that knowledge, such as one would expect anyone involved in a royal commission to have.

Senator COONEY—The way this royal commission, the building royal commission, is conducting itself, that would be very much open to doubt, may I suggest. But in any event—

Senator Ellison—I am talking about constructive notice. If you were talking to someone in public administration at a high level, one would think that you did not have to explain to them: ‘Look, you know there is a Senate estimates committee and I can get asked questions about all this as the Australian Government Solicitor.’ I really shake my head and wonder if they would have said, ‘Oh, what is a Senate estimates committee?’ Anyone in that realm of public administration at that level would know about a Senate estimates committee.

Senator COONEY—That is how you put it, Minister. I would suggest that this is a matter which may well border on negligence on the part of a solicitor in not telling the client what the law is.

CHAIR—Senator Cooney, I understand that this is a matter that concerns not just you but other members of the committee, and already this evening we have had some extensive discussion now on the matter and its implications. Whether you wish to indicate that you regard this as a matter of professional negligence, which was the implication you just made—the statement you just made, in fact—is in fact taking it to a new plane which I think the minister would indicate and I would indicate is perhaps a discussion we would need to have elsewhere.

Senator COONEY—I understand that. But I replied to something the minister raised. I was putting this to the witness and I want to emphasise that it is serious. I think what is happening here is people are saying, ‘Ooh, perhaps we should have warned them. Let’s not go on with this. Let’s sort of cut it dead now. Let’s stop the Senate committee’s process to protect us from what is coming out.’

CHAIR—Senator Cooney, I do not get that understanding at all.

Senator COONEY—Can I put it this way: do you mind if I go on and read into the transcript these various provisions?

CHAIR—Of course not, Senator Cooney. You have every right to put those matters on the record, as you know, and as I endeavour to ensure all members of the committee have the opportunity to do if they so wish. So please put the matters on the record.

Senator COONEY—I think there is a point here. I think what the minister said is that everybody knows about this. Do you know the material I am referring to, Ms De Gruchy? If you know it then there is no need for me to tell you.

Ms De Gruchy—I cannot say that I have read the resolution that you have read out. I am aware of the general principles relating to public accountability that you make reference to.

Senator COONEY—But you did not tell your clients about it?

Ms De Gruchy—The clients that we are dealing with in relation to both royal commissions would be fully aware of public accountability. Our position in relation to that was not that we were in a position of telling our clients that they are publicly accountable—because they are aware of that. As a Commonwealth entity we are aware of our own accountability. But under the Judiciary Act we are also placed in the same position, owing an obligation of solicitor-client confidence. The whole issue of the obligation that we owe, in the same way that any private sector solicitor would owe, was the subject of the Attorney's letter to the Senate.

Senator COONEY—Are you telling me that there is legislation that says that a public client, such as a royal commission, has privilege before a Senate committee? Could you direct us to that legislation, please?

Ms De Gruchy—No, I am not saying that. I am saying that AGS as a solicitor has an obligation of confidence to its client, not that the client has some ability not to be publicly accountable. I will read from the Attorney's letter to the President of the Senate dated 17 November 2000, which indicated:

AGS is in a solicitor-client relationship with its government clients and has, in relation to those clients and to the courts, essentially the same legal obligations as are owed by private sector lawyers to their clients and the courts (see paragraph 55Q(2) of the *Judiciary Act 1903*). AGS' legal obligations, such as the maintenance of legal professional privilege and avoidance of conflicts of interest, make it appropriate for questions about clients' matters to be the responsibility of the relevant client agencies rather than AGS.

I am concerned that AGS would be placed in an untenable position if it were required to provide comments or advice to a Parliamentary Committee on issues such as:

- the conduct of the Commonwealth's legal affairs ...

Senator COONEY—Where is that quote from?

Ms De Gruchy—It is from a letter from the Attorney-General to the President of the Senate on 17 November 2000.

Senator COONEY—This is what the Senate says. I do not know whether you have any respect for the Senate and, if so, to what extent. Do you take the Senate as a serious institution?

Ms De Gruchy—I take the Senate as a serious institution and of course I am fully aware of obligations of witnesses before Senate committees.

Senator COONEY—I will just cut to the chase, in those circumstances. This is a resolution of the Senate of 25 June 1998 which states:

The Senate reaffirms the principle, stated previously in resolutions of 9 December 1971—
you would know that one—

23 October 1974—

you would know that one—

18 September 1980—

you would know that one—

4 June 1984—

you would know that one—

and 29 May 1997—

you would know that one—

that there are no areas in connection with the expenditure of public funds where any person—

that is, any person: a-n-y—

has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament—

not the Attorney-General—

has expressly provided otherwise ...

How do you reconcile that with what you have just told me? Unless what you do is say, ‘The Senate isn’t really important but the Attorney-General is.’

Ms De Gruchy—I accept that there are resolutions of the Senate about what is compellable from witnesses before the Senate. The Attorney’s letter is simply a letter requesting senators in their consideration of matters before the committee to consider the issues of client confidentiality and the position that AGS is placed in in a competitive market in the Commonwealth.

Senator COONEY—I understand that but the committee tonight has chosen not to do that and has asked you questions which you have refused to answer on the basis of what you say is client confidentiality. That is the reality, isn’t it? That is the situation. You are being loyal to your client, and for that you are to be admired, but you have disregarded the Senate’s requirements, a Senate committee’s requirements, in the interests of your client.

Senator Ellison—I do not understand that, Senator Cooney.

Senator COONEY—We have asked questions about lawyers, what they say and what they are doing. Perhaps we will test it: what was the amount of money expended by the royal commission with your organisation?

Ms De Gruchy—I would have to take your question on notice, Senator.

Senator COONEY—But what you are really saying is that you are not going to tell me.

Senator Ellison—I do not think that is fair. She has said she will take it on notice.

CHAIR—I do not think that is fair. I think Ms De Gruchy has indicated that she will take that on notice. At the risk of extending this debate further, Senator Cooney, I think it is also important for the committee to note that in previous hearings—estimates and otherwise—the

committee has also put on the record resolutions agreed to by the Senate on 25 February 1988 entitled 'Procedures to be observed by Senate committees for the protection of witnesses' and, in particular, paragraph 1(10), which states in part:

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

In addition to that, paragraph 1(16), with which we are all familiar, states:

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

Both of those resolutions of the Senate in relation to procedures to be observed by Senate committees for the protection of witnesses also pertain to proceedings such as this. We have had a very lengthy debate on this issue which I would describe as not progressing.

Senator COONEY—I would suggest that we have a private meeting to put it to the vote to see whether or not this question should be persisted with.

CHAIR—Which question is that, Senator Cooney?

Senator COONEY—The question of how much money, approximately, was expended with the Australian Government Solicitor by both these royal commissions.

Senator Ellison—I do not know that it is being disallowed.

CHAIR—I was not aware that that question had been rejected, Senator Cooney. I had not heard it asked in those terms and I have not heard it rejected.

Senator COONEY—I have heard Ms De Gruchy reject it with the statement that she will take it on notice.

CHAIR—I do not regard that as a rejection of the question.

Senator COONEY—That is why I want to have private meeting to deal with it.

Senator Ellison—We just do not have the figure available right here and now. We take a lot of questions on notice. The witness has said she will take it on notice and that she will get the figure for you.

Senator McKIERNAN—I think I would have to take the side of the minister on this occasion, Senator Cooney. As I recall your question it was that you asked for the amount of money and Ms De Gruchy did take the matter on notice. I think on previous occasions we have accepted that when you are asking for precise figures. But I think that, were you to reframe your question and ask for an approximation—

Senator COONEY—That is what I have asked for, an approximation.

