



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

Estimates

WEDNESDAY, 25 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Wednesday, 25 May 2011

Senators in attendance: Senators Abetz, Barnett, Boyce, Brandis, Crossin, Fielding, Fifield, Furner, Humphries, Ludlam, Mason, Parry, Pratt, Siewert, Trood and Williams

ATTORNEY-GENERAL**In Attendance**

Senator Ludwig, Minister for Agriculture, Fisheries and Forestry, and Minister Assisting the Attorney-General on Queensland Floods Recovery

Attorney-General's Department**Management and Accountability**

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

Mr Tony Sheehan, Deputy Secretary, National Security and Criminal Justice Group

Ms Elizabeth Kelly, Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system**1.1 Attorney-General's Department Operating Expenses—Civil Justice and Legal Services****Access to Justice Division**

Ms Louise Glanville First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smrdel, Assistant Secretary, Federal Courts Branch

Civil Law Division

Mr Matt Minogue, First Assistant Secretary

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Mr Chris Collett, Acting Assistant Secretary, Classification Branch

Ms Janean Richards, Assistant Secretary, Office of Legal Services Coordination

Ms Janette Dines, Assistant Secretary, QLD Floods and Commonwealth Law Ministers Meeting Branch

Constitutional Policy and Law Reform

Mr David Fredericks, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

International Law and Human Rights Division

Mr Greg Manning, First Assistant Secretary, Office of International Law

Ms Catherine Fitch, Assistant Secretary, International Human Rights and Anti-Discrimination Branch

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Office of Legislative Drafting and Publishing Division

Mr John Leahy PSM, First Assistant Secretary

Mr Noel Bugeia, Assistant Secretary, Legislative Services and Publication

Program 1.2—Attorney-General’s Department Operating Expenses—National Security and Criminal Justice

Criminal Justice Division

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Tamsyn Harvey, Acting Assistant Secretary, Criminal Law and Law Enforcement Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch

Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch

Emergency Management Australia

Mr Campbell Darby DSC AM, Director-General

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Ms Kerryn Vine-Camp, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

International Crime Cooperation Division

Ms Maggie Jackson, First Assistant Secretary

Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Unit

National Security Resilience Policy Division

Ms Ayesha Perry, Acting First Assistant Secretary

Mr Michael Jerks, Acting First Assistant Secretary, (Assistant Secretary, Critical Infrastructure Protection Branch)

Mr Duncan Anderson, Acting Assistant Secretary, Emergency Management Policy Branch

Mr Andrew Rice, Assistant Secretary, Identity Security Branch

Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy and Coordination Branch

National Security Law and Policy Division

Mr Geoff McDonald PSM, First Assistant Secretary

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Taskforce

Ms Leisa Richardson, Acting Assistant Secretary, AusCheck Branch

Ms Kelly Williams, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

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

1.3 Justice Services**Access to Justice Division**

Ms Louise Glanville First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smrdel, Assistant Secretary, Federal Courts Branch

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Civil Law Division

Mr Matt Minogue, First Assistant Secretary

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Mr Chris Collett, Acting Assistant Secretary, Classification Branch

Ms Janean Richards, Assistant Secretary, Office of Legal Services Coordination

Ms Janette Dines, Assistant Secretary, QLD Floods and Commonwealth Law Ministers Meeting Branch

International Law and Human Rights Division

Mr Greg Manning, First Assistant Secretary, Office of International Law

Ms Catherine Fitch, Assistant Secretary, International Human Rights and Anti-Discrimination Branch

Dr John Boersig PSM, Assistant Secretary, Human Rights Branch

Office of Legislative Drafting and Publishing Division

Mr John Leahy PSM, First Assistant Secretary

Mr Noel Bugeia, Assistant Secretary, Legislative Services and Publication

1.4 Family Relationship Services

Access to Justice Division

Ms Louise Glanville, First Assistant Secretary

Ms Karen Moore, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Mr Steven Marshall, Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Albin Smrdel, Assistant Secretary, Federal Courts Branch

1.5 Indigenous Law and Justice

Social Inclusion Division

Ms Katherine Jones, First Assistant Secretary

Ms Marjorie Todd, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Catherine Fitch, Assistant Secretary, Indigenous Policy and Service Delivery Branch

1.6 National Security and Criminal Justice

Criminal Justice Division

Mr Iain Anderson, First Assistant Secretary

Mr Anthony Coles, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Tamsyn Harvey, Acting Assistant Secretary, Criminal Law and Law Enforcement Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Mr Michael Pahlow, Assistant Secretary, Counter-Terrorism Capability Development Branch

Ms Doris Gibb, Assistant Secretary, Geospatial Capability Development Branch

Emergency Management Australia

Mr Campbell Darby DSC AM, Director-General

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Ms Kerryn Vine-Camp, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

International Crime Cooperation Division

Ms Maggie Jackson, First Assistant Secretary

Ms Alex Taylor, Assistant Secretary, International Crime—Policy and Engagement Branch

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

Ms Catherine Hawkins, Assistant Secretary, International Legal Assistance Unit

National Security Resilience Policy Division

Ms Ayesha Perry, Acting First Assistant Secretary

Mr Michael Jerks, Acting First Assistant Secretary, (Assistant Secretary, Critical Infrastructure Protection Branch)

Mr Duncan Anderson, Acting Assistant Secretary, Emergency Management Policy Branch

Mr Andrew Rice, Assistant Secretary, Identity Security Branch

Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy and Coordination Branch

National Security Law and Policy Division

Mr Geoff McDonald PSM, First Assistant Secretary

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Taskforce

Ms Leisa Richardson, Acting Assistant Secretary, AusCheck Branch

Ms Kelly Williams, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

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

People, Information and Technology Division

Ms Hilary Russell, General Manager

Strategic Policy and Coordination Group**Finance and Property Division**

Mr Stephen Lutze, General Manager

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Priorities and Coordination Division

Mr David Fredericks, First Assistant Secretary

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Craig Harris, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

Mr Andrew Walter, Assistant Secretary, Strategy and Policy Advice Unit

People, Information and Technology Division

Ms Hilary Russell, General Manager

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, People and Business Support

Ms Karen Harfield, Executive Director, Performance and Stakeholder Relations

Australian Customs and Border Protection Service

Mr Michael Pezzullo, Acting Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Ms Roxanne Kelley, Acting Deputy Chief Executive Officer, Border Enforcement

Mr Steven Groves, Chief Finance Officer

Ms Raelene Vivian, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sarah Major, National Manager, Trade Policy and Regulation

Mr Justin Wickes, Acting National Manager, Trade Measures

Rear Admiral Tim Barrett, Commander, Border Protection Command

Mr Demetrio Veteri, Deputy Commander, Border Protection Command

Ms Sharon Nyakuengama, Acting National Director, Enforcement and Investigations

Mr Nigel Perry, National Director Maritime Operations Support Division

Mr John Gibbon, Acting National Director, Intelligence and Targeting

Mr Geoff Johannes, National Manager, Trade Measures Review

Dr Ben Evans, National Manager, Border Strategies and Priorities Branch

Ms Maree Bridger, National Director People and Place

Mr Joe Attanasio, Chief Information and Knowledge Officer, IT Division

Mr Kingsley Woodford-Smith, National Manager, SIEV 221 Taskforce

Australian Federal Police

Mr Tony Negus APM, Commissioner

Mr Peter Drennan APM, Deputy Commissioner, National Security

Mr Michael Phelan APM, Deputy Commissioner, Close Operations Support

Mr Andrew Colvin, Deputy Commissioner, Operations

Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Mr Ian Govey, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon Ms Catherine Branson QC, President and Human Rights Commissioner

Mr Graeme Innes AM, Disability Discrimination Commissioner and Race Discrimination Commissioner

Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner

Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Ms Padma Raman, Executive Director

Mr Darren Dick, Director, Policy and Programs

Mr David Richards, Manager, Finance and Services, Chief Financial Officer

Australian Law Reform Commission

Professor Rosalind Croucher, President

Ms Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security

Mr David Fricker, Deputy Director-General

Australian Transaction Reports and Analysis Centre

Mr John Schmidt, Chief Executive Officer

Mr Peter Clark, Executive General Manager, Supervision

Ms Liz Atkins, Executive General Manager, Intelligence

Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer

Ms Amanda Wood, General Manager, Supervision, Central and North West

Mr John Visser, General Manager, Intelligence

Classification Board

Mr Donald McDonald AC, Director

Ms Lesley O'Brien, Deputy Director

Classification Review Board

Ms Victoria Rubensohn AM, Convenor

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director, Corporate Services

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Executive Director Corporate

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Mr Jeff Smart, Manager, Corporate Services

Ms Carolyn Rogers, Senior Registrar

Insolvency and Trustee Services Australia

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy

Mr Gavin McCosker, National Manager

Mr Jeff Hanley, National Manager, Regulation and Enforcement

Mr Bob Morison, Chief Finance Officer

Mr Matthew Osborne, Principal Legal Officer

Mr Adam Toma, National Manager, Regulation and Enforcement

Mr Andrew Robinson, National Manager, Debt Agreement Service and Information and Registry

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Mr James Carter, Deputy Director

Committee met at 09:02

CHAIR (Senator Crossin): I declare open this public hearing of the Senate Legal and Constitutional Affairs Committee. The Senate has referred to the committee the particulars of proposed expenditure in respect of the year ending 30 June 2012 and the particulars of certain proposed expenditure in respect of the year ending 30 June 2012 for the Attorney-General's and Immigration and Citizenship portfolios. The committee must report to the Senate on 21 June 2011. We have set Friday, 8 July 2011 as the date by which answers to questions on notice are to be returned. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings, but our secretariat has copies if you need them. I particularly draw the attention of witnesses to an order of the Senate 13 May 2009, specifying the process by which a claim of public interest immunity should be raised. A copy of which will be incorporated in *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

- (c) orders that the following operate as an order of continuing effect:
- (1) If:
 - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
 - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
 - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
 - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
 - (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
 - (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
 - (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
 - (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
 - (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

CHAIR: I welcome Minister Ludwig, Minister for Agriculture, Fisheries and Forestry; Minister Assisting the Attorney-General on Queensland Floods Recovery; the Minister representing the Attorney-General; and the Minister representing the Minister for Home Affairs during these proceedings. Mr Wilkins, good morning to you as well. Minister, did you want to start by making an opening statement.

Senator Ludwig: No, thank you, Chair.

Mr Wilkins: If it is all right, Madam Chair, I just want to make a very short statement. The portfolio chief executive officers and agencies have cooperated extremely well in

developing a budget that does duty for the government's main fiscal policies. There has been a huge degree of cooperation from the various chief executive officers and agencies in relation to that. There is a specific—and as you know—targeted fiscal strategy for the 2011-12 budget. The strategy includes retaining a two per cent limit on annual real spending growth on average until the budget surplus is at least one per cent of GDP and bringing the budget into surplus in 2012-13. The government's budget papers—and I am not going to go through those—set out in detail how the limit on spending and bringing the budget into surplus is being achieved. The portfolio has done its part to contribute to those fiscal targets.

While there is some new expenditure in important areas, the portfolio has also identified opportunities for further efficiencies and better targeting of resources, which are set out in the budget papers. Like all agencies, the portfolio is also subject to the government's temporary increase in the efficiency dividend. I wanted to emphasise that the outcomes of the budget and the assessment of the future spending priorities reflect a genuine whole-of-portfolio entirely cooperative effort and approach taken by all the agencies during the process. Without going into specific detail, even despite the climate of fiscal discipline, the government has retained or made new expenditure commitments in a number of important areas in the portfolio, including provision of funding to continue and strengthen our borders through regional cooperation; to continue some of the key national security and crime prevention measures; and improve access to justice. I will not labour the point. I can go into those as we go through, but I just wanted to emphasise the level of corporation and the whole-of-portfolio approach to the government's fiscal strategy. Thank you.

CHAIR: Thank you, Mr Wilkins.

Australian Human Rights Commission

[09:08]

CHAIR: I welcome members of the Australian Human Rights Commission. Ms Branson, good morning. Do you or any of your commissioners have an opening statement?

Ms Branson: No, we do not.

CHAIR: Okay, let us go to questions.

Senator SIEWERT: I have a couple of areas of questions. One is issues around imprisonment of prisoners with cognitive or intellectual disabilities. Has the commission been looking at this issue, is it involved in the issue, has it had anything to say on this particular issue, and do they know the numbers—for example, have you looked at the numbers of people around Australia that have a cognitive or intellectual disability that are in incarceration?

Ms Branson: Thank you, Senator. May I refer this question to be Disability Discrimination Commissioner, Mr Innes.

Senator SIEWERT: I figured that is where it might go.

Mr Innes: Thank you for the question. You are correct; this is a real concern across Australia. Whilst I cannot quote you specific figures, studies are clear that the level of people with intellectual and cognitive impairment in prisons is much higher than in the general population. This is due to a range of factors, and the resolution of the problem will be complex. It really relates to dollars and resources in broad terms. People are put in prison

because there are few alternative places for such people, if they have committed crimes, and there isn't the level of diversion programs from the judicial system.

Under the sixth area of activity of the National Disability Strategy, which all COAG governments committed to earlier this year, governments are expected to address this problem, as they are under the Convention on the Rights of Persons with Disabilities. The commission is looking forward to the opportunity to work with those governments to share its knowledge and assist in addressing that problem. It is a problem that, in the main, requires not major law change but, rather, resourcing in an attempt to provide the various legal systems with the opportunity to address it.

Senator SIEWERT: I think you said there was not an understanding of the numbers of people. Did I understand that correctly?

Mr Innes: No. I am sorry; I said I do not have an understanding of the numbers of people. There have been a range of studies done. I have seen those studies. I do not have them at my fingertips but I would be confident that if we went back to government at federal and state levels it would be possible to pull together that research. I just do not have the information to hand.

Senator SIEWERT: So you think that, around Australia, there is knowledge of the number of people with an intellectual or cognitive disability that are incarcerated?

Mr Innes: In broad terms, I think that is true. I think that some of the studies are now somewhat dated. I think that governments generally understand the problem. It is a matter of focusing resources on the sorts of programs which we need to address the problem.

Senator SIEWERT: What role do think the commission is going to take from here, particularly as it applies through the program that is suggested to ensure that we meet our obligations under the Convention on the Rights of Persons with Disabilities?

Mr Innes: The commission, in its disability area, is focusing its strategic plan on the six areas of the National Disability Strategy. We look forward to providing strategic advice and encouragement to the nine COAG governments to address the problem. We can raise and point out the issues and work to advise governments about ways in which the problem can be addressed—we are very happy do that. The crunch comes when governments need to devote resources to this area. That is what is not happening to a great enough extent at present, so we will be encouraging governments to implement, as they have committed to do under the National Disability Strategy, the access to justice provisions of that strategy.

Senator SIEWERT: Have there been any formal complaints to the commission around this issue?

Mr Innes: We of course are required to maintain confidentiality on complaints we have received. You used the expression 'complaints'. We view them in a narrow way based around our legislation. But were you to ask me, 'Have we had this issue raised with us?'—

Senator SIEWERT: Have you had this issue raised with you?

Mr Innes: I would answer you by saying yes, absolutely, we have. Some three months ago my colleague Commissioner Gooda and I commented in the media on a particular case in Western Australia where a man with an intellectual disability had been incarcerated in the prison system at the Governor's pleasure—or whatever the appropriate phrase is—because

there was no alternative facility for him to live in. He is in the very difficult situation. The issues of which he was accused did not go to trial as a result of his disability so he is in limbo, as it were. This is a classic example of the problem we have and the lack of resources allocated by COAG governments to address this issue.

The other area where this issue is a real problem is in the Northern Territory where a number of correspondents have raised with us instances of similar practices to the one that I have just described in Western Australia. They are very concerned that people in this situation often do not have their cases go to trial, but they are incarcerated in the general prison system.

Senator SIEWERT: In terms of this particular situation, does it conflict with obligations under the Convention on the Rights of Persons with Disabilities?

Mr Innes: Yes. There are convention obligations, and I am sorry, Senator, I would have to take on notice referring you to the particular articles of the convention—I could do that if you would like me to. There are convention obligations for government to address these issues. They are convention obligations which would need to be progressively realised and, as I have said, it will be a matter of finding resources to be made available to address this problem. But it is a particular challenge that we need to face up to, and that governments have committed to facing up to in the National Disability Strategy. It is now a question of implementing that strategy.

Senator SIEWERT: I am wondering whether I could move on to the update on Universal Periodic Review. Where is that at in terms of our formal response?

Ms Branson: The Australian government will be expected to respond in the Human Rights Council in Geneva, I think within the first or second week of June. Since we came back from the interactive dialogue in Geneva, there have been public consultations. There has been some engagement more broadly with civil society and now it is time for the government to give its formal response.

Senator SIEWERT: Presumably that is being developed between now and the first and second week of June?

Ms Branson: I think that they are questions for the Attorney-General's Department.

Senator SIEWERT: Mr Gooda, in terms of work on the implementation of the Declaration of the Rights of Indigenous Peoples, are you involved in that work?

Mr Gooda: Yes, we have been in discussion with FaHSCIA, the Department of Families, Housing, Community Services and Indigenous Affairs about the implementation of the declaration. We have got staff in New York, as we speak, at the permanent forum and the focus of the permanent forum concerns the implementation of the declaration particularly around the issue of free, prior and informed consent. We hope to work closely with government about the implementation of the declaration, but I think it presents certain problems. I do not think that you would find any government in the world doing it really well, but I think we now have a chance to lead the way.

We have got certain strategies that we want to put to government. For instance, putting it alongside the seven conventions when we talk about the Parliamentary Human Rights Scrutiny Committee and whether that is possible or not, because it is a declaration not a convention that we sign up to. Those are the sorts of high-level issues that we want to talk about. I think there are some foundational issues in there that we have really got to take on

board, things like self-determination, free, prior and informed consent, and the right to participate in decisions that affect us and, I might add, they are human rights, not rights that are particular to Indigenous people.

Senator SIEWERT: You said you were talking to FaHCSIA about free, prior and informed consent, is that in terms of how you implement that through policy and legislative changes? Is that what you mean?

Mr Gooda: I think it needs some interpretation. It is a global document and I think we have to work at how we interpret that down to what it means here in Australia. There are some international views emerging, particularly from Indigenous people. It is not the scary concept a lot of people think, like it is a right of veto. It is more a process that you have to go through. In my native title report, this year, we are planning on—

Senator SIEWERT: I was going there next!

Mr Gooda: We are planning on doing a piece on 'What does free, prior and informed consent mean in Australia?'

Senator SIEWERT: I noticed in your last report you did touch on it. Are you are going to be developing that more?

Mr Gooda: In the last report I touched on consultation and what that means. This year we will be addressing free, prior and informed consent, because I think that is a really big issue confronting and concerning people in Australia, and I hope to make it not the scary proposition that people think it is.

Senator SIEWERT: You said there are other foundation issues in there as well. Will you be addressing those, like the self-determination that you talked about?

Mr Gooda: Absolutely, particularly with the engagement between Indigenous people in government and the right to participate in decisions that affect us. I think it is a really important foundation for the basis of any engagement that government does not just engage with Indigenous people because it is a nice thing to do. We actually have a right to participate in decisions that affect us. I think that is one of the messages I want to get through when we talk about the implementation of the declaration.

Senator SIEWERT: There has been a lot of talk recently about Aboriginal and Torres Strait Islander incarceration rates. Are you going to pursue incarceration rates and issues around justice reinvestment when you work on the declaration?

Mr Gooda: Absolutely. We will talk particularly about justice reinvestment as a way of reducing incarceration rates, and we are particularly concerned about the incarceration rates of juveniles. They are absolutely the highest in the country and it is something that concerns everyone. We have just gone past the 20th year mark of the release of the Royal Commission into Aboriginal Deaths in Custody. We now have more Aboriginal people in prison than we did when that report was released. It causes us concern and we will certainly be keeping a watching brief on how it develops and will be promoting justice reinvestment wherever we can. We have had one meeting with the new government in New South Wales, with the Attorney-General. They are very keen to work on some practical issues on how to go about reducing the numbers in custody of Indigenous peoples. We will be meeting with people in Victoria shortly. So I think it is, again, about us at a national level promoting what can be

done by the states and territories to reduce the terrible rate of incarceration of Indigenous peoples.

Senator SIEWERT: Have you engaged with the death in custody review that the New South Wales Aboriginal Legal Service has undertaken of the implementation of the recommendations of the Royal Commission? Have you done any monitoring of the implementation of those recommendations, and are you engaged with that review?

Mr Gooda: First of all, we are engaged with that review. We have been invited to contribute, and we met recently with the Aboriginal legal service and told them that. But as for monitoring, we just keep an eye on some of the 339 recommendations. With our limited resources we probably look, mainly, at the headline things like how incarceration rates are increasing, and look at some of the reasons why people are in jail. When you look at places like WA you will probably find most Indigenous people are in jail around simple things like traffic offences.

Senator SIEWERT: We had the Royal Commission 20 years ago, and its extensive recommendations addressed a lot of the issues on incarceration. It seems to me we are seeing continued increases in incarceration rates and we have not been keeping an eye on the implementation of the recommendations.

Mr Gooda: I think you will find that state governments were really funded to set up watch committees and all of that, which would report. I could not say for certain what the time period was, but it was a few years ago. They just gave up; they just did not report anymore.

Senator SIEWERT: The states?

Mr Gooda: As far as I know they do not report any more. There was a national reporting framework for the implementation of those 339 recommendations and that does not happen anymore.

Senator SIEWERT: Thank you.

Senator FIFIELD: Good morning, Mr Innes. You have spoken and written a great deal about levels of employment for people with disabilities in the public sector and you recently had an opinion piece published in the *Australian*, which touched on what you referred to as a 'massive fail':

Within the federal public service itself, the proportion of people with disability is even lower now than it was 20 years ago. "Massive fail" is, I think, the way the present generation would describe that one.

I was in the Finance and Public Administration Committee estimates last night and I put that to the Australian Public Service Commissioner, and also drew his attention to the National Disability Strategy and its component which looks to improve the state of public sector employment for people with disabilities.

A fear I have is that although the National Disability Strategy is a fine and worthy document there are many fine and worthy documents that find themselves sitting on a shelf—everyone giving assent to them but nothing particularly changes as a result of them. When I asked the Public Service Commissioner what plans they had or what discussions they had had with government to seek to give effect to that part of the National Disability Strategy he—how can I put this?—said all the right things but I am not sure how far advanced the Public Service Commission is in seeking ways to lift the level of employment of people with disabilities in the public sector. I just wanted to take this opportunity to get your thoughts as

to how that can be done better, and any advice you might have for the Public Service Commission?

Mr Innes: Thank you for that question. I think this Public Service Commissioner is the first commissioner to really focus his mind on this issue and start to address it. I am excited by that. In that article I was talking about a problem over the last 10 or 15 years. I do not have the quote in front of me. I do think 'massive fail' is the absolutely correct expression. The efforts of the Public Service in this area have been, and I have described them this way before, shameful. The government cannot go out and try to sell employment of people with disability to the private sector if they are not performing in that area themselves. I am not saying anything that I have not already said to this or the previous government.

I think, though, that efforts are being made in the Commonwealth Public Service—small so far, but I think the trend is heading in the right direction—to redress that. I would encourage all COAG governments who have committed to this issue in the National Disability Strategy to follow the lead of the ACT government. A month or so ago they actually set a target, or a quota. I have been opposed to quotas for employment of people with disabilities for most of my life in this area, but I have come to the view that we are so far behind on employment of people with disability that the only way we are going to redress the balance is to set some quotas or targets. I would suggest that individual government departments and agencies need to set their own quotas and targets and then develop processes to achieve those targets. I met with a group of parliamentary secretaries and deputy secretaries about two months ago where this was put on the table and discussed in some detail. Different views were expressed amongst that group as to whether this was a viable thing for the Public Service to do. As I have said, the government cannot sell employment of people with a disability to the private sector if it is not performing itself. The employment of people with a disability is at such a low place now that I think the only way to redress it is to do some of the things that the current commissioner is doing in allowing for the creation of either non-ongoing or ongoing positions for people with a disability. The commission needs to go further than that and establish some quotas and targets, and work towards achieving them.

Senator FIFIELD: If we just put quotas to one side, you would certainly be of the view that targets at least introduce a degree of accountability for government departments and agencies?

Mr Innes: Yes. Targets certainly should introduce a degree of accountability and, in the same way as other targets, they should be linked to people's performance bonuses. That is the only way that we are really going to get people to focus on, and address, what is a complex problem because it is a problem of changing people's attitudes. The other thing that leaders in public and private employment need to do is not just talk about this issue but actually lead by example.

Senator FIFIELD: I think that is very true in the public sector. Government does need to lead by example. Ventilating this issue in forums like this helps to keep it in the forefront of the mind of government.

Mr Innes: I agree.

Senator FIFIELD: On another matter, we see periodically articles in the newspapers and in other media about people with disabilities and their experiences with airlines. There was

another case in the paper today. I do not want to single out a particular airline because you cannot always take at face value what is in the papers. In your view, and from issues which may be raised with your office, is there a particular problem with how airlines do treat passengers who have a disability?

Mr Innes: Yes, there is and, again, this is an issue that I have been quite public about over the last 12 months. In terms of compliance with the Disability Discrimination Act and public transport standards, airlines are one of a couple of problem areas, as opposed to some others such as bus and rail, which are progressing relatively well with some exceptions. The problem for airlines is that they are caught between the pressures of operating at the lowest possible cost and meeting their obligations under the law. Sometimes, particularly lower service airlines cross that line with regard to a range of services that they provide to passengers with disabilities. I will not give you a list of examples now, unless you would like me to, but it is across the board.

It really stems from the way that passengers with disabilities are viewed. Whilst I know that airlines are making some attempts to change this, the sense that I get as a traveller with a disability is that often passengers with disabilities are viewed as a problem rather than as a customer. Until we can change that mindset and that attitude, and until we cannot talk about passengers with disabilities using the same words and phrases that we talk about luggage, then we are not going to be able to address the problem.

The two problems are, as I have said, staff training and staff numbers. Airlines are trying to operate at lowest possible costs and reducing staff numbers and the people who first fall through the cracks are passengers with disabilities. Despite the efforts of a number of airlines to improve their staff training, the attitude towards passengers with disabilities is not changing as quickly as it should. We have things like automatic check-in, which effectively excludes anyone who cannot use a touch screen; we have passengers left on planes for long periods of time when they are expecting assistance to transfer to a wheelchair, and numerous other examples that I could give you.

Senator FIFIELD: You meet from time to time with the airlines to try and give them some guidance on these matters?

Mr Innes: There is an accessible airlines working group convened by the Department of Transport which includes myself and representatives of various disability organisations. Airlines are encouraged to lodge action plans on the website of the Department of Transport. The expectation was that those action plans were going to be lodged by 1 July last year. There are still several major airlines which have not lodged their action plans—and these are only voluntary plans. Both last year and this year I called for some greater regulation in this area; and my view has not been changed. I think that in Europe and the United States governments have regulated the provision of service to customers with disabilities. I think the time is very close where the Australian government needs to focus in that area as well.

Senator FIFIELD: Do you want to mention those airlines that have submitted their voluntary action plans and those that have not?

Mr Innes: I think it might be better to consult the website of the Department of Transport rather than me do it from memory; I do not want to be unfair to airlines who have not lodged

plans. But I am not talking about small airlines, I am talking about a couple of the major airlines who still have not lodged their plans.

Senator FIFIELD: Would one of them start with the letter Q?

Mr Innes: My understanding is that the Qantas plan has been lodged. I could stand corrected, but I do not believe that the Jetstar plan has been lodged.

Senator FIFIELD: Thank you, I will check that website. I just thought it may provide the opportunity for a focus on the need for those voluntary action plans to be submitted.

Mr Innes: I am sorry, I just do not have that information.

Senator FIFIELD: Not at all. I think we have probably achieved that objective here. I will check the website. Do you think more needs to be done than the committee that you are on and these voluntary action plans? Is there a need for a portfolio minister banging some heads together?

Mr Innes: I am very close to forming the view that it is an area in which voluntary compliance has not worked and where we need some clearer regulation, yes.

Senator FIFIELD: Jawboning by ministers might be an interim step?

Mr Innes: It certainly would. That occurred when Mr Shorten was parliamentary secretary last year. He did some effective things in that area. It probably is time for that to occur again because there are many examples where people with disabilities are not receiving the level of service required by the Disability Discrimination Act and the accessible public transport standards.

Senator FIFIELD: You received a little coverage in the media about your experiences in the basement of Parliament House, where some security barriers meant that you found it quite difficult to find the taxi rank. I think you wrote to the Secretary of the Department of Parliamentary Services about that matter and copied me in. I asked the Department of Parliamentary Services about this matter in the Finance and Public Administration estimates on Monday. They indicated that they had put some tactile tiles in the basement. I asked the Secretary of the Department of Parliamentary Services if the action that he had taken in response to your letter had been conveyed to you—if he had replied. He was not sure. He took that on notice. I thought it might be more straightforward to just ask you if you have received a reply from the secretary?

Mr Innes: I have received an interim reply. I have not received a reply which details the work that has been done, other than some assurances on work which may be done. My concern is—and I put the view to the department, which they have not denied—that there was no involvement of an access consultant when that work was done. I am concerned that again there will be no involvement of an access consultant when the final work is completed. I think it is unacceptable that everyone else is welcome in our parliament, but people with disabilities are given the clear message by the barriers that are put there that they are not welcome in the house of our democratic system. Whilst of course we have to be mindful of security issues, we cannot allow security issues to exclude or to hold back in some way a particular sector of our population. That is what I saw in the preliminary security work that was done in the basement of Parliament House. I am not confident at this stage that the department is getting the correct advice to ensure that the problem will not occur in the future when the works down there are finalised.

Senator FIFIELD: The Department of Parliamentary Services did indicate that they are doing a review of accessibility for the building as a whole. I emphasised to them the need to engage appropriate consultants and to consult widely with groups that are representative of people with disabilities and that have an understanding of these issues. While it is appropriate to meet the codes that cover accessibility, which have changed since the parliament was opened, nevertheless there may be things that are beyond the code which are sensible and good practice. Hopefully raising these issues here will help to drive that home a little further with the Department of Parliamentary Services.

Mr Innes: I hope so. Many of the problems of access are related not necessarily only to the access to premises standards but also to fit-outs and fixtures in buildings. One of the real barriers to this building, which has been named by people with disabilities for many years but never addressed, is the weight of the doors. Many people with physical disabilities—and many others without physical disabilities—cannot open the doors of this building without assistance.

Senator FIFIELD: As in the front doors of the building?

Mr Innes: Yes.

CHAIR: Any door.

Mr Innes: The entrance doors to the building, just because of their weight and the way they are structured. To me, that again sends a message that people are not welcome in what should be the heart of our democracy.

Senator FIFIELD: The front doors of the building are not a bad starting point. Thank you, Mr Innes. I am sure the Department of Parliamentary Services will take close note of the *Hansard* of these proceedings.

Senator FURNER: It is over a year since the Attorney-General announced the Human Rights Framework. At what point is the department in the implementation of that framework?

Ms Branson: I wonder if that is not a question best directed to the department itself? We have staff who work with the Attorney-General with respect to the framework. We are aware of, and very pleased by, the government's commitment to include in the national action plan those recommendations from the UPR which they accept. As I indicated earlier, the time for them to advise the Human Rights Council of the recommendations that they have accepted is not yet quite with us. But I think the details of the work on the development of the framework is a question for the department.

Senator FURNER: What are the education measures, such as those for community education, in that framework, other than the legislation and procedures in it?

Ms Branson: The framework itself placed great emphasis on community education. I am sorry, my previous answer went to the national action plan, which is a more detailed development of the framework rather than the framework itself. So far as community education is concerned, funding has come to the Australian Human Rights Commission and we are using that within three broad areas. Funding has been provided to us for additional staff for human rights education, for community engagement and for complaint handling. That funding commenced on 1 July 2010. There was some delay in the filling of all those positions because of the calling of the election and the announcements made about what would happen to that funding were there a change of government. So we thought it

appropriate to stop the recruitment process but moved thereafter to fill those positions. Two of those positions are in complaints handling. One is in our communications team, because we see the use of new technologies as being a very important way to engage with the community and to reach wider audiences, and there are officers within our community engagement team, which consists of a director at EL2 level, a senior policy and project officer at EL1 level, a policy and project officer at APS6 level, and two part-time positions which together are the equivalent cost of another APS6 officer.