Senator McKIERNAN—I am not so sure that the record will actually show it like that.

Senator COONEY—All right, it might be better for you to ask the question and then see where we get.

Senator McKIERNAN—Are you in a position, Ms De Gruchy, to give the committee an approximation of the amount of money that either or both of the commissions are expending with the AGS for its services?

Mr Riggs—I think the awkwardness here is that the two royal commissions have budget funds and that AGS is clearly in receipt of significant parts of those funds. There is a

difficulty for AGS to account, as it were, to this committee for the way in which the two commissions deploy the funds that parliament is asked to vote for. So, whatever we were to say in response to that question, in a sense, indicates information that more properly should come to you from the two royal commissions.

We as AGS have no difficulty in your having that information. It is not our place to give it to you, is our perception. I think what I can say is that AGS in this current financial year does expect to have a significantly greater level of turnover in the current year than it had in the year before, and the royal commissions are clearly a part of that. But I do have great difficulty in putting on the public record some information that has not come from our client.

Senator Ellison—Leaving that issue aside because I want to get back to the question, I want to say that the question of an approximation would have to relate to a period of time. As you would appreciate, the figures are changing daily so the questions we should look at are: what is the amount for the HIIH commission and what is it for the building commission, from when the AGS was first engaged up to and including a point in time.

I suppose if you say ‘today’, that is hard to approximate because in the last week who knows what could have come in. I do not know if an approximation can be given. I can appreciate that Mr Riggs has just said that it is privileged but I do not think it is; in fact, I am saying that it is not. If we can have a fixed period of time, then that figure can be given.

CHAIR—As it happens, having had the building industry and the HIIH Royal Commission before us—

Senator Ellison—I am saying that that figure will be given, but I am also saying that it is difficult to give that figure without having a specific time frame to estimate an approximation. Mr Riggs has been put on the spot, so he has to make some calculations.

Senator COONEY—It would help a lot if the commissions were to waive their privileges. It would get Ms De Gruchy off the hook with the concern she has. She is only in the position she is in now because of a loyalty to the commissions.

CHAIR—Minister, I want to acknowledge that statement and thank you for your assistance. The indication the minister has made is that it is his view that the information is obtainable and that it would be of assistance if we were to place a time frame on that. Senator Cooney, I would suggest to you in good faith that the committee is in a position to take up Ms De Gruchy’s offer of taking that question on notice. We are also in a position to raise concerns with the building industry royal commission—as we did at length yesterday—to seek a response to the question within a time frame, whether it is from the point of engagement of the AGS to date or as close thereto as possible, and to seek a response that is back with the committee before, as I imagine will happen, the committee reconvenes to consider Attorney-General’s estimates on Friday morning.

Senator COONEY—Can that other question of the waiver of privilege also be ready by then, or can we have notice of that beforehand? I think we have been asking about that on and off for a while.

CHAIR—We have been seeking some advice on the matter of legal fees, and the minister has again indicated that he is pursuing that.

Senator Ellison—We will try a figure up until the last week. You are not going to get a huge difference in the last week, are you.

CHAIR—Is that acceptable to the committee?

Senator McKIERNAN—Minister, I thank you on the record for the assistance you have given to the committee, and I thank Mr Riggs for his intervention and his attempt to give assistance to the committee. Up until last week is fine as a time line. In terms of retrospectivity, I think both commissions are relatively recent—in parliamentary terms—so a time from the engagement of AGS by each of the commissions up until last week would be fine.

Senator Ellison—We will be back on Friday. We can revisit it then, and I am sure Senator Carr will be here too.

CHAIR—We do have that outstanding issue, though, Minister, that has been pursued for two solid days now by Senator Carr.

Mr Cornall—Madam Chair, I am in a position to let you have the Attorney's response on the matters that were raised. I have discussed this response with the Attorney-General's chief of staff. I have not had the opportunity to speak to the Attorney personally.

CHAIR—Mr Cornall, when you put that on the record, I have given an undertaking to Senator Carr that it will not be pursued in the context of the committee until he is present. Please, by all means make the response, and we will discuss it later.

Mr Cornall—I would like to be very precise about this. These are the instructions I have received:

- In accordance with longstanding Government policy, the Government will not publicly disclose information on the daily or hourly rates at which the Commonwealth has engaged legal Counsel.
 - This policy has developed to protect the Government's financial interests and to maintain the Government's negotiating position in relation to individual contracts with legal Counsel.
- However, the Government is in a position to provide details of the range of fees paid to senior and junior counsel assisting the Royal Commissions.
 - Senior Counsel assisting the Building and Construction Industry Royal Commission and the HIH Royal Commission are paid between \$2,800 and \$3,800 per day.
 - Junior Counsel assisting the Royal Commissions are paid between \$1,300 and \$2,400 per day.
- The fees paid to Counsel across the two Royal Commissions are broadly commensurate.
- The engagement of counsel to assist the BCI and HIH Royal Commissions has been in accordance with the Legal Services Directions issued by the Attorney-General ...
- In reaching agreement with counsel on fees the Commonwealth has been conscious of the need for restraint in the costs of the Commissions.

It should be remembered, however, that counsel will all be undertaking extensive and long term briefs on matters of major public importance.
- Until about 1992/93 the Department published the amounts paid in each financial year to each named Counsel who had provided advice or had appeared for the Commonwealth during that year.
 - This data was cumulative and did not indicate how many matters a particular Counsel had been involved in nor how much Counsel was paid in a particular matter.
- It is not clear why these statistics ceased to be provided subsequently. However, it is noted that the Department formerly exercised almost complete control over the provision of legal services to the Commonwealth, whereas the position has now substantially changed.
 - The Department's role is now more limited in the provision of legal services, particularly since the AGS was corporatised in 1999. Since that time, the Department has assumed the role of

administering the Legal Services Directions, which regulate the provision of legal services to the Commonwealth and its agencies.

- I understand the Committee's concern to be provided with information about the amounts paid in fees to legal Counsel assisting the Royal Commissions. The Attorney-General will give consideration to the extent to which it may be possible to publish information regarding aggregate fees paid to individual legal Counsel by the Attorney-General's Department, having regard to the current arrangements for the provision of legal services, and bearing in mind the need to protect the financial interests of the Commonwealth and the Commonwealth's negotiating position in such matters.

Senator COONEY—I think that is quite unsatisfactory, for the reasons I have already given. Perhaps not now but on Friday I would like to go through the material I was going to put forward. I think this gets close to being contemptuous of the Senate. Perhaps we can think about that between now and Friday. I do not know what the point of the Senate passing resolutions is, because the executive just treats it with contempt. Between now and then perhaps we ought to get an opinion from the Clerk of the Senate. That might be the best way of dealing with this. I am not sure whether that is the Attorney-General's position or the royal commissions' position. We were told by Ms De Gruchy that she was acting for the royal commissions and yet the answer that is significant comes from the Attorney-General, so I am not sure who is in control of the whole thing. In my view it is quite unsatisfactory.

CHAIR—As I understand the response, Senator Cooney, it pertains to the broader question that the committee raised with the department earlier in our deliberations, based on the discussions we were having at the time around the royal commissions. I did not understand that to be a specific response to the discussions we have just been having with Ms De Gruchy in relation to the royal commissions. I suggest, if it is acceptable to the committee, that the committee notes that statement read by Mr Cornall, seeks a copy to be distributed for our consideration and has a private meeting at the conclusion of estimates this evening to decide which avenues it wishes to pursue on that.

Senator COONEY—The trouble with that is we run out of time.

Senator Ellison—This could take another three days.

CHAIR—I am suggesting that we do not take the time of the public hearing, now that it is 9.38 p.m.; rather, that we proceed with the public hearing and further questions to the AGS, if there are any, or move on to the next agency if there are none. I suggest that at the conclusion of these hearings at 11 p.m. the committee hold a private meeting to discuss what measures members of the committee would wish to pursue.

Senator McKIERNAN—Could I just intervene and comment on the protocols that we have followed as a committee. There has always been a convention in any of the estimates committees that I have served on that, when we reach a stage where we have to make decisions as a committee, we give some notice of that committee meeting. The Chair has suggested to us that in an hour or so we will have a private meeting which gives the opportunity for members of the committee who are not here to be present at that meeting. I think we are at a stage where we have not only the responsibilities of the committee and the proceedings of this estimates committee but indeed the proceedings of the Senate itself in front of us. We have to make decisions in regard to them. I think we should, with some notice to the rest of the members of the committee, go in the direction suggested by the chair and have a private meeting at the conclusion of this evening's hearing.

Senator COONEY—There is one last matter I wish to raise: that either Mr Cornall or Senator Ellison approach the royal commissions to see whether they would be prepared to waive their privilege, such as it is—

CHAIR—In relation to matters that pertain to their relationship with the AGS.

Senator COONEY—That is right. Not only the cost but the whole gamut.

Senator Ellison—And to what extent—

Senator COONEY—In other words, are these royal commissions the sorts of royal commissions that are willing to allow the people of Australia to see how they are being conducted—

CHAIR—Is that a question—

Senator COONEY—That is just a question—or are they going to hide behind the veil of what they say is their solicitor-client privilege?

Senator Ellison—A request has been made and we will carry that forward, but it would be unreasonable to ask for a waiver of total privilege so that all the legal advice could be divulged.

CHAIR—I did seek to clarify that with Senator Cooney.

Senator Ellison—I have always understood that the line of questioning from this committee was just to cost and that, of course, is what the Australian taxpayer is interested in—legal costs. I am certainly willing to take that forward, and I will take the other request forward as well, but I do so with my comment that I think it is unreasonable to expect them to waive privilege on the legal advice they are getting.

Senator COONEY—Here is a royal commission, particularly the building one, that spears the people who come before it. This is a royal commission that is willing to inflict that sort of thing on the people it forces to come before it and is unwilling to reveal its own workings so that this committee and the people of Australia can judge the quality of its work, which, given the material I was referring you to the other day, is perhaps suspect.

Senator Ellison—Anyway, it is on the record.

CHAIR—It is on the record, although I would note that the questions which come forward, Senator Cooney, as I understand it—and I am sure you will correct me if I am wrong—come forward as questions of the committee. It is my view that we are able to seek a response from the royal commission as to whether they are prepared to waive privilege in relation to their relationship with the AGS in the manner in which we have been discussing this evening—that is, in terms of costs, as the minister has indicated—but not to completely waive their privilege relationship with the AGS.

Senator COONEY—I would do it in two parts. It would go forward as a committee request in respect of the costs, but I would go further—and I know the rest of the committee probably does not support me on this—and put it forward as a test on what this royal commission into the building industry is prepared to do.

CHAIR—Perhaps I can summarise it as I understand it—and I think I have an indication from Senator McKiernan in relation to pursuing the costs question and privilege—that the committee request concerns that, and you have sought further information also.

Senator COONEY—Yes, but I gather I am not supported by the rest of the committee.

Senator Ellison—So what is the committee asking to be done?

CHAIR—The committee is asking for clarification of whether the building industry royal commission is prepared to waive its privilege relationship with the AGS in relation to costs matters.

Senator Ellison—And charges, as well.

CHAIR—Yes.

Senator COONEY—And HIH, I suppose.

CHAIR—Yes.

Senator COONEY—I gather I am not getting support from the rest of the committee, but I would ask that you request the building industry royal commission to waive its privilege generally.

CHAIR—Your request is on the *Hansard*. I seek the cooperation of the committee to move on.

Senator McKIERNAN—Prior to moving on, is it possible to have a copy of the opinion from the Attorney, because we are going to have a meeting within the hour? We will need to have a hard copy before us as we are deliberating.

Mr Cornall—Yes, you can. I have just made a couple of handwritten notes on this. I will see whether I can get a clean copy or just print the notes out.

Senator McKIERNAN—That is more than acceptable, thank you, Mr Cornall. I have three final questions which I hope are of a more general nature and not just on the royal commissions. This question is asked in the sense of the marketing that AGS undertakes—publications and other marketing tools. What is the AGS's estimated share of the legal work that the AGS undertakes from government departments as clients?

Ms De Gruchy—Do you mean in a global sense—from all government departments and agencies?

Senator McKIERNAN—Yes.

Ms De Gruchy—There is no current reliable estimate of market share within the Commonwealth. You may recall that, at the time of the Logan report relating to the Commonwealth legal services market, there was some indication of the size of the market and perhaps what AGS's market share was at that time, which was 1997. The market has presumably changed since that time. It may have got bigger with more complexity and litigation, and the size of the market shares may have changed with competition in the market, but we do not have a reliable sense of what that is. We still believe that we have a very sizeable share of the Commonwealth market. At that time the Commonwealth legal services market was estimated at roughly \$200 million, and that covered not only APS services but also in-house providers of services and also council services being provided from the independent bar. At that time the figure was somewhere in the region of 40 per cent of that market. I would expect that AGS's share of the market is still not dissimilar from what it was then, although presumably there are more players in the market and therefore it could be less.

Senator McKIERNAN—Do you know of any work being done to determine what the total value of the government legal market is?

Ms De Gruchy—I am not aware of any work having been done. It would be a matter for the Office of Legal Services Coordination and the Attorney-General's Department as to how

they might approach the subject of the size of the Commonwealth market, rather than one for the providers in the market.

Senator McKIERNAN—Thank you. I am not sure whether Mr Cornall or Ms Leigh were listening to that conversation: I was asking about market share and the size of the government legal market. In order to assess AGS's share in that market we would need to have some idea of its totality. Has any recent work been done to determine what the totality of the market is from a government point of view?

Mr Cornall—The Australian Bureau of Statistics has done surveys of the total Australian legal market and done some useful work in breaking down the totality of fees charged by private firms—I am not sure whether AGS was part of that survey—by size of firm and by state and things like that. I am not sure how recent the last survey was, but there were certainly a couple of surveys done several years apart and I found them very interesting and very helpful.

Senator McKIERNAN—Thank you for that pointer. In conclusion, is that ABS survey broken down into practice areas?

Mr Cornall—Yes, broad practice areas.

Senator McKIERNAN—I appreciate your assistance on that. We can follow that up.

Senator LUDWIG—So that Senator Cooney's request is clear, because we seem to run into this solicitor-client privilege on occasion and it might arise again into the future with the AGS, if you take a look at the answers to the questions, save the last matter, the building industry royal commission and the HIH Royal Commission were readily available to assist the committee in answering any questions that were put. From where I sat, there did not seem to be any restrictions that were imposed upon them and they did not feel obliged not to go anywhere or withhold any evidence or information from the committee. One of the methods that we might adopt as a way forward might be that a waiver be given to the AGS—even if it is not a blanket waiver—in relation to the HIH issues that they deal with so that they appear together. That could be organised on Friday. At least the HIH commission can then say whether this is a matter that can be answered or that cannot be answered.