The community engagement team is currently developing a range of new projects and activities which will expand the commission's development and delivery of community education programs about rights and responsibilities. And, as I mentioned, particular attention is being given to innovative ways to use new technologies to reach wider audiences. We have indeed engaged, after a tender process, a social marketing company to help us determine the most effective content, media and technologies to use for a web based social media platform, and help us to build understanding and respect for rights, and we expect to have their final report before 30 June this year.

We are also developing materials and programs to raise awareness of other components of Australia's Human Rights Framework, including the consolidated Anti-Discrimination Act and the development of the national action plan on human rights, and developing strategies to complement education by NGOs under the new human rights grants program. We are working also with those developing the new school curriculum to see human rights education built into the curriculum.

We are providing advice on the development of human rights education for the APS through the Attorney-General's Department, which is responsible for delivering that education. We are working with the department as well to develop the national action plan on human rights for Australia, on the review and consolidation of antidiscrimination laws and, as I mentioned, on the selection of programs for the human rights education grants scheme.

Senator FURNER: I might follow up on some of those answers. How many staff are you considering employing as a result of it?

Ms Branson: As a result of the funding?

Senator FURNER: That is right.

Ms Branson: The funding it provides is for staffing over a number of years. I think there was an answer given on notice from the last Senate estimates which gives those figures, but at the moment the numbers are as I gave you: four full-time equivalent positions in our community engagement unit, two in complaints handling and one in our communications team.

Senator FURNER: Okay. Thanks very much.

CHAIR: Senator Barnett.

Senator BARNETT: Thanks, Chair. I have a few questions. Ms Branson, it is nice to see you again.

Ms Branson: Thank you, Senator Barnett.

Senator BARNETT: I want to ask about the Age Discrimination Commissioner appointment, if I could. It was in the Attorney-General's Department media release of 10 May

headed 'Improving access to justice'. Could you provide an update in terms of that appointment—I understand the start date is 1 July—and tell us if there is a short list as yet.

Ms Branson: Senator, we are very pleased that the legislation has now passed the House and so we are hopeful that there will be an Age Discrimination Commissioner with the commission from 1 July. The recruitment process is run by the Attorney-General's Department, but you will be aware, I think, that there were public advertisements. A number of applications were received. There have been interview processes by a panel of which I was pleased to be a member, and recommendations have gone to the minister.

Senator BARNETT: So there were a number of recommendations.

Ms Branson: 'Recommendations' is probably the wrong word. The minister was advised of applicants who were viewed by the committee as being appropriate for appointment to the position.

Senator BARNETT: How many were on that panel?

Ms Branson: There was an external consultant engaged by the Attorney-General's Department, and the panel was three persons.

Senator BARNETT: How many were suggested as recommended for the Attorney-General?

Ms Branson: The chair of the panel is from the Attorney-General's Department, and is sitting at this table. I am not sure whether it would be better to direct questions to her.

Senator BARNETT: I would be more than happy—would you like to answer that now, Mr Wilkins, or later?

Mr Wilkins: I think we were trying to impose some discipline on where things are asked.

CHAIR: Yes, we are.

Senator BARNETT: I am happy to ask that later.

CHAIR: We will come back to that.

Senator BARNETT: I see there is \$2.9 million over four years to assist with that person's appointment. Is that right, Ms Branson? How will you be resourced to support the position of the Age Discrimination Commissioner within the Human Rights Commission?

Ms Branson: Our expectation is to be provided with funding to pay the remuneration of the commissioner and only very modest additional funding.

Senator BARNETT: So no extra support staff or other resources to support that appointment? That is really what I am asking—how is that appointment to be supported?

Ms Branson: It is expected that the office holder will have a director of a unit to provide advice, and a policy officer. To provide that staffing, some of the existing funding of the Human Rights Commission will have to be used.

Senator BARNETT: Do you have a budget for that purpose? What is the budget?

Ms Branson: The commission has a budget. There is new money coming around this appointment which, as I have indicated, is sufficient to pay the remuneration of the commissioner and, I think, to provide only one additional staff member. We will reallocate funding from within the commission's existing budget to provide the second officer.

Senator BARNETT: Can you advise what that budget is for the Age Discrimination Commissioner?

Ms Branson: It is \$700,000.

Senator BARNETT: Is that consistent with your other commissioners?

Ms Branson: It is difficult to say now because it is so long since those new positions were funded, but it is less than we would ordinarily use to support a discrimination commissioner. It will require the reallocation of funding across the commission. We will seek to ensure that all commissioners have equivalent support, but the addition of two new commissioner positions will require spreading of staff and, thus, a lower level of direct support to each commissioner.

Senator BARNETT: I am sure the \$700,000 for the Age Discrimination Commissioner is on your website or whatever, but is that broadly consistent with the salaries paid to the other commissioners?

Ms Branson: The Remuneration Tribunal sets the level of remuneration.

Senator BARNETT: That is on your website; is that correct?

Ms Branson: It is certainly on the Remuneration Tribunal's website.

Senator BARNETT: Very good, thank you. I notice the appointment of Elizabeth Broderick, who is at the table—congratulations on your appointment—and I want to move to the area of Defence and an update on the Defence review that has been announced. I have seen the media release that the commission put out on 3 May, and am wondering if you can provide an update on that review. I understand you have appointed Damian Powell, Mark Ney and Sam Mostyn. Who appointed those people; was it the commission or other people?

Ms Branson: It may be appropriate if I answer this question, although the Sex Discrimination Commissioner may wish to supplement the answer. The Minister for Defence requested the Australian Human Rights Commission to make, if possible, the Sex Discrimination Commissioner available to chair a review. The commission agreed to that request on the basis that the review would be funded by the Department of Defence, because we lacked internal funding to do that. The procedure followed by the Australian Human Rights Commission is to delegate certain of its powers to a panel, which will be chaired by the Sex Discrimination Commissioner and include the three people you have named. They will be working under a delegation given to them by the Australian Human Rights Commission to exercise powers of the Australian Human Rights Commission.

Senator BARNETT: Thank you very much; that is most useful. Just to clarify that, how much has been allocated for this review by the ADF in terms of funding?

Ms Branson: We are still in negotiations with the Department of Defence and a finalised agreement has not been reached, although we are in advanced stages of negotiation. We are anxious to ensure the independence of the inquiry, so our endeavours will be to negotiate funding that we are comfortable will meet the reasonable needs of the panel in conducting the work in accordance with their terms of reference and on the basis that any unused funds will be returned to the Department of Defence.

Senator BARNETT: That is a long way of saying you cannot tell us the figure.

Ms Branson: We have not yet agreed on a final figure.

Senator BARNETT: No, I can see where you are coming from. Have you got reporting date as yet?

Ms Branson: No.

Senator BARNETT: I would like to know a bit more about the terms of reference and the methodology. I understand that is being prepared. Has that been concluded?

Ms Branson: I will now ask the Sex Discrimination Commissioner to answer questions about how she and her panel proposed to conduct the inquiry under the delegation which they hold.

Senator BARNETT: By the way, is that a legal delegation, a legal instrument?

Ms Branson: It is a legal instrument, yes.

Senator BARNETT: Is that a non-disallowable instrument? Is it a public document?

Ms Branson: The Australian Human Rights Commission Act empowers the commission to delegate powers and we have acted pursuant to that statutory provision.

Senator BARNETT: Right, but the appointment from the Minister for Defence—

Ms Branson: There is no appointment by the minister; the minister simply requested us to undertake this review and we agreed, and to facilitate the conduct of the review we have delegated to our powers to the panel.

Senator BARNETT: Okay. Ms Broderick, if you are happy to answer some of those questions and describe if these three appointments will be full-time, part-time and how it is going to operate.

Ms Broderick: On 3 May the Australian Human Rights Commission released the terms of reference. In general, the terms of reference are to inquire into and make recommendations on the treatment of women in the Australian Defence Force Academy as phase 1, with a particular focus on the adequacy and appropriateness of measures, firstly, to promote gender equality to ensure women's safety; to address and prevent sexual harassment and abuse and sex dissemination. The other terms of reference in relation to the academy is to identify initiatives required to drive cultural change in the treatment of women.

Those terms of reference are the Australian Human Rights Commission's terms of reference which were released, as I said, on 3 May. As the president said, a panel has been put together. The three panel members who are you referred to: Mark Ney, who is an ex-assistant police commissioner from the AFP; Damian Powell, who is head of one of the University of Melbourne's residential colleges and is president of the Colleges Association; and Sam Mostyn, who has had extensive experience in elite men's sport and changing cultures in male dominated industries. It is not a full-time appointment.

Senator BARNETT: Who appointed them?

Ms Broderick: The Australian Human Rights Commission appointed them.

Senator BARNETT: So the defence minister didn't; you did?

Ms Broderick: No, the Australian Human Rights Commission. This is an independent inquiry. It is not a full-time appointment. Their role is for the four of us to work together, particularly in the planning phase as to how the review will be conducted and, of course, to write and be involved in the preparation of a final report and recommendations.

Senator BARNETT: And your role is part-time as well?

Ms Broderick: My role over the last few week has been growing. I see my role as full-time—when I look at what needs to be done and to do it in an acceptable time period. I think it will take a majority of my time—not all my time, but the majority of my time. To that extent I have worked with the president and others to make sure that we have got good backfill arrangements within the commission, because, as you well know, we have a work plan.

Senator BARNETT: Yes, of course. That is an obvious supplementary question. Are we looking at three months, six months, 12 months? Have you got a time frame in mind?

Ms Broderick: The first report—we do an interim report—will focus on ADFA. We expect to do it before the end of the year. But the wider review will look at the treatment of women across the three services—Navy, Army and Air Force—particularly a group of strategies called the Women's Action Plan. That will start as a second phase but we do not have an exact time frame for that phase.

Senator BARNETT: But well into next year?

Ms Broderick: Possibly into next year, yes.

Senator BARNETT: When do public submissions have to be in?

Ms Broderick: We have not as yet advertised for public submissions. That is something that we are working on in the planning stage, but it is our view that we will call for public submissions and advertise in various newspapers nationally, and that there will be an opportunity for the community, particularly, to talk to us about the treatment of women and the terms of reference.

Senator BARNETT: How many support staff will you have to help the four of you do your work?

Ms Broderick: We have set up a small secretariat and we have appointed a director, who is helping in the planning stages. We will have one person as an administrative assistant, then we need research, report and content-writing skills. So we have one person there, a person in logistics three days a week, and legal assistance as the initial setup of the secretariat. But, as I said, we are in the early stages at this time. We also have two part-time research officers. It will become clearer as we go on.

Senator BARNETT: That is understandable. Therefore, when do you expect to conclude your negotiations—this is probably more of a question for Ms Branson—with the minister's office, or is it with the Department of Defence?

Ms Branson: We expect to complete negotiations with the department within the next few days.

Senator BARNETT: If it is to be completed in the next few days you must have a broad estimate of the cost of the inquiry?

Ms Branson: Yes, we do have a broad estimate of figures that we are discussing with the department.

Senator BARNETT: Are you able to share that figure with us?

Ms Branson: The total figure currently being discussed with the department around the treatment of women at ADFA and in the ADF is approximately \$4.7 million.

Senator BARNETT: Obviously that is a substantial amount of money, which would assume that the process will continue well into next year. That is something that you have already answered in a way. So, with respect, you are paying these three new panel members—I presume they are going to be paid for their part time work. What is their appointment—

Ms Broderick: That is right. They will be paid according to the Remuneration Tribunal, which has a daily rate. We do not have a daily rate here but I think it is around \$500 a day, or of that order. We can take that on notice.

Senator BARNETT: Sure, just double check that on notice and I would be happy. So that is a daily rate for those panel members. What about yourself, Ms Broderick? May I ask? Are you continuing on in your role and that remuneration covers your salary.

Ms Broderick: That is right. I continue on, although of course then we have some backfill arrangements for myself.

Senator BARNETT: Can we just go to the backfill arrangements? Ms Branson, you might be able to help here. What is the case? We are going to lose Ms Broderick from the scene in her role as the Sex Discrimination Commissioner for, well, a large part of this year. She has indicated that the majority of her time will be on this inquiry. What plans do you have in store?

Ms Branson: Commissioner Broderick will spend much of her time on this inquiry, but she will maintain her position as Sex Discrimination Commissioner and maintain broad oversight of the work of the sex discrimination unit within the commission. She will maintain her responsibilities as a member of the Australian Human Rights Commission, but we are proposing to engage a senior officer to work at the commission, initially one day a week then moving to three days a week, who will carry the title Deputy Sex Discrimination Commissioner to oversee our sex discrimination and gender work within the commission.

Senator BARNETT: Has the person been appointed yet?

Ms Branson: We have not yet announced the appointment.

Senator BARNETT: You cannot tell us who it is and when they would start?

Ms Branson: I think that, with no announcement having been made, it would be inappropriate to announce the name. We are expecting them to start on a one-day-a-week basis as they free themselves from other responsibilities in mid June.

Senator BARNETT: And did you say that that one day a week would increase—

Ms Branson: To three days a week in July.

Senator BARNETT: Do you have a breakdown of that \$4.7 million you can share with us?

Ms Branson: Would it be more convenient if I provided it in response to your question on notice?

Senator BARNETT: That would be fine.

Ms Branson: We will do that.

Senator BARNETT: Thank you very much indeed. Ms Broderick, you are quoted in the *Australian* on 12 April as having previously commented on the Skype sex scandal engulfing the ADF saying that a macho boys culture dominated the Defence Force. Do you think that is pretty accurate? Is that a fair assessment?

Ms Broderick: We have no preliminary findings. We have been in the planning stage. I write numerous opinion pieces on a whole range of organisations in my role as the Sex Discrimination Commissioner. There are no preliminary findings. We are in the planning stage, as I said, and then will be going in—

Senator BARNETT: I am not asking you for preliminary findings at this stage. I am really asking if that quote is accurate.

Ms Broderick: I stand by that opinion piece I wrote, if that is what you are asking.

Senator BARNETT: So do you think the behaviour of people in the ADF Academy is inconsistent or consistent with similar behaviour in the community more generally?

Ms Broderick: I cannot really say at this stage. That is one of the things that our review will look at.

Senator BARNETT: I want to move to the agreement between Australia and Malaysia regarding detainees—the people swap agreement of some 800 for 4,000 coming back to Australia, which has had a lot of publicity—and the arrival in Australia of Navi Pillay, the United Nations High Commissioner. Did you meet with her over the last couple of days?

Ms Branson: I met with her on Monday.

Senator BARNETT: Was it a productive meeting?

Ms Branson: It was a very productive meeting, yes.

Senator BARNETT: Did you discuss the Australia-Malaysia agreement?

Ms Branson: I did not directly discuss that with her, but I was present at the public event which was organised by the Australian Human Rights Commission at which she answered questions on that topic.

Senator BARNETT: So you are aware of her view that that agreement is in breach of international law?

Ms Branson: I heard her express that view at the public event, which I have mentioned, and I saw on television last night that she indicated she had received further information from the Australian government which had influenced her opinion. I have not seen her, however, since her meetings with the Australian government.

Senator BARNETT: Are you aware that Malaysia has not ratified the international agreements on torture or refugees?

Ms Branson: I am aware that Malaysia is not a party to the refugees convention, the convention against torture nor, as I understand it, the International Covenant on Civil and Political Rights.

Senator BARNETT: That is right. So, based on that and your understanding as a well versed lawyer and former judge, are you able to advise the committee whether the agreement—and we have a public joint statement; just to clarify, have you read that joint statement?

Ms Branson: I do not believe I have. I have not seen any agreement between Australia and Malaysia.

Senator BARNETT: There was a joint statement, which is a public document, between the Prime Minister of Malaysia and the Prime Minister of Australia. That has been widely circulated since 20 May.

Ms Branson: I am aware of a statement foreshadowing an agreement. I am not aware of the content of any actual agreement.

Senator BARNETT: Sorry, 7 May. They are still formulating the wording of the agreement. So, based on your understanding of the proposed agreement to date and what you know, do you agree that it is a breach of international law?

Senator Ludwig: You are asking for a legal opinion now from the commission, I suspect, and you have provided no information to ground the ability to ask for that view. With respect, Chair, the senator is asking for opinions on documents they have not even provided and agreements that have not been concluded as yet and to proffer opinions on—

CHAIR: I understand that and I think that Ms Branson has answered that adequately.

Ms Branson: Thank you, Senator. Because Malaysia is not a party to the international instruments that I have named, there are plainly risks that sending people to that country could result in breaches of Australia's human rights obligations. But without seeing the terms of the agreement, I do not feel able to express a view on whether it would lead to such breaches of Australia's obligations.

Senator BARNETT: Notwithstanding that you have not seen the agreement—and I am not asking you for a legal opinion—there is a common tradition here from the Australian Human Rights Commission that you have regularly and consistently expressed a view which is, from time to time, different from the government of the day and you have stood by that in every way, shape and form. I and others have said that sometimes you are a law unto yourself. Whether you agree or disagree with that, you have certainly expressed views inconsistent with, or different from, the Australian government. So just to clarify for the record, they have not signed those international agreements on torture, on refugees, or the International Covenant on Civil and Political Rights, and in your view based on that understanding and based on their current practice in terms of how they deal with asylum seekers and boat people of whatever colour or persuasion, you have concerns about the boat people who will be going from Australia to Malaysia. Can you describe your concerns?

Ms Branson: I have concerns and they are on the public record. I have issued a press release articulating those concerns.

Senator BARNETT: Could you summarise the articulation of those concerns, please.

Ms Branson: Yes. Because Malaysia is not a signatory to the instruments that I have identified, there is a risk that sending people to that country, unless adequate protections are negotiated, that Australia's international operations will be breached. We are aware that reputable organisations such as Amnesty International have reported on refugees and asylum seekers in Malaysia living in a very adverse circumstances. We are concerned that people who are sent there may either be arbitrarily detained or released into the community without the opportunity to work and thus support themselves and their families. We are very concerned that if children are sent to Malaysia they may not be able to attend school. These are concerns.

We are not saying that this will happen but they are concerns that we believe are significant and important concerns that surround this proposed initiative.

Senator BARNETT: And if they do happen, what would you do?

Senator Ludwig: That would be hypothetical.

Senator BARNETT: Have you expressed your views directly to the minister?

Ms Branson: I have not spoken personally to the minister. The minister, his department and his staff are aware of our views—

Senator BARNETT: Both ministers—the A-G and the minister for immigration?

Ms Branson: Yes. We have not as a commission considered our position. The situation at the moment is hypothetical.

Senator BARNETT: Have you written to the minister or have you just forwarded a copy of your press release to both ministers?

Ms Branson: The press release went to both ministers. I am in relatively regular correspondence with the Minister for Immigration. I do not believe that I have put these concerns in a separate letter.

Senator BARNETT: Do you agree or disagree with the UN High Commissioner for Human Rights that the arrangement is in breach of international law?

Ms Branson: Madam Chair, is that of assistance to the work of this committee for me to answer—

Senator Ludwig: I think that we have answered that question earlier.

Senator BARNETT: She is the United Nations High Commissioner for Human Rights. You must have a special understanding of her views. She has just been in Australia. You had a meeting with her on Monday. I am asking if you concur with her understanding and her views on the Malaysia deal?

Ms Branson: It is not an easy question to answer. I have told you what my own views are. Her views, given at a public event on Monday, have been publicised. She was also seen on national television last night, saying that she had received additional information from the government and was reviewing her opinion. It is therefore very hard for me to say now what her view is. My view, however, I have placed on the record here.

Senator BARNETT: The Commonwealth Ombudsman reviews all immigration detainee cases at two years—that is your understanding, isn't it?

Ms Branson: My understanding is that that is his responsibility, yes.

Senator BARNETT: Yes, indeed. With the number of detainees being at a very high level and having risen significantly over time, do you have any views on the human rights of detainees in Australia in light of the numbers and the stresses and strains on our detention centres, both onshore and offshore?

Ms Branson: Yes. The Australian Human Rights Commission has published a number of reports following visits to immigration detention facilities. In other circumstances, we have for many years urged the government to review its mandatory detention policy, which we believe may be inconsistent with Australia's obligation under the International Covenant on Civil and Political Rights, which proscribes arbitrary detention. We are very concerned that

particularly long periods of indefinite detention are damaging to the mental health of those affected by that detention and, in particular, where children are detained. You will recall the inquiry done by the Australian Human Rights Commission into children in immigration detention, which provided very strong evidence of damage to children as a result of indefinite and lengthy detention.

Senator BARNETT: I will move on to one last area, and that relates to what I am advised is the very recent decision of the 47-member UN Human Rights Council in Geneva, in which they unanimously agreed to replace the traditional condemnation of religious defamation with a resolution underlining the right of individuals to freedom of belief. Were you aware of that resolution?

Ms Branson: I was not, I have to say.

Senator BARNETT: Is anybody at the table aware, or would anybody else in the commission aware of it?

Ms Branson: It has not come to the commission for consideration.

Senator BARNETT: Please take that on notice and review the decision. The question is: will that have any influence on or consequences for Australia and the views of the Human Rights Commission in particular?

Ms Branson: Chair, we have discussed before whether it is appropriate for this estimates committee to require the Australian Human Rights Commission to undertake particular work. I seek your guidance on this issue.

CHAIR: What is the intent, Senator Barnett?

Senator BARNETT: This is a unanimous decision of the United Nations Human Rights Council. My question is: does it have consequences for Australia? The commission released a report on religious freedom not so long ago, and this is of direct relevance to that report and these issues in Australia. So I think it is a very fair question and I ask the commission to consider it positively.

CHAIR: I would have thought that perhaps it might be a question that would be better asked of the Attorney-General's Department.

Senator BARNETT: I have not got to them yet.

CHAIR: I am deflecting it to them.

Mr Wilkins: I think that is probably right, Madam Chair. In any event, what you are asking whoever—whether it is us or the Human Rights Commission—to do is an extensive piece of work which might form the basis of a whole committee report, which is not exactly a question about estimates. This is actually a substantive piece of work which would tie up considerable resources, either ours or theirs, for a considerable amount of time and which the government may ask us to do at some point in the future anyway, depending on—

Senator BARNETT: I am asking you to take it on notice.

Senator Ludwig: I do not think it is appropriate.

CHAIR: Senator Barnett, I am not sure this estimates committee can ask the Attorney-General's Department to do work for us, essentially.

Senator BARNETT: I have not got to the Attorney-General's Department, and when we do we can discuss it. I am asking the Human Rights Commission. This is a unanimous decision of the United Nations Human Rights Council. It has consequences, or could have consequences, for us in Australia. I am very interested in the views of the Australian Human Rights Commission and its response to that decision. That is a very fair and legitimate question. Apparently the commissioner is not aware of this decision. I have been made aware of it and I would like to know the commission's response to that decision. It is not an unfair question. If it is a one-line response well, so be it; if it is more expansive, that would be appreciated. That is a matter for the commission. I have asked for it to be taken on notice. That is entirely legitimate.

Senator Ludwig: That is a different question. I am sure if the commission has seen or has not seen it at this stage, which is their evidence, then if it does come across their table, they may be able to respond as to what—

Senator BARNETT: That is ridiculous, with respect, Minister—absolutely ridiculous!

Senator Ludwig: You changed your question. You asked them to undertake work and then you changed your question.

Senator BARNETT: I ask for their response to it. That is a matter for them in terms of how much work they do, but I would like to know their response. That is a legitimate question. This is the peak human rights body in the United Nations. We are talking to the peak human rights body in Australia. For goodness sake!

CHAIR: Senator Barnett, I think as Ms Branson has indicated, it is not a resolution that has come to the attention of the Australian Human Rights Commission—

Senator BARNETT: That is a great pity.

CHAIR: I am just trying to find a way forward here and whether or not you could ask the Human Rights Commission to take on notice what their next course of action might be, given this has been asked, if that is what you want.

Senator Ludwig: Chair, logically, they would not respond to every decision in every court dealing with every matter that might be relevant. But they may—

CHAIR: That may well be the answer from the Human Rights Commission, Minister.

Senator Ludwig: come across a matter and examine this particular issue. In the course of their work they may. That would then put it in futuro—it would be a future decision as yet unknown. Still, in my view, it doesn't make sense as a question.

CHAIR: I would have thought, Senator Barnett, it would be more a question you might ask the Attorney-General's Department.

Senator BARNETT: No, this is totally unacceptable, Madam Chair. I will take a point of order. This is totally unacceptable. This is a legitimate question. This is an abuse of Senate estimates. We have the peak body for the Human Rights Commission in Australia before this committee. This is a potentially important decision by the peak human rights council in the world, in the globe, at the UN, at Geneva. It relates specifically to the matters that I have referred to: religious defamation. They have written a report on it, released it within the last couple of months. This is a legitimate question and for this committee to be closed down to

try to block my questioning in this way is entirely unsatisfactory. I will be reporting it to the President and further to the Senate, if this matter is not sorted out right now.

CHAIR: Senator Barnett, no-one is suggesting that your questions are blocked. What we are trying to do is, firstly, ascertain the consistency of the question you are asking and, secondly, once we have done that, whether or not it is appropriate for either the Human Rights Commission or the department to respond.

Senator BARNETT: I am asking the Human Rights Commission. We will get to the department later today.

CHAIR: Could you clearly articulate what your question is?

Senator BARNETT: I have asked several times. Do you want me to ask it again?

CHAIR: Yes, thank you.

Senator Ludwig: Chair, I am a little confused as to what we are being asked to do.

CHAIR: We would like your question asked again, Senator Barnett.

Senator BARNETT: Right. We will try it for the third time. I am advised that there has been a unanimous vote of the United Nations Human Rights Council in Geneva, a 47-member committee. I am advised that this council has made a resolution which replaces its traditional condemnation of religious defamation with a resolution underlining the right of individuals to freedom of belief. I am seeking, firstly, to know whether the Australian Human Rights Commission are aware of that decision, and the answer was no, for which I thanked Ms Branson.

Ms Branson: The Australian Human Rights Commission has not had that resolution in front of it. I personally was not aware of it. I cannot speak for other members of the commission.

Senator BARNETT: Thank you. Then I asked Ms Branson and the Human Rights Commission to take it on notice and to provide the committee with their response to that decision as to whether it has implications for us in Australia, and any other views or responses to that decision—which appears, *prima facie*, to be significant. You are the peak body for human rights in Australia. I am seeking your views in response to that decision. That is my question.

CHAIR: Which you can take on notice.

Senator BARNETT: Which I have asked to be taken on notice.

Ms Branson: Madam Chair, I think there is a very important issue of principle raised by this question. It is the capacity of this committee to direct the Australian Human Rights Commission as to the work which it should do as opposed to questioning it on the work that it has done. As I have indicated, I have not seen this resolution of the Human Rights Council. I am very happy to assume that it is in the language that the senator has investigated. Before the commission itself could form a view on that, we would require our legal team to undertake significant research of international jurisprudence touching on the proper interpretation of the earlier resolution and the proper interpretation of the current resolution. Our policy staff would have to advise us as to its significance within Australia. It would take a significant amount of time for the commission's staff to place before the commission the information necessary for us to form the view that the senator has asked for. It may be that that is

something that we would in any event do, but there is an important question of principle about whether, as a commission, we can be required by members of this committee to undertake work at their request.

Mr Wilkins: Madam Chair, I underline that. I think it is fine to ask if the Human Rights Commission knows about it and if it has a view, but actually to instruct it to go away and form a view is a different proposition. I think that is the problem.

Senator BARNETT: If you want me to ease the burden, why doesn't Ms Branson offer a preliminary view without obtaining masses of legal advice? I am simply seeking a response. If you do not wish to do the full kit and caboodle, I am okay with that. Let us review it. I have asked you to take it on notice, and when you provide a response that will give me and other senators the opportunity to follow up. Whether it is a one-paragraph or one-page response or something more comprehensive, that would give me and others the opportunity to follow up. I am simply asking, as politely as possible, you to take it on notice and provide a response.

Ms Branson: Senator Barnett, I am here as the president of the commission. My personal views, as the chair has reminded me in the past, are not of interest to this committee. It will either be a view of the commission or a personal view of mine, and I have been directed previously not to give my personal views.

Senator BARNETT: I am not asking for your personal views.

Ms Branson: In any event, I do not have personal views about a resolution I did not know about and which I have not at this stage seen.

Senator BARNETT: Let me make it clear that I am not asking for your personal views.

Senator Ludwig: Chair, the real difficulty is that this is a request to undertake work. It is not to ask for a view about something that the commission has seized upon. The Commissioner and the people at the table have indicated that the commission is unaware of the decision, and they have not formed a view as a consequence of that. If Senator Barnett wants to have someone precis the decision or have a look at the decision, he has the Parliamentary Library to do that. He has a committee that can undertake an inquiry into the matter if it so wishes. He can raise it in a number of fora in that fashion. He can undertake the work himself if he wants to download it and read it.

Senator BARNETT: Do not be ridiculous, Minister. That is totally out of order.

Senator Ludwig: What he is asking—

CHAIR: Senator Barnett, let the minister finish.

Senator BARNETT: This is an obfuscation of the Senate.

CHAIR: Senator Barnett, you have asked whether or not the commission were aware of the decision. The answer was no. Have they formed a view about it? They obviously have not because they are not aware of the decision of the Human Rights Commission. I am persuaded by the argument that this committee has never asked, at estimates anyway, the Human Rights Commission to undertake work for us—that is, an analysis of the impact of that decision on Australia. I ask you to move on to other questions.

Senator BARNETT: That is totally unacceptable. In response to the minister, who said that the commission have not seized on the matter, that is absolute rubbish and you know it. They released a report on 21 March, the *Freedom of religion and belief in 21st century*

Australia report. Mr Innes released that report. It is extremely comprehensive and Mr Innes knows the issue very, very well. To say they have not seized on this matter is absolute and arrant nonsense.

CHAIR: I think, Senator Barnett—

Senator Ludwig: I am going to defend myself. I am talking specifically about what you have raised and what the commission have been asked to do. You might find, the next time we are here, that it has come across the commission's desk and the commission are vitally interested in it. If you ask your question at that time, they may have formed a view about it and a response, and then it would be entirely appropriate for you to ask about it and for them to respond accordingly.

Senator BARNETT: I will take this up further. It is totally unacceptable.

CHAIR: I have other senators here who want to ask questions in that area so—

Senator BARNETT: I have a follow-up question on this issue. Do you, the Human Rights Commission, monitor resolutions of the Human Rights Council or don't you?

Ms Branson: We receive regular advice of resolutions of the Human Rights Council. We have been in an extraordinarily busy period. Over recent days, I have been absent from Australia, chairing the Commonwealth Forum of National Human Rights Institutions in London and then moving to ICC 24 in Geneva. I have only been back in Australia very few days, and it is possible that this matter was overlooked. The advice comes to my office.

Senator BARNETT: So you are saying you may have received advice within the commission about this matter?

Ms Branson: We receive regular faxes from the Human Rights Council, to a fax machine in my area of the commission, advising us of significant measures taken there. I think it likely that the advice was received but, because of my absence from Australia, did not come to my attention.

Senator BARNETT: All right. How many people do you employ in the commission?

Ms Branson: In our commission?

Senator BARNETT: Yes.

Ms Branson: Approximately 110.

Senator BARNETT: Right. I am going to leave it there in light of what I consider the direct blocking of these matters, which I will be pursuing in other places. Thank you.

CHAIR: Senator Pratt, we are going to go to questions from you.

Senator PRATT: Thank you very much, Chair. Mr Innes, I would like to begin by asking about the proposed World Blind Union treaty with the World Intellectual Property Organisation and if you have any views about progress on that treaty.

Mr Innes: Thank you—

Senator PRATT: Yes, we will start there.

Mr Innes: I was not sure if you had finished your question.

Senator PRATT: I was not sure either!

Mr Innes: Thanks for the question, Senator. I expect, in two to three weeks, to attend a meeting of the World Intellectual Property Organisation in Geneva at which the question of the development of an internationally binding instrument to provide an exception to copyright law to allow producers of alternative format materials—mainly audio materials and braille materials—to access printed books. This issue is a key focus of the World Blind Union because of the very small amount of print material available in alternative formats. There are a number of reasons for that, but one of the reasons the amount is so small is the difficulties in acquiring copyright permission to produce this material. The need of people who are blind or have a print disability for an equal right to information is of course very important, and so the commission is keen to see the development of such an instrument, which would facilitate that need for information. I think, in Australia last year, less than one per cent of the material produced in print was made available in alternative formats, so you can see the disparity of information that exists.

My understanding is that the Australian government, whilst not necessarily supportive of the proposed treaties at the moment, recognises the need for such an internationally binding instrument. I have sought to provide advice to the Australian delegation at the WIPO meeting, and I am hopeful that, with the assistance of the Australian and other governments, an internationally binding instrument can be developed by WIPO which will be acceptable to its members so that this problem can be addressed.

Senator PRATT: So you are hoping that Australia will be one of the parties supporting the treaty?

Mr Innes: My understanding from the Attorney is that in broad terms Australia is supportive of and recognises the need for an internationally binding instrument. As with all these sorts of instruments, I think it is probably fair to say that there are several drafts on the table and the government or the Attorney may not support the current drafts, but that is what the negotiation which we are about to undertake is about.

Senator PRATT: I understand that there are a number of different agendas being run by different blocks of countries in the negotiations, so I am keen to work out which agenda Australia is keen to pin down as part of those negotiations. I would assume that it goes to the heart of the matter, which is about freeing up the copyright question for access.

Mr Innes: I suppose the question about which, if any, of the four proposals that are currently on the table the government supports is a matter for the government rather than for me.

Senator PRATT: Yes, indeed.

Mr Innes: But my understanding is certainly that the government is supportive of the development of such an internationally binding instrument. It may well be that the government does not, in whole, support any of the four current proposals. I am hopeful that negotiations in Geneva will bring the wording to a position where the Australian government can support that instrument.

Senator PRATT: What is the commission's view about the nature of the proposal in terms of the various options that should be supported?

Mr Innes: That is a very complex question, and also the commission as a whole has not really had the opportunity to look at the various proposals in detail and express a view. My

view is that I am seeking to achieve the purpose that you have indicated, which is to develop an internationally binding instrument which will address the copyright problem currently faced by people who are blind or have a print disability. That is my objective rather than seeking to determine which proposal is—

Senator PRATT: So you would be hoping that Australia and the commission are able to play an active role in meeting that end in June?

Mr Innes: It is certainly my intention to play an active role, and I am hopeful that the Australian government will do so as well.

Senator PRATT: Thank you very much, Mr Innes. I have some further questions—to begin with, about the commission's view on strengthening protections against indirect discrimination on the grounds of family responsibilities, because that was debated last week. I am interested to know the commission's view on the significance of making progress on that question.

Ms Broderick: As you know, the legislation would have passed yesterday. The original draft of the legislation made both direct and indirect discrimination on the basis of family responsibilities unlawful, and that meant that men would have the same protection as women for family responsibilities under the Sex Discrimination Act. I am on record as clearly supporting that, because, as the Sex Discrimination Commissioner, when I look particularly across business and workplaces, it is men's access to family-friendly work conditions that will actually promote a culture which is more inclusive of people with caring responsibilities. Where the bill is now is that indirect discrimination was not included in the amending bill. We have, though, moved some way, because men now have better protection for direct discrimination. Prior to this amendment bill, the protection was only if you were dismissed; now you are protected throughout the duration of your employment, so it is a step forward, but we could have gone a bit further.

Senator PRATT: What is the significance of indirect discrimination? I think some people have a little bit of difficulty understanding it in broad terms, and maybe that is part of why the parliament struggled to also come to terms with these questions.

Ms Broderick: Direct discrimination is particularly, for example, if a man wants to drop his child off at child care every morning and is told that no, he is not able to do that. I suppose then he would be—

Senator PRATT: Excuse me, Chair, I am having trouble hearing because of the conversations down the other end of the table.

CHAIR: We will turn that microphone up a bit. Also, we need to go to a break in a moment, so very quickly—

Ms Broderick: So it may be direct discrimination if he is treated differently to people without caring responsibilities, particularly women. But, if you are looking at indirect discrimination, you are looking at a practice or a process or a culture which on its face may not be discriminatory but may have an adverse impact on a group, which could be men with caring responsibilities. So, on the face of it, it looks okay, but when you look at its impact it particularly disadvantages one group.

Senator PRATT: Thank you very much for highlighting that. I am interested in the role of the Human Rights Commission—

CHAIR: Is this a new question?

Senator PRATT: Yes, it is.

CHAIR: We are going to stop there. We will come back to that after the break.

Proceedings suspended from 10:40 to 10:53

CHAIR: Ms Branson, you wanted to clarify an issue about funding.

Ms Branson: I gave an answer earlier about funding for the Age Discrimination Commissioner. I spoke in respect of the way the commission itself or, more importantly, me as CEO of the commission has been treating the funding. I should make it plain how the funding coming to us has been calculated for budgetary purposes by the government. The funding that has been provided is \$1 million per year over four years to the Australian Human Rights Commission from 1 July 2011. That funding is to cover the salary of the Age Discrimination Commissioner based on the relevant Remuneration Tribunal determination and for additional staff for the commission to support the new commissioner. Based on the support staff profile, there is an APS4, which is a half-time shared executive assistant. There are two officers at the APS6 level. There is one EL1 and one EL2 officer, the latter being a director. The remaining funding would cover modest travel, program development and implementation costs. For the Race Discrimination Commissioner, there is funding of \$0.4 million per year over four years to provide a standalone Race Discrimination Commissioner and to cover the salary as set by the Remuneration Tribunal, and for a shared executive assistant and associated corporate on-costs such as IT and training costs. That was the funding provided under the budget for those two new positions.

Senator BARNETT: Thank you for getting back to us on that. The total amount is \$4.7 million over four years. Is that correct?

Ms Branson: Could you repeat that?

Senator BARNETT: What is the total amount over the four years?

Ms Branson: There is \$1 million per year over four years for age discrimination and \$0.4 million per year over four years for race discrimination. That assumes the existence of staff in the commission already dealing with race discrimination issues.

Senator BARNETT: Based on the Remuneration Tribunal, it is about \$700,000 for an Age Discrimination Commissioner. Correct?

Ms Branson: No, the current Remuneration Tribunal determination for a commissioner is, I understand, \$267,840 in remuneration, and on top of that there are of course on-costs and other matters.

Senator BARNETT: I thought we were provided earlier with a figure of \$700,000, which I thought was high. What was that figure?

Ms Branson: That was the figure provided. It is half of \$1.4 million. The total funding given to us for two new commissioners is \$1.4 million per year. We have been thinking of that as \$700,000 for each commissioner's position, but technically it has been calculated in the way I have just outlined.

Senator BARNETT: I am with you because it did not quite make sense before. Thank you, I think I have it.

Ms Branson: There is another matter that I want to raise. The Australian Human Rights Commission in 2008, shortly before I became president of the commission, put a submission to the High Commissioner for Human Rights agreeing with a view expressed by the government that defamation of religion was an inappropriate terminology. That submission, to which we have drawn attention before, is on the Australian Human Rights Commission's website.

CHAIR: I am going to go back to that issue and resolve the discussion we had before morning tea. I have had a discussion with my secretary about this and as chair I think we need to move through this a bit before we finish today. My interpretation is that there was an expectation that perhaps there needed to be some in-depth, comprehensive analysis of the decision of the United Nations High Commissioner for Human Rights. I also come to a view that it is not appropriate that questions on notice not be taken—agencies and departments cannot refuse to take questions on notice. So I am going to ask you to take these questions on notice from me as the chair.

Have either you or any member of the Human Rights Commission seen that resolution? If not, can you make yourselves aware of it and provide to this committee an analysis of how decisions such as that are handled when they come to the attention of the Human Rights Commission? In the normal course of your day-to-day duties do you respond to such resolutions? Are they filed? Are they commented upon? Is a briefing note provided amongst you or to the minister? In relation to that particular resolution we would ask you to provide the Human Rights Commission's response to that resolution. How you choose to answer those questions on notice or how comprehensive you choose to answer them is up to you, but I am going to put those questions on notice and ask you to consider those and respond to them in the time frame.

Ms Branson: Thank you, Madam Chair.

Senator BARNETT: On a point of order, Madam Chair: with the greatest respect, you are instructing the Human Rights Commission to act in a certain way in response to my questions, which I asked three or four times. Such a recommendation is entirely unacceptable to me and in my view it should be unacceptable to this committee. I asked the questions and any senator at this table is entitled to ask questions in any way they so choose. I will not be required by you as chair to amend the way my questions are put. I have asked my questions, I have put them very clearly, and for you to reword my questions to Ms Branson, to be asked on notice, in a different way is not acceptable. What would be acceptable to me is if you said to Ms Branson that she is required to answer the questions that I put on notice and that I put to Ms Branson. I am not happy that you have reworded my questions. The *Hansard* will be very clear—I have asked the questions about three times. I am pleased, Chair, to hear that you have instructed Ms Branson to answer the questions, and I would like you to confirm that Ms Branson will be required to answer my questions, not your questions.

Senator Ludwig: It is a question of not being required to answer. We can take on notice the questions that were put; how the commission chooses to answer the questions is a matter for the commission.

Senator BARNETT: Questions from whom—me or the chair?

CHAIR: Senator Barnett, I was in no way trying to rephrase your questions. I have now asked the commission to provide us with answers on how they process resolutions such as this that they become aware of. My questions go to how they handle these resolutions in their normal course of action. What I am going to do is ask the commission to look at the transcript of this morning and take on notice questions you asked of them. How the commission respond to those questions, and the degree to which they respond to those questions and the manner in which they respond to those questions, is up to the commission. It is not appropriate to refuse to take questions on notice, and so I now ask you to review the *Hansard* and follow up on those questions.

Ms Branson: Thank you, Madam Chair. I sought your guidance from the beginning and I now have it. I thank you for that guidance.

Senator BARNETT: On a point of order: to conclude this matter, I raise two things. During the very short break that we had, I was advised of and have been forwarded correspondence from the prime ministers of New Zealand and the UK, and there is a response from the Department of the Prime Minister and Cabinet in Australia regarding this particular issue of the defamation of religions resolution. I am just alerting you to that, that this is information that has been forwarded to me. This is not something that has just willy-nilly come out of the air. I am aghast, firstly, that you are not aware of this particular resolution. Secondly, I ask, Chair, that you review the *Hansard* particularly with respect to the response from Minister Ludwig, who took the same position as Ms Branson. I would also ask you to review the *Hansard* of Roger Wilkins who likewise, in my view, obstructed me in my efforts to ask questions of Ms Branson. In my view they were acting contrary to the standing orders. Once that review is undertaken I would ask the Minister and Mr Wilkins to come back into the committee and apologise to the committee for attempts to obstruct appropriate and proper questioning of committee witnesses.

CHAIR: We are going to move on. Minister Ludwig, I do not think you need to respond to that; I will.

Senator Ludwig: I am not going to be slurred here by Senator Barnett.

Senator BARNETT: You have already slurred me.

Senator Ludwig: Quite frankly, it is offensive for Senator Barnett to take this tack.

Senator BARNETT: I would like an apology from you, Minister.

Senator Ludwig: The position I adopted was that it is unusual for those on this side of the table, the commission in this instance, to be instructed by the estimates committee to undertake work. That is the point. In terms of taking questions on notice about a wide range of issues, it is entirely appropriate for the commission to undertake that work. I understand Senator Barnett is passionate about this issue, but he should divorce that from the clinical issues about how this committee operates.

Senator BARNETT: So you are not apologising to the committee?

Senator Ludwig: Well, you have not asked for one. You have instructed me to come back and do it, which is quite offensive.

Senator BARNETT: I would like you to do it. Why do you not do it voluntarily and without being forced to?

CHAIR: We are going to move on. Senator Barnett, I do not believe that there was an attempt by either the minister or Mr Wilkins to obstruct at all. I think there was an attempt to try to clarify exactly what you were seeking to ask of the Human Rights Commission.

Senator BARNETT: *Hansard* will show that.

Senator PRATT: I know that the Human Rights Commission supports the constitutional reform to recognise Aboriginal and Torres Strait Islander people. Mr Gooda, I think you are part of the expert panel. Clearly there has been bipartisan political support given to this, but constitutional changes require a mandate from the Australian people in order to get them up and supported. I suppose I am asking for your thoughts on the steps we are going to need to take to successfully progress this beyond just being a debate for government, for Indigenous organisations and for human rights organisations to one that ultimately gets a broad mandate from the Australian people.

Mr Gooda: In my social justice report I wrote a chapter on constitutional change this year. There were three issues that we talked about that were essential to the successful passing of a referendum: popular ownership of the proposal, community education and bipartisanship. We have bipartisanship at the political level. That message has been taken up by the expert panel. We launched a discussion paper last week. There is a website that fairly extensively goes through things like social media to engage with the public. There will be over 60 public consultations, one of which is happening in Canberra today. The Human Rights Commission has been approached by groups such as the Royal Australian College of General Practitioners, the Royal College of Psychiatrists and the Teachers Federation—all of whom have about 100,000 members that we can access very quickly. The panel is extremely aware, in particular, of educating the population about what the Constitution does and why it needs amendment, and then we will consult with them about the appropriate form that recognition should take.

Senator PRATT: I look forward to being part of that. I have a question about the Human Rights Commission's perception of bullying as a human rights issue. I notice that you said in your opening remarks, Ms Branson, that new forms of media are some of the outreach methodologies that you are looking at. I was interested to know where bullying fits in as a human rights issue and what work the Human Rights Commission is doing in this area.

Ms Branson: You may be aware that the Australian Human Rights Commission has adopted two key priorities to inform its work over the next year or so. One of those is seeking to address violence and harassment and bullying in the community; the other is improving community understanding of human rights. Both of these initiatives we think will be very useful tools in trying to tackle bullying, which seems to be an increasing problem with our community and of course an interference with people's rights not only to live free from violence but often to obtain education, to have the highest attainable standard of health, freedom of expression and a good number of other rights. So far as young people are concerned, we are developing a web-based initiative, together with Reach Out, which is a youth mental health organisation, which seeks to work with bystanders of bullying, getting them to step forward and have an impact on acceptable behaviours in particular places. We are seeking to have people identify pledges to take in their place around standing up to bullying. That is already available on new media, over the Internet, and I think it is known as 'Stand up, don't stand by'.

Senator PRATT: Terrific. Is bullying one of those issues that connects people's understanding of broader human rights? In a sense, people see human rights over here and bullying over there, without really understanding that sometimes the characteristics for which people are bullied relate to a broad range of human rights issues.

Ms Branson: I think it does. You will be aware of our motto—'Everyone, everywhere, everyday'. We are very anxious to increase community understanding that human rights are for everyone and over each of our lives we are likely to become vulnerable at some time to human rights abuses. We know it most clearly when we are either very young and vulnerable or in advanced years and vulnerable. There are people who face discrimination throughout their lives on various unacceptable grounds such as race, disability, religious belief—there are many grounds. I think the link between discrimination and bullying is one that is increasingly being understood. I think we saw it well illustrated in something that many people saw, which was the bullying incident from the Chifley College that went, as they say, viral on Facebook and then we learned that each of the players in that scenario saw themselves as victims of bullying. Indeed, the one who lashed out violently explained his conduct in terms of his own experience of not having his rights respected. It is a complex area but one that is very important for our community to address. We are very pleased to be playing a part in that.

CHAIR: Thank you to you and your colleagues, Ms Branson, for your attendance. I am sure we will see you many times over the coming months.

Australian Law Reform Commission

[11:13]

CHAIR: I welcome the Australian Law Reform Commission. Professor Croucher, do you have an opening statement?

Prof. Croucher: No, Chair—I am happy to take questions.

Senator BARNETT: Can you provide up to date advice on your negotiations with the Attorney-General's Department regarding your financial arrangements going forward, and specifically, in particular, the lease arrangements?

Prof. Croucher: The first thing I should say is that the department has provided funding to support a second commissioner appointment.

Senator BARNETT: Thank you for mentioning that; I will get to it.

Prof. Croucher: That is one important first step in our arrangements with the department. With respect to the lease that you asked about, we are committed to our old premises—if I can describe them in that way—until September next year, but just after Easter we were able to move into our new premises. We have a rent holiday there until August.

Senator BARNETT: This year?

Prof. Croucher: Yes, this year. So the commitment in the new premises is approximately half the rent for the old premises. We are under negotiation at the moment with two prospective potential subtenants for the old premises. So we have moves in train to reduce the liability we have until the end of the old lease.

Senator BARNETT: Based on an answer to a question on notice, I am advised that in the lease that ends in September 2012 the amount payable in rent for those premises will be \$601,950 in 2011-12, and then \$156,062 in 2012.

Prof. Croucher: That is correct.

Senator BARNETT: So there is a question obviously for the taxpayer. You said you were having negotiations regarding that lease, which is through to September 2012. How are they going and what sort of arrangements are likely to be put in place?

Prof. Croucher: Obviously this is under negotiation so I need to be discreet but, of the prospective opportunities we have, one negotiation is with an existing tenant in the old building. If that comes to fruition that will almost entirely offset the lease commitment we have in the new premises.

Senator BARNETT: How long have you been out of your old premises and how long has it been vacant now?

Prof. Croucher: We left on 29 April, immediately after Easter.

Senator BARNETT: It is about \$50,000 a month, I assume, if it is \$600-odd thousand a year?

Prof. Croucher: Yes.

Senator BARNETT: So there has been about one month where it has been empty for about \$50,000?

Prof. Croucher: We have no rental commitment in the new premises, so we would have been committed whether we were in or out of the old premises. The fact that we are out gives us an opportunity to recoup some of the commitment that we have until the end of the existing lease.

Senator BARNETT: So you are negotiating and you are hoping to cover that \$50,000 in whole or in large part?

Prof. Croucher: The extent to which we cover anything will be determined by the success in securing a new tenant.

Senator BARNETT: But do you think it will be more like half of that rent or more than half?

Prof. Croucher: As I mentioned, it appears that if the arrangements come to fruition we will be able to offset virtually the entire additional commitment of the new premises in the next period.

Senator BARNETT: Have you made a statement about the new premises? Can you tell us where it is and its size?

Prof. Croucher: I can give it in fairly global terms. The footprint of the new premises is approximately half the footprint of the previous premises. The ability to do that has been achieved through sharing services with our main tenant, the Australian Government Solicitor. So we are subleasing some of the Australian Government Solicitor's rooms, which are in the MLC Centre in Sydney.

Senator BARNETT: What is the rent per month and per year?

Prof. Croucher: The figure that is in my head, but I will seek direction from my executive director, is approximately \$287,000 a year for the new premises.

Senator BARNETT: Does it have a library?

Prof. Croucher: We have a very reduced core library complement. We have an arrangement with the Australian Government Solicitor to share their library service. We have also made considerable arrangements with respect to online access to materials.

Senator BARNETT: So you share those facilities with the Australian Government Solicitor?

Prof. Croucher: We have an agreement that allows us to use their facilities, yes.

Senator BARNETT: Are there any other financial pressures at the moment? You have obviously had some significant cuts over some time. Are there any other financial pressures on your operations?

Prof. Croucher: We are looking forward to the fact that once we get over this period in the next financial year we are predicting that we would be able to match our expenditure with our appropriation.

Senator BARNETT: The appointment of Professor Flew was announced on 21 April. What is his role? Is it specifically on the national classification scheme inquiry?

Prof. Croucher: Yes. As a full-time commissioner in the commission, he has a particular role as part of the commission but his specific role while he is with us is to be the commissioner in charge of the classification inquiry.

Senator BARNETT: Will he be providing support to you as the chief commissioner, as it were?

Prof. Croucher: All commissioners, full-time and part-time but particularly full-time, do have a role in relation to participating in governance issues as well.

Senator BARNETT: Is the inquiry into classifications proceeding well?

Prof. Croucher: Yes, I am delighted that last Friday we were able to release an issues paper, which is the first step in the community consultation process for that enquiry. That enables us to provide discussions on an informed basis with a background paper behind us.

Senator BARNETT: I have the issues paper with me. No doubt you are waiting with bated breath for the Senate report of the references committee of this committee.

Prof. Croucher: Indeed. There are a number of inquiries going on, all of which will be of intense interest and relevance to our work as well.

Senator BARNETT: Does the government wish to provide a response now or later to this committee's report on the ALRC? Are you in a position to provide a response or do you want to do that later?

Mr Wilkins: We might deal with that later.

CHAIR: Thank you for attending today.

Australian Transaction Reports and Analysis Centre

[11.22]

CHAIR: Good morning to you and your officers, Mr Schmidt. Do you have an opening statement?

Mr Schmidt: No, we have no opening statement.

Senator PARRY: On page 95 of Budget Paper No. 2 the government has identified savings of \$12.1 million over four years from operational efficiencies in AUSTRAC. Can you explain where the cuts will be coming from?

Mr Schmidt: We are currently examining a range of options within the organisation. Obviously the first port of call is discretionary expenditure—travel and other commitments—to see what we can do there. We are looking at some realignment and restructuring of some of our internal business units to see what we can yield out of that. We are fortunate in a strange way in being an organisation which has a young and qualified staff so we have a steady turnover and always carry a number of vacancies. That presents opportunities to decide, if we do some restructuring where we find there are positions we can do without and do not need to fill, to move people around. All of those options are on the table at the moment as we do our budget planning to reflect the budget allocation.

Senator PARRY: When will you have that finalised?

Mr Schmidt: The intention is to have the budgets of the various business units established before the end of this financial year. Some of the measures, having in mind that there will be a degree of staff movement or structuring which might give effect over the course of the 12 months to the savings, will have to be rolled out over a period of time.

Senator PARRY: On page 253 of the Attorney-General's portfolio budget statements, the staffing level is going to be cut by 21, I believe from 311 this financial year to 290 in 2011-12. Is that what you were just factoring in a moment ago?

Mr Schmidt: That is a proxy figure. If you were to allocate all of the savings measure purely to staff, that is one way of cutting the pie, if I could put it that way. As I indicated, we are obviously looking at a range of options so that we can minimise the impact on staffing.

Senator PARRY: So you could achieve the \$12.1 million with those staff? That seems extraordinary over the four years.

Mr Schmidt: That is one option, certainly. If you were to remove the staff then that would give you that saving, but the intention is to try and take a more nuanced approach to implementing the saving.

Senator PARRY: In going down that track, have you identified categories of staffing levels such as which officers and at what level?

Mr Schmidt: Not at this stage, Senator.

Senator PARRY: If you do not go down the track of reducing staff—that is, you use the other efficiencies, excluding staff—will the operational capabilities of the agency still be maintained?

Mr Schmidt: Absolutely. All budgets are swings and roundabouts, if I can put it in that generalisation. We were fortunate enough to receive in the previous budget \$24 million over four years to completely redevelop analytical capacity, which means upgrading the hardware and software which we use to do our work. Obviously, that is one of the intentions out of the implementation of that, which is being developed and rolled out

Senator PARRY: Do you measure your workload through the volume of transactions that are flagged for investigation or further action?

Mr Schmidt: We have a range of measures in the annual report. For some of them it is volume of reports received and processed. One of the figures in there is the volume of disseminations we give to our partner agencies. The matter to take into account when considering those sorts of figures is that, as we enhance our capacity, we can do more targeted reports. Also, one of the efforts we are particularly focusing on is, of course, skilling up our partner agencies who have online access to our databases and who will have online access to the improved databases when they are rolled out so that they themselves can, of their own volition, carry out a great deal of the work. So it is striking that balance between self-generated reports, which we believe would be of interest to them and doing work for them when they commission us because of our particular skills. And there is also the work that they do themselves using our raw data.

Senator PARRY: Has the workload and the number of disseminations been trending up?

Mr Schmidt: The figures are in the annual report. If I can take that on notice, I can certainly give you the trends on those figures.

Senator PARRY: So you are confident that AUSTRAC can maintain its current workload with the reduction in the budget over the next four years?

Mr Schmidt: I believe that to be the case.

Senator PARRY: And if you do reduce staff, you are suggesting that the technology assistance will compensate for the reduction in staff?

Mr Schmidt: Indeed.

Senator PARRY: You mentioned a reduction in travel, would that impact any field operations that AUSTRAC may undertake?

Mr Schmidt: That is obviously a consideration that we would have to look at in making decisions on that. I come from a state government background and have not had the challenge of dealing with officers spread across the countryside, and I must confess that I am certainly impressed by the use of videoconferencing and other facilities within the organisation to reduce the need for people to travel. That seems to be a very efficient and cost-effective way of dealing with matters which, in other places, would have had to have been dealt with face-to-face by travel.

Senator PARRY: Finally, workplace integrity: are senior officers in AUSTRAC subjected to rigorous monitoring of their assets in the form of a declaration of interest?

Mr Schmidt: Indeed. In fact, I have just gone through the annual process for that, and all of the senior executives have lodged their declarations.

Senator PARRY: Do they report to you?

Mr Schmidt: They do indeed.

Senator PARRY: Who do you report to?

Mr Schmidt: I report to the minister.

Senator PARRY: And you have lodged yours with the minister?

Mr Schmidt: Theirs is on a slightly different cycle; mine is with the anniversary of my appointment, which will be the end of September. I do put one in annually.

Senator PARRY: What happens if there is a major change in your declaration of interests in between reporting periods?

Mr Schmidt: Regardless of the declarations, because of the security clearances we have, it is incumbent on all officers to notify our security personnel of any significant change in their personal circumstances which might impact on their clearance or a range of factors. If my financial circumstances, for example, were to change dramatically, I would be expected to put in a notification to the security personnel and that would be kept on my file.

Senator PARRY: Does that include any convictions that you may have recorded during the 12-month period?

Mr Schmidt: Absolutely. We would take action if a person had not notified us that that was in train.

Senator PARRY: Thank you.

Senator FURNER: Mr Schmidt, industry has raised some concerns about the cost recovery model, and in particular there have been some significant concerns about the impact on small business. Can you tell us what AUSTRAC is doing about that particular impact.

Mr Schmidt: For the benefit of the committee—because this has been an issue of some interest in previous meetings as well—on Friday of last week I signed off on a rule which is an instrument I can make under the legislation to introduce an exemption from certain provisions of the act for small gaming operators. I had given an in-principle decision some months ago to give such an exemption for gaming venues which had 10 or fewer gaming machines. After extensive consultation with the industry but also, very importantly, with our law enforcement and revenue agencies, I have determined to set that figure at 15. That will have the effect of taking approximately 1,200 reporting entities out of the cost recovery requirements. Sorry—I tell a lie. If it had been set at 10 machines, it would have been approximately 1,200, which is about 20 per cent. I have not got the exact figure for the 15, but a significant number of entities will have the benefit of that exemption.

I have also made an in-principle decision, and consultation will now commence with the cash-carrying industry to see if there are areas there. Cash carriers, of course, are the people who transport cash between reporting entities, to businesses and banks, between banks, and between government agencies and banks. We are proposing that, where those transactions relate to low-risk matters—what I am talking about there is movements between the banks themselves; movement between banks and their branches and the ATMs; and movements between governments and banks—they will have a reduction in the requirement to report on those. They will still be subject to other elements of the cost recovery regime but, of course, if they are exempt from having to lodge threshold transaction reports for \$10,000 worth of cash being moved between the entities I have outlined, they would not be subject to the cost recovery element of the levy relating to those sorts of transactions.

Senator FURNER: Are there any changes that you have made as a result of the model since its announcement?

Mr Schmidt: Certainly. I might pass over to Ms Wood, who will go into more detail.

Ms Wood: Since the initial announcement in the budget last year, the model has been amended in significant ways to address concerns raised by small businesses. In particular, affiliates of remitter networks will not be subject to the levy: that is, licensed post offices,

newsagents and entities of that nature will not be subject to cost recovery under the model as it currently stands. Their networks—agents such as Western Union—would be subject to a levy rather than the individual affiliates, the retail outlets of those network providers. So around 6,000 mainly small businesses have been exempted as a result of that change to the model. Further, non-employing entities and microbusinesses—that is, entities which have no employees, being either sole traders or partnerships without employees—and entities with fewer than five employees will not be subject to the base component of the levy. For most entities in that category, that means that they would not be subject to any levy whatsoever, because the way that it is currently proposed that the entity will be structured contains a base component, a transaction-reporting component and a large entity component. So those micro or non-employing entities would not be subject to the base component, by definition they would not be subject to the large entity component, and most of those entities would not lodge transaction reports with AUSTRAC. So in the main those entities would not be subject to any levy. There is also a benefit to those entities, to the extent that they do lodge transaction reports with AUSTRAC, that if the amount of the levy that is calculated is less than \$100 then under the bill as it currently stands we would not send out a levy to those entities. It just would not be administratively feasible to send out a bill for that amount of money. So those entities would be out.

As the CEO alluded to, under the provisions which are set out in the bill, entities which are exempt from part 7 of AML/CTF Act would also be exempt from cost recovery. Part 7 of the AML/CTF Act relates to the program requirements under the act. To the extent that an entity has been exempted by the CEO from those requirements, in general AUSTRAC's regulatory mandate in respect of those entities is quite low. So there is a rationale for exempting them from cost recovery. Because of that, and the decision made by the CEO last Friday in respect of small gaming venues, entities with an entitlement to 15 or fewer gaming machines would be exempt from the levy. So around half of the entities that are regulated by AUSTRAC would be subject to no levy under the cost recovery arrangements.

Senator FURNER: Is the model easily followed? Are there any complexities in that you would be able to identify that people have difficulty in following?

Ms Wood: I guess it is complex to explain but it is not so complex to administer. There are three elements to the model. There is a base component which all entities that are subject to the levy would pay, and that is estimated to be \$284 in the first year of the operation of the levy. Really, though, that relates to the baseline expenses of AUSTRAC. There are certain services that AUSTRAC provides, such as the provision of a help desk, our website and guidance which is available to all entities, and that base component really relates to those costs.

There is also a component for large entities. In the cost recovery impact statement which was released on 12 May the large entity component relates to entities that either individually or as part of a corporate group have annual earnings in excess of \$100 million. That component of the levy relates to the additional cost that AUSTRAC incurs in regulating larger entities. Because of the significance of larger entities in the economy, and the amount of transactions and the volume of money that goes through those entities, there is a higher money laundering and terrorism financing risk associated with those entities, so we employ relatively more regulatory resources in regulating those large entities.

The third component of the model relates to transaction reporting. We use a measure of the volume of reports lodged with AUSTRAC and the value of those reports lodged with AUSTRAC as a measure of the incremental costs that AUSTRAC incurs in regulating the reporting obligations under the AML/CTF Act. So there are three elements. I think each individually is not too difficult, conceptually, to understand, but when you are trying to understand the whole model from a standing start it could seem complex. We have been through a number of consultation processes and industry is becoming more comfortable with the operation of it.

Mr Schmidt: There is another new measure being introduced. We have a voluntarily enrolment arrangement at the moment for reporting entities. I think the current figure we have is over 18,000. The vast bulk of entities out there, which are covered by a regime, voluntarily enrol. We are now going to raise that to a mandatory requirement. As part of that, people will be prompted to answer questions which make it much more easily identifiable as to which category they will fall into for a range of matters, including cost recovery. So there will be the capacity as this is rolled out to give that feedback. A small entity will be able to be notified that they do not pass the threshold where they would have the base levy. We will be in a much better position to convey that. I always appreciate that there is a challenge for small business with any regulatory regime. We will be endeavouring to make that as painless a transition as possible. As we have already discussed, certainly those micro businesses will not have a liability.

CHAIR: Mr Schmidt and your colleagues, thank you for coming to join us today and making yourselves available.

Classification Board Classification Review Board

[11:39]

CHAIR: I welcome the Classification Board and the Classification Review Board officers. Good morning, Mr McDonald. It is good to see you and your colleagues once again. Do you have an opening statement for us?

Mr D McDonald: Thank you for your welcome. I am rather surprised, and slightly embarrassed, to find myself here since you had so graciously farewelled me on my last appearance!

Senator BRANDIS: It does feel a bit *deja vu*!

CHAIR: You are indispensable, that is why.

Mr D McDonald: No I do not think that is true, but it is a nice way of imagining it. As I advised at that last hearing, my appointment as director was to expire on 30 April, as indeed it did. Since then, however, I have been reappointed until 30 September this year while the selection process for the position of director is being finalised. To state the obvious, I am not a candidate for the position.

The Classification Board made 5,009 decisions in 2010-11 up until 30 April 2011. This compares with 5,435 made in the same period in the previous years. These classification decisions are mostly for DVD products, with computer games being the second largest by volume. The board continues to make decisions within the statutory time frame of 20 business

days, or five days for priority processing. No decisions in this year have exceeded the statutory time limits.

The classification scheme is currently undergoing a period of considerable review, including of course by this committee. As I have stated previously, the Classification Board welcomes the current scrutiny of the National Classification Scheme and looks forward to the significant outcomes and improvements that such review activity will, hopefully, bring.