It is going to arise again and again, I suspect. As AGS seem to have suggested, they are in the marketplace; they have provided information and they are touting for business—that is what their magazine seems to suggest—so this matter is going to arise again. If we spend a couple of hours on it every time it arises, it is going to get a little bit tedious. We are talking about HIH and the building industry royal commissions. Public moneys were made available to them and they understood that. From my recollection, they were helpful to the committee whereas, when we run into another primary area, for a range of reasons we do not get the same assistance. I suspect that if the HIH commission directly employed the solicitor or the barrister they would have readily provided the information.

Senator Ellison—They were not asked the precise question, as I recall. They were asked other questions.

Senator LUDWIG—No, but we held them back to ask them of AGS.

Senator Ellison—That is what I mentioned earlier about the entry point for the questions. That is why I took on notice for the royal commission some earlier matters raised by I think Senator McKiernan. You will have your meeting tonight. We will pursue these matters in the morning with the royal commissions. Then it is a question of whether the committee wants to

recall the two royal commissions or whether we can satisfy the questions posed by the committee without their having to be recalled.

Senator COONEY—When I was suggesting the issue of negligence I said that these bodies know what it is all about. If they knew what the resolutions were and what the lien, if you like, and the rules were on this, then I do not see how they can object. You cannot have it both ways. We cannot say, ‘We are not negligent because these bodies know what they are getting into,’ and then when we say to the bodies, ‘You knew what you were getting yourself into, reveal all,’ they say, ‘No, we cannot do that because we were not expecting this.’

Senator Ellison—I think that might apply to the costs, but not to the waiver of privilege for legal advice. I have never known this committee to ask for that waiver to be given in relation to legal advice.

Senator COONEY—It is not what this committee knew; it is what the rules and the resolutions of the Senate are.

Senator Ellison—The Senate has never said that there should be a waiver of privilege for legal advice. In fact, it has been a standing rule of the Senate that it has always accepted, for instance, that the advice given from officials to the minister is not divulged. I have never seen a Senate committee ask for a waiver of privilege in relation to the advice given. Certainly, costs and things like that are a different story.

Senator COONEY—All I am saying is that you cannot have it both ways.

Senator McKIERNAN—I just have a very short explanation for the record. Senator Cooney, in asking for the waiver of client privilege, suggested that perhaps he was on his own in making that request. The matter that he was requesting was not something that I had put my mind to. I understood that, when Mr Cornall had concluded reading the advice from the Attorney, we were not going to debate that matter then and there—that if there was going to be debate Senator Carr would be rejoining the committee in order to do so. I had not addressed the matters that were contained in there. So, in Senator Cooney asserting that he was on his own, it does not necessarily mean that I was not supporting the request that he made. It is just that, at that particular time, I had other matters on my mind which I was addressing through the course of the deliberations.

CHAIR—Thank you, Senator McKiernan. I do not believe there are any further questions for the AGS. Ms De Gruchy, Mr Riggs, thank you both very much. I am sure we will be discussing these issues again.

[9.55 p.m.]

Australian Institute of Criminology and Criminology Research Council

CHAIR—I welcome Dr Graycar, of the Australian Institute of Criminology and Criminology Research Council. Thank you for your forbearance in waiting while the committee pursued a number of those other issues. We are grateful. Dr Graycar, I want to start by asking you a question about the AIC’s publication No. 224 of this year, *Electronic voting: benefits and risks*, which I understand was authored by the deputy director of research, Dr Smith.

Dr Graycar—That is right, Dr Russell Smith.

CHAIR—This goes to a question which interests me particularly of the capacity to introduce electronic voting in various fora in Australia. I wonder if you could give the

committee some idea of where, if anywhere, the paper—and the research attached to it—is going from here.

Dr Graycar—All of our research publications go into the public arena. They are sent as a matter of course to all of our stakeholders, which include all members of parliament, and they are taken up, as is seen fit, by people. We do not advocate the outcomes in any way. We did this paper as part of the work that one of our groups headed by Dr Smith does: it looks at issues of fraud and sophisticated crime. What he was looking at in this paper was the potential for fraud through electoral matters and the potential to corrupt. The essence of the paper was to say there are protective processes that can be put in place. It is a discussion paper, no more than that. It is not a policy paper by any means.

CHAIR—The report, in discussing issues of authentication and verifiability, makes some reference to previous examples of electoral fraud, perhaps, which have attained some notoriety in common parlance, particularly in relation to a Curacao Fischer Catt who was enrolled to vote in a federal electorate in my state, New South Wales, in 1990. In what might be the responses to the paper, is the Australian Electoral Commission involved in this discussion with the AIC or do you do it separately from their role?

Dr Graycar—We did the paper off our own bat, but we discussed it with the Australian Electoral Commission, and before publication we had the paper with the Electoral Commission to make sure that there were no inaccuracies in it.

CHAIR—I am sure there are not. The paper makes an assessment of the ACT experience in the last territorial election, which enabled voters to participate using an electronic voting method. Is it the AIC's view that that experiment was sufficiently broad to provide a reliable assessment of how we might protect against fraud and problems with authenticity in this process?

Dr Graycar—I am not across the detail and I do not have the paper in front of me.

CHAIR—I can give you mine.

Dr Graycar—I am happy to take the issue up with Dr Smith to look at it. The purpose of the paper, as I said at the beginning, is to try and canvass methods of reducing the potential for fraud. Looking at experiences that have taken place and at things that have worked in practice will give us some better understanding of the potential to reduce fraud. But it is not a policy paper. It was a discussion and a canvassing of issues.

CHAIR—I understand that. I am always interested in the institute's papers—the Trends and Issues series in particular. I think you would find that there is a significant number of members of the parliament, both in the House and in the Senate, who are interested in the issue of electronic voting and its potential in Australia. I suggest that there may be an opportunity, through either this committee or another appropriate route, to hold a seminar or forum of some sort within the parliament, in a sitting period, to enable members of the parliament to discuss these issues with Dr Smith. Perhaps, in company with the Australian Electoral Commission, you could make that a very positive venture.

Dr Graycar—We would be delighted. I have, on one occasion, done a seminar through the Parliamentary Library. I would be happy to arrange a seminar for the committee—or anything else. Perhaps we could talk about that.

CHAIR—When we have turned our minds away from the riveting stuff of estimates, we might turn our minds to whether the committee can assist in facilitating that.

Dr Graycar—We would be delighted to assist.

CHAIR—Are there any further questions for Dr Graycar?

Senator COONEY—You gave us this excellent book, *Australian Crime: Facts and Figures 2000*. Is there a more up-to-date copy?

Dr Graycar—We have *Australian Crime: Facts and Figures 2001*.

Senator COONEY—Would it be rude of me to ask if I could have a copy of that?

Dr Graycar—I would be happy to leave a copy with you. It came out a few weeks ago and we have made it available. I have a couple of copies with me.

Senator COONEY—This is a most important volume. Do you distribute this widely amongst members of parliament, law enforcement agencies and things like that?

Dr Graycar—Yes, we do. We send it out to all members of both houses. We have a very large mailing list. The one you have was sent out with one of our routine mail-outs so that everybody had it. It is on our web site in full. This year we have decided to charge for additional copies of the publication, although members of parliament get it as a matter of course. The full text is on our web site.