As you would be aware, on 6 May I provided the committee with a copy of the initial information that the Classification Board prepared for the Australian Law Reform Commission. This includes background information on the functions and procedures of the board, and raises a range of preliminary observations and discussion points which the board thought the ALRC may wish to consider in the early stages of its review and which this Senate committee may find useful in its deliberations.

The board has continued its practice of auditing publications with serial declarations and calling in unclassified material which comes to its attention. The board audits every title within the declaration period. In this year, to 30 April 2011, I have called in seven publications and 158 adult films. Only one of those call-in notices for publications has been complied with, and none of those film call-ins have been complied with. In each and every instance, the Attorney-General's Department—

Senator BARNETT: From when to when?

Mr D McDonald: this current financial year, to 30 April—notifies the relevant law enforcement agency of this failure to comply. I will continue to use my call-in powers in circumstances where I believe they are warranted. Classification enforcement is an ongoing issue that the board and the community are concerned about.

The deputy director, Ms O'Brien, who is here with me today, will be attending and presenting at the classification enforcement contacts forum on 7 June 2011. The board is supportive of this forum as a key mechanism for bringing together relevant parties involved in classification enforcement matters, including Commonwealth, state and territory law enforcement officers, Classification Liaison Scheme officers and representatives of Customs and Border Protection and ACMA. I understand that the ALRC will also be attending and presenting at the forum. This provides an opportunity for the ALRC to hear first hand of the challenges faced by law enforcement agencies in relation to classification laws.

The board continues to share the widespread community concern about material readily available on the Internet that would be classified RC—that is to say, refused classification. Although ACMA refers material to us in response to complaints, there is a great deal of other material that does not come to the board as part of this process. As we have commented before, a mandatory Internet filter is being proposed as part of the government's cybersafety initiative. The requirement for ISPs to filter a list of URLs which have been refused classification will not commence until after the completion of the ALRC review into the National Classification Scheme.

The Classification Board understands that the Department of Broadband, Communications and the Digital Economy is working to facilitate the voluntary filtering of certain URLs by three of Australia's largest ISPs—Telstra, Optus and Primus. I understand that voluntary filtering is due to commence this year, and it will apply to child abuse material. How online

content is screened and selected to any proposed Internet filter is not a matter for this board. The regulation and classification of online content services is provided for under schedule 7 of the Broadcasting Services Act. Internet content is regulated by ACMA. The department and the Classification Board have been working with the DBCDE and ACMA on the policy and operational questions regarding the classification of material under the voluntary ISP filtering arrangements. In regard to handling any additional workload for the filter, I am confident that the department will make adequate arrangements.

The Australian government has made clear its support for the introduction of an R18+ classification for computer games. At the March Standing Committee of Attorneys-General meeting ministers agreed to make a decision regarding the introduction of an R18+ category for computer games at their next meeting in July. This committee will be aware that the National Classification Scheme requires the agreement of all Commonwealth, state and territory classification ministers on the proposed guidelines and the introduction of an R18+ category itself for such a change to take effect. The board classifies computer games RC if they exceed the standards acceptable for MA15+. RC games cannot be legally sold, hired, advertised, demonstrated or imported. I look forward to your questions.

Senator BARNETT: My first question was going to be why are you here, Mr McDonald, but I think you have answered that.

Mr D McDonald: I am not sure I can answer that, Senator.

Senator BARNETT: Maybe the minister can alert us as to why. Obviously there has been advance notice, Minister, in regard to Mr McDonald. He has obviously advised us in February, and others did so before that, that he was retiring on 30 April. Would the minister like to provide any response to the reason there has been an extension for I think five months.

Senator Ludwig: I think Mr McDonald outlined in his opening address why he was still here.

Senator BARNETT: You do not have anything further to add?

Senator Ludwig: I can take it on notice and see what I can find.

CHAIR: I thought the answer was so the recruitment process could continue.

Senator Ludwig: I heard that as well, but if the senator does not accept that what can I do?

Senator BARNETT: I am not saying I do not accept it, but clearly there has been advance notice and I am wondering whether the department or the minister has not got their act together in terms of a recruitment process well in advance of the 30 April deadline. It would appear so, unless there is evidence to the contrary. It is a stopgap measure, obviously, and unless you have some evidence to the contrary it is obviously on the basis of a stopgap measure.

Senator Ludwig: That is an outrageous way of working. We can play that silly game, Senator Barnett, all day and I would enjoy it—making wild allegations about you and then saying, 'If you do not answer it then it must be true.' Mr McDonald outlined the reason. I thought he answered it but you asked me the same question. I referred to his opening address, if you do not accept that, which I then outlined. I then indicated that I understood we were searching, as Mr McDonald said, for a new person to fill the position. If there is anything

further that the Attorney-General wanted to add I can take that on notice. I said that but you seem to accept none of that. What question did you want answered, and which way did you want it answered? Maybe you could tell us in advance so we can select one out of a menu from A to Z.

Senator BARNETT: The minister obviously does not have an answer so I will move on.

Senator Ludwig: Chair, I am going to intervene every time he does that because it is not the evidence that has been given. It is not a correct response.

Senator BARNETT: The *Hansard* will speak for itself.

CHAIR: Senator Barnett, I think the answer is that Mr McDonald has been appointed again temporarily while the recruitment process is finalised.

Senator BARNETT: That is noted and that speaks very loudly—in fact, volumes—for this government and the way they are managing this country.

CHAIR: Mr Wilkins may well have something to add when we get to the department.

Senator BARNETT: Mr McDonald, there were seven publications called in and 158 films called in. One publication complied but no films did. This is the latest evidence of a system that is not working. We do not need to spend too much time today because we are undertaking an inquiry. Are there common distributors that are the culprits in this regard? And if so, could you please name them?

Mr D McDonald: Yes, we can. LA Magazines are responsible for two, Windsor Wholesale for two, Metro Interactive/Primal Urge for one, and Gordon and Gotch for one, which was the one that was complied with.

Senator BARNETT: And the films? If you have a list I am happy for you to just table it.

Mr McDonald: Yes, we will table it. From memory, I think it was one distributor. It was an advertisement. I am sorry, but I cannot put my hands on it.

Senator BARNETT: But you think that there is just one distributor for all but 158 films?

Mr D McDonald: I have them here now. There is Primal Urge for five, Australian Hustler for 27, Platypus Australia for nine, Metro Interactive for five and—this is the dominant one—Adult Crown for 112.

Senator BARNETT: They are a very dominant player, aren't they?

Mr D McDonald: Yes. They are difficult to communicate with.

Senator BARNETT: And they just do not respond?

Mr D McDonald: No, there is no response.

Senator BARNETT: Well, that is totally unsatisfactory from our point of view. You said that RC on the internet is an area of concern for you. Have you expressed that concern to the minister or to the department in any way at all?

Mr D McDonald: This is really an important issue for the ALRC to look at because there is not a clear separation between the responsibilities of ACMA under the Broadcasting Services Act and ours. ACMA only response to complaints; that is the structure of how it works. We of course can only respond to material that is submitted to us for classification. So that needs to be drawn together and it is an important area to be examined in this inquiry.

Senator BARNETT: But you have not communicated your concerns directly to the minister or the department?

Mr D McDonald: They know well of our concerns. It is an abiding issue in discussions between us.

Senator BARNETT: You express it on an ongoing basis?

Mr D McDonald: Yes.

Senator BARNETT: Regarding the R18+, you have indicated the July 2011 meeting coming up, but that is not a matter for you; it is a matter for the various state and territory governments.

Mr D McDonald: Exactly. Ministers have said that they want to make a decision then, and if they are not unanimous then—

Senator BARNETT: That is right—under the scheme. That is really the question: how can it work if it is not unanimous? My understanding is that under the scheme it must be unanimous.

Mr D McDonald: Yes, indeed.

Senator BARNETT: Is that your understanding?

Mr D McDonald: It must be unanimous. That is to be hoped for, but we will see. I would expect that, again, that is a requirement under the present legislation that the ALRC would be expected to form a view about.

Senator BARNETT: Yes, but I am just asking you the question, being very specific. Under the current legislation, it must be unanimous.

Mr D McDonald: That is correct.

Senator BARNETT: That is all I have. I appreciate your opening statement, because that is very helpful to the committee, so thank you.

Mr D McDonald: Thanks.

Senator PRATT: I just had some questions. You have begun to cover it, Mr McDonald, in your opening remarks. It regards progress on the R18+ classification for video and computer games. I wanted to ask about the input into the guidelines. Who has participated in drafting those guidelines up to this point?

Mr D McDonald: The guidelines are an issue for the minister—or the ministers in total, but the minister is clearly the lead player in the drafting of that.

Senator PRATT: How long are they going to be available for consultation? Do you know?

Mr D McDonald: The guidelines? I would have to ask the department.

Senator PRATT: All right. I can probably leave most of these questions to the department. I would think I have some questions about the kinds of games and those kinds of things. Are they best asked there?

Mr D McDonald: I am sorry?

Senator PRATT: Are those questions best asked of the department?

Mr D McDonald: They are best asked of the department. That is not a matter for the board.

Senator PRATT: Okay, I will leave those there and pursue them later.

CHAIR: All right. Mr McDonald, that is all the questions we have, so thanks to you and your officers for your time today.

Mr D McDonald: Thank you, Chair.

Senator BARNETT: Thanks again, Mr McDonald. Over and over again we are thanking you for being here.

Mr D McDonald: Thank you, yes. No more farewells, Senator—except mine to you.

Senator BARNETT: Thank you very much.

Senator BRANDIS: Thank you, Mr McDonald. I enjoyed your *Spectator* diary.

Mr D McDonald: Thank you, Senator.

Federal Court of Australia

[11:58]

CHAIR: Mr Soden, good afternoon—nearly!—and welcome to you. Do you have an opening statement at all for us today?

Mr Soden: No, thank you, Madam Chair.

Senator BRANDIS: Mr Soden, the Federal Court has undertaken a major review of the Federal Court Rules and the Federal Court forms.

Mr Soden: Yes, it has.

Senator BRANDIS: I understand that the draft of the new rules and forms was first provided to the profession on 24 December 2010. Is that right?

Mr Soden: I would have to take that precise date on notice, but I think that is right.

Senator BRANDIS: That was the first occasion on which the professional associations were shown what I presume was an exposure draft of the proposed new rules and forms?

Mr Soden: Taking on notice the actual date, most probably yes.

Senator BRANDIS: If I am right, and I am told by a recipient from one of the professional associations that, indeed, it was 24 December, and given, as we know, that a lot of professional bodies and practitioners are away at Christmas time and throughout January, why was it decided to first circulate this extensive rewrite of the Federal Court rules and forms just before Christmas?

Mr Soden: I am sorry, I cannot answer that question. I am not aware of the decision that was taken as to the date for the release. I assume it was done simply because that was when it was ready to be done, not for any ulterior purpose.

Senator BRANDIS: I take your word for that, but it does seem strange, particularly since it is the case, is it not, that comments from the profession on the new rules and forms were requested by the end of February. It was by 28 February—is that right?

Mr Soden: From recollection that is right, yes.

Senator BRANDIS: Does it seem reasonable to you? I must say that it does not seem reasonable to me that the whole extent of the profession's involvement in providing feedback

on an extensive rewrite of the rules and forms was expected to take place in the course of two months, especially having regard to the fact that the bulk of that period was the period between immediately before Christmas and the end of January.

Mr Soden: I suppose that it is a relatively short period. But notwithstanding the fact that it is a completely new rewrite of the rules, it is not a rewrite to the extent that everything was thrown up in the air and started again. It was a narrow confines within which the rules were rewritten. I think the assumption was that it was likely to generate strong support from the profession, and not the opposite.

Senator BRANDIS: Well, it may, but the Federal Court rules, as you and I both know, are a very voluminous statutory instrument of the highest importance to the profession, and it does surprise me that even if this had been in ordinary time rather than over Christmas time, a maximum consultation period of effectively not more than two months and, in a practical sense, less than two months, was all that was vouchsafed to the profession.

Mr Soden: I have to say that I was not close to the decision that was taken, but I think I could say on behalf of Justice Lander, who has had carriage of this on behalf of all of the judges, that if there had been a strong reaction from the profession in relation to that time, and a request for extra time, then that would have been very carefully considered by him, I am sure. I do not think that has been the case.

Senator BRANDIS: Could you check that please and take it on notice for me?

Mr Soden: I will certainly take that on notice.

Senator BRANDIS: Thank you. Was there any particular urgency about this? Governments publish exposure drafts of legislation, and in complex areas those exposure drafts can be out among the stakeholders for six or 12 months or more. Was there any particular urgency about commencing the new Federal Court rules that would have suggested such a briefly limited period of consultation?

Mr Soden: No, I do not think there was any urgency, other than the fact that they had been under development for so long and we had been saying for so long that we were revising the rules that we got to the stage where that complete exposure draft could be released. I think there was just an acceleration of a process to try to complete it as soon as possible. There was no other pressure other than that, from my perspective.

Senator BRANDIS: When you say 'for so long', over how many months and years has this project been underway?

Mr Soden: I will have to take that on notice, but I think I could say it has probably been on the books for about a decade.

Senator BRANDIS: The committee of judges who were responsible for the actual rewrite—under Justice Lander was it?

Mr Soden: Ultimately Justice Lander, yes.

Senator BRANDIS: When did that committee commence its work?

Mr Soden: I will take that on notice, but it would be at least two years ago.

Senator BRANDIS: Mr Soden, I know the Federal Court is famous for its hard work and industry and I know you have a very energetic new Chief Justice who is very famous for his hard work and industry, but it does seem to me, if I may say so, a little disrespectful to the

profession that a project in its home stretch took two years and in its genesis began over 10 years ago and was so extensive that it took that long for the court to develop it. It seems a little disrespectful to the profession to give them only two months to consider it and to provide feedback to the court.

Mr Soden: I think I would want to say on behalf of the judges that there was no disrespect intended, and I think they would be quite concerned if there was a perception that the attitude that the court had taken was disrespectful. I am sure that is not what was intended.

Senator BRANDIS: A number of senior practitioners before your court have expressed to me astonishment that such a major project and such an extensive rewrite of the basic practice document of the court should have been put out for consideration and feedback by the profession for only two months and a fortiori that two months is starting on Christmas Eve.

Mr Soden: I hear what you are saying, Senator. As I said, I think there would be disappointment among the judges if they thought that was the view of the profession, but I hear what you are saying.

Senator BRANDIS: I am not saying it is the view of the profession; it is certainly the view of a number of senior members of the profession. I am told, by the way, that the Law Institute of Victoria did not even receive the exposure draft on 24 December—that it never got it. Can you check that, please?

Mr Soden: I will certainly take that on notice.

Senator BRANDIS: I do not want to belabour the point but perhaps you could give us some explanation on behalf of the court as to why a decision to have such a relatively brief consultation period arising from such an extensive and large project was settled upon.

Mr Soden: Yes, I am very happy to take that on notice.

Senator BRANDIS: Those rules will commence on 1 August this year?

Mr Soden: That is my recollection as to the intention, yes.

Senator BRANDIS: The announcement that the commencement date would be 1 August this year was made on 16 May.

Mr Soden: That is my recollection as well, but I will take that on notice to be concise and accurate.

Senator BRANDIS: Once again, and not just thinking about the rules but also about the forms which, as you know, the law firms have to build into their precedents, could you provide an explanation—given what you say is not the particular urgency of the task, if I understand you correctly—as to why the Federal Court was able to do this in a leisurely way over 10 years but the profession is expected to completely reconfigure its operation within the space of the period between 16 May and 1 August.

Mr Soden: I will take that on notice.

Senator BRANDIS: Can I take you to the Victorian District Registry of the court. Is it the case that Justice Ryan is retiring in June and Justice Finkelstein is retiring in July?

Mr Soden: Yes. I think to be accurate Justice Finkelstein is 30 June, maybe effective 1 July.

Senator BRANDIS: Thank you. Has a decision been taken to replace one or both of those judges?

Mr Soden: The government has announced an appointment for a person in Melbourne.

Senator BRANDIS: Is that Mr Murphy?

Mr Soden: Mr Murphy, yes. Mr Murphy will be sworn in on 14 June.

Senator BRANDIS: Is he an intended replacement of either Justice Ryan or Justice Finkelstein? My understanding is that that is not the case; that Mr Murphy's appointment was to fill another gap on the Victorian registry of the court.

Mr Soden: I am not aware of that. It might be a question that you ask the department. We have Justice Ryan going and Bernard Murphy will commence on the 14th, and now Justice Finkelstein is going.

Senator BRANDIS: What is Mr Murphy's background, by the way, Mr Soden? Can you tell us what his experience is in the practice of law and government?

Mr Soden: I do not know him personally, other than from the couple of meetings I have had with him since the appointment was made. I understand he is a quite well-known solicitor, the director of Morris Blackburn in Victoria, and that he has extensive litigation and civil procedure experience. It is from what I have read of him; I do not know him personally, other than meeting him recently.

Senator BRANDIS: He is an old associate of the Prime Minister's is he not?

Mr Soden: I do not know, to be honest. I have seen reference to that in some comment in the media, but I personally do not know that.

Senator BRANDIS: I am not saying there is necessarily anything wrong with a person who is an old associate of the Prime Minister's being appointed to the Federal Court. And I am certainly not saying there is anything wrong with a solicitor being appointed to the Federal Court, the Howard government having appointed solicitors to the Federal Court itself, as you know. But it does rather raise the eyebrows when an old associate of the Prime Minister's from a well-known firm of Labor Party solicitors is regarded by the government as the most obvious person in Victoria for this particular judicial appointment to the nation's second-highest court.

Mr Soden: I am not privy to what happened in the details of the appointment process, but Mr Murphy is well known as being an expert in class action work and, of course, we have a large class action jurisdiction, particularly in relation to corporate class actions.

Senator BRANDIS: Sorry, for a moment I thought you were about to say 'class warfare'! You can assure us that the protocols published by the Attorney-General in relation to judicial appointments to the Federal Court were observed in this case? Or can you assure us of that?

Mr Soden: That is conducted so confidentially that I am not involved in the process at all. I know it is happening, but it is very carefully conducted to ensure that it is extremely confidential.

Senator BRANDIS: That is why I phrased my question as I did; I was not asking you to reveal anything confidential, merely to tell us whether or not you were satisfied that the protocol had been observed. It may be that that question is more appropriately directed to the

Attorney-General's Department, but I thought that you may also be in a position to give us that reassurance.

Mr Wilkins: I am advised that those protocols were adhered to in this particular situation.

Senator BRANDIS: I do not think that this is asking you anything that trespasses into the area of confidential information: how many other candidates were there who were considered for that judicial appointment when the decision was ultimately made to appoint Mr Murphy?

Mr Wilkins: I do not have that information.

Senator BRANDIS: Will you take it on notice, please?

Mr Wilkins: Maybe we can come to that with the—

Senator BRANDIS: I will re-ask this question at the appropriate stage in the Attorney-General's Department, so perhaps that information can be sought out in the time being?

Mr Wilkins: We will see what we can do.

Senator BRANDIS: Mr Soden, am I right in understanding that, including Justice Murphy's appointment, there will be a maximum number of 11 judges based at the Victorian registry of the court?

Mr Soden: I would have to sit and count them.

Senator BRANDIS: Well, it will not take long: one, two, three—

Mr Soden: Let me just check—I think that is right.

Senator BRANDIS: Let me tell you where I am going with this, because I do not want to trick you or—

Mr Soden: It sounds right.

Senator BRANDIS: There were in 2007-08 not fewer than 15 judges based at the Victoria registry of the court. In 2011-12 there will be 11, and I am advised by practitioners in Melbourne that the case load and the level of work of the court at its Victorian registry certainly has not diminished in the intervening period. So, why has the number of judges shrunk by more than one quarter in the second-biggest city in the country when the work load has not diminished?

Mr Soden: I do not have details here or at the forefront of my mind of what it was a couple of years ago compared to what it is now, and I am not sure whether that number 15 included or excluded the Chief Justice, who was, as you know, Melbourne based at that time.

Senator BRANDIS: I believe it did.

Mr Soden: I think 15 was the number some years ago, and I think it is 11 now. I would have to take that on notice. In the last couple of years there were some changes to the judicial numbers in Melbourne, obviously. I can take on notice the detail of those changes, but from memory it included things like when the former Justice Neil Young resigned that position was transferred to the Federal Magistrates Court to enable a magistrate to be appointed. Following Justice Mark Weinberg's appointment to the Court of Appeal, that position was not filled.

Senator BRANDIS: But if the explanation is that there has been an uptake by the Federal Magistrates Court of some of the work formerly done by the Federal Court, that would be apparent across the country. Yet, that phenomenon is not evident in the Sydney registry, is it, where there has been an increase, or at least not a decrease, in the number of judges.

Mr Soden: I do not think there has been an increase in Sydney—

Senator BRANDIS: Certainly there has not been a decrease.

Mr Soden: I think there has been a decrease, I think by two judges in the last two years.

Senator BRANDIS: From what to what?

Mr Soden: From 18 to 16, off the top of my head.

Senator BRANDIS: Do you ascribe that to a transfer of work formerly done by the Federal Court to the Federal Magistrates Court?

Mr Soden: No, it was a budget saving measure.

Senator BRANDIS: How many judges are there sitting on the court at the minute?

Mr Soden: If you include all the judges appointed to the Federal Court, 47—but that includes people like Chief Justice Higgins—

Senator BRANDIS: I want to know the number of judges who are actually at work rather than on leave for whatever reason or on secondment or have double commissions and sit on a territory supreme court, for example.

Mr Soden: Would you include in that number those who are on long leave? I would have to take that on notice.

Senator BRANDIS: Would you take it on notice.

Mr Soden: I am happy to take it on notice.

Mr Wilkins: We can help with that number, if you want.

Senator BRANDIS: Yes, please. My approach to these estimates is that anybody who knows the answer is welcome to offer it.

Mr Wilkins: We have just been keeping an eye on the timing, Senator.

Ms Kelly: We believe the number to be 43.

Mr Soden: I am not sure whether or not that includes people on long leave.

Ms Kelly: I have taken out the three judges who are appointed to other offices, but I do not have the long leave details.

Senator BRANDIS: So it includes the long leave judges. Comparing like with like, how does that compare with 12 months previously?

Ms Kelly: I do not have that figure.

Senator BRANDIS: You can take that on notice. Thank you.

CHAIR: Thank you for your attendance today.

Family Court of Australia

[12:18]

CHAIR: I welcome Mr Foster and officers of the Family Court of Australia. Do you have an opening statement?

Mr Foster: No, Chair. For the record, I am CEO of the Family Court and the Acting CEO of the Federal Magistrates Court.

Senator BRANDIS: Given the announcement by the government in May of last year that the Federal Magistrates Court would be retained, and given the arrangements in place since 1

January this year preserving the separateness of the two jurisdictions, the Federal Magistrates Court and the Family Court, I am a little surprised—and of course this is not a reflection on you personally—that, the government having decided at the urging of the opposition to keep the two courts separate, they still have a common CEO—you—and that in relation to the Federal Magistrates Court you continue to be the Acting CEO. Indeed, the very inclusion of the adjective 'acting' in your title suggests that that is not a permanent arrangement. When do you expect that a permanent CEO of the Federal Magistrates Court will be appointed so that you can resume your work full time as the CEO of the Family Court?

Mr Foster: I guess that at the end of the day it is not a matter for me to decide what it is.

Senator BRANDIS: No, I understand that.

Mr Foster: But I would assume it is the intention of the government to pursue the restructure of the courts. If there were a second tier of the Family Court and the FMC were retained, that would seem to be a sensible time to appoint a CEO of the Federal Magistrates Court. But, at the end of the day, that is a matter for someone else, not for me.

Senator BRANDIS: But you have not been given any informal intimation as to when the current temporary arrangements in relation to your position with the FMC will end?

Mr Foster: I have been appointed by the Chief Federal Magistrate until a certain date—I would have to take the date on notice, but I think it is the end of October or early November this year—or until such time as there is an additional or separate appointment made.

Senator BRANDIS: I see. When was that done?

Mr Foster: That was done about 12 months ago, but I would have to take that on notice because I have not got the copy of the appointment with me.

Senator BRANDIS: When that was done about 12 months ago, was that estimated end date part of the appointment?

Mr Foster: I think it just has a grandfather clause, actually, so it would be reviewed on a periodic basis. That was really the intent of it as I understand it.

Senator BRANDIS: As a result, as well, of the federal government's decision to abandon the abolition of the Federal Magistrates Court, there has been a disentangling of certain appropriations within the budgets of the two courts. That is right?

Mr Foster: That is right.

Senator BRANDIS: In a functional sense, how has the disentangling of the two courts been carried into effect?

Mr Foster: In effect—

Senator BRANDIS: Sorry; that is a slightly vague question, but do you know what I am getting at?

Mr Foster: I know. I understand what you are saying, I think. I will try and answer it, and then you will know whether I actually understand your question or not. We made a deliberate decision when there was no longer an appropriation to the FMC to keep—

Senator BRANDIS: Pausing there, when you say 'we'—because you do appear in a double capacity here—

Mr Foster: As the court.

Senator BRANDIS: You are now saying 'we, the Federal Magistrates Court', right?

Mr Foster: As between the two courts.

Senator BRANDIS: Oh, I see.

Mr Foster: As between the two courts, we kept a separate set of accounts and a separate set of books so that we knew what money was being spent at the FMC, whether it was an appropriation or a spend in time. So it was not that difficult, quite frankly, to unscramble the egg, so to speak, in that regard.

Senator BRANDIS: All right. Where are we at, Mr Foster, so far as you understand the progress of the legislation to be? This has been, as you know, postponed and postponed and postponed and postponed and postponed by the government. Where are we at now?

Mr Foster: I think that is a question that should be directed to the department and not to me, quite frankly.

Senator BRANDIS: Do you know?

Mr Foster: I do not know, no.

Senator BRANDIS: All right. Is it all right if I ask you that now, Mr Wilkins, because I suppose you do know?

CHAIR: We were actually going to try—

Senator BRANDIS: I am just trying to save time, Madam Chair.

CHAIR: I understand that, but what we were also—

Senator BRANDIS: We are dealing with an issue, and there is an officer at the table with an answer.

CHAIR: That is true, but what we were also trying to do was avoid this flip-flopping between the two all the time.

Senator BRANDIS: I do not mind.

CHAIR: But if the answer is short then let us proceed.

Mr Wilkins: I think the answer is short. The timing is a matter for the government and the Attorney-General.

Senator BRANDIS: You do not know what the current plan is?

Mr Wilkins: As I said, it is a matter for the Attorney.

Senator Ludwig: I can add that the government intends to reintroduce the Access to Justice (Family Court Restructure and Other Measures) Bill to the parliament, and the timing, of course, is a matter for the government. That is what I can advise the committee.

Senator BRANDIS: I am sure, Minister, that short of abandoning it again entirely, you do intend to introduce it at some time. I am asking, 'when?' Or if no decision has been made, can you tell us that?

Senator Ludwig: My answer included that timing was a matter for government.

Senator BRANDIS: Yes. And I am asking you about the timing. When does the government intend to introduce it?

Senator Ludwig: My response is the same: the timing is a matter for the government.

Senator BRANDIS: Yes, I know that.

Senator Ludwig: We could go around this mulberry bush.

Senator BRANDIS: The question is whether you are going to answer my question. Given that the timing is indeed a matter for the government, when is the government going to—

Senator Ludwig: I am being responsive to that.

Senator BRANDIS: You are not, Minister.

Senator Ludwig: I am; the timing is a matter for the government.

Senator BRANDIS: Has a decision be made as to when the bill will be introduced?

Senator Ludwig: I am not aware of whether a decision has been made. That of course would be a matter for the Attorney-General. I can check on that, though, if you like.

Senator BRANDIS: You represent the Attorney-General in the Senate. I assume, given that you represent the Attorney-General in the Senate and sit in the cabinet, if a decision had been made you would know about it.

Senator Ludwig: You can assume all you like.

Senator BRANDIS: Mr Foster, at the last estimates I asked a question and I cannot remember if it was in your capacity as the acting CEO of the FMC or the CEO of the Family Court, but it does not really matter for my purposes. The question was about meetings of the Family Law Courts Advisory Group. In the most recent set of minutes, which were provided in response to questions taken notice—heavily redacted, I might add—we are told that the first meeting of the 2011 was to be on Wednesday 2 March, which was the last item in the minutes of the last meeting of last year on 13 December 2010.

Mr Foster: Can I just have a moment to try to collect that?

Senator BRANDIS: I do not want to waste any time. All I want to know is whether the meeting has taken place.

Mr Foster: I am sorry, but I will have to take that question on notice.

Senator BRANDIS: Has any meeting of the Family Law Courts Advisory Group taken place this year?

Mr Foster: There was a combined meeting of the two courts policy advisory committees.

Senator BRANDIS: Is that the same thing as the Family Law Courts Advisory Group?

Mr Foster: No, it is not the same group. These are the two policy advisory committees—one to the Chief Federal Magistrate and one to the Chief Justice. They would have an annual meeting—

Senator BRANDIS: Sorry to cut you off, but you sit on the Family Law Courts Advisory Group so you would know whether a meeting of that body has taken place since the beginning of this year.

Mr Foster: My memory is that it was not because we had a combined policy advisory committee meeting on 18 April, of which I could certainly table the minutes of that meeting if you desired them.

Senator BRANDIS: Take it on notice, by all means, to satisfy yourself that your answer is right, but to the best of your recollection there has not been a meeting of the Family Law Courts Advisory Group this year?

Mr Foster: That is right, because we had that combined policy advisory committee meeting in lieu of that.

Senator BRANDIS: There has been one meeting of that body?

Mr Foster: Yes.

Senator BRANDIS: And you have the minutes there which you wish to table?

Mr Foster: Yes, I am quite happy to table them.

Senator BRANDIS: Would you do that, please?

Mr Foster: Certainly.

Proceedings suspended from 12:29 to 13:35

CHAIR: I welcome back officers from the Family Court of Australia.

Senator FURNER: I understand there is some strong evidence forthcoming with respect to the need for reform. Could you elaborate on some of that evidence that has been delivered by government in respect of the need for reform in the particular area of the Family Court restructure?

Mr Foster: From my perspective, when the Federal Magistrates Court was first established it was basically established with limited, or not many, resources. Its resources were to come from the Federal Court of Australia and the Family Court. And because the vast majority of its work is in family law, most of those resources came from the Family Court. Over a period of time there was a reduction in the number of judges in the Family Court and a growth with the number of FMs in the Federal Magistrates Court to the extent that there are now 32 judges in the Family Court, plus two vacancies, and 62 federal magistrates, with two vacancies. So there has been a massive shift in the judicial resources from one court to another.

Over a period of time that created some difficulties between the two courts in relation to the proper sharing of resources. It is not difficult to concede that there is a bit of patch protection, I guess, in some sense. That is one of the primary reasons for having a look at the structure of the courts. There were some difficulties in relation to each court's jurisdiction—what was an appropriate level of work for each court—and transfers of cases between the courts. I guess it was thought that that impacted on service delivery and the services to clients. There was some confusion about which court people should be in.

But over a period of time some of those issues have moved on, I think. There is a protocol which exists between the two courts as to where people should file. It is now that around 85 per cent of filings are in the Federal Magistrates Court and the rest in the Family Court. That is primarily based around the resources of both federal magistrates and judges. There is good cooperation between the courts now in relation to transferring matters to and from. So I think the ground has shifted somewhat, certainly since 2000. The two jurisdictional heads made a decision to combine the administration of the courts because they were so closely intertwined, and that has been a very successful process. That, again, has helped the cooperation between

the two courts. I would say that now, from my perspective, it is at a very high-level—if that is helpful?

Senator FURNER: That is. The two vacancies you referred to: how long have those positions been vacant?

Mr Foster: They have been advertised—and I understand that really it is a matter for the department—and there is a selection process going on at the moment. Applications have closed and I understand that the interviews will be held fairly shortly for a judge in Sydney and a judge in Melbourne.

Similarly, in relation to the FMC there will be one for a federal magistrate in Sydney and for a federal magistrate in Melbourne. The advertisements have only just gone out for those. I am not sure whether they have closed or not. It is imminent.

Senator FURNER: Can you tell me what the working relationship is between the Attorney-General's Department and the courts? Is it a healthy relationship?

Mr Foster: From my perspective, I would say it is a very healthy relationship. I think there is great openness and transparency between what occurs. There is lots of consultation. The Attorney-General's Department is represented on the Family Law Court's advisory board, which is chaired by the Chief Justice. The board's membership includes the Chief Federal Magistrate and a federal magistrate and a judge of the Family Court and me. There is also a member of the department on that oversighting group. I think that is reflective of the level of cooperation that exists as between the courts and the Attorney-General's Department. I would rate it as probably the best it has ever been.

Senator FURNER: How often would the two meet?

Mr Foster: From my perspective, I am in constant contact with the department about a whole range of issues, with a whole range of people in the Attorney-General's Department because of the sort of work that we do. It happens on a very frequent basis. Formally, it happens through various committees but informally it happens on certainly a weekly basis as a minimum that I would be having discussions with someone from the department about some issue or another.

CHAIR: Senator Brandis, we will come back to you now.

Mr Foster: Senator, just before you ask the next question, I have now got a copy of the instrument of my acting appointment and I would be quite happy to table that if that would be helpful.

Senator BRANDIS: Yes, you are welcome to table that. Thank you. Mr Foster, I looked at those draft minutes of the joint policy advisory committee over lunch. There is nothing I particularly want to pursue arising from them, so can I go on to another topic. Is it correct to say that in the budget the government allocated an additional \$8 million to the FMC to fund two new federal magistrates and their staff to increase the workload and the processing of refugee status applications? Can I take you to the PBS page 327 in that regard.

Mr Foster: That is right. It was \$8.164 million over four years.

Senator BRANDIS: Will those two additional federal magistrate positions be tasked specifically to deal with the expanded volume of refugee status applicants?

Mr Foster: It is to do that, but I guess any person who accepts such an appointment to the Federal Magistrates Court must be prepared to exercise the whole jurisdiction of the court.

Senator BRANDIS: I understand that, of course.

Mr Foster: But that is the rationale behind that.

Senator BRANDIS: That is the rationale; that is why they have been appointed.

Mr Foster: That is right.

Senator BRANDIS: Does the court keep statistics on how many magistrate positions or equivalent full-time positions are allocated between lists so that you would be able to inform us how many magistrates or equivalent full-time magistrates positions are currently allocated to considering refugee status applications?

Mr Foster: Not specifically refugee applications but general federal law I can certainly give you the numbers—

Senator BRANDIS: But general federal law—

Mr Foster: which includes the migration statistics.

Senator BRANDIS: I want to confine myself to the migration matters. Are you able to disaggregate within general federal law matters for the migration matters?

Mr Foster: I would have to take that on notice. I am not sure how easy that task would be, because the federal magistrates exercise all of the general federal law, including migration matters. So I would have to do some assessment of it.

Senator BRANDIS: I am sure that is right, Mr Foster, but when the Federal Magistrates Court was allocated this addition \$8.164 million over four years to address—this is quoting from the PBS—'the increased demand on the Federal Magistrates Court as a result of changes to the processing of Refugee Status Determinations', the budget submission on which that budget measure was presumably based was, may I take it, based on a perception within the Federal Magistrates Court that there was growing pressure on the court because of the increased amount of casework for such determinations. Therefore, it did not come out of thin air. There must be statistics kept by the court which would allow you to inform the committee about the number of magistrates who are occupied with those sorts of cases.

Mr Foster: Yes. There are currently, out of the 62 federal magistrates, 13.75 equivalent doing general federal law. I would need to break that number up to find out how many are actually dealing specifically with migration cases. I do not have that.

Senator BRANDIS: You run the court, Mr Foster, so you must have a sense of it. So take it on notice by all means if you like, but for the purposes of this discussion it will satisfy me if you talk approximately.

Mr Foster: I am not sure that I am in a position to say that or put a figure on it; I can say only that the migration workload, out of the total general federal law workload, is currently running at 13.5 per cent of the total, compared to 12.7 per cent last year.

Senator BRANDIS: Of the general federal law workload?

Mr Foster: Of the whole general federal law filings, migration work at the moment is around 13.5 per cent.

Senator BRANDIS: What was the figure last year?

Mr Foster: It was 12.7.

Senator BRANDIS: Do you have the figure for the year before that, by the way?

Mr Foster: Not to hand.

Senator BRANDIS: Can you provide us with the comparable figures for each of the years going back to 2007, please.

Mr Foster: Yes, I should be able to do that.

Senator BRANDIS: But, in any event, it has increased.

Mr Foster: I do not have the percentages, but I can give you the number of migration filings for that period of time.

Senator BRANDIS: Yes, that would be interesting.

Mr Foster: Would you like me to read that into the *Hansard*.

Senator BRANDIS: Please.

Mr Foster: For 2006-07 it was 2,119; for 2007-08 it was 1,548; for 2008-09 it was 1,288; for 2009-10 it was 880; and for 2010-11, to 30 April 2011, it was 724. The total of general federal law filings in 2006-07 was 7,832; in 2007-08 it was 7,093; in 2008-09 it was 6,573; in 2009-10 it was 6,948; and in 2010-11, to 30 April, it was 5,371. But I have not got percentages for those; that is all.

Senator BRANDIS: Can you give us the figures, please, for the refugee status determinations.

Mr Foster: As a result of the High Court—

Senator BRANDIS: No, just the figures for each of the years for which you have just given us the overall migration filings—the filings for refugee status determinations.

Mr Foster: The migration litigation statistics were those ones that I just read out to you. That is the only detail I have.

Senator BRANDIS: But refugee status determinations are a subset of all migration applications.

Mr Foster: That is right, and I would have to take that on notice.

Senator BRANDIS: The specific budget measure to which I have directed your attention asked for the allocation of more than \$8 million for two extra federal magistrates to deal specifically with the increased volume of refugee status determinations.

Mr Foster: Yes.

Senator BRANDIS: Thank you.

CHAIR: That is all you have?

Senator BRANDIS: I think that might be all I have for the Federal Magistrates Court.

CHAIR: No other questions for the Family Court?

Senator BRANDIS: No, this is the Federal Magistrates Court. They are different.

CHAIR: Okay. They are one and the same, really, aren't they?

Senator BRANDIS: No, they are very different. The Family Court and the Federal Magistrates Court are not one and the same, Madam Chair of the Legal and Constitutional Affairs Legislation Committee of the Senate.

CHAIR: We did ask questions of the Family Court a moment ago.

Senator BRANDIS: No, we asked questions about the family law jurisdiction; not questions about the Family Court.

CHAIR: Senator Furner asked questions.

Senator BRANDIS: Perhaps Senator Furner was as unenlightened as you about the difference between the two institutions.

CHAIR: No, I was just trying to ensure that we were dealing with one set of questions and then the other set of questions. Have we totally finished in this area?

Senator BRANDIS: No, I have questions of the Family Court. Mr Foster, I am going to put you out of your agony because I suspect that the questions you responded to in your capacity as the acting CEO of the Federal Magistrates Court in relation to the courts review is not something you can tell me a great deal more about in your capacity as the CEO of the Family Court.

Mr Foster: It is exactly the same position.

Senator BRANDIS: Minister, dealing now with the Family Court, are you able to tell us when the issue of the respective jurisdiction in relation to family law matters between the Family Court and the FMC will be clarified by the legislation?

Senator Ludwig: My earlier response would be the same.

Senator BRANDIS: The timing is a matter for the government?

Senator Ludwig: Thank you.

Senator BRANDIS: The sun rises in the east—we know these commonplaces, Minister. When will the legislation be introduced?

Senator Ludwig: The timing of that is still a matter for government, but I am happy to take it on notice to see whether the Attorney-General wants to provide an answer to your question about a date.

Senator BRANDIS: Without asking you about anything that may have happened in cabinet, which I do not do, can you tell me whether the matter has gone to cabinet?

Senator Ludwig: I will take that on notice.

Senator BRANDIS: All right. Mr Foster, including and excluding Western Australian judges, how many Family Court judges are there at work at the moment?

Mr Foster: There are 32 judges at the Family Court, including the Chief Justice, with two vacancies—one in Melbourne and one in Sydney. In the Family Court of Western Australia there are five or six.

Senator BRANDIS: Had the financial arrangements between the Commonwealth government and the Western Australian government in relation to Western Australian Family Court judges been altered in the last 12 months?

Mr Foster: It is not really a matter that I would be qualified to speak on.

Senator BRANDIS: You do not know?

Mr Foster: It is a matter for the department.

Senator BRANDIS: I will come back to that with the department. How many of the judges sit on the appellate and complex trials division, and how many sit in the general division?

Mr Foster: There are 25.5 sitting in first instance and 6.5 in the appellate division of the moment.

Senator BRANDIS: Had those relativities changed in the last year? And if so, how?

Mr Foster: I would have to take that on notice, but yes, there have been a couple of judges who have left the court.

Senator BRANDIS: Has been from the general division or the appellate division?

Mr Foster: Cohen J retired from 4 March and is not being replaced. O'Ryan J from the full court retired on 15 March this year, it is to be confirmed whether he will be replaced or not. I do not know. Barry J—

Senator BRANDIS: He is about to retire.

Mr Foster: He is about to go, as is Justice Rose in July and as is Justice Mushin. Justice Brown in Melbourne retired and that is the position that has been advertised. Justice Boland from the full court retired, and that is the position that has been advertised in Sydney but as a trial judge and not necessarily to the full court.

Senator BRANDIS: All right. As I understand your evidence, there are seven judges who have either retired in the past year or are about to retire, and of those seven, only two are to be replaced.

Mr Foster: I think the decisions have not been made about whether they will be replaced as judges.

Senator BRANDIS: The replacement of only two has been advertised.

Mr Foster: That is right, because they may be replaced by a federal magistrate or they may not be replaced at all. That decision still needs to be made.

Senator BRANDIS: Let me see me just pursue that with you for a moment. By that do you mean that a federal magistrate might be promoted to the Family Court?

Mr Foster: No, I do not think that is necessarily think the case. The government might make a decision to appoint a federal magistrate in lieu of a judge of the Family Court. At the moment, 85 per cent of the filings in family law are going to the Federal Magistrates Court.

Senator BRANDIS: Minister, does it continue to be the policy of the government to reduce the total establishment of the Family Court as more and more of the family law work is taken up by the Federal Magistrates Court?

Senator Ludwig: I will need to take that on notice, obviously. I will see if I can get an answer to you. I am not confirming or denying the preface to your statement. I will check.

Senator BRANDIS: There has been, as you know, during the life of this government a gradual reduction in the aggregate number of Family Court judges, as has been explained in previous estimates committees, when it was expected that there would be a consolidation of the Family Court and the Federal Magistrates Court. That was a deliberate and perhaps

understandable policy. Now that the government has decided not to do that, I wonder whether it is still the plan to continue to reduce the total number of Family Court judges so that more of the Family Court's routine work can be done by federal magistrates, or whether that is not the case. Mr Foster?

Senator Ludwig: I will just intervene there for the moment, Chair. I am not confirming whether it is the plan because of course that is your phraseology. I will take that on notice because I would have thought it would be more dependent on workload – that is just an observation – rather than numbers. It does seem that you are fixated on numbers not workload and where the resources are best served. What I indicated is that I can provide, and I will take that on notice to ensure that you get a full response about the issue that you raise.

Senator BRANDIS: I think it is a very uncontroversial proposition, which has been the case under governments of both political persuasions, that the number of judges or judicial officers is directly a function of the workload of the court. The peculiarity here is that in its confusion for two years the government was proposing to eliminate the Federal Magistrates Court and consolidate it with the Family Court. One can understand why, while that process was underway or imminent, some judicial officers were not replaced until the new structure was bedded down. But the government changed its policy a year ago to abandon that proposal as announced by the Attorney-General in May 2010. Hence I am wondering whether the antecedent practice of keeping the number of judges on the Family Court up to the existing establishment has been reinstated or whether the plan is to continue to deplete the number of Family Court judges. If it is the latter that is perfectly understandable because, as Mr Foster has rightly said, 85 per cent of family law filings are in the Federal Magistrates Court. I would just like to know. I am not being political here; I would just like to know what the planners.

Senator Ludwig: And I am not trying to leave you in suspense. I will take your question on notice and see what the Attorney-General can provide.

Senator BRANDIS: Mr Foster, are you aware of whether there is a policy in relation to the replacement of Family Court judges?

Mr Foster: I can only say that, if you are talking about numbers, in 2005 there were 44 judges of the Family Court, in 2006 there were 41, in 2007 there were 40, in 2009 there were 35, in 2010 there were 34 and there are currently 32 plus two vacancies. So the numbers have been coming down over a period of time.

Senator BRANDIS: I think those numbers speak for themselves. Of the 32 plus two vacancies, those two vacancies are the two that have been advertised?

Mr Foster: That is right.

Senator BRANDIS: I think that is all I wanted to know about the Family Court. Thank you.

CHAIR: That is it. Thank you, Mr Foster and your colleagues for joining us this afternoon. I would ask representatives of the Australian Crime Commission to come forward.

Australian Crime Commission

[14.00]

CHAIR: Mr Lawler, good afternoon. Welcome to you and your team. Do you have an opening statement for us?

Mr Lawler: No, we do not.

CHAIR: We will go to questions. Senator Parry, you are going start.

Senator PARRY: Thank you, Madam Chair. Welcome, Mr Lawler. To commence with, could I ask some questions about staffing. The portfolio budget statement for 2011-12 has the staffing level for 2010-11 at 570. There was a revised estimate for 2011-12, which is 547 staff—23 fewer. That is at table 2.1 on page 91. Could you give an explanation, please, as to the decrease in staff numbers?

Mr Lawler: Yes, I can, Senator. It is important to note that those figures are average staffing levels, which are the figures used within the portfolio budget statement. The estimated reduction in staff—again, the best projections of the commission—relates to a reduction through the cessation of Wickenby funding, specifically as it relates to project Grindle—a further intelligence collection operation within that activity. There is a range of ceasing proceeds of crime funding specifically to implement the Sentinel Strategy—a reduction there. And there is a reduction following the completion of the establishment of a secret ICT network within the commission. Along with efficiency dividends, we project that reductions in staff are based on those following factors.

Senator PARRY: Could I go to Wickenby. There has been a fair bit of media coverage about this, one being 5 April this year entitled, 'Hogan's case tops review of tax office'. That article referred to the Ombudsman. It said:

The Ombudsman is considering expanding its investigation into a cross-agency review of the \$430 million Wickenby probe, which would focus on the Australian Tax Office and Wickenby partners including the Australian Crime Commission and the Australian Federal Police.

You have indicated a reduction in attention to the Wickenby task force. In light of those comments from the Ombudsman, what is the rationale for reducing the Wickenby task force staffing?

Mr Lawler: It is quite a complex matter. I will firstly refer to the appropriations in the context of Wickenby. The reduction for project Grindle is only a proportion of that funding. In 2011-12 the Wickenby extension program was \$2.415 million and the reduction of the offshore tax haven component is \$1.268 million. That leaves somewhere in the order of about \$1.2 million to allow the commission to continue with the matters that it has subject to prosecution, ongoing cost to support the Commonwealth DPP and to finalise the one remaining investigation that is outstanding, which is Operation Youghal.

In relation to the press reporting around the Australian National Audit Office and the Commonwealth Ombudsman's review of Project Wickenby, the commission wrote to the Auditor-General on 20 April this year and the Commonwealth Ombudsman on 21 April indicating complete support. Since that time there has been a range of discussions and meetings with the Auditor-General's staff and the Commonwealth Ombudsman's staff with a view to assisting both those bodies with the work that they are undertaking. I understand that the Audit Office has commenced its work and detailed briefings have been provided in that regard.

Senator PARRY: So it is fair to say, and you cannot comment on the ATO's position, that from your perspective the ATO will be picking up a larger proportion of the Wickenby investigation?

Mr Lawler: I think in totality that is certainly true, and I think it has been true from the start of Wickenby that the Australian Taxation Office has been the lead in that very successful partnership arrangement.

Senator PARRY: This would be one of the few operations that the ACC is conducting where there is a potential to gain funds back to the Commonwealth through the recovery of unpaid taxes. Would that be a fair statement?

Mr Lawler: I think that is a very fair statement. I have a summary report which details those particular broader benefits to the community. With your concurrence, I would like to take the committee to some of those particular highlights. I will start by talking about the total value of assets restrained as a result of Project Wickenby to 31 March 2011, which was \$56.25 million. The total tax liabilities raised were \$1.074 billion. There was a total tax collection of \$249.75 million and there was a compliance dividend of \$306.1 million, for a total of \$557.95 million. If the pure fiscal returns were not compelling enough, there were excellent indicators of the effectiveness of Project Wickenby which have been provided by AUSTRAC. These looked at the analysis and flows of funds between secrecy havens and Australia. In aggregate, the outward funds flows to tax and secrecy havens have decreased in dollar value by 15.8 per cent in the 2010-11 year, compared to a baseline figure in 2007-08. So it is a very significant reduction in funds flows. For instance, outflows to Vanuatu and Jersey have been reduced by nearly 50 per cent—49.9 per cent—and 30.9 per cent respectively, with inflows from Jersey and the British Virgin Islands decreasing by 70.4 per cent and 55.4 per cent respectively. The point of raising that is that those figures and that independent analysis of funds flows show that the Project Wickenby activity has clearly changed behaviours of taxpayers in Australia.

Senator PARRY: Therefore, Mr Lawler, that raises the question: is it wise to be cutting the staff and are you satisfied that the staff cuts to that project, from the ACC perspective, will not in any way impede the progress of further recovery through Operation Wickenby or Project Wickenby?

Mr Lawler: In one sense, as I have said many times, there is no head of any law enforcement agency that would not like more money to do more things. But, that having been said, there have been very significant funds invested in Project Wickenby. It has delivered very considerable savings and benefits to the broader Australian community. I do not want to pre-empt the outcomes of the Auditor-General's work or the Ombudsman's review, but certainly from my perspective, based on the information that is provided to me, I believe it is a very successful project which will have longstanding benefits. My judgment is that the reductions were carefully considered. Notwithstanding my earlier comments, it is my view that, working with the Australian Taxation Office and other partners, we will be able to manage this going forward should high-priority matters in this sort of area be referred to us.

Senator PARRY: Thank you. I will go back again to the portfolio budget statements of 2011-12. Table 1.1 on page 89 has the total net resourcing for the ACC at \$133 million for 2011-12. It was \$141 million in 2010-11. Notwithstanding the discussion about staffing, how was the cut in funding going to affect the operation of the Australian Crime Commission?

Ms Bailey: Senator, could you repeat the page you are looking at.

Senator PARRY: Page 89 of the portfolio budget statements for 2011-12. The table there, table 1.1, indicates that the total net resourcing for the ACC is \$133 million for 2011-12, and in 2010-11 it was \$141 million. So there is a decrease, and the question is: how is the efficiency or the operation of the Australian Crime Commission going to be affected by that decrease?

Ms Bailey: That table includes retained funds to fund employee liabilities, plus a small surplus for our capital investment, plus our appropriation.

Senator PARRY: Can you give me a breakdown of the reserves.

Ms Bailey: I think the \$36.1 million is our prior year carry-forward, which is the money for our employee entitlements, which I think is in the order of \$30 million or just over, and we have a small surplus on top of that that we are using for capital investment—the other \$6 million. So the net position for the year is actually \$97 million available for revenue expenditure this year for the ACC.

Senator PARRY: So it is \$97 million for 2011-12.

Ms Bailey: Yes.

Senator PARRY: If you equate that then, removing those items you have just removed, what was it for 2010-11?

Ms Bailey: The difference is in the order of just under \$2 million—about \$1.7 million for this year, I think.

Senator PARRY: So it is a reduction of only \$1.7 million.

Ms Bailey: In that order—the Wickenby money. By the time all the efficiency is off and the indexation is on, it is in that order.

Senator PARRY: Mr Lawler, will that \$1.7 million have any impact on the operation of the Australian Crime Commission?

Mr Lawler: It is 1.6 per cent rather than \$1.6 million.

Senator PARRY: Do we have the dollar figure for the percentage? I could work it out but if you have it it will save me punching buttons.

Mr Lawler: I have the total revenue for 2010-11 at \$103.97 million and the total revenue for 2011-12 at \$97.718 million.

Senator PARRY: So there is a reduction of some \$6 million.

Mr Lawler: That is right. As Ms Bailey explained, that is a combination of ons and offs with efficiency dividends, indexation and a range of other matters, including other revenue, which picks up state and territory funding and some other section 31 revenues.

Senator PARRY: Just to be clear, my original question was about \$141 million versus \$133 million. It is about the same differential. So I have a grossed up figure; you have been operating on net figures.

Ms Bailey: Yes.

Senator PARRY: We have about a \$6 million shortfall from the previous financial year. How is the operation of the Australian Crime Commission going to be affected?

Mr Lawler: We are going to manage within the appropriation we have been provided. We are going to provide the best possible impact against the most serious threats of organised crime in this country for that amount of money. It is important for the committee to be aware that the Crime Commission is not the only agency that is tasked with fighting serious and organised crime. There is an array of agencies – the Federal Police, Customs and of course the state and territory police, most importantly, along with a range of other Commonwealth agencies including the Attorney-General's Department. So it is very much a collective effort. The commission, with its appropriation, will look to be as efficient as it possibly can and make sure that we are using the resources we have to the best possible effect. I am confident that we can do that in an effective way.

Senator PARRY: I would like to move to unexplained wealth. I am very sympathetic and would understand if these matters are operationally sensitive. So feel free to decline to answer these questions on that basis. Is the Australian Crime Commission involved in any unexplained wealth investigations since the laws were passed through this parliament in 2010.

Mr Lawler: Yes, we have been. We have a range of activities that are looking at the proceeds of crime and unexplained wealth, and of more recent times the Criminal Assets Confiscation Task Force has been established under the leadership of the Australian Federal Police. The Crime Commission has posted six staff to that task force, a task force specifically focusing on opportunities to deprive serious and organised crime of the benefits that they seek to recruit, namely, wealth. Those particular six posted officers will be looking to facilitate the use of the ACC's coercive powers as approved by the board in relation to this particular criminal activity.

Senator PARRY: Can I particularly target the unexplained wealth legislation provisions – the amendments that went through last year – as opposed to proceeds of crime, and ask two questions. Are there any direct investigations that the Australian Crime Commission is involved in involving that particular suite of legislation or amendments? Secondly, were the amendments robust enough to enable the wealth to be confiscated or removed from the targeted individuals?

Mr Lawler: The Australian Crime Commission has been investigating matters in relation to unexplained wealth. The provisions are less than optimal, and it is fair to say that the commission and, I understand, other partners are experiencing difficulties in giving practical effect to the provisions as they currently stand.

Senator PARRY: Is it the intention of the Australian Crime Commission to brief the Attorney-General to that effect?

Mr Lawler: There have been a range of discussions about the provisions. We have not briefed the Attorney-General—certainly I have not—specifically around those matters at this time.

Senator PARRY: Thank you, Mr Lawler. I will just move to some general questions and then hand over to my colleague Senator Trood, with the chair's permission. Has the Australian Crime Commission found evidence that there is a rise in organised crime syndicate activity—in particular at airports and ports throughout Australia? As you are aware, Mr Lawler, I am involved in a separate inquiry in relation to this matter, but I want to get some matters on the record here.

Ms Harfield: In relation to the work that we have been doing with the Parliamentary Joint Committee on Law Enforcement in responding to that inquiry, we do find that criminality exists on the ports, within both the airport and maritime port environments. In terms of an increase, we have previously had an intelligence collection determination which looked at the sectoral impacts of organised crime within those environments. That demonstrated that there were a small percentage of individuals present within the port environments that had links to organised crime. In the continued monitoring work that we do in the intelligence-gathering arena, we have not seen a significant increase in that, but obviously that small proportion does have a significant impact within that environment.

Senator PARRY: Thank you. In relation to that intelligence, is there any evidence that there has been an increase in the smuggling of illicit drugs and weapons through the aviation and maritime sectors?

Ms Harfield: In relation to drugs, the Australian Crime Commission does produce the *Illicit drug data report*, which is a historical year look back at seizures. There has been some increase in, certainly, the success of both Customs and the AFP in relation to seizures. Overall quantity has increased. It is very difficult to then draw a specific correlation between the volumes that are coming through. We have not seen an overall increase in seizures on the streets, so it may be that there is improved detection at the border arena but not necessarily less volume or more volume available on the streets.

Senator PARRY: Thank you. I want to refer to an article in the *Herald Sun* on 1 March this year. It was titled 'Illegal tobacco sales up 25 per cent, study finds'. It states that the trade of illegal tobacco has gone up by that amount since last year. Does the Australian Crime Commission have a position on that? Can it confirm or deny it or offer an alternative statistic in relation to those volumes?

Ms Harfield: We do not have a specific statistic in relation to those volumes. We are obviously aware, and in our unclassified organised crime assessment for 2011, which was published, we do mention illicit tobacco as a commodity used by organised crime in gaining illegal profits, mainly through the avoidance of tax. But, in terms of seeing an increase in that, we have not got a specific intelligence view on that. It does offer less risk to organised crime syndicates as an importation commodity, so it is an attractive commodity, but it still does not provide the sort of profit margin that they gain within the illegal drug commodity market. So we do not believe there has been a significant shift to that.

Senator PARRY: Does the Australian Crime Commission have any intelligence to suggest that the plain paper packaging of cigarettes may tend to see a rise in the illegal importation of tobacco products, in particular cigarettes?

Mr Lawler: Let me answer that question this way: firstly, the commission is working very closely with the Australian Taxation Office and the Australian Customs Service and Border Protection Command, who are very active in the enforcement in the enforcement of illicit tobacco. We do see organised crime in a much broader context, and my colleague Ms Harfield referred to the *Organised crime in Australia* unclassified report of 2011. I commend that report to the committee if they have not seen that. It talks about counterfeiting, and we see organised crime again motivated by money looking to exploit any opportunity where they can counterfeit articles, goods or other valuable items. We see it in areas of pharmaceuticals, which has a particular risk to the community for obvious reasons, automotive parts, motor

vehicle parts through to handbags and CDs. Indeed I would not be surprised to see it in the context of tobacco and cigarettes. Particularly, organised crime are able to, very precisely and very quickly, exploit changes in the regulatory or policy environment, and in the context of illicit tobacco we think there is a risk that they might do that.

Senator PARRY: Would it be fair to say that if there were plain packaged cigarettes it would make it easier to bring in cigarettes in an illicit manner because there is no brand identification?

Mr Lawler: I do not have sufficient expertise in that area to make a judgment.

Senator PARRY: Would it make detection harder, for example, or the evidentiary value of proving that a particular cigarette from a particular manufacturer was or was not present?

Mr Lawler: Again, it sounds logical, but one needs to think these things through before one makes a response to a question like that. The dynamics can be quite complex. We have not done specific work on an analysis or an assessment of plain paper packaging and its effect or how organised crime might respond to that, outside my comments about the profit motive, which is the principal driver.

Senator PARRY: Thank you. I ask that you take that question on notice and if you wish to add more to that answer after further consideration, please provide it back to the committee.

Mr Lawler: Certainly.

Senator TROOD: Mr Lawler, I assume you are familiar with the Commonwealth Ombudsman's report on monitoring controlled operations from November last year.

Mr Lawler: Yes, I am very, very familiar with that report.

Senator TROOD: I am delighted to hear that. I want to ask you a couple of questions about that. In that report the Ombudsman raised a few concerns about practices within the ACC. The first of those related to the nature of your quarterly reports and whether persons were properly described as law enforcement officers within those reports. My first question is this: why was it that these reports were not properly filled out?

Mr Lawler: Thank you for the question. I start by saying that the Australian Crime Commission and the Commonwealth Ombudsman work very closely together across a range of reports and statutory responsibilities the Ombudsman has not only in relation to controlled operations but telephone interception and surveillance devices. And you may have seen a report in the *Canberra Times* this morning that referenced the commission and the Commonwealth Ombudsman commenting about how the commission had a high culture of compliance in relation to such matters. That having been said, I think the controlled operations legislation is a complex piece of legislation, and the reason for that goes back to when the legislation was crafted. I believe it was put together and designed to assist law enforcement in controlled operations that were transactional in nature. The legislation never envisaged the sorts of operations or the length of time those operations would be conducted by the commission, or the complexity of those controlled operations. There has been detailed discussions with the former Commonwealth Ombudsman in relation to the length, which I raised with the Commonwealth Ombudsman at the time as a potential weakness in the legislation. There was a subsequent amendment to the legislation to increase the length of time to two years for controlled operations.

Of more recent times, I have been in close discussion with the Ombudsman in relation to that particular report and whether in actual fact the interpretation of the Ombudsman was accurate. There is a divergence of views around the perception that attaches to the way the commission undertakes controlled operations. We have sought legal advice from the Australian Government Solicitor on how the commission operates in these complex environments, and that information has been shared with the Commonwealth Ombudsman. It has found that the commission has acted lawfully in relation to the conduct of those operations and, indeed, certainly the intent of the commission has been to enhance compliance and in no way circumvent it. I think the Ombudsman makes reference to that in his report.

Finally, the commission has been found to be compliant in relation to these matters. That having been said, I acknowledge the Ombudsman's perception—a perception that could be in the broader public arena. And, on that basis, I instructed staff that they were to ensure, particularly in relation to one aspect of the report, that where they were lawfully able to do so—and they were not able to do so on all occasions and in all circumstances, which is a difficulty with the act—to present extensions of controlled operations to the AAT.

With respect to the specific references to the officers that you mentioned, I do not have the specifics here but I understand that the ACC on that report was assessed as being compliant. It was noted, as you say, around the naming of particular officers, and the ACC has moved to rectify that.

Senator TROOD: You have rectified it in relation to any outstanding matters and your practice has now been changed, is that right? So you are now in compliance?

Mr Lawler: My understanding is that it is a clarification. It is was about a law enforcement officer but it related to their particular status, their special member status. That matter, I understand, has been clarified.

Senator TROOD: To the satisfaction of the Ombudsman?

Mr Lawler: I understand so, yes, in relation to that particular matter.

Senator TROOD: Thank you, Mr Lawler. Your remarks just now referred to the matter in relation to controlled operations. I note the points you made about the difficulties of work with the legislation. However, the Ombudsman does make some references to this in his report, as you say, about the issuing of three-month certificates, and he expresses some concerns about the way in which operations are being continued without securing those certificates from the AAT, as I understand it. Is that the area where you and the Ombudsman have a difference of interpretation as to your obligations?

Mr Lawler: That is right. It becomes a very technical point here. In actual fact, where the controlled operation is going to change in a material particular after three months, it is not able to be extended; it has to go back before an authorised officer of the ACC for renewal.

Senator TROOD: That is right.

Mr Lawler: Because the nature of the operations often changes, that is often what the outcome is. Indeed, I personally have renewed controlled operations in that manner. The reason for that is to exercise greater oversight, not less oversight. It is important for the committee to understand that all controlled operations that are performed by the ACC are subject to external oversight by the Ombudsman, so every report is inspected by the

Commonwealth Ombudsman. Indeed, controlled operations are very frequently examined by the courts. So there is quite a deal of oversight. There has been a difference of view as to the legal interpretation of how the act should be given practical operational effect. As I say, the advice we have from the Australian Government Solicitor, whilst acknowledging the issue of perception, has confirmed, on my reading of it—again, it is a very complex piece of legal advice, which I have shared with the Ombudsman—that the ACC has acted lawfully in the way it has conducted controlled operations.

Senator TROOD: So you have now received that advice now, have you?

Mr Lawler: Yes, we have.

Senator TROOD: The Ombudsman, I think, was referring to the operations which were actually begun prior to the changes in the legislation, as I understand it. Because they were undertaken prior to the commencement of the changes to the legislation, the Ombudsman was understanding of your circumstances, but the legislation would seem to be reasonably straightforward as to your obligations to secure the external approval for continuing operations—or is that still a matter of controversy?

Mr Lawler: That is still a matter of controversy. Indeed, the Administrative Appeals Tribunal, in certain circumstances, is not permitted to renew controlled operations.

Senator TROOD: This would seem to be a rather unsatisfactory area. I think the last thing that would be appropriate would be for the Australian Crime Commission not to be in compliance with the law on these matters.

Mr Lawler: I think the simple fact is that the manner in which we have been operating, and indeed the advice we have from the Australian Government Solicitor, is that we are acting in accordance with the law, continue to do so and have always done so. The legislative amendments in February 2010 that you spoke about were important amendments, but they did not go to the complexity and the difficulties we are experiencing operationally that have subsequently emerged. In the report you refer to, the Ombudsman made no recommendation for change; it was, I understand, commentary in that report about his and his office's perception of how this might be viewed, a very different concept from whether one is acting lawfully and legally.