Senator COONEY—There is always a law and order campaign going, I think, particularly by members of the parliament. We are threatened, at the moment, with terrorism and with the spread of guns, bikie gangs and what have you. Would a person reading this purple volume get a picture of how crime really was operating in Australia?

Dr Graycar—The facts and figures booklet is based on two main sources. One is the Australian Bureau of Statistics recorded crime and the material which comes out of their administrative data, the correctional material and crimes reported to the police. In the 2001 edition we have also conducted a survey known as the ICVS, the international crime victims survey, so we have additional material in that. What it shows, by and large, is that some crimes have increased. It is not feasible to talk about the crime rate increasing; some volume crimes have increased. Assault has increased. Things like robbery and motor vehicle theft have remained constant. What that booklet does not do is deal with some of the hidden crimes, or the crimes that are not easily measurable by the ABS or by our regular surveys—some of the fraud crimes, some of the activities of organised crime, for example.

Senator COONEY—This would seem to show the rate of the crime that is going to affect you and me as we go about our normal life—housebreakings, assaults and things like that. It gives a good measure of it. I notice the trends in prison population are going up. Sentencing law became more draconian during the 1990s, throughout the various states, did it not?

Dr Graycar—In most states, imprisonment rates have increased, and at a faster rate than the rate of increases in crime rates.

Senator COONEY—Has Victoria still got the lowest rate per head of population?

Dr Graycar—Victoria has the lowest on many factors. The rate of imprisonment per 100,000 population is lower. The rate of most volume crime in Victoria is lower—things like burglaries, motor vehicle theft. Assaults and homicides are lower than they are in other states.

Senator COONEY—And yet, to make the point, it has the lowest prison rate as well.

Dr Graycar—Yes, and that is commensurate both with the police statistics and the survey work that has been done.

Senator LUDWIG—This isn't a plug for Victoria, is it?

Senator COONEY—It is just a matter of truth, of how Victoria is the place to live. I will not go to the states where it is highest because I might embarrass people.

Senator Ellison—Probably a Labor government somewhere!

Senator LUDWIG—It would have to be.

Senator COONEY—Yes, the minister strikes back.

Senator Ellison—It was a pretty easy one.

Senator COONEY—Can we get a picture of the drug situation. Clearly lots of our resources are put into stopping and punishing drug crimes. The call for more powers is usually centred on the drug issue. Do you get a picture or an impression of whether the situation is improving or getting worse per head the population?

Dr Graycar—We run a research program called 'Drug use monitoring Australia'. We are in four sites at the moment and expanding it to seven. This gives us a very accurate view of the drugs that are on the street at any particular time and we relate that to the criminal activities of the people that we interview. We interview people who have been detained by police, and we can get a very accurate view. We have seen in the last year a decline in heroin use by people who have been apprehended by police. We have seen an increase in some amphetamine use and, for the first time since we have been doing the survey, some increase in cocaine in some areas. What it shows is that if some drug supplies close down, as heroin has for all sorts of reasons, there are alternative drugs that find their way on to the street and these come in in various organised crime activities. We do know that significant proportions of people who commit burglaries have illicit drugs in their systems. We have the numbers; we have them by site, by age, by drug and a whole lot of other social factors of crime.

Senator COONEY—How do the media take to this? Do you get a run in the media that gets your work across? It seems to me that, given the law and order issues that are proclaimed far and wide by all sides of politics, it is pretty important that the community have an idea of what the reality of it all is.

Dr Graycar—We try to be accurate. We do not do our work in a sensationalist manner. When we do not act in a sensationalist manner the media is not terribly interested a lot of the time. However, they use our materials as source material. When our Trends and Issues papers come out, very often they do get media attention. But we find, as you would well know, the media want sensational stories rather than measured, accurate analyses of the situation.

Senator COONEY—When you hear some speeches by members of parliament and by candidates you must wonder whether they have ever read this volume. Or would you prefer not to comment on that?

Dr Graycar—There are many crime statistics and people use them, as they use a lot of data, to support positions and to help them build arguments. The diversity of crime statistics is such that you can tell a lot of stories from the same set of data.

Senator COONEY—We have the new crime of people-smuggling. How will you accommodate that? Will you just wait and see what happens?

Dr Graycar—We have not included people-smuggling in this. As I said, this booklet does not deal with many of the issues of organised crime. That is a significant other area from the

volume crime that the booklet deals with. It would be very hard to put the data on people-smuggling down in the format we have there.

Senator COONEY—Anyhow, it has not really taken off as a crime that is punished up till now. I do not know how many people have been brought to trial, but I do not think there have been that many. Has there been a fall in the incidence of the crime of homicide, which I venture to say is probably still the worst of crimes? Your booklet says that, relative to 1999, in 2000 the number of male victims of homicide decreased by 17 per cent while the number of female victims increased by six per cent. Is it still the position that most murders are committed against people known to the perpetrator?

Dr Graycar—That is correct. The homicide rate is the same today as it was almost 100 years ago. There have been some ups and downs throughout the century. Eight out of 10 homicides occur between people who are known to each other. About 50 to 60 per cent are intimate homicides; the remainder are people who are in other types of relationships.

Senator COONEY—If it is not presumptuous, I would like to pay tribute to you for preparing this. Thank you very much. I hope more and more of us read it. Do I have to return this to you?

Dr Graycar—No, that is your copy. I am happy to table a copy for the committee or certainly to let you have that copy.

Senator COONEY—I am happy to table it for the committee.

CHAIR—Thank you very much, Senator Cooney.

Senator COONEY—Thank you very much for coming along, Dr Graycar. I think it is very important in the context of this committee to get a realistic picture of what the crime situation really is.

CHAIR—Thank you, Dr Graycar. We do appreciate your patience in waiting until this late hour on the second day of hearings, when you may have been expecting to appear much earlier on the first day.

Dr Graycar—Thank you very much. Before going, I would just like to express my best wishes to Senator Cooney and to Senator McKiernan on their retirement from the Senate and to wish them well in the future.

Senator COONEY—Thank you very much. That is very nice.

[10:14 p.m.]

Australian Security Intelligence Organisation

CHAIR—I will call Mr Richardson and we will begin on ASIO. We will do that expeditiously. Welcome, Mr Richardson. Thank you for your patience in waiting to appear this evening.

Senator LUDWIG—Are you able to provide some details in relation to the welfare of Mr Hicks and Mr Habib? What role did you play in relation to that?

Mr Richardson—I think that the Attorney-General and the Minister for Foreign Affairs put out a joint press release on both Mr Habib and Mr Hicks last week. I think that press release said that they were in good health, that they had access to proper medical facilities and to culturally appropriate foods and that they had opportunities to pray in accordance with their religious beliefs. Essentially, I think that the press release said that they were being treated humanely.

Senator LUDWIG—What involvement did ASIO have in relation to either Hicks or Habib? Are you able to provide any information in relation to that?

Mr Richardson—We were part of the team that visited Guantanamo Bay a couple of weeks back, and we were involved in the discussions and questioning that took place with both at that time.

Senator LUDWIG—So you have some knowledge in relation to both Hicks and Habib, other than those things provided in the press release?

Mr Richardson—In what sense?

Senator LUDWIG—That is what I am trying to find out. As I understand it, what you have said so far is a paraphrase of what was in the press release of 14 May 2002. I am trying to go further than that and find out what other details you can provide. Can you substantiate or provide details about the conditions under which Mr Hicks and Mr Habib are being held? There was a newspaper article—and this question was also put to the Australian Federal Police, as I understand it, by Senator McKiernan—that reported that Hicks is kept all day in a small cage and that he has been told that if he tells anything he knows he will be sent back to Australia sooner. I wonder what you can say in relation to that.

Mr Richardson—The reference to a cage was contained in a letter that Mr Hicks wrote to his family which was brought back to Australia by the team. If he describes it as a cage, then that is his description. In answer to questions this afternoon, the Secretary to the Attorney-General's Department gave some information in relation to the detention facilities. As he mentioned in answer to the questions this afternoon, the detention facilities that have now been built are significantly better than those on Guantanamo Bay when the detainees were initially taken there.

Senator LUDWIG—Just on that point, are you able to provide any information to the committee about the quarters he is kept in now, as compared to the quarters he was kept in?

Mr Richardson—Not in detail myself, because I have not seen them personally. I know that they are more substantive and less open and that they have better facilities.

Senator LUDWIG—Do you have a report containing a description of them? Is that something that is provided to your organisation that you could assist the committee with? For argument's sake, do you have details of the size of the facility and whether he has a bed or a mattress and those sorts of things?

Mr Richardson—Yes, he has a bed.

Senator LUDWIG—Do you know what type of bed it is?

Mr Richardson—I am not aware of what type of bed it is, and indeed what I have seen has not gone into a detailed description of the bed.

Senator LUDWIG—It is not something about which you would seek to find out?

Mr Richardson—We could, but there was no—

Senator LUDWIG—I am not asking you to find out; I was just wondering why in terms of an Australian citizen.

Mr Richardson—We could, but I am not aware of any complaint in relation to the bed. I would also note that the International Committee of the Red Cross are at Guantanamo Bay. They have independent access to the detainees and they are the very sorts of matters that the ICRC would take an interest in.

Senator LUDWIG—Why would you say that?

Mr Richardson—Because that is part of their remit. They take an interest—

Senator LUDWIG—Is that distinct from whether your organisation would take an interest in the conditions in which he is kept?

Mr Richardson—Yes, but you specifically went to the question of a bed.

Senator LUDWIG—In the context that I could go to toilet facilities, a bed, a washbasin or a blanket. I did not think we were going to limit ourselves to the bed when I prefaced my remarks with the conditions.

Mr Richardson—The team that went there have reported on the conditions. There are appropriate facilities, appropriate medical facilities, good food standards and the like. They did not provide a detailed description of the cell, the sort of bed and the like, but they did report that the conditions were humane.

Senator LUDWIG—Do you know whether or not Mr Hicks or Mr Habib are receiving specific medical attention?

Mr Richardson—As the Secretary of the Attorney-General's Department said this afternoon, Mr Habib is receiving treatment for a pre-existing condition.

Senator LUDWIG—Is there no other information with which you can assist in relation to that matter?

Mr Richardson—I think that would be for his family. I do not think that would be for government officials to be talking about publicly; it is really for them.

Senator McKIERNAN—Has the delegation that visited Mr Hicks and Mr Habib provided a briefing to the families of both individuals?

Mr Richardson—I think the press release issued by the Attorney-General and the Minister for Foreign Affairs referred to the fact that the Department of Foreign Affairs and Trade had been in contact with both families.

Senator McKIERNAN—If the families already have this information, what is the difficulty with you providing the information to the parliament.

Mr Richardson—In terms of what is a pre-existing medical condition—

Senator McKIERNAN—No, not that.

Mr Richardson—That is what I was referring to.

Senator LUDWIG—I did not understand that to be the case.

Mr Richardson—That was my understanding.

Senator LUDWIG—Yes, I can understand how you would gain that impression. We were discussing whether either Mr Hicks or Mr Habib is receiving specific medical attention, and the Attorney-General, when he answered that, indicated that Mr Habib had a pre-existing medical condition which warranted that. The question then flows as to whether there is anything outside the pre-existing condition which would warrant medical attention. What we are seeking is to find out whether Mr Habib and Mr Hicks are being treated appropriately and receiving proper and appropriate medical attention.

Mr Richardson—The answer to that is yes.

Senator LUDWIG—Are you able to provide any information on any legal advice they may be receiving, if any?

Mr Richardson—Nothing over and above the answer to questions this afternoon by the Attorney-General's Department.

Senator LUDWIG—You probably heard the questions which were asked earlier. It is just a question of whether you can provide any additional information to that.

Mr Richardson—No.

Senator LUDWIG—Are you able to indicate what prosecutions may be levelled against Mr Hicks and Mr Habib under Australian law?

Mr Richardson—No. That is for the AFP and the DPP.

Senator LUDWIG—As a result of the recent interviews conducted by the AFP and ASIO, are you in a position to indicate whether they are a member of any organisation?

Mr Richardson—What I can say is that, as the Attorney-General said in his press release last December, certainly Mr Hicks has received extensive Al-Qaeda training.

Senator LUDWIG—As a more general question about the costs of the exercise that ASIO has been involved in in relation to Mr Habib and Mr Hicks, are you able to provide a breakdown of the agency costs to date?

Mr Richardson—I cannot right here, but we could certainly provide that to you.

Senator LUDWIG—Thank you. That would be helpful.

Senator McKIERNAN—I do not want to verbal you, but I think I heard you saying earlier that Mr Hicks is now in 'improved' living conditions compared with what he was previously in. Am I correct in that?

Mr Richardson—Yes, that is right. That is for all detainees in Guantanamo Bay.

Senator McKIERNAN—That information comes to you from your officer or officers that visited Mr Hicks and Camp Delta in recent times?

Mr Richardson—Yes, and I think that is on the public record also. The Americans themselves have stated it, because the initial facilities were temporary and they built more substantive facilities the detainees have now been moved to.

Senator McKIERNAN—Thank you for the additional information. What I was really chasing was the information that your officers had gathered and how they arrived at that conclusion that there were improved facilities. Were these officers the same officers who visited Mr Hicks previously?

Mr Richardson—No. They had not previously been visited by Australian officials at Guantanamo Bay.

Senator McKIERNAN—How then can they arrive at the comparison, and therefore the conclusion, that these are improved facilities?

Mr Richardson—Personally I do not think they have needed to go to Guantanamo Bay for that particular judgment, because that is on the public record in that journalists have seen the temporary facilities and those who have seen the permanent facilities. I think there are a range of people, independent of the US authorities themselves, who have seen both the temporary and the permanent facilities and who have put the improvements on the public record.

Senator McKIERNAN—I wonder if part of that comparative analysis that has been undertaken was photographs which are also published in the Australian media, which I have seen and which might lead one to be in a position to make a comparison. Do you think that entered their mind, or was a factor in it?

Mr Richardson—I do not know. I cannot say what entered their mind.

Senator McKIERNAN—So they made the comparison between what they were told by other people—

Mr Richardson—No. They were not doing a comparison in terms of a study, but they did make the comment.

Senator McKIERNAN—That is the reason I wanted to find out the basis on which they made that comment. Is it an informed comment, or was it merely propaganda coming from the White House or from the State office in New York?

Mr Richardson—No, I do not—

Senator McKIERNAN—Let's face it, there are organisations around the world that do put out propaganda. Not only the State office of the United States but also the Al-Qaeda network and the Taliban do it. I am just wondering what the basis of such a statement is which has been given to you.

Mr Richardson—I certainly would be prepared to make the statement on the basis of what I have read publicly written by people independent of the US administration who have been to Guantanamo Bay.

Senator McKIERNAN—Thank you; I accept that. The secretary to the department, in describing the facilities earlier this afternoon, indicated that on this occasion at Camp Delta there are walls around the facility. He then indicated that there are internal barriers. Would they be in the form of cells—that is, steel bars that you would see in a prison?