Senator TROOD: You are right about that. He did not make a recommendation, but he does make this observation:

While we note the ACC believes that the various internal controls it has instigated ensure a robust and justifiable approach to its use of controlled operations, in our view, it would be inappropriate for an agency to 'by pass' the new mechanism and seek to conduct controlled operations by the means of consecutive certificates.

I assume that is the passage you are referring to.

Mr Lawler: That is the point, and the point that the legal advice raises is that in some circumstances we are talking about a continuation of, or an application for, a new certificate, and an application for a new certificate goes back to the ACC authorising officer. For example, if the controlled operations are to be for a period of less than three months, let us say for two months, then when it concludes it has to go back to the ACC internal authorising officer, not to the AAT. If it is for three months and there is substantive change to the certificate it must go back to the ACC internal authorising officer. In one sense it is not

permitted under the legislation, where those substantive changes are made, for the AAT to be involved or to approve its ongoing operation.

Senator TROOD: These external oversight controls are an important part of the need that we give the commission to act in a way which it does, I think.

Mr Lawler: Senator, I totally agree. I am the greatest advocate of external oversight and welcome it. I spoke of the oversight just in controlled operations that the commission had in addition to the Administrative of Appeals Tribunal and raised comments by the Ombudsman just this morning reported in the press about the ACC's culture.

Senator TROOD: Mr Lawler, have you contemplated speaking to the Attorney about these matters, and the confusions that exist and the difficulties that they pose? I think the interest of the public would be better protected if we could clarify this and make sure there was not any doubt about the fact that the commission was in compliance.

Mr Lawler: It is certainly preferable to have clarity. When the parliament passed the legislation the sort of controlled operations we are talking about, but which I cannot talk about in an open forum for obvious reasons, were not contemplated. That having been said, I do believe, and my briefing is, that when you read the legislation there was some understanding by the parliament of the need for flexibility to ensure that the actual objectives of law enforcement were achieved balanced against the need for appropriate oversight. I think the reason for forcing it back to the authorising officer is that there are some changes to controlled operations that it would be unfair to ask an AAT officer to adjudicate on because there would be some matters where they would not have the background to do so. I think that may be a reason—I speculate—as to why the legislation was passed in the way it was.

But to your specific question: when we received the legal advice, which was only finalised just recently, I thought the first thing to do, in courtesy, was to write to the Ombudsman, share the legal advice with him and make sure that the ACC's position was very clear, bearing in mind our paramount position was to comply with the legislation, to be transparent and to have a culture of compliance. And once the Ombudsman had the opportunity, I indicated in that letter, I was going to bring together the Attorney-General's Department and its senior staff, the senior members of the ACC and the senior members of the Ombudsman office on the basis of the legal advice to see whether in actual fact there was any requirement for further legislative change or adjustments to processes or procedures. I thought that was a sensible way of moving forward.

Senator TROOD: Thank you.

Senator FURNER: I refer you to some recent media comments in respect to things like bikie gangs, fraud, money laundering and drugs. A few weeks ago the ACC released a report in relation to organised crime in Australia. I would like to touch on some of the things raised in that report. Firstly, how does the ACC fusion process work; how do we know we are getting the right information in that regard; and how do other agencies act on that?

Mr Lawler: Thank you for the question. Can I talk for a minute or two about the *Organised crime in Australia report 2011* and report to the committee that this is the most comprehensive unclassified report on serious and organised crime in Australia ever released by the commission. It has been declassified from the classified *Organised crime threat assessment* on which the Commonwealth Organised Crime Response Plan is based. It is the

view of the commission and the view of the board, who approved the release of the report to the public, that we have to balance the need for secrecy and the protection of the commission's operations against informing the public about the sorts of threats that organised crime poses to them particularly. So we were very pleased to release the report with the Minister for Justice and Minister for Home Affairs, Brendan O'Connor. Indeed, the feedback on the document has been quite extraordinary. The online hit rate from members of the public that we track shows a very strong interest in the report; indeed, we have had second publication runs of the document in hard copy. So thank you for the opportunity to talk about that. I am sure you would have found within it areas where organised crime is at work of which you may not previously have been aware, and that was exactly the intent.

As far as the National Criminal Intelligence Fusion Capability is concerned, the Attorney-General and the Minister for Home Affairs officially launched that centre on 13 July 2010. It was to enhance the capabilities of the Financial Intelligence Assessment Team and it allowed for 17 additional full-time positions comprising a variety of specialties—financial investigators, operational psychologists, data-mining technicians, statisticians and experts in database management and architecture.

The whole purpose of the Fusion capability is to establish the unknown. Law enforcement at a state level and our Commonwealth partners have a good understanding of the threats as we know them. However, what the commission was attempting to do through the Fusion capability—supported by the government by \$14.9 million over four years—was develop sophisticated techniques to determine threats that were not known about. The way that was done was twofold. The first is by matching data and datasets and trying to gather intelligence into one location where it could be effectively analysed; and the second is by following the money—trying to track the criminals' footsteps in the movements of the money. There are partnership arrangements with a range of agencies, very significant partner agencies—11 in all within the Fusion capability. A key partner is the Australian Transaction Reports and Analysis Centre, which is where the financial intelligence comes from.

In the first nine months of operation, we have been able to very successfully provide 44 new targets that were previously unknown to law enforcement. Again, I think that is a very positive outcome. I suspect that, as we go forward, the Fusion capability—and it is still in its infancy—will come into its own. Another important aspect of the Fusion capability is its ability to identify fraud against government programs, often very significant fraud, through, again, using the intelligence holdings of the commission and where lawfully appropriate the intelligence holdings of other agencies to identify areas where, for example, people may be claiming benefits where they are not entitled to and where in fact we can show vast amounts of money that they have which would preclude them from being eligible for such benefits and payments. Indeed, I am sure the majority of Australians would applaud such activity.

Senator FURNER: Absolutely. You mention the 17 positions that have been established. Have all those positions been filled at this point in time?

Mr Lawler: Yes, they have. I am advised that of 31 March this year all of those positions have been filled.

Senator FURNER: Turning to Mexican cartels, does the ACC have any interest in that area, and if so what is it doing about it?

Mr Lawler: The ACC has an absolute interest in Mexican cartels, and indeed in all organised criminality. The *Illicit drug data report 2009* identified a trend where embarkation of cocaine for Australia had moved to Mexico, being the prominent location from which cocaine was being imported into this country. There have been some other very significant seizures by our partner agencies, particularly the AFP and the Customs Service. There was a very large seizure of cocaine, over 400 kilograms, in Moreton Bay going back earlier in the year. We read the press, we see the violence and brutality of Mexican cartels operating in Mexico. I think the latest death count since 2006 is that 55,000 people have been killed by the cartels. The Crime Commission and its partner agencies are working with our international partners and are very focused on the threat from Mexican cartels. It has been reported that some of these cartels are the size of Fortune 200 company, so these are big global enterprises that we are fighting to ensure they do not damage the Australian community.

I need to advise the committee that the commission and its board have proactively been focused on this for over a year. The board at its June 2010 meeting authorised a special intelligence operation in relation to cocaine. Since that time the commission under the authority of the board has examined a large number of people in relation to cocaine and organised crime relating to that. I made the point about embarkation and Mexico previously.

Finally, I will touch on some facts that are quite compelling in the context of Mexican organised crime, and their principal commodity cocaine, albeit they are involved in the full gamut of organised criminal activity. To give you an understanding of the financial drivers behind why cocaine is imported into Australia by these cartels, a kilogram of cocaine in US dollars in Colombia is worth in the order of \$US2,300. If it makes its way to Mexico it is worth \$US12,500. If it makes its way to the US it is worth about \$US26,500. But if it reaches the shores of Australia, in wholesale terms it is worth nearly \$US150,000. That is a 6,100 per cent increase, and there is not any business alive that would not want a rate of return like that. So that is driver. And part of it, and I have said this publicly elsewhere, is that there also needs to be work done—and there is work being done—around the demand side. The people using cocaine are having the effect that we have spoken of here.

Senator FURNER: That is why Australia is being targeted—it is as a result of those prices you indicated of \$US150,000 for a kilogram of cocaine.

Mr Lawler: That is obviously one of the drivers but the cartels and organised crime are sophisticated and do their risk analysis as well. They work out the risks of the cocaine being seized and the risk of getting the money back out of Australia. We have sophisticated law enforcement and sophisticated intelligence and judicial processes that present a great risk to them. So we are a hardened environment for drug trafficking but we have a lot more work to do.

Senator FURNER: Turning to the criminal activities of bkie gangs, there appears to be some competing views on how we handle these as organised crime. What is the ACC's view on this particular area in respect of the competing views of the different states on dealing with the laws on handling them?

Mr Lawler: My view and the view of the commission has been that whatever effective legislation can be enacted to reduce the threat of outlawed motorcycle gangs is to be commended. I do not have a view on specific legislation. I am not sufficiently skilled to be able to assess that; there are others much better placed to do that. But I need to say to the

committee that the outlaw motorcycle gangs do pose a very serious threat to Australia. They are involved in a broad range of criminal activity. They are damaging the Australian community. There is strong collaboration between law enforcement at the state and federal levels, between the commission and all of those partners. We have heard about unexplained wealth. That is one such tool to reduce the threat posed by these groups, not only outlaw motorcycle gangs but the broad range of transnational organised crime groups operating in Australia.

Senator FURNER: Thank you.

Senator PARRY: I would like to revisit the annual report. I did not ask about this. Mr Lawler, the ACC board, whose strength I think is in having the representation it does, had the recent addition of the Australian Commissioner of Taxation as a board member. That is certainly a plus. Do you see a gap? Do you see the need for any additional senior officer of any public service arm that should be added to the board or do you think it is complete as it is?

Mr Lawler: We have a 15-strong member board. As you say, the addition of Michael D'Ascenzo, the Australian Commissioner of Taxation, through amendments to legislation is very welcome. They have a very important role to play in fighting serious and organised crime. Some commentary has been that it is a very large board, but my sense is that it is a vehicle that allows for agency heads across our federation who have an interest in serious and organised crime to be brought together. My sense is that that is calibrated right, but I would not rule out doing that into the future, depending on how organised crime develops. But I think the board brings a diversity of views and a strength in the fact that we have the heads of agencies from around the country. It is a very powerful board. It brings a lot of intellectual capital to the problem in a strategic context. And I think that some of the things the board have done have been terrific.

Senator PARRY: I assume that all of the public service heads are Canberra-based, which leaves the seven jurisdictional police force commissioners being outside of Canberra. I particularly want to commend Victoria, South Australia, Tasmania and the Northern Territory police commissioners for achieving 100 per cent attendance at their board meeting – according to the table in the annual report. That board, as you indicated, certainly does bring a wealth of experience to the table. Thank you.

CHAIR: There are no other questions for the ACC. Thank you, Mr Lawler and your colleagues, for your time this afternoon. I now ask officers from the office of the DPP to come forward.

Office of the Director of Public Prosecutions

[15:00]

CHAIR: Good afternoon and welcome. Do you have an opening statement?

Mr Craigie: No, thank you.

CHAIR: All right. We will move to questions.

Senator BRANDIS: Mr Craigie, do you have your latest annual report handy?

Mr Craigie: We have it here at the table.

Senator BRANDIS: In the most recent annual report, that is the 2009-10 annual report, you set out in chapter 2 your nine areas of practice: fraud, serious drugs, commercial prosecutions, counterterrorism, money laundering, people-trafficking, slavery and sexual servitude, people smuggling, child exploitation, and environment safety and general prosecutions. I am particularly interested in practice area No. 7, which is discussed at chapter 2.7, from page 60 and following, that is, people smuggling. This is, as your annual report characterises it, a key practice area for the Commonwealth DPP.

Mr Craigie: It certainly is.

Senator BRANDIS: The report says:

IN 2009-2010 THERE WAS AN INCREASE FROM THE PREVIOUS YEAR IN THE NUMBER OF MARITIME PEOPLE SMUGGLING MATTERS REFERRED TO THE CDPP. AS AT 30 JUNE 2010 THERE WERE 102 PEOPLE SMUGGLING PROSECUTIONS INVOLVING ORGANISERS, CAPTAIN AND CREW BEFORE THE COURTS.

Then you have what are called cameos of some of those cases. Let me ask you a preliminary question: when you use the phrase 'before the courts' may we take it that you mean that a prosecution has been instituted?

Mr Craigie: Technically it means that someone has appeared in a court, from the Magistrates Court up, or is still before the court somewhere within our system, from Magistrates through to the High Court.

Senator BRANDIS: And that includes people whose matters have been disposed of at first instance by a conviction and have appealed against the conviction?

Mr Craigie: Yes.

Senator BRANDIS: So it is all first instance and appellant matters?

Mr Craigie: Yes.

Senator BRANDIS: It obviously includes only matters prosecuted by the Commonwealth DPP; there are state or territory offences committed by people smugglers as well, which may be prosecuted by the state DPPs or the equivalent agency.

Mr Craigie: That circumstance can arise, yes.

Senator BRANDIS: For completeness I should say that the letter of transmittal for this report is 20 October 2010. At the date of the report, that figure does not include those cases that were under investigation or under consideration by you but where a prosecution had not been commenced?

Mr Craigie: No.

Senator BRANDIS: Are you able to give us an estimate comparing like for like as at 30 June 2010, that is, how many people-smuggling cases were on the hands of the DPP at the investigation stage only?

Mr Craigie: What you are asking me is how many briefs at that stage, as I understand it, we had awaiting assessment with a view to prosecute?

Senator BRANDIS: Yes, that is a better way of putting it.

Mr Craigie: Of all the figures I have here, that is not one that I have readily at hand. I can tell you how many we have before the courts as of yesterday.

Senator BRANDIS: I am going to take you through it in what I hope is a reasonably methodical way.

Mr Craigie: If we are capable of generating that figure, we will. You will understand our focus is on what we have assessed and what we have put before the court rather than what we might be working on.

Senator BRANDIS: I understand that, but I want to get a holistic picture of all your work in relation to people smuggling.

Mr Craigie: That might be a gap that we have to fill at a later stage, but I will certainly endeavour to do so.

Senator BRANDIS: If you have to take it on notice at the end of this evidence, please do, but if there happens to be a helper of yours watching this on the broadcast could I, through you, ask if those figures can be assembled swiftly and got to you.

Mr Craigie: I am surrounded by talent, some of it bordering on omniscience, but that might be pressing them.

Senator BRANDIS: What is the number of people smuggling cases before the courts at the moment?

Mr Craigie: Just under 300 as of yesterday.

Senator BRANDIS: Yesterday was 24 May, so in less than 11 months it has gone from 102 to just under 300. That is a reasonably rapid escalation.

Mr Craigie: The precise figure as of 18 May was 288.

Senator BRANDIS: So from 30 June 2010 to 18 May 2011 the number of people smuggling prosecutions brought by you before the courts escalated from 102 to 288. It has not quite trebled but assuming a trend and given that this was a period of 10 1/2 months that we have under review one could say loosely it has trebled in the current financial year.

Mr Craigie: Yes.

Senator BRANDIS: I take you to the financial statements, particularly page 210 of the annual report. This is 'note 4 Suppliers'. See under the subitem 'Goods and services' there is a item 'Prosecution Legal Costs'. Are those the fees paid to counsel?

Mr Craigie: That would be external.

Senator BRANDIS: That amount actually fell between 2008-09 and 2009-10 by about half-a-million dollars. May I take it that most prosecutions are conducted by salaried officers of your office?

Mr Craigie: As far as we can. Once they reach a certain state of complexity—

Senator BRANDIS: They are briefed to private counsel.

Mr Craigie: They are briefed out, yes.

Senator BRANDIS: What I am trying to locate, please—and if other officers at the table can help me they should feel free to jump in—is whether there is, in the financial statements of your office, any aggregation of the actual costs in terms of outlays or the imputed or allocated costs within your agency of all of the resources devoted to the prosecution of people smugglers?

Mr Craigie: Senator, would you pardon me?

Senator BRANDIS: Take your time, Mr Craigie.

Mr Craigie: The answer is: because we have not habitually costed out anything, we have not, as a matter of course, recorded or, in fact, developed that sort of data. If so required, we could.

Senator BRANDIS: I am not asking you to. I know that there is a lot of pressure on your resources and I do not want to waste your time or divert your officers from more urgent work, so do not take that on notice. If there is not some economic cost-allocation exercise being performed, well, there has not been. In any event, if, since the beginning of the current financial year, the number of cases before the courts has trebled, then presumably the demand on your resources has escalated correspondingly.

Mr Craigie: Indeed. I do not want to interrupt you but one thing I should have added when I answered your question in relation to what we loosely call 'legals', which is outside briefing, is that I probably should have qualified that with the words 'so far'. Obviously an option, as the burden of the practice grows, is to turn as much as humanly possible—and if it turns out to be efficient—to internal advocates, if that works out to be a practical way of doing it, in certain places.

Senator BRANDIS: And I assume at the lower level of the proceedings, like committal proceedings, it would be more customary to have an in-house counsel do the prosecution. But in responding to an appeal in the High Court, for example, you would brief that to an experienced constitutional or High Court silk.

Mr Craigie: Yes, and bearing in mind that some committal proceedings and some kinds of cases—and people smuggling can be one of them—may throw up some inherent complexities.

Senator BRANDIS: Indeed, and I was only generalising; I understand that perfectly. In the not quite 12 months during which the number of people-smuggling cases before the courts has trebled, what have been the changes in the number of your staff allocated to deal with such cases?

Mr Craigie: I was rather hoping the end of that question was 'numbers of staff generally', but I can—

Senator BRANDIS: If it makes it easier for you, Mr Craigie, I wanted to know both, so why don't we take that second question first?

Mr Craigie: While I am answering this we will turn up those figures as relating to the developing practice, because it is a developing practice.

Senator BRANDIS: If it assists, can I take you to page 408 of the portfolio budget statement, table 2.1, last line?

Mr Craigie: Yes.

Senator BRANDIS: Average staffing level number—that is not a dollar figure, that is a number of people figure—has gone from 539 to 513, although for completeness I should say that that is in relation to outcome 1.

Mr Craigie: Yes.

Senator BRANDIS: But outcome 1 is the prosecution outcome, isn't it?

Mr Craigie: Yes.

Senator BRANDIS: So that is the relevant outcome?

Mr Craigie: I can tell you that on our most recent figure the actual number of people that we have under our roof is 529. Of course, those are average figures that you are looking at.

Senator BRANDIS: Sure; the actual number of the average staffing level for the prosecution function of your office, which would include—would it not?—all of the in-house or salaried officers involved in prosecution, but which would not include those external counsel or practitioners instructed by you?

Mr Craigie: Those figures actually represent everyone under our roof.

Senator BRANDIS: Everyone under your roof?

Mr Craigie: Including the small, hard-working group of—

Senator BRANDIS: Including the tea lady?

Mr Craigie: Yes.

Senator BRANDIS: So it has gone from 539 in 2010-11 to an estimate of 513 in 2011-12, although you are telling us that, in fact, it would be more accurate to say that it has gone to 529, not 513?

Mr Craigie: Those are average figures that float up and down during the course of a year.

Senator BRANDIS: I see. So what figure would you prefer us to take: 513 or 529?

Mr Craigie: As it is the one in the budget papers, I am quite content to operate with the average figure.

Senator BRANDIS: All right, that is the 513?

Mr Craigie: Yes.

Senator BRANDIS: So the total number of staff that you have, from the most junior nonprofessional staff to the most senior professional staff, between 2010-11 and, estimated, 2011-12 in fact shrank by 26, from 539 to 513 at a time when the number of people-smuggling cases you had to deal with before the courts trebled from 122 to more than 288?

Mr Craigie: That is right.

Senator BRANDIS: And, of course, although I am concentrating only on people smuggling, outcome 1 deals with all of your prosecution functions—that is, all nine of the prosecution functions that you have adumbrated in your annual report?

Mr Craigie: Yes.

Senator BRANDIS: So may we take it that, those numbers being hard numbers—albeit averages, but nevertheless hard numbers—if the number of people-smuggling prosecutions has trebled, and the number of staff has fallen then either fewer staff per prosecution are being allocated or some staff are being removed from other work like, for example, drug trafficking or child sex tourism, in order to deal with the trebling of the people-smuggling prosecutions, or, it is a mixture of the two?

Mr Craigie: You may take it that we are still undertaking all the work that comes through the door.

Senator BRANDIS: I understand.

Mr Craigie: So far. It is a mixture of people working harder and allocating some quite senior people into teams to deal with people-smuggling practice. So far that is how all the balls are being kept in the air, if I could put it that way.

Senator BRANDIS: I think I do understand that, but nevertheless would you agree with me in general that since the number of people smuggling-cases in one year has trebled—that is, the cases before the courts, and not even considering the number of cases under assessment by your office—then there are fewer people available to do more work?

Mr Craigie: Yes.

Senator BRANDIS: That seems a good point at which to direct your attention to this memo. I have spare copies. You recognise that document of course, Mr Craigie.

Mr Craigie: Yes, I think the prose is unmistakable.

Senator BRANDIS: Well, the name is unmistakable—Mr Chris Craigie SC; that is you, isn't it?

Mr Craigie: Indeed.

CHAIR: Is this an email or a letter?

Senator BRANDIS: I will identify the document, Madam Chairman, have no doubt about that.

CHAIR: Thank you.

Senator BRANDIS: Mr Craigie, this is, as its title suggests, a message you sent on the topic described as 'Important developments for our legal practice in light of Government budget decisions'.

CHAIR: Senator Brandis, is this for tabling?

Senator BRANDIS: I was going to table it. Do you want me to table it now?

CHAIR: If you are going to refer to it, I think you need to table it.

Senator BRANDIS: I am certainly going to refer to it. I will table it now. That is what, as the title suggests, it is about.

Mr Craigie: Yes, that is what it is. I do not mind if you tease it out of me, but I can tell you in what form it appeared and at what time.

Senator BRANDIS: You know the drill obviously.

Mr Craigie: Yes.

Senator BRANDIS: Can you just identify the document for us and also the addressees of the document?

Mr Craigie: The document was forwarded to staff on the morning after the budget was released by two means—an email was sent to every staff member and it was put on our internal with portal for more permanence—with a strong suggestion that people should in either of those forms read it and assimilate it.

Senator BRANDIS: I think you agreed that you were the author of the document.

Mr Craigie: Yes.

Senator BRANDIS: I assume this was, from what you have told us, meant to be an internal document, not a public document.

Mr Craigie: It was.

Senator BRANDIS: That having been said, given the extensiveness of its circulation within your office, it would not be extremely surprising to you that it has come into the hands of people outside the office and into the public domain.

Mr Craigie: It has gone to 500-odd people in eight places.

Senator BRANDIS: There is nothing in this document that you would ask me not to go to for reasons of national security or anything like that?

Mr Craigie: The sources are all either matters of public record or matters of procedure that are freely available and open to anyone who does the research. I think the content of the yellow book would be another source—

Senator BRANDIS: Do you mean what I call the portfolio budget statement?

Mr Craigie: I am sorry. I should not use that terminology.

Senator BRANDIS: You can use your own in-house term; that is fine by me. Let us go through it then. In the first paragraph you talk in general about the stringencies of budget decisions. In fact, you use the phrase 'stringent budgetary decisions'. In the second paragraph you speak especially about the efficiency dividend, although I think it is fair to say that the reference to budgetary decisions is not limited to the efficiency dividend.

Mr Craigie: Indeed.

Senator BRANDIS: I now want to take you to the third paragraph. I will read it into the record. You say:

A specific aspect of the budget, directly impacting on this Office—

that is, the Office of the Commonwealth Director of Public Prosecutions—

is that the Government has also ceased specific additional funding to the CDPP for people smuggling prosecutions as from 1 July 2011. As a consequence of this latter Government decision, at this stage, the Office will be obliged to absorb the cost of undertaking people smuggling prosecutions. As you would be aware several Government initiatives have been very recently announced in relation to people smuggling. It is difficult to make projections at this stage as to ongoing numbers, however there are a very significant number of cases already with this office.

I want to tease you out with a little bit of particularity about what is in that paragraph, Mr Craigie, but before I do, if I could put it in layman's language.

Mr Craigie: Sorry to interrupt you Senator: I think you did insert, I am sure, innocently—

Senator BRANDIS: Did I?

Mr Craigie: the words 'at this stage', which I do not think actually appear in the document.

Senator BRANDIS: I am sorry.

Mr Craigie: I take no particular offence.

Senator BRANDIS: It was inadvertent, and thank you for correcting me.

Mr Craigie: I am sorry: I withdraw that.

Senator BRANDIS: So the mistake was yours, not mine. It always warms my heart when I discover the mistake is that of the witness, Mr Craigie.

Mr Craigie: It is better to take the point and be wrong, I think, then not take it at all.

Senator BRANDIS: Before we go into the detail, does it as general proposition amount to this: in the very year when the number of people-smuggling prosecutions has trebled, the resources made available to your office through the budget has been reduced?

Mr Craigie: Yes.

Senator BRANDIS: Are you—by reference to your word, the yellow book—able to locate in the portfolio budget statement for the Commonwealth DPP, which begins at page 405, the specific budgetary measure to which you refer in the sentence at paragraph 3, or is that information not apparent on the face of the PBS?

Mr Craigie: I think it is fair to say it is not explicit.

Senator BRANDIS: Where is it buried? To what line item or items would I have to disaggregate in order to reveal this cut to your people-smuggling prosecution budget?

Mr Craigie: The closest one gets to a direct reference to it is about midway through 3.22 on page 411, which talks about the completion of the two-year budget measure for people smuggling.

Senator BRANDIS: I see: that is the second dot point on page 411. So this is a particular reduction of a part of your genuine operating revenue by the withdrawal of that measure announced in the 2009 budget?

Mr Craigie: By that specific measure coming to an end and not being—

Senator BRANDIS: So it was a terminating program in the 2009 budget which was not renewed?

Mr Craigie: Yes.

Senator BRANDIS: By the way, are you able to tell us, please Mr Craigie: at the time of the 2009 budget, how many people-smuggling cases did you have before the court?

Mr Craigie: We can probably give you that figure—we would have to take that on notice.

Senator BRANDIS: Given that on 30 June 2010, it was 102—

Mr Craigie: I think that gives you a strong indication.

Senator BRANDIS: Since the sharp upward spike in the number of people-smuggling episodes was first apparent in the statistics—we saw this from, among many other things, the immigration estimates in the last couple of days—and first began to register in 2009, may we take it that whatever the figure was at the time of the 2009 budget, it would have been somewhat less than the figure that you give in your annual report as of 30 June 2010?

Mr Craigie: It would have.

Senator BRANDIS: So it was fewer than 102.

Mr Craigie: I suspect that is right.

Senator BRANDIS: I really want to pursue this quite closely so I wonder if the helper or helpers who might be listening could get that figure out for me before you finish your evidence.

Mr Craigie: If it is possible.

Senator BRANDIS: In any event, in 2009 the government saw fit to give you an extra allocation to deal with what was then thought to be an increase in the burdens on your office of dealing with an increased number of people-smuggling cases. In the two years since, the number of people-smuggling cases has more than trebled and that additional money has been withdrawn in the 2011 budget. Is that right?

Mr Craigie: Not continued, Senator.

Senator BRANDIS: Discontinued in the 2011 budget; all right. Coming back to your memorandum, in the fourth paragraph you say:

Given the scale of the reductions to the CDPP, the required reduction in our operations will be more significant than the steps I took in 2009 to address resource constraints imposed on the Office at the time.

May we take it that that is a reference to a reduction in functions that you imposed in 2009?

Mr Craigie: It was not so much a reduction in core functions or statutory functions; it was a drawing back from a number of additional services that we provided to referring agencies. One specific measure, in addition to that, was that we withdrew from the processing of incoming extradition mutual assistance requests, which went to the department, effectively.

Senator BRANDIS: So in 2009 the economies you effected at that time did not involve discontinuing any aspect of your prosecution function?

Mr Craigie: No.

Senator BRANDIS: But, just reading on, under the subheading 'Direction by the Attorney' you say:

I now come to the major mechanism by which the Office will address the challenge of reduced resources. Until now, the CDPP has prosecuted all matters referred to it where the test in the Prosecution Policy of the Commonwealth is satisfied, that is, there is a prima facie case with reasonable prospects of conviction and the prosecution is in the public interest. However, as a result of budget related Government decisions there will be significantly reduced resources to the CDPP in the coming financial year. This necessarily means that the CDPP will not be resourced next year to carry out the range of work and number of prosecutions that it currently conducts.

Just pausing there, that means, doesn't it, that for the first time the CDPP will not be able to commence prosecutions of all the cases which it considers ought to be, under the prosecution policy of the Commonwealth, prosecuted?

Mr Craigie: It means that we would be faced with a dilemma of not having the resources to continue that which we had no good reason not to continue. Hence—

Senator BRANDIS: And the 'that' we are talking about is prosecutions?

Mr Craigie: Yes. Hence, if that position continued—and I have to say it is still the subject of discussion—one would come to the section 8 mechanism as, in my view, the only alternative resolution.

Senator BRANDIS: This is section 8 of the DPP Act?

Mr Craigie: Indeed.

Senator BRANDIS: But section 8 of the DPP Act, which is 'Directions and guidelines by Attorney-General', does not get you any more money or any more resources, does it?

Mr Craigie: It does not, no.

Senator BRANDIS: The public is faced with this rather alarming prospect that, as a result of decisions by the government made in the course of the budget, there will be cases which would otherwise be prosecuted, because your officers were of the view properly applying the guidelines in the prosecution policy of the Commonwealth that they should be prosecuted, which will not be prosecuted.

Mr Craigie: I will not comment on whether the public would be alarmed or not but plainly—

Senator BRANDIS: That is what is going to happen.

Mr Craigie: There is a dilemma in the tension between priorities of government and priorities of budget and reconciling those priorities with such other priorities in relation to prosecutions that the government may wish to determine.

Senator BRANDIS: I understand why you want to express yourself carefully as is perfectly appropriate but, if things remain as they are, in other words the request that you have made of the Attorney-General to which I will come in detail in a moment is not positively responded to, you cannot reassure the Senate that you will have the resources to prosecute all the cases which you would otherwise have prosecuted, in other words cases that meet the Commonwealth prosecution guidelines.

Mr Craigie: That is a mathematical reality, yes.

Senator BRANDIS: Okay. Has this ever happened before that the Commonwealth government has not seen fit to allocate enough resources to the Commonwealth DPP to enable you or your office to prosecute all the cases that you consider ought, applying the guidelines, to be prosecuted?

Mr Craigie: It may have happened before, it doubtless has, that our resources have reduced but that consequence, were we to come to that consequence and I do not think it is concluded that we will, has not been encountered.

Senator BRANDIS: That consequence has not been encountered. Your reluctance to conclude that that consequence will eventuate—that is, your inability for want of resources to prosecute all the cases that you think should be prosecuted—depends entirely on the Attorney-General responding positively to the request that you refer to in this memorandum.

Mr Craigie: It would depend upon that failing a satisfactory resolution of discussions that, as you would expect, we are having with the department and we optimistically are pursuing with vigour.

Mr Wilkins: There has in fact been a positive response from the Attorney and Mr Craigie may be a little reticent about talking about it. It goes to the fact that there are ongoing discussions and an undertaking to look at a sustainable formula of funding for the DPP—

Senator BRANDIS: With due respect, Mr Wilkins, an undertaking by a politician to look at something is perhaps not the most ironclad guarantee in the history of the—

Mr Wilkins: and in the meantime to maintain funding to the DPP so that it does not affect the capacity of the DPP to carry out the prosecutions currently under the prosecutions policy. It is premature to conclude that the DPP will be unable to fulfil existing functions on a sustainable basis going forward. That was the only point I wanted to make.

Senator BRANDIS: I understand your point but with all due respect—and I know you are somebody who is fascinated by logic—that amounts to saying that it is premature to conclude that the DPP will not have enough money because the DPP has asked the government to change its position to give it more money and it has not received a flat 'No', it has received a 'We will look at it.'

Mr Wilkins: All I am saying, Senator, is you are basing this argument on the numbers that are provided in that column.

Senator BRANDIS: No, I am not. I asked questions about the numbers in order to give context to what was to come. I am actually basing the questions on the opinions expressed by Mr Craigie in this document.

Mr Wilkins: Yes, but Mr Craigie's opinions are based on numbers which are now not set in concrete and which are under discussion.

Senator BRANDIS: I understand it is all under discussion, Mr Wilkins, but that is as well as you can do.

Proceedings suspended from 15:40 to 15:59

CHAIR: Senator Brandis, we will continue with our examination of the estimates.

Mr Craigie: Senator, I do have an answer to your question as to the number of people-smuggling matters before the courts on 30 June 2009: there were 32.

Senator BRANDIS: So I was being very conservative when I put to you that we could surmise that it would be fewer than 102. In fact, it was less than a third of that number. On 30 June 2009, the number of people-smuggling cases before the courts was 32; on 30 June 2010, the number of people-smuggling cases before the courts was 102, a threefold increase in one year; and on 18 May 2011, the number of people-smuggling cases before the courts is 288. You have agreed with me that, extrapolating the trend, that means it likely that on 30 June 2011 the number of people-smuggling cases before the courts will be in excess of 300. In other words, in each of the last two years, the number of people-smuggling cases before the courts has trebled and over the two years the number of people-smuggling cases before the courts has gone from 32 to more than 300—a tenfold increase—at a time at which the resources made available to the Commonwealth DPP to prosecute all categories of cases, not just people-smuggling cases, has been reduced.

Mr Craigie: There has been a general reduction over time, as you will see from the budget papers, but until now there has been no question that we have not been resourced for the people smuggling. That arises as of 30 June, absent the kinds of solutions that the department insists, and I accept, are being pursued as being alternatives either to a fairly unusual mechanism of a direction or of us running out of the resources to prosecute other matters.

Senator BRANDIS: Those are the choices, are they not? One is to go cap in hand to the Attorney-General, who is not one of the economic ministers in the government, seeking a direction under section 8 of the Director of Public Prosecutions Act. Which subsection are you going under, by the way? Do you have a copy of your act there? I have looked at section 8 of the DPP Act in another context, which I will come to in an unrelated matter shortly. Section 8 of the Director of Public Prosecutions Act was never intended to be a provision for the allocation of additional financial resources. Section 8 of the DPP Act is about

circumstances in which the Attorney-General directs the conduct or a step to be taken in relation to the conduct of a prosecution.

Mr Craigie: I do not know, if you look at the history of the directions that have been given to date, and there have been only four, that that history would indicate that the direction power as intended by parliament was in fact so limited either in theory or in the practice reflected in those four directions. They have been fairly wide ranging in their subject area. One that I do recall was a direction for emphasis to be given to a specific area of practice, which was child-sex tourism.

Senator BRANDIS: Section 8 is a rather expanded provision, providing ultimately for the Attorney-General to control the prosecutorial function of the Commonwealth if, for some reason, he is of the view that a particular decision—either a policy decision or a decision in an individual case by the DPP or his office—ought to be altered by political intervention. It is nothing to do with allocating more money, but is in order to plug a hole in the budget.

Mr Craigie: I do not know that I would adopt your historical version—

Senator BRANDIS: You do not have to if you do not want to.

Mr Craigie: of the use of the section or its purpose. It would appear, historically, that its use can be quite broad ranging. It has covered such things as directing the office in relation to a priority, in one case—

Senator BRANDIS: I understand.

Mr Craigie: of areas to be prosecuted and relationships in relation to another agency. The ASIC predecessor was another direction, and there is the relationship with parliamentary committees, including this one. There is a fourth direction, which momentarily slips my mind.

Senator BRANDIS: But that was not about the appropriation of extra monies, was it?

Mr Craigie: I am not going to argue about what the pith and substance of some theoretical direction that might or might not be necessary could be.

Senator BRANDIS: Be that as it may, time is limited; I do not mean to cut you off, but I also do not want to spend too much of the available time having an arcane argument about what section 8 of the DPP Act means. Let me just put it to you that it is an extraordinary and unusual thing for a person in your office to be placed in a position of having to seek a direction from the Attorney-General under section 8 of the Director of Public Prosecutions Act to plug a hole in your budget. As you say yourself in your memorandum of 11 May to your staff, 'As a result of the budget, if nothing changes, we will not be able to prosecute all the cases that we otherwise would prosecute under the Commonwealth prosecution guidelines'. That is a paraphrase, but that is what you said.

Mr Craigie: It certainly would be unusual, if nothing changes.

Senator BRANDIS: If nothing changes.

Mr Craigie: I am proceeding on the basis that the first law officer and his department would not wish either for us not to have the resources to prosecute across the whole range of referrals from 30-odd agencies, or to have us placed in the position of making decisions that are not within my province.

Senator BRANDIS: I am absolutely with you, Mr Craigie. I am sure that the Attorney-General, as the first law officer, would not wish to be in that position. Nor would you. Nor

would I, as the opposition spokesman wish the Australian government, through its agencies, to be in a position that it could not prosecute all of the criminals, or the alleged criminals, whom it considered ought to be prosecuted. But that is the position that the government has put the first law officer, and you, and the public in by presenting a budget in the House of Representatives, which we are now reviewing in Senate estimates, which does not give you all of the financial resources you need to do that very thing.

You can draw our attention to the problem in Senate estimates; it is very appropriate that you do. The Senate, considering the budget estimates for this portfolio, will, I am sure, be very concerned. Certainly, the opposition is concerned that the budget does not give you all the resources you need, when there has been a tenfold increase in the number of people smuggling-cases before the courts in two years at the same time as a reduction in the number of your staff to handle them, and a reduction in the financial resources available to you to conduct those prosecutions. But, as you say, if nothing changes then that is the reality you will face.

Mr Craigie: There are a number of comments, with respect, and you will forgive me if I perhaps—

Senator BRANDIS: I am trying to paraphrase the position.

Mr Craigie: verge on commentary myself. I appear here as an independent DPP. I have absolutely no anxiety whatsoever to move into a position of political controversy between the government and the opposition.

Senator BRANDIS: No, I can understand that.

Mr Craigie: I see that the government faces difficult competing pressures. I point out the difficulties of those pressures not being met effectively, and I have suggested a number of options. The department has responded, indicating that we can work our way through without any of the extreme outcomes needing to be turned to. It would seem sensible from my point of view that I allow that process to play out and that I rely not on going cap in hand, as you put it, to the first law officer but on an appropriate relationship, which, I have to say, I have enjoyed with every Attorney with whom I have had anything to do in this office and a previous statutory office that I held.

Senator BRANDIS: It is not Mr McClelland's fault that he does not have enough weight in cabinet or does not sit on the Expenditure Review Committee of cabinet for that matter in order to protect his agencies from budget cuts, but that is what has happened.

Senator Ludwig: Is there a question or are you simply being—

Senator BRANDIS: I am responding to Mr Craigie's—

Senator Ludwig: because that is an inaccurate description, and you know it as well as I do. I have been sitting here patiently because you have been reasonably asking questions and the witness has been responding to those. You are now making commentary, and the Attorney-General is not here to defend—

Senator BRANDIS: I am trying to stick up for the poor Attorney-General.

Senator Ludwig: himself against the slur that you are making.

Senator BRANDIS: The poor Attorney-General—

Senator Ludwig: I am here and I will respond: you are making a slur against the Attorney-General.

Senator BRANDIS: No, I am not.

Senator Ludwig: It would be much easier if you confined yourself to a question.

Senator BRANDIS: Senator Ludwig, in fact I am trying to ride to the defence of the hapless Attorney-General but, be that as it may, I accept—

Senator Ludwig: There you go again: you cannot seem to help yourself, Senator Brandis, can you?

Senator BRANDIS: your observations, Senator Ludwig, that ordinarily the question and answer format is appropriate and that is the way we have been going; but I am putting a more general proposition to Mr Craigie. He thought fit to respond in a more general way, which I felt was perfectly appropriate and to which I rejoin. Let me return to your document, Mr Craigie.

Going to the first paragraph, after the heading, 'Direction by the Attorney', you say in the last sentence:

... As a result of budget related Government decisions there will be significantly reduced resources to the CDPP in the coming financial year. This necessarily means that the CDPP will not be resourced next year to carry out the range of work and number of prosecutions that it currently conducts.

That is your view.

Mr Craigie: That was what I said the morning after the budget.

Senator BRANDIS: Thank you, and then you foreshadow the strategy of asking for a direction under section 8 of the DDP Act, which we have already discussed.

Mr Craigie: It is not so much a strategy as a mechanism.

Senator BRANDIS: A course of action. I go to the second page of your document under the subheading, 'Impact on the Office'. You say to your staff:

In approaching the present situation I have been very concerned to minimise any anxiety that the impact of these resource constraints might have on the staff of the Office. In relation to ceasing the fines and costs function, the Office will adopt a staged approach and we will discuss this with the staff concerned.

I think it is a notorious fact because officers of your office have approached me and others of my colleagues expressing anxiety about the effect of these cutbacks on the capacity of the Commonwealth DPP to fulfil its function. Going beyond the people-smuggling prosecutions and the effect on those prosecutions of these cutbacks, you also referred to on the first page of your memo that you will be ceasing the recovery of fines and costs function.

Mr Craigie: Yes.

Senator BRANDIS: What does that mean in layman's terms, please Mr Craigie?

Mr Craigie: It is fairly arcane but I might leave it to the first deputy to explain how he came to be part of it.

Senator BRANDIS: This is a function that until now the CDPP has performed.

Mr Craigie: It is.

Senator BRANDIS: This is a function that, until now, the CDPP has performed.

Mr Craigie: It is.

Senator BRANDIS: It is a function that heretofore you regarded as appropriate for the CDPP to perform and, as a result of the budget cutbacks, you have decided that it can no longer be performed. Is that right?

Mr Thornton: It is not actually a statutory function; it is an administrative function that the CDPP performed. Basically, what it involved was that when fines are imposed we had an administrative role. The mechanism for collection is under the state mechanisms—the state debt recovery offices. In some cases it is the courts et cetera. We would pass that information on to the courts and, when money came in, they would refer it to us and then we would pay it into consolidated revenue. The amounts involved in terms of our staffing resources was not all that great, but it was just under \$500,000 and, in the circumstances, what we propose is that this will be passed on to the agencies that refer the cases to us, so they will not carry out that administrative function.

Senator BRANDIS: I understand that. What that means is that the policy of your office, which is a good policy, if I may say so, of enforcing fines has been discontinued under budget constraints. That is what it amounts to.

Mr Thornton: We do not actually enforce the fine.

Senator BRANDIS: You do the administrative work attendant on enforcing the fines.

Mr Thornton: Yes, the preliminary work.

Senator BRANDIS: That will not now happen, so people who are convicted of Commonwealth offences prosecuted by your office and whose punishment is a fine will find that, if they default in the payment of that fine, the fine is not going to be enforced.

Mr Thornton: No, we would not expect that the mechanism for enforcing the fines will change. As I said, it is a removal of that from our budget, given our budgetary constraints to the agencies that refer the cases to us. So we would still expect that the work would be done. It just would not be done by us.

Senator BRANDIS: What guarantees do you have that it will be done by the agencies that refer the cases to you?

Mr Thornton: We will obviously liaise with the agencies about the processes that we have in place and that we want them to take over but, at the end of the day, these are questions for the agencies. We cannot guarantee that.

Senator BRANDIS: Sure. Of course you cannot guarantee it. When the administrative function was performed by you, you could guarantee that it would be performed because it was you who was doing it but, as you say, now that it has been remitted under financial pressure to the agencies, it is up to them whether they enforce these fines that you have secured through successful prosecutions, isn't it?

Mr Thornton: It is up to them to carry out the administrative function which refers to the state debt recovery office, the courts or however the fines are recovered.

Senator BRANDIS: Let me go back to your memo, Mr Craigie, again on page 2, the third paragraph after the heading 'Impact on the office', starting halfway down, where it says: ... it is important for everyone to understand that, following an expected Direction from the Attorney—this is section 8 of the DPP proposal that you have sought but are yet to receive—right?

Mr Craigie: Yes.

Senator BRANDIS: So, even if your approach—I will not use the word 'strategy' if you think it is a loaded word—of asking the Attorney for a direction under section 8 were to be successful and you have not yet received a direction from the Attorney under section 8, even if that were to be forthcoming, you go on to say:

... there will be a reduced number of prosecutions conducted with our reducing resources. We will not be able to sustain the range of activities in which we have been involved up to this point. Indeed, we will need to review some matters that are currently before the courts. These measures are the inevitable consequence of reduced resources being made available for prosecutions and consistent with my commitment that neither the over-loading of staff, nor reducing quality, are options for consideration.

It is hard to put into other words what you say there so shockingly explicitly yourself. But, even if you do get the direction under section 8, from the Attorney-General, you will not be able to—and these are your words:

... sustain the range of activities in which we have been involved up to this point. Indeed, we will need to review some matters that are currently before the courts.

Mr Craigie, that means, does it not, when you say 'review some matters that are currently before the courts', that you will have to review whether or not to continue certain prosecutions currently before the courts, even if you get the section 8 direction?

Mr Craigie: It is not a question of even if one got the direction—and I remind you again this is pertaining to the situation as it appeared on the day after the budget—

Senator BRANDIS: The budget bills have not been amended, Mr Craigie. That is the situation as it is now.

Mr Craigie: If things do not change, the section 8 direction does not arise as any sort of mechanism required by me. It is my view that we would not be able to cease doing those things that we were no longer funded to do and to reorder the practice in effect without some overriding statutory exercise—and section 8 is that one that provides the Attorney with that power—to allow us to do what our own prosecution policy otherwise makes quite clear is not appropriate.

Senator BRANDIS: You know as well as I do that neither section 8 nor any other provision of the Director of Public Prosecutions Act authorises the Attorney to draw money from the Consolidated Revenue Fund or otherwise appropriate any extra money that you are not already given in the budget, do you not?

Mr Thornton: I think we may be at cross-purposes here. Section 8 and the discussions with the department are two separate things. Section 8 is not the mechanism by which any additional funding would be obtained. Section 8, in our view, would be required if we were not given additional funding and had to make priorities amongst our prosecutions. What you might see in a section 8 is a mechanism by which the priorities in terms of the seriousness of the cases and those sorts of things were to be applied.

Senator BRANDIS: You would be seeking a direction from the Attorney-General, if I may say so—and I do not mean this offensively, so please do not take it the wrong way—to cover yourselves so that if you do not have the resources to do all the prosecutions you want to do among the nine categories you identify in your annual report, as it were, sanctioning you to withdraw from some categories of prosecutions or reallocating resources among the different classes of cases which you prosecute.

Mr Craigie: It is not a matter of covering or sanctioning; it is reconciling—

Senator BRANDIS: Reconciling, yes.

Mr Craigie: the prosecution policy with priorities that government determines. The effect of a direction—and again I say this is the situation the morning after the budget—would be for executive government, as is its right, to say to me, 'If you have reduced resources and there are some things that are to be given priority over others, these are our priorities.'

Senator BRANDIS: Sure, subject to one I hope not pedantic qualification, that it is not for the government to appropriate money; it is for the parliament. Nevertheless, the government introduces an appropriation bill to the parliament and asks the parliament's sanction and, as a matter of routine, the parliament passes the appropriation bill. Mr Craigie, it is all about money, is it not, and you do not have enough?

Mr Craigie: I think we remain at cross-purposes. If one needed to turn to the mechanism of the direction, it would not be in order to obtain more money; it would be in order to—

Senator BRANDIS: To reallocate priorities.

Mr Craigie: indicate how to deal with that reality.

Senator BRANDIS: Mr Craigie, we are absolutely not at cross-purposes at all. In fact, that is the very proposition I have been putting to you. A direction from the Attorney-General under section 8 of the Director of Public Prosecutions Act is not going to get you one more cent; what it will do is sanction or authorise you if you are faced with the position, as you say in this memorandum that you are, of reordering your priorities so that the reduced amount of money you have can be spent in a different way. That is what it amounts to, doesn't it?

Mr Craigie: Absent any other resolution—and you have heard what Mr Wilkins has said.

Senator BRANDIS: But there is no more money in the budget for you. The budget bills will pass. The termination of the special allocation for the people-smuggling prosecutions two years ago will not change. That program will not revive. The amount of money allocated to you will not go up and will not go down. The way things looked to you on the morning of 11 May, 14 days ago, is exactly the way they are on the afternoon of 25 May, 14 days later.

Senator Ludwig: You have just demonstrated your knowledge of how the budget works. That is interesting, but it does not work that way, and you know it. There are reserves and other ways of dealing with it. It is quite clear that you think everything stays fixed in relation to the Director of Public Prosecutions, but the evidence the Director of Public Prosecutions has given is that he is in discussions about this very matter with the department. I suspect and we all hope that there will be a resolution.

Senator BRANDIS: We hope there will be a resolution. You are an agency constituted under your own act of parliament, with your own budget allocation and your own provisions separate from the department in the portfolio budget statements—the yellow book, as you called it.

Mr Craigie: Yes.

Senator BRANDIS: You should not be having to go to the department to ask for some kind of transfer payment to keep you going because the government has not given you enough money to perform your prosecution function under the prosecution guidelines and because you are fearful—or concerned, to use a less loaded word—

Senator Ludwig: Just ask the question rather than put words into the mouth of Mr Craigie.

Senator Brandis: as you say in your memorandum to staff, that you will not be able to undertake all the prosecutions you currently undertake. That is right, isn't it?

Mr Craigie: They are your comments.

Senator BRANDIS: They are right though, aren't they? That is the way it looks, doesn't it?

Mr Craigie: Senator, you may see it that way but I do not think it would be appropriate for me to comment on it.

Senator BRANDIS: That is fine. That is very eloquent, Mr Craigie. You go on to say:

... we will need to review some matters that are currently before the courts. These measures are the inevitable consequence of reduced resources being made available for prosecutions and consistent with my commitment that neither the over-loading of staff, nor reducing quality, are options for consideration.

That is fair enough. That is a management decision that you make in your office. You are not going to work the staff any harder than they already work—and I am sure they work very hard—and you are not going to reduce quality, which I again think most people would agree with you is a perfectly appropriate position to take. If you do not overwork the staff, which you should not, and you do not reduce quality, which you should not, and you have less money, which you have, then reduced resources available for prosecutions is, in your words, 'the inevitable consequence', isn't it? I am just quoting your own words back.

Mr Craigie: Shortly put: something had to give—

Senator BRANDIS: What is going to give is the number of prosecutions.

Mr Craigie: What we are told by the department is that it will be the government that will give in finding—

Senator BRANDIS: Go on.

Mr Craigie: Senator, I am not in a position when I am in discussions of that nature to gainsay the bona fides of people who tell me that they wish to avoid either of the consequences that I have pointed to as the only alternatives.

Senator BRANDIS: Mr Craigie, I do not want to embarrass you. I know that you are in discussions with the government in order to deal with this issue, and I can understand why you feel you need to tread warily here, particularly with Mr Wilkins sitting two seats away from you, but the fact is that this is a matter of legitimate public concern, properly to be ventilated—that is what these estimates committees for—to expose the fact that you have been put in this position that, in your own words, 'the government has to give' if you are going to be able to fulfil your prosecution function because of the allocation to you of resources in the budget.

Mr Wilkins: Senator, I hope you are not reflecting on the bona fides—

Senator BRANDIS: I am not reflecting on anyone's bona fides!

Mr Wilkins: We are trying to sort this out.

Senator BRANDIS: I am sure you are, Mr Wilkins. I am not reflecting on your bona fides and I am not reflecting on Mr Craigie's bona fides. I, too, have been a minister in the government, and I, too, know the feeling when the expenditure review committee of the Cabinet screws one of your agencies. The pity here is that it happens to be an agency as central to the peace, order and good government of the Commonwealth as the Director of Public Prosecutions.

Mr Wilkins: I think it is premature to think that they have actually done what you say yet.

Senator BRANDIS: We will let Mr Craigie's memorandum speak for itself. But, Mr Wilkins, to reassure you; I am not questioning your bona fides and I am not questioning Mr Craigie's bona fides; I am not even questioning Mr Swan's bona fides and I am certainly not questioning Mr McClelland's bona fides. What I am questioning is the policy decision to allocate reduced funds to the Commonwealth Director of Public Prosecutions which results in Mr Craigie being put in this position.

Senator Ludwig: And the answer to date has been that they are in discussions about this very fact. I know you have built a wonderful case—on sand—in this respect, but you have avoided the issue that Mr Craigie's evidence is that that was a memo which was put out at that time after the budget. Since that time, the department and Mr Craigie have been in discussions about how they can resolve—

Senator BRANDIS: And those discussions have not produced an outcome, but Mr Craigie is hopeful that they will.

Senator Ludwig: But then I would also draw your attention to the portfolio budget statement, which you so avidly read. Having it open myself, I do note that if you look at the ordinary annual services of the agency there is an appropriation of something in the order of 59 ½ million dollars, which is in reserve. So, it is not that there are insufficient funds either.

Senator BRANDIS: Senator Ludwig, I hope your answer is not that this is not a problem because the DPP can draw upon reserves?

Senator Ludwig: No. We both know that you would require permission to draw upon that reserve.

Senator BRANDIS: Indeed.

Senator Ludwig: But that is a discussion—

Senator BRANDIS: I do not think that this an answer to any question I asked.

Senator Ludwig: Your indication was that my view was that there was no money. If you want to correct that, the point I am making is that that is why they could be in discussion now, because there are reserves available. They can examine how they can arrive at a position where both the efficiencies from the agency are realised and the agency can undertake the range of work that it would otherwise be required to do.

Senator BRANDIS: The point is that you should not have to draw upon reserves! The whole point of reserves—

Senator Ludwig: They still may not need to.

Senator BRANDIS: is that in the ordinary course of events they are not to be drawn upon. Your solution to Mr Craigie's problem is to say, 'You can draw upon reserves because of a decision this government made'. This is not the Australian Institute of Sport or some arguably

marginal function of government. This is the core function of government: the prosecution of crime. And it is your government's decision that has forced you to the absurdity of saying, 'It is not the problem you think it is, Senator Brandis, because they can draw upon the reserves'. Heavens above!

Mr Craigie, let me take you to the ante-penultimate paragraph of your memorandum—

Senator Ludwig: With a good grace, Senator Brandis.

Senator BRANDIS: You say:

I do understand that there will be concern about these changes. Some amongst you may be asking, quite reasonably, "How can this be happening, given the importance of our work?" or "Why is the office being placed in this position—surely this could have been averted?" I want to assure you that the office leadership has made it very clear to government that a reduced budgetary allocation for prosecutions must have a significant effect on the Office and on Commonwealth law enforcement. Government decisions have been taken in the budget process with this having been communicated on many occasions and in every way possible. We have been in discussions about the impact of reduced resources and have made sure that all the consequences of the reduction have also been made in unmistakable terms.

Those are your words are they not, Mr Craigie?

Mr Craigie: Yes, they are.

Senator BRANDIS: I want to turn to a different matter. Our old friend section 8 of the Director of Public Prosecutions Act arises here as well. What I now want to turn to is the matter of David Hicks, the person convicted of a terrorist related crime on his own plea of guilty in the United States of America. I asked Mr Negus, the Commissioner of the AFP, about this in the last estimates round. He told me—I am reading from page 178 of the *Hansard* of the 22 February for this committee—that there was a meeting on 13 October to discuss the Hicks matter attended by the AFP, the Commonwealth DPP and the Attorney-General's Department at the request of the AFP to discuss the legislation—that is, the proceeds of crime legislation—and in particular the possibility of an literary proceeds award and how it might be applied. He went on to say:

We had commenced an investigation and we were engaging with our partner agencies to look at the applicability of the legislation and to make sure that we had properly considered some of those issues.

I think it is fair to say he is talking about the enforceability of the legislation in the circumstances. Mr Negus went on to say:

The investigation continued and on 8 October, prior to that meeting taking place, we had written to the Commonwealth DPP and spoken to them about the applicability of the legislation. We then had the meeting with those stakeholders that I talked about. We then had various conversations with the Director of Public Prosecutions back and forwards between then and 23 December. On 23 December we referred a range of material to the Commonwealth Director of Public Prosecutions for further advice.

I asked Commissioner Negus, 'Has that advice been received?' and he replied:

No, it has not. Again I should say that, whilst the matter is still an active investigation and we are having discussions with the Commonwealth Director of Public Prosecutions about the next steps to be taken, we are somewhat bound in what we can say publicly about the nature of those investigations.

Mr Craigie, has advice in relation to the enforceability of the Proceeds of Crime Act against the terrorist David Hicks now been sent by your office to the AFP?

Mr Craigie: I find myself in the same position as the commissioner. It remains an operational matter. As you would imagine, there are some inherent complexities in it.

Senator BRANDIS: I am not sure what the complexities are because the book has been published; it is there for all to read. His boasting of his involvement in terrorism is there for all to read and the literary proceeds order provisions of the Proceeds of Crime Act do seem tolerably clear, I must say. Anyway, go on.

Mr Craigie: I do not think it is appropriate that I walk you into the complexities that are inherent in a matter of this unique nature and our unique aspects of it. Suffice to say it has been worked on continuously and vigorously by my office and by the AFP. There have been a number of interchanges between us both before and since the last estimates hearings. All I can say is that we are continuing to progress the matter. If there is anxiety as to when and where the matter will be resolved, I can only counsel some patience and I suspect that your patience will be rewarded before too much longer.

Senator BRANDIS: That is very encouraging and I am very patient, Mr Craigie, I can assure you. I was, as I think most decent people in this country would have been, rather affronted by the sight of this self-confessed terrorist being feted at the Sydney Writers' Festival last week, autographing his noxious book, selling his book and being treated not as a self-confessed terrorist but as a celebrity when we have a perfectly good Commonwealth law which it seems to me is designed to deal specifically with a very case such as this. In any event I really only have one question. I know the rules about operational matters. You will see that Commissioner Negus who also knows the rules about operational matters gave the evidence that I have read to you in the last estimates round but all I want to know is the answer to one question. It was a question that Commissioner Negus felt able to respond to and which did not elicit any objection from the minister at the table on 22 February. I asked Commissioner Negus whether advice from the DPP on the matter had yet been received and he said to me, 'No, it hasn't yet been received.' All I am asking you is: has advice on the matter—that is, the advice which was the subject of my question on 22 February and which I am re-asking—from the DPP to the AFP now been given?

Mr Craigie: There has been a range of advices on a range of issues to do with this matter and it has been given to the DPP.

Senator BRANDIS: I think I am at liberty to go this much further. Does the advice to which you refer include what might be called among members of the bar, counsel's advice on prospects?

Mr Craigie: I do not think it would be appropriate for me to answer that.

Senator Ludwig: I would have thought it probably stretches—I am just trying to recollect from when I was on your side of the table whether I had occasionally asked and travelled this same area. Because it is an iterative process sometimes it makes it difficult to ascertain when that might occur.

Senator BRANDIS: And it does, but let me foreshadow. I am not going to ask you what the advice was, please be reassured of that.

Mr Craigie: I suppose I can cut to the chase by simply saying that the advice is actually to me about a conclusion that I may or may not reach in future.

Senator BRANDIS: So you have not yet reached a conclusion.

Mr Craigie: All I can say is, with respect, watch this spot. I do not think you will have to wait too much longer.

Senator BRANDIS: I am happy with that, Mr Craigie, thank you.

CHAIR: Are there any other questions of the DPP? Thank you very much Mr Craigie. We appreciate the amount of time you have spent with us today and best of luck with that work. I am now going to ask officers from ASIO, the Australian Security Intelligence Organisation to come to the table.

Australian Security Intelligence Organisation

[16:45]

CHAIR: Mr Irvine, I welcome you and officers from ASIO. Do you have an opening statement this afternoon?

Mr Irvine: I thought it might be helpful, particularly given the recent death of Osama bin Laden, to comment on one of the key features of our increasingly complex operating and threat environments. Bin Laden's death has obviously attracted a great deal of interest and speculation about the implications for the security environment, both internationally and in Australia. Bin Laden's death is undeniably an important milestone in international counterterrorism efforts and especially in the international fight against Western transnational terrorism. It is a significant victory, I think both real and symbolic, and a blow to the morale of al-Qaeda supporters and those whom al-Qaeda inspires. It certainly represents the determination of our allies to face up to this issue.

Bin Laden's demise represents not only a sort of bookend for the decade since 9-11 but in my view a confirmation that the effort against terrorism is bearing some fruit. It should give encouragement to people everywhere, not only people in Western countries but also Muslim populations who have been equally the victims of brutal and indiscriminate acts of terrorism perpetrated by al-Qaeda and its fellow travellers.

One consequence of bin Laden's departure is the temptation to think that the threat to Australia and Australians from violent extremist jihadist elements has somehow been reduced and that as a consequence we can lower our guard and reduce our national effort against terrorism. ASIO does not subscribe to that view. As important as Osama bin Laden's death is symbolically, we have seen so far absolutely no indication that it has changed fundamentally the dynamics of anti-Western transnational terrorism. Nor does it mean that the threat is diminished in any way.

Al-Qaeda and its affiliates have shown their capability and capacity over the past decade to surmount setbacks and overcome the loss of leaders. As is noted in the 2010 counterterrorism white paper, support for al-Qaeda's brand of terrorism, while small perhaps in global terms, shows every sign of persisting even if its current leadership is to be killed or captured. In the face of global counterterrorism efforts and loss of leaders and operatives over the past decade, al-Qaeda and its allies have repeatedly shown a capacity to overcome tactical and operational setbacks and continue to plot and conduct attacks and inspire others to do so. Indeed, in the immediate aftermath of Osama bin Laden's death the prospects of revenge attacks throughout the world have probably increased.

The internet helps al-Qaeda in its task. It is both a propaganda and a recruitment tool. It provides terrorists with both a platform to support operational activity and the means through

which to project their ideology onto the international stage. The dissemination of violent extremist ideology through the internet poses the very real danger of drawing individuals down the path of radicalisation. As a result, in recent years, we have seen the emergence of what I will call 'stand-alone' violent jihadist activity perpetrated by the individual who has few, if any, longstanding formal physical or visible links to a group but who is motivated, often over the internet, or can be encouraged to plan and execute an act of terrorism. Umar Farouk Abdulmutallab, who attempted to detonate an explosive device aboard a Northwest Airlines flight into Detroit on Christmas Day 2009, and Nidal Malik Hasan, the alleged perpetrator of the mass shooting of soldiers at Fort Hood military base in Texas in November 2009, may be said to fall into this category of stand-alone terrorist.

It is a fact that over 100 Australians have died as a result of terrorist attacks overseas. Here in Australia we have been fortunate that there has been no terrorist incident on our soil—at least for many years. But I need constantly to remind people that in the last decade ASIO, the security intelligence service, and Australian law enforcement agencies, both state and federal, have detected and disrupted a number of major terrorist plots in Australia which had as their central objective mass casualties amongst Australians. These disruptions have led to prosecutions and the conviction and imprisonment of some extremists. So this is not an abstract or an offshore threat; it is a real threat and it is amongst us.

While Australia's security alert level has remained medium, each year ASIO responds to literally thousands of counterterrorism leads. The committee might like to note that we are currently involved in several hundred counterterrorism investigations and inquiries. These investigations range from Australians in contact with terrorists offshore, including al-Qaeda, to the investigation of possible threats to Australian interests from extremist activity either onshore or offshore. New threats, including from local extremists, those based overseas or a combination of the two, can emerge quickly and with little or no warning. ASIO's bread and butter work, therefore, remains the pursuit and investigation of leads on potential terrorist threats, particularly in Australia but also overseas. Worryingly, we are continuing to see a limited number of Australians seeking to travel overseas for participation in or facilitation of terrorist related activities. My concern is that such people may target innocent people overseas, assist those who would do harm to our nation or might return to Australia with greater knowledge, training and intent to carry out an act of terrorism back home.

I reiterate the central point I am making: the threat of terrorism in Australia is real and persistent. Individuals inspired by violent extremist jihadist ideology remain committed to undertaking attacks in the pursuit of their cause, and they are present in many countries, including Australia. In a volatile and unpredictable security environment, where threats can originate both offshore and onshore, ASIO must needs work closely, indeed more closely than ever, with its security intelligence and law enforcement counterparts, both nationally and internationally.

Turning briefly to another threat, let me say that an increasingly persistent threat to national security and to the interests and privacy of Australians comes from abuse or exploitation of the vulnerabilities of the internet by both state and non-state actors. While ASIO does not comment—ever—on espionage matters, it is clear that the internet has become a vehicle for the covert extraction of information that its owners would prefer, and have a right to believe, should remain confidential. This can affect the nation's vital economic as well as political and

defence interests and, of course, the privacy of ordinary Australians. Addressing this problem requires effective intra-governmental cooperation as well as increasing cooperation between the government and the private sector.