Mr Cornall—I think I did address this question. I think I said that there were wire fences to make up the internal walls of the cell. That is my understanding from what I have read, and I think that is what I said on the record.

Senator McKIERNAN—Have any photographs been brought back to Australia from that visit?

Mr Cornall—If there have, I have not seen them.

Mr Richardson—No.

Senator McKIERNAN—Are you saying that there have not been any photographs brought back?

Mr Richardson—I will check and I will advise the committee immediately if I am wrong, but I believe the answer to that is no.

Senator McKIERNAN—Thank you, Mr Richardson. The other thing you did not mention today, Mr Cornall—you certainly mentioned the walls and the wire dividers—was a roof.

Mr Cornall—I think I said that it was airconditioned, and you would need to have a roof to have airconditioning.

Senator McKIERNAN—In the tropics they have airconditioning when they do not even have glass in the windows, but I accept your point. Thank you for that clarification. Mr Richardson, I do not know if ASIO are in a position to say if there are any precedents for an

Australian citizen to be held in these circumstances for this length of time. Now there are two Australian citizens.

Mr Richardson—I am not aware of any personally, but I really think that would reside with the Attorney-General's Department.

Senator McKIERNAN—But I suspect that you, as an intelligence gathering organisation, would have an interest in this matter. You would not have that form of intelligence?

Mr Richardson—I am not aware of a previous situation that would precisely parallel this.

Senator Ellison—I think during the war we detained some Italians and Germans.

Senator COONEY—As I understood it, parents were detained if they were Italians. I think some of them were naturalised Australians. I might not be right about that, but we certainly detained some.

Senator Ellison—Not on all fours, but some things may be similar. That is perhaps something that could be looked at.

CHAIR—Thank you, Minister.

Senator McKIERNAN—Thank you for the additional clarifications to the earlier questions that we had on this matter. In these circumstances, one has to be pleased that the United States is indeed an ally of Australia. One would fear if the US were an enemy and holding Australian citizens in these circumstances.

Mr Richardson—In fairness—and I might be in strife here—I do not think the US would consider that they are detaining Australians as Australians; they are detaining 30 or so nationalities because of what they believe to be their involvement with a group that—

Senator McKIERNAN—In those circumstances, I am really pleased that they are an ally, a friend to Australians.

Mr Richardson—Understood.

Senator McKIERNAN—Were they to be an enemy, one could imagine what might be happening with those Australian citizens who are incarcerated in those circumstances.

Senator COONEY—Does it matter very much whether Australian citizens are locked up by friend or foe? Shouldn't we do something about looking after our own?

Mr Richardson—Yes. I think the government does take a particular interest in Australians overseas.

CHAIR—Mr Cornall, you had an additional comment to make?

Mr Cornall—Yes, this afternoon there were a couple of issues that I said I would check and clarify.

CHAIR—On this topic?

Mr Cornall—Yes. Australia has requested access for private lawyers and family to go to Guantanamo Bay. At this stage, those requests have not been agreed to by the United States. In that regard, I believe the United States is treating all requests in the same way and no nationals of any other country are getting any different response than the one that we are getting. As far as we know, no-one from any of those other 30 nationalities has been released from US custody and returned to their home state.

Senator McKIERNAN—Thank you, Mr Cornall.

CHAIR—Are there any further matters for ASIO?

Senator COONEY—Yes, I have some questions. Mr Richardson, arising from what has just been said, the picture you could get in the end is that the only thing we are not concerned about in all of this is Australian citizenship—Australian citizens, rather. In talking about Australian citizenship, you seem to be able to be an Australian and about three other nationalities as well. Does ASIO, for example, give any weight to the fact that a person is an Australian citizen when it is carrying out its intelligence gathering? I am thinking of one instance where people travelling around the world or coming to Australia are met—that might be the way to put it—and inquiries are made of them. When they get to Australia, further inquiries are made and the family of a particular person is sought out by agents and asked questions. Is there any protocol that guides the agents—or whomever we have in ASIO—in the way they go about their intelligence gathering?

Mr Richardson—Yes, there is. To step back to your first question, most of the people we interact with are Australians. Whether or not people are Australians, we still seek to interact with those people within a framework of propriety and legality. We give all our officers quite good training in respect of the ethical legal framework. There are various codes of conduct and policy procedures laid down within the organisation governing the way in which ASIO officers are to conduct themselves.

Senator COONEY—Are those codes of conduct public?

Mr Richardson—Some of them are contained in policy procedures within ASIO which are not public. There are some guidelines which are tabled in the parliament. I suspect they do not go to the detail of what you are asking, but they provide a framework.

Senator COONEY—What would happen if people were confronted? No, the word ‘confronted’ would not be appropriate. If people were approached and asked questions by ASIO, how would they know what ASIO should or should not do and what they should or should not do?

Mr Richardson—In that situation, ASIO officers are required to show identification. They are also required to outline the role of ASIO, and they would outline the purpose of their inquiries.

Senator COONEY—Does ASIO tackle people because they are from Pakistan or because they are Muslim?

Mr Richardson—No.

Senator COONEY—Or because they happen to have gone to Pakistan?

Mr Richardson—No. The mere fact of being of any religion or of going to any country would not, of itself, make a person of interest to ASIO.

Senator COONEY—It is alleged—and I am not saying that they did not—that they drifted over into Afghanistan. Would that, on its own, be a problem?

Mr Richardson—Not of itself. The mere fact of having been to Afghanistan would not, of itself, create a security interest.

Senator COONEY—Does ASIO have relations with other like organisations of friendly countries around the world?

Mr Richardson—Yes, we do. In our annual report to parliament each year we list the number of agencies around the world with whom we have a formal liaison relationship. I think it currently stands at around 220.

Senator COONEY—Can you be confident that those agencies would treat people in what we would consider a proper way?

Mr Richardson—Not always, no. Indeed, there are procedures which govern our sharing of information about Australians with the agencies of other countries and which do go to the human rights records of countries.

Senator COONEY—I am not in any way alleging that anything did happen that was untoward overseas in the matter I am talking about—in fact, quite the contrary. But would ASIO take up the cause of an Australian who ran into some untoward conduct by like agencies overseas?

Mr Richardson—That would initially be an issue for the Department of Foreign Affairs and Trade and their consular responsibilities.

Senator COONEY—Certainly, as you said, being a Muslim is in no way a signal to ASIO to take any particular interest?

Mr Richardson—No way.

Senator COONEY—Can I just go to another topic. I have got to ask this very firmly. Has ASIO used any proceedings at all to intercept the electronic communication of unionists in the building industry?

Mr Richardson—I think I was asked questions on this—

Senator COONEY—I asked you last time, but it was pointed out that I did not ask properly. So I am trying to ask properly.

Mr Richardson—We can only seek a warrant to exercise our special powers if there is an issue relevant to security as defined in the ASIO Act—that is, espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on the defence system and foreign interference. There has been nothing regarding the exercise of special powers in the time that I have been in ASIO that has involved any union in any shape or form.

Senator COONEY—So what I am asked to ascertain is whether the answer is no, that ASIO has not, or whether you are not able to say?

Mr Richardson—The answer is no. If people choose to believe it then it is up to them, but the answer is no. Indeed, it would be illegal for us to do so unless it was directly relevant to our act.

Senator COONEY—There is another matter on which ASIO got a mention by Mr Blick. He wrote an account of collecting and reporting on intelligence relating to Australians in respect of the *Tampa*. PILCH sent off a communication which the person concerned thinks must have been a fax and Mr Blick, in his report on this, said:

DSD may not, under Australian law, intercept domestic Australian telecommunications. Domestic telecommunications interception for security and intelligence purposes is carried out by the Australian Security Intelligence Organisation under warrants issued by the Attorney-General.

He chooses to mention you there in paragraph 9. In paragraph 12, he says:

The only ministerial involvement in a decision about collection was when the then Minister for Defence wrote to the Attorney-General seeking ASIO assistance, under warrant, with foreign intelligence collection activities that DSD was not empowered to conduct.

And then in the last paragraph he says:

I also received prompt and complete assistance from the Director-General of Security and other ASIO personnel.

So it seems that you are floating around in all this. I might also ask the Attorney-General's Department. This is a communication from PILCH to the *Tampa* in which PILCH offered legal services to the people coming in on the boat and also to the captain. On the John Fayne show about this time the Attorney-General had some criticism of PILCH and said that they were even offering services to the captain, which was very peculiar. Did you play any part in the investigation of PILCH?

Mr Richardson—PILCH is?

Senator COONEY—I thought you would know that. PILCH is the Public Interest Law Clearing House. I thought everybody knew about that.

Mr Richardson—The answer to that is no.

Senator COONEY—The coexecutive directors are Samantha Burchell and Emma Hunt. Emma Hunt happens to be the mother of my grandchild.

Mr Richardson—The answer to that is no.

Senator COONEY—So I can go home on the weekend and assure them that Mr Dennis Richardson in no way was intruding upon the family.

Mr Richardson—And that ASIO was in no way intruding on the family.

Senator COONEY—I should probably be very disappointed. Does anyone from Attorney-General's have any comments to make about that? You know PILCH, Mr Cornall.

Mr Cornall—I do. I think Emma Hunt was an employee of Victoria Legal Aid for some time.

Senator COONEY—She was.

Mr Cornall—No, we do not know anything about this matter.

Senator COONEY—It is not that paranoia runs deep but the suggestion was that there was an interview between the Attorney and John Fayne in which reference was made to PILCH offering services to the captain. One way the information may have been obtained was from the fax that Emma sent off as a public spirited Coexecutive Director of the Public Interest Law Clearing House.

Mr Cornall—I am sorry, we cannot take the matter any further.

CHAIR—Both Mr Cornall and Mr Richardson have indicated that their answer is no, Senator Cooney.

Senator COONEY—Very well, if you say so. If you want me to stop, I will stop.

CHAIR—No, Senator Cooney, I do not want you to stop if you are not ready to do that. But I do want to, at some stage before 11 p.m., move on to the APS.

Senator COONEY—I just cannot stop on this one because I was not with the committee when it was last speaking to you, Mr Richardson. I must raise this point. With this new

legislation, I think people want to give you the power to take people into custody for 48 hours or more simply to obtain information from them. Is that right?

Mr Richardson—I think the proposal in the bill currently before the parliament, and on which this committee has now submitted its report, does not give ASIO the power of taking someone into custody. It gives ASIO the power to seek a warrant for someone to be taken into custody by the police, taken before a prescribed authority and questioned. That is right.

Senator COONEY—By ASIO.

Mr Richardson—That is right, by us; we seek the warrant.

Senator COONEY—Yes, you do not physically take them into custody but you arrange for them to be taken into custody.

Mr Richardson—We put forward the case as to why we believe they should be taken into detention.

Senator COONEY—But when they are in detention you are going to go down, with all your courtesy, and talk to them.

Mr Richardson—That is right.

Senator COONEY—With a purpose in mind.

Mr Richardson—That is right.

Senator COONEY—I would have thought that was having them taken into custody, at least. If you do not take them into custody yourself you are having them taken into custody so that you can talk to them—

Mr Richardson—Sure.

Senator COONEY—for the purposes of getting information. That does not shock you?

Mr Richardson—In what way?

Senator COONEY—That does not shock you as a concept?

Mr Richardson—I have given evidence before this committee. I do not think I have anything to add to the evidence I have already given, which is on the public record.

Senator SCULLION—I thought I would take a very short moment to explore your thoughts as an expert witness on terrorism. You are head of Australia's premier intelligence gathering organisation. You obviously travel as well. An idea has been put to me on a number of occasions over the last five weeks by a variety of interestingly dressed and opinionated people that terrorism is just a myth in Australia. It does not really exist and we do not really need to be too worried about it. It is very hard for me. I got through last weekend and I was not attacked, so perhaps I should have the same view. Perhaps you could give us a brief appraisal of how you assess Australia as a risk and whether it is a myth?

Mr Richardson—Senator, again, I believe I outlined in very careful words and answered precisely that question in my evidence before this committee. I sought to be as balanced as I could. I outlined what the current threat levels were in Australia and I outlined what had changed since September 11, without wishing to go overboard about it. It would be wrong to describe Australia in the same terms as the US as a potential terrorist target. But, equally, it would be wrong to dismiss terrorism as it relates to Australia as a myth.

In December, as I mentioned to this committee, people were arrested or detained in Singapore and they were targeting primarily US interests in Singapore, but they also were targeting the British and Australian High Commissions there. There are, as I have said to this committee, a small number of people in Australia who have trained with terrorist organisations overseas and not all of those people are in the custody of the US military.

CHAIR—Mr Richardson, thank you for assisting the committee this evening.

Mr Richardson—Madam Chair, could I join with others—

CHAIR—If you are very short, Mr Richardson.

Senator COONEY—No, give him a long time. Do not cut him off.

Mr Richardson—Because I would not want to tarnish their reputations, I would like to express personal wishes to Senator Cooney and to Senator McKiernan in their post-parliamentary life. I have appeared before this committee for about 10 years now and both Senator Cooney and Senator McKiernan have been on this committee for all of that time. They have taken me through some tough times but it has always, at the end of the day, been enjoyable. I believe they have always been very fair and very reasonable and I have enjoyed the experience. I wish them very well.

Senator COONEY—Thank you very much.

Senator McKIERNAN—Thank you, Mr Richardson. I do not remember the committee hearings; I remember the good times—even when Brisbane beat the Eagles at the WACA when I was accompanied by very distinguished guests from overseas. I remember that and I also know that not only are you a well-seasoned expert in the area of intelligence, and previously in immigration matters, but you also cook a very fair fish-head soup.

Senator COONEY—And previously to that as a guidance to great men—well, not as great as himself—

Mr Richardson—You can have your files back now.

CHAIR—Yes, indeed. Files returned, sealed! Mr Richardson, thank you very much.

Senator Ellison—It would have been good to call the APS, but I fear if we call them now for a short time, questions will be forgotten and be asked again when they next reappear.

CHAIR—It is well for you to say that, but I have been sitting under the eye of Mr Studdert for some hours now, Minister, and I am feeling more than slightly intimidated. I do appreciate the point you make and I will apologise to those officers and agencies that have not been reached and that have been waiting for a very extended period of time to appear today. The committee will resume in its consideration of Attorney-General's budget estimates, at this stage, on Friday morning at 9 a.m. The committee will sit again tomorrow morning at 9 a.m. with its consideration of estimates for the Department of Immigration and Multicultural and Indigenous Affairs. I hope those officers who have been so delayed will accept my apologies on behalf of the committee but there are serious matters we have had to consider and it has extended our time. Thank you, also, to all the members of the committee, Mr Cornall, minister and officers present for your patience and your assistance today.

Committee adjourned at 10.59 p.m.