Thus ASIO works closely with the Cyber Security Operations Centre in the Department of Defence and with the Computer Emergency Response Team in the Attorney-General's Department. We have been playing our part particularly in contextualising cyberespionage within the broader security and cyber environment. Most important is that government organisations at both the state and federal levels, Australian commercial enterprises and the general public, each of whose dependence on the internet increases by the day, understand how vulnerable they can be when using the internet and how important it is to take even the most basic precautions. I thank the committee for its indulgence.

CHAIR: Senator Barnett, with the committee's indulgence, Senator Ludlum do you have questions of ASIO?

Senator LUDLAM: I do.

CHAIR: I have just negotiated with Senator Hanson-Young to come down. She only has a 10-minute window of opportunity for the next little while.

Senator LUDLAM: I am happy to lead off with a couple and hand over to Senator Hanson-Young when she gets here.

Senator TROOD: I have questions too, Chair.

CHAIR: Yes, I have a few senators listed here.

Senator LUDLAM: Thanks, Mr Irvine, for your opening statement. I might pick you up on something that you mentioned there particularly with regard to online security. Is there anything you are able to tell us about attempts to compromise the security of this very building? Do you have anything you would like to add on the subject?

Mr Irvine: I am sorry, I do not have anything I would like to add on that. It is government policy that ASIO not comment on operational matters.

Senator LUDLAM: I have heard you say that to me a couple of times so I should have known that is where you would go. Maybe we will start off then before Senator Hanson-Young gets here on the fortress that is under construction down on the lake. I wonder if you can give us an update. In this budget it appears on my reading that there is another \$69 million increase from 2010-11 for capital outlays. Is that unexpected expenditure—could you account for that for us please?

Mr Irvine: My knowledge is that the project as a building project is running within the current budget of \$589 million. It is on schedule and it is expected to be handed over to ASIO on target in the middle of next year. With regard to the additional funding I will hand over to my colleague who can explain exactly what that means.

Mr Fricker: It does not represent new funding. It does not represent a budget overrun if that was the implication in the question.

Senator LUDLAM: I guess it was.

Mr Fricker: It is on schedule as the director-general has just said and that is according to the schedule of the construction.

Senator LUDLAM: Has that funding been brought forward then? Page 241 of the PBS says that the \$69 million is primarily relating to that building. Is that funding that has been brought forward unexpectedly?

Mr Fricker: There has been some rephrasing of some of the running costs of the building to pick up on when we actually move into the building and those running costs are incurred. The equity injection for the new equipment in the building remains in accordance with budget predictions. What we have done to maximise the cost-effectiveness of the move is prolong the life of some of our existing equipment and so some of the funding for replacement of existing equipment has been pushed out one year. I will have a look in the PBS in a moment, but the funding you may be referring to there is the cost of replacement. I think there is \$19 million for the cost of replacing existing equipment. That is being timed so that we can retire equipment in the old building and have new equipment in the new building rather than replace the equipment now and then have to move it.

Senator LUDLAM: Maybe that is the breakout I was referring to. Stating that that \$69 million is primarily relating to that structure, I am wondering what else it relates to, but perhaps that is what you mean—it is equipment rather than construction costs per se.

Mr Fricker: That is right. So of the \$61 million, \$19.2 million is for replacing existing assets and \$41.5 million represents equity and equity injection for the new building.

Senator LUDLAM: Thank you.

Senator TROOD: Chair, I was going to ask questions of ASIO on their new building. It might facilitate the progress of the committee if I was able to ask those questions at the moment, if it suits the committee.

CHAIR: That is all right.

Senator TROOD: The figure of \$30.6 million over four years is increased operating costs. They are the figures you have just referred Senator Ludlam to. Is that right?

Mr Fricker: The figures for Senator Ludlam were replacement of assets.

Senator TROOD: Is the \$30.6 million another figure?

Mr Fricker: That is correct, that is for the rent of the new building. The budget comprises equipment, replacement of existing assets, new capital equity injection for the new building and then we have allowances for the running costs—that is, rent, power and maintenance.

Senator TROOD: These are costs which were not envisaged at the time the budget for the building was established. Is that right?

Mr Fricker: They were always envisaged. They were introduced as budget items in the last budget cycle. It was always anticipated there would be running costs and there would be rent payable to the Department of Finance and Deregulation as the landlord.

Senator TROOD: There is a reference in the papers to a sharing of costs with the Department of Finance and Deregulation in relation to some of this money, and that is a reference to this figure, is it?

Mr Fricker: That is correct.

Senator TROOD: Since ONA withdrew from the project, you told me at the last Senate estimates that you were going to seek another tenant. Have you sought another tenant and have you been successful?

Mr Irvine: We have not yet been successful, but we are in serious negotiations with another government department.

Senator TROOD: So there is some prospect that it will come to the fore?

Mr Irvine: I certainly hope so.

Senator TROOD: That is indeed good news. When I asked Mr Gyngell from ONA this in February, his explanation for pulling out of the arrangement, or the parting of the ways, was that there was not enough space for ONA in that building. Almost everybody in Canberra will find that an extravagant claim, I would have thought. Can you explain to the committee how this could possibly be the case, Mr Fricker.

Mr Fricker: That does not accord with my understanding of the situation. Four thousand square metres was allocated in the building for ONA, sufficient to accommodate, I believe, 180 staff; space was allocated for a data centre et cetera. It is not my recollection that that was the reason the decision was made that ONA would take up alternative accommodation. It is hard for me to comment more than that, but that is not my understanding of the reasons. As I say, adequate provisions, according to all of the estimates, the plans and the requirements, were made in that building.

Senator TROOD: What do you understand the explanation to be? What is the ASIO view on this matter?

Mr Fricker: That would be speculation on my part.

Senator TROOD: It is not speculation as to ASIO's understanding, Mr Fricker.

Mr Fricker: I am not sure my understanding would properly inform the committee as to what was in the mind of ONA.

Senator TROOD: I think it would deeply inform the committee, largely because we have an account from ONA as to why they were unable to proceed with the intended arrangement but we have not had an opportunity to hear your side of the story.

Mr Fricker: I do not really have a side of the story to tell. We continue to manage with the Department of Finance and Deregulation the construction and the move into that building. My responsibility is to ensure that ASIO is able to move into that building and maintain its operational capacity and, indeed, enhance its operational capacity. Respectfully, I cannot speculate what the motivations were and what was motivating the decision of ONA.

Senator TROOD: When ONA pulled out they must have given you an explanation. I assume they gave you an explanation as to why they pulled out of it.

Mr Irvine: I was not in ASIO at that time, but I think I would like to take that question on notice. I have heard a couple of explanations. We will go back and give you a considered reply. ONA clearly had reasons. It may have had to do with the disposition of the space within the building. It may have had to do with—and if the Director-General of ONA said—the amount of space that was available in the building relative to ONA's purposes. Another explanation I have heard is that it is preferable that ONA be closer to the Prime Minister's department, its parent department. There is a whole number of explanations. I have never

actually inquired as to which one was the right explanation. We have been dealing with the fact that we have 4,000 square metres of space in the building that we are not currently able to use and, therefore, we are seeking an alternative tenant who will come in with us and whose offices, I hope, will have similar sorts of security classifications to enable them to work in an A-class building of that nature.

Senator TROOD: I would be very grateful if you took that on notice, Mr Irvine. That would be helpful to me. You will understand, I think, the reasons for pressing it. There would seem to be a manifest logic in having two intelligence agencies in the same building, given that I assume it is fitted out to the highest form of security classification.

Mr Irvine: Absolutely.

Senator TROOD: And a consequence of ONA not being able to go there is that they have had to spend a lot of money somewhere else around the town renovating a building and ensuring that it, too, has the high degree of security classification that is required. At one level, this is costing the Commonwealth money, and that seems to be something we should avoid, if we can.

There is one other matter relating to the building, if I may, and that concerns an incident in March when a gentleman had a measure of misadventure and fell into the construction site and apparently lay there injured, perhaps with concussion, for apparently 36 hours. I suppose the first question that occurs to me, Mr Fricker or Mr Irvine, is how it is possible that someone could get into what I assume to be a high-security site, as the building of ASIO is.

Mr Irvine: I think the answer to the last question is that he climbed the fence. Consequent to that, let me just say that at this stage investigations are continuing by the ACT police into the unauthorised entry of the site. I am advised that an initial investigation by WorkSafe ACT has identified that the injuries sustained by the man were not a result of noncompliance with safety procedures on the site. I am advised that Lend Lease, which is responsible for the security rather than ASIO, has taken all reasonable procedures to prevent injury to members of the public generally. At the moment, what we have done is work with Lend Lease to increase their security on the site to try to ensure that we do not have a similar sort of incident again.

Senator TROOD: So there has been a review of the security arrangements in light of this incident?

Mr Irvine: Yes. My advice is that comprehensive security procedures have been developed with the managing contractor for the design and construction phases that are commensurate with the level of risk for this project.

Senator TROOD: Do you know whether or not that has had an impact on the cost of security of the site or are they—

Mr Irvine: I am not aware that it has.

Mr Fricker: The provisions will continue to be managed within budget. It will not result in a blow-out of the budget. I might note as well that there are two aspects. One is the work safety issues and site security in people being able to gain access to the site. That covers the normal raft of site security issues in terms of personal safety, theft, vandalism et cetera. The other is national security safety concerns. It was terribly unfortunate that that gentleman was left unattended for that period of time, but if I could just—

Senator TROOD: How is he, by the way?

Mr Fricker: My understanding is that he remains hospitalised in a stable condition. My understanding is he suffered severe injuries. The security management of that site is very much a layered security model. The fact that he could get over the external fence of that site and then injure himself and lie unattended for that period of time meant that the subsequent security measures we have in place were sufficient to make sure that there was no national security breach as a result of that intrusion.

Senator TROOD: Could it be, Mr Fricker, that the security surrounding the site is having an impact on the workplace health and safety needs of the site—that there is a tension between the two which has in some way facilitated this or been part of the cause of this situation?

Mr Fricker: No, I do not think that is the case. As the Director General has just said, I think we are observing, with both Lend Lease and the Department of Finance and Deregulation, all of the construction safety requirements. You would expect there to be a perimeter fence. Every construction site has a perimeter fence. Every construction site has warning and advisory signs. WorkSafe has been consulted to make sure that we are reviewing that site and that all those safety measures are properly implemented. No, I do not think this incident represents any sort of unproductive tension between our security requirements.

Senator TROOD: Has the perimeter fence been enhanced in some way as a result of the fact that, as the Director General said, it was able to be breached?

Mr Fricker: Because it is the ASIO building, I do not wish to provide too much detail about security measures on the site but, to answer your question, there has been a review of the incident to ensure that any safety requirements that should be in place will be put in place. That review is still underway.

Senator TROOD: That the perimeter fence was able to be vaulted, climbed or in any way breached by someone in the condition this gentleman was allegedly in suggests that there may be some shortcomings in the fencing—at least it does to me. I cannot imagine it, passing the site as I do from time to time, but the reality is that someone was able to get through.

Mr Fricker: It is a perimeter fence that is no less than any other construction site would have. A determined individual may be able to breach any construction site perimeter fence. We are not going to construct huge brick walls around the site to absolutely prevent anybody from any possibility of getting over that fence; it has to be a sensible measure in line with Australian construction standards. They will be the measures we will continue to adopt. I repeat that the site security is managed by Bovis Lend Lease under the managing contractor and the owner of the building, the Department of Finance and Deregulation. All parties are involved in looking at the overall security measures for the site.

Senator TROOD: I was about to return the call to Senator Ludlam, but he seems to have left the building, or at least the committee room.

CHAIR: Keep going then. I suspect he was not aware of how long you would be.

Senator TROOD: I was going to pick up on some of Mr Irvine's opening remarks in relation to the threat and thank him for his timely comments to the committee. They are apposite and we ought to be reminded of the dangers and the challenges that we face in this area. I am also delighted that we have actually found time for ASIO in the estimates schedule

when we were unable to do so on the last occasion we were here. Are you able to quantify or do you spend time trying to determine how much of ASIO's time is spent on, for example, the counter-terrorism responsibilities you have compared to espionage? Can you give the committee some idea of how you disperse your resources in relation to those challenges?

Mr Irvine: We do keep metrics in respect of our overall operational effort and the allocation of resources within that operational effort. With your indulgence, I will not go into absolute specific figures, but let me say that at the moment our operational effort is, by quite a considerable amount, devoted to terrorism—investigating, following up leads and, in some cases, moving to prevent terrorist activity. That activity is carried out in close cooperation with other authorities in Australia, the support of other parts of the intelligence community and also—and I place particular stress on this—in close cooperation with the Australian Federal Police and with the various state police forces. It is indeed a national effort that transcends state borders. But ASIO's operational effort and the majority of our work, by quite a considerable margin, are devoted to countering terrorism.

Senator TROOD: That is helpful, thank you, Mr Irvine. You may not wish to say anything about this but I would be interested to know how adequately you think we are dealing with the challenge of espionage activity across the government and across the country.

Mr Irvine: When you talk about either terrorism or espionage and you sit where I sit, you want to be able to do more. I am certainly very keen to see our counter-espionage effort developed. We have plans to do that and we are doing that, but I probably would not want to comment too much more on espionage.

Senator TROOD: Senator Ludlam has returned. Thank you for indulging me, Senator Ludlam.

Senator LUDLAM: No problem. Unfortunately, Senator Hanson-Young is not able to make it now. On the subject of the security checks and clearances that ASIO does on asylum seekers, my understanding is that you do two different kinds, broadly. The initial one is to briefly ascertain that somebody is okay to be released into the community while the longer term review occurs. The other is the longer term security review. Let us just test that that is the case.

Mr Irvine: With regard to irregular maritime arrivals, yes, that is the case.

Senator LUDLAM: Are those tasks substantially performed by the same people?

Mr Irvine: We work closely in cooperation with the Department of Immigration and Citizenship in that there is a partnership in those processes.

Senator LUDLAM: But they are delegating the actual security task to ASIO?

Mr Irvine: No, it is not a question of delegation. It is our function to manage the security process for those people. I wonder whether it would help if I were to give you an understanding, from our point of view, of the visa security assessment process. Would that be useful?

Senator LUDLAM: I think it probably would, but I just want to pre-empt you with the main question that I wanted to ask, which is how long those brief checks actually take. So please bear that in mind as you step us through the process.

Mr Irvine: I think it might be useful if I went into it a bit because, as you know, there has been quite a bit of speculation and I think some confusion about ASIO's role in this process. The fact is that ASIO and DIAC have a longstanding arrangement for the referral of visa applications to ASIO for security assessment purposes. These apply whether we are talking about irregular maritime arrivals on Christmas Island or elsewhere, or claimants for protection visas or any other visa types. The criteria under which that referral process takes place have been determined by ASIO. It is an ASIO managed process right across the board. It is an intelligence led process, it is a risk managed process and it involves close cooperation with DIAC. If you do not mind, I will not go specifically into what the criteria are that we set within that process because to talk about it publicly would compromise the integrity of the process.

The next thing to say is that the nature of the security checking is on a case-by-case basis. It is not determined solely by nationality, by ethnic origins or by religious or other reasons. The checking that we carry out varies according to the purpose for which we have been asked to make the check. This comes into the question you have asked. We make two types of assessment in respect of IMAs, as you have said. The first one is to determine suitability for community based detention and the second one is to determine the suitability for an individual to reside permanently in Australia. The level of checking that we undertake is commensurate ultimately with the level of risk we assess the individual to have.

This referral process has been developed in consultation with DIAC. What it has done, particularly recently, is enable us to streamline security checking for what I will call non-complex cases and that is commensurate with the level of risk that they present. What it does is allow us to focus our most intensive security investigation effort into the groups or individuals of most security concern. The result is, I believe, particularly in recent times, that our security checking has become more thorough and more effective. In fact, this is evidenced in the number of adverse security assessments, which have increased as a result of our ability to focus on these complex cases.

The final point to make is that, prior to this year, it was government policy that all irregular maritime arrivals be subject to the full ASIO investigative process. In other words, every one was treated as a complex investigation. This was proving particularly difficult for everybody, partly because of the complexity of the investigations themselves and because of the numbers involved. Therefore, at the end of last year, the government agreed on two significant decisions. The first was that ASIO would refer to us for complex security checking, while it would security-check only those people who had already been accorded refugee status. In the jargon it is known as 'IA met'; in other words, their refugee claims could be accepted. Prior to that, we had been conducting full investigations on every IMA, even on those people who were unlikely to be or ultimately not accepted. So we were wasting a lot of effort on that. That decision has relieved the pressure to some extent. The second decision was to streamline the process, use greater risk management and align the process much more closely with the process that we apply to every other visa applicant.

So what we have now is an ASIO managed process in which ASIO and the Department of Immigration and Citizenship cooperate to assess a person's security relevance. If it is considered that there is an area of concern, ASIO then conducts a fuller and more complex investigation.

Senator LUDLAM: And you conduct that initial check to see whether this is a simple or complex case?

Mr Irvine: We are working together with DIAC in an ASIO managed process to do that.

Senator LUDLAM: What I am most keen on asking is: firstly, how long does it take to do that initial check to determine whether or not a case is simple or complex?

Mr Irvine: It can take as little as a couple of days.

Senator LUDLAM: Once you have assessed that somebody has a simple case, how long does the actual test take to determine their eligibility for community based detention?

Mr Irvine: The community based detention one can be determined very quickly—again, within a couple of days.

Senator LUDLAM: So it is possible within 24 to 48 hours? I am trying to pin you down now.

Mr Irvine: Sometimes you run into issues and you get into real problems quoting average figures, but let us say that, of the 900-odd cases that have been referred to us, we have been able to get back to Immigration very quickly. Without giving you an exact figure, I do not believe that that is a significant element in the time consumed by this process.

Senator LUDLAM: That is what I was most interested in. So that initial check to determine whether somebody is free to go into community based detention while the longer term work is carried out can be a matter of a day or two in many instances. I will ask you to provide on notice any statistical information that you can, recognising that the system has only been on its feet for a couple of months.

Mr Irvine: I can give you a couple of statistics. The complex cases are going to take longer and some quite a considerable time. At the moment I can say to you that, of the 6,250-odd people currently in detention, only seven per cent of those are awaiting ASIO security assessments.

Senator LUDLAM: The question as to what the rest of them are doing there is for another portfolio.

Mr Irvine: That does not mean that we are going to be able to rush through those assessments willy-nilly. These are the complex ones; they will take longer.

Senator LUDLAM: I understand. Thank you. I would like to change the subject, if I may.

Senator TROOD: I have some pertinent questions in this area, if it suits the committee. To clarify this matter between assessments for community detention and permanent detention, does it mean that when you undertake an assessment for the purposes of community detention and you give an answer that you might subsequently revisit that person's file for the purposes of a further assessment as to their suitability for permanent detention?

Mr Irvine: That would almost certainly be the case.

Senator TROOD: You do not seek to do permanent detention because you have been asked to make judgment about their community detention?

Mr Irvine: No. The fact that someone is allowed into community detention within Australia, under the conditions of that community detention—and, therefore, it is a different sort of security assessment—versus someone being given a permanent visa, the whole process

in effect starts again once that person who is in community detention has been accepted for refugee status.

Senator TROOD: Are we speaking only about adults here or are we speaking about all people in detention.

Mr Irvine: We do not conduct, without very good reason, security assessments on people under the age of 16.

Senator TROOD: We are talking about all people aged 16 and over. Is that right?

Mr Irvine: They will be subject to some form of security assessment process, yes.

Senator TROOD: What is the magic of the age 16 in this process?

Mr Irvine: That is the age that Immigration uses and that we use. I cannot explain it any further than that.

Senator TROOD: It is not your judgment?

Mr Irvine: From our point of view, the likelihood of someone being a substantial security risk as a minor as opposed to someone who is getting into the late teens, early twenties and thereafter is different.

Senator TROOD: Is that a judgment you have made as a security agency or is that an instruction you have received from DIAC?

Mr Irvine: No. It is a judgment we have made as a security agency. It is not hard and fast. If we had reason to believe that someone who claimed to be 15 was more like 24, or even 18 or 19, then we could conduct a security assessment on them.

Senator TROOD: In an answer to a question on notice, question 98, after the last estimates, you responded to me by saying that ASIO currently completes security assessments of IMAs in an average of 66 days. In light of this new system, do you have a metric on the time it is taking now?

Mr Irvine: Yes, but it is not a comparable metric anymore. The figure I quoted to you in the past was the amount of time it took for the whole range of cases to be referred to us for complex assessing and the time we delivered that assessment. That gradually blew out. The first time I appeared here it was about 36 days. As the numbers increased it blew out to something like 67 days. Today we have not really been long enough in the business under the new system to give you meaningful figures. What I can say is that a substantial number, and, indeed, probably the majority of people, will be able to be assessed under our streamlined processes quite quickly; in days or weeks but not 67 days. But the more complex cases, which were dragging our previous statistics down, could continue to take considerable time.

Senator TROOD: Another estimates committee was informed by the Inspector-General for Intelligence and Security just the other day about the complaints that she had received with regard to the timeliness of your processes. I think she told Finance and Public Administration—Dr Thom, of course—that she had received 861 complaints. Have you had an opportunity to respond to the complaints that she no doubt has put to you?

Mr Irvine: I am just looking for those figures. Without looking at the figures, my understanding is that IGIS found that there had been no error on the part of ASIO assessments. She also noted that quite a number of complaints were actually designed to hurry up the visa process. I meant to find the exact—

Senator TROOD: That was indeed Dr Thom's evidence. That explains some of the complaints, but there are clearly some within those complaints that might be regarded as legitimate and substantive complaints in relation to your activities, and I want to know whether or not you have a response to that.

Mr Irvine: The basic answer to that is that the streamlining processes that we have introduced are part of an attempt to address a number of problems, all of which stem from the fact that it was taking a very long time to process and to conduct the security assessments. We hope the streamlining that we have introduced will help. It will not entirely solve the problem—or at least it will not entirely satisfy those people claiming status—but it will go a long way to making the waiting times reasonable, with the exception, I have to say, of some of the more complex cases which security demands we investigate very, very thoroughly.

Senator TROOD: You said the adverse assessments figure had increased. Do you have any statistics on adverse assessments?

Mr Irvine: Currently, with regard to IMAs, overall in all these categories we have this year, just in the last nine months, issued—

Senator TROOD: Are we talking about the financial year?

Mr Irvine: No. In the last nine months we have issued 36 adverse assessments to the IMA cohort, the irregular maritime arrival cohort. I am sorry; you have to be very careful with these figures. We have issued 36 adverse assessments, period, across all categories. Of those, 28 were people claiming—they were irregular maritime arrivals. There were another couple claiming other sorts of permanent visas, and I think there were six adverse assessments issued in respect of people wanting temporary visas to visit Australia.

Senator TROOD: My understanding is that, while you provide an assessment, it is up to the department of immigration to decide what the consequences of that assessment are. Is that correct?

Mr Irvine: I think the way the regulations are written—certainly the practice—means that the Minister for Immigration and Citizenship would refuse refugee status or entry status to a person who has received an adverse ASIO assessment.

Senator TROOD: Finally, do you have any figures on the security assessments you undertake for non-IMAs—people who come to Australia via aircraft or in other ways and who might enter the country illegally? Maybe you do not know whether or not they enter illegally. The category of non-IMAs—

Mr Irvine: Let me give you the breakdown, as I have it at the moment. This refers from the period 1 July to 30 April. So they are pretty much up-to-date figures. Overall during that period in terms of visa security assessments, because we also do security assessments for a variety of other purposes, we have conducted exactly 26,267 and, of those, 14,818 were for temporary visa applicants—people wanting to come to visit Australia for whatever reason. In terms of people asking for permanent visas into Australia, there are 11,449. That figure of 11,449 is broken down into 1,331 IMA assessments. For people applying for protection visas onshore for whatever reason—in other words, not the irregular maritime arrival cohort—there are about 256. For the various other permanent visa applications—subclasses of that—there was quite a considerable number of 9,862. But I do not have details of them. So I think the

key figures are 26,000 plus visa security assessments in the nine months to 30 May and, of those, 14,000, nearly 15,000, were people applying for a permanent visa to visit Australia.

Senator TROOD: Can you break down the 9,862, which is clearly a very large proportion of the 11,000-odd, into any significant cohort at all or not?

Mr Irvine: I cannot. And rather than speculate I would rather provide you with a list of the principal cohorts.

Senator TROOD: If you could please do that. Do the people to whom I referred in my original question—that is to say, people who might arrive at airports or by other means and who say, 'I'm a refugee and I want protection'—fall into which of these categories of the 26,000 or the 14,000?

Mr Irvine: I think, but I will check to make sure, they would fall under the category which I labelled 'onshore protection visas'.

Mr Fricker: There is no need to check that.

Mr Irvine: There is no need to check that. That is correct.

CHAIR: Senator Pratt has a question on the same issue.

Senator PRATT: I have a question on IMA.

Senator TROOD: Does she? I am happy to yield to Senator Pratt.

Senator PRATT: It is in your line of questioning. I know that you have made progress through all of those outstanding security assessments for irregular maritime arrivals, but I was unclear whether that was as a result of your existing processes or of the streamlined ones.

Mr Irvine: We had, if you like, a surge of approvals once we introduced the new risk management processes, because it enabled us to look at quite a number of the people who had been referred to us holus-bolus prior to that and who were banking up as a result of all the difficulties that we had with the huge numbers of people arriving last year. It is still too early to say what the long-term impact of that will be.

Senator PRATT: Whether it will enable you to keep up or do them very quickly?

Mr Irvine: I am certainly hoping it will.

Senator PRATT: I think you outlined that we would not expect the remaining outstanding assessments to be expedited as quickly because, clearly, they are the harder issues to resolve.

Mr Irvine: Basically, yes, except that the more resources I can put into the more complex cases—now that we are able to focus much more on the complex cases, I would like to think that we could move it a bit more quickly than we would have previously.

Senator PRATT: We have already had the department of immigration before us, and we did not really get a chance to match up the two discussions. I assume in a sense, because you have had a chance to get through that cohort, the pressure is now on them to go through what they need to do at their end in terms of placing people appropriately.

Mr Irvine: Yes, I expect so.

Senator BARNETT: We have had DIAC for the last couple of days, as you know, and a number of questions were asked of them which they have referred on to ASIO, so I am following up, and some of these questions relate to questions that Senator Cash has asked.

You have already given a bit of background just in the last few moments, so there may be a bit of overlap. If there is, please alert us to that. How long is it currently taking to determine the security assessments of offshore entry persons, on average?

Mr Irvine: You are referring to IMAs?

Senator BARNETT: Yes.

Mr Irvine: I can tell you that the figure had blown out under the old scheme to approximately 67 days. At that time, the overall refugee status process, or protection visa process, from the time that someone arrived, say on Christmas Island, until the time that a person was either granted or denied a visa, was approximately 212 days or thereabouts. I cannot give you equivalent figures for the last couple of months, but I am hoping, as I said in answer to Senator Pratt and Senator Ludlum, that we should be able to speed up the overall time. I am also hoping that we can now get onto some of the more complex cases—and we are—to address those, but I cannot really give you average times at the moment.

Senator BARNETT: All right, because it is a little early to say?

Mr Irvine: Yes.

Senator BARNETT: When did this system first get introduced?

Mr Irvine: In essence just from late February-1 March or thereabouts.

Senator BARNETT: Okay. I know you have answered some of these questions on notice from February, but I am trying to get the latest details regarding IMAs in the period 2010-11 to date. How many have had ASIO security checks?

Mr Irvine: I will give you the figures over a number of years to give you an idea. In the period 2008-09, we did 207 security assessments. You will not be surprised that in the period 2009-10 we did 2,822.

Senator BARNETT: A tenfold increase, right.

Mr Irvine: In the period 2000—as I mentioned before—July to April of this year, the figure is about 1,300.

Senator BARNETT: That is very useful indeed. Are there any cases in which ASIO has changed its assessment of an IMA, having regard to further information or for any other reason? If so, how many and for what reason?

Mr Irvine: We have certainly changed our assessment in, I think, eight or nine cases, where we conducted an initial assessment quite quickly and subsequent information came to light that required us to issue a new assessment.

Senator BARNETT: Can you categorise that sort of information?

Mr Irvine: In what way?

Senator BARNETT: In any way.

Mr Irvine: Simply that we had more information come to light which made us look again at whether or not that person could represent a security risk coming into Australia.

Senator BARNETT: Over what period are you talking about – those eight or nine cases?

Mr Irvine: Over the last financial year.

Senator BARNETT: I want to ask you about the 'up to' 800 asylum seekers to be sent by Australia to Malaysia. What role will ASIO have in their processing, if any?

Mr Irvine: We have certainly not discussed that with the department of immigration and citizenship. I do not envisage us having a significant role, if any.

Senator BARNETT: Why is that?

Mr Irvine: We are not conducting security checks on people because they would not be coming into Australia. They would not have been given refugee status – the '1A met' status – which is when we start to kick in with security assessments.

Senator BARNETT: When do you start these assessments? If they are already here sitting at Christmas Island, when do you start the security assessments? You cannot leave it in limbo for an infinite period.

Mr Irvine: As I mentioned earlier, when we sought to streamline the process, we sought to cut out what was unnecessary checking. In other words, there is no need to check someone, to conduct a security assessment, on someone who is not coming to Australia. The decision was that we would check only those people who have been granted refugee status to enter Australia. That is the current policy. It was not last year. We checked everyone who arrived.

Senator BARNETT: When did this policy change?

Mr Irvine: The government made the decision very late last year. We worked through the implementation phase with DIAC in January and February, and introduced it in March.

Senator BARNETT: So basically you have to make an assessment as to whether they have refugee status. If they said 'yes' then you undertook your assessment.

Mr Irvine: Yes.

Senator BARNETT: But if the Malaysian government asked the Australian government to provide that assessment then I assume you would follow through on that directive.

Mr Irvine: We would not have conducted an assessment to be able to provide any information.

Senator BARNETT: No, but if DIAC or the government asked you to, you would obviously undertake the assessment.

Mr Irvine: If the government instructed us to undertake an assessment, we would. But I would not anticipate, in those circumstances, that that would happen.

Mr Fricker: An ASIO security assessment is produced for a prescribed administrative act. In the scenario you are portraying, I am not clear as to what the prescribed administrative action would be. Passage to Malaysia I do not think would constitute a prescribed administrative act. Applying for a visa is. Whether we do a security assessment or not would be based on for what purpose? The purpose for which we would grant issue –

Senator BARNETT: So if it is not for a prescribed security act, that is, coming into Australia as a refugee, then you are not legally able to undertake such an assessment? Is that what you are saying?

Mr Irvine: I am not sure that we are not legally able to. I would have to take this answer under advice. We are also required to, on our own cognizance, conduct security inquiries, and

if that person were regarded as a threat to Australia or Australians then we might in fact conduct an inquiry anyway. Can I take that on notice? The legal area here is quite tricky.

Senator BARNETT: Why don't you take that on notice. With respect, one of the reasons we are asking this is because the fact is we do not know. There is much about this Australian Malaysian deal which is still somewhere up in the sky. Nobody really knows how it is going to operate. That is one of the problems. It was referred from DIAC to you so that is why we were following up. Let us have a look at the answer to your question on notice 151 from February estimates. You kindly provided the stats through to that period. It stated that from 1 July 2010 to 30 April 2011 ASIO had issued 20 adverse security assessments. Can you provide an explanation as to how many IMAs these assessments applied to and why each case received an adverse assessment?

Mr Irvine: In my previous answer to Senator Trood I in fact updated those figures. As I said before, the figures we are talking about are 36 adverse visa assessments across all visa categories. Of those, 28 – I do not recall the figure before – were irregular maritime arrivals.

Senator BARNETT: I do not think you said why they received the adverse assessment.

Mr Irvine: I will not go into detail on individuals or on individual adverse assessments. The adverse assessment was that this person was regarded as someone who could be a security threat to Australia under the terms of section 4 of the ASIO Act.

Senator BARNETT: So we can say that 28 of the 36 were a security risk?

Mr Irvine: Were assessed as security risks under section 4 of the act.

Senator BARNETT: What happened to them?

Mr Irvine: The process is that we issue an adverse security assessment and then they become the subject of DIAC procedures.

Senator BARNETT: Deportation in the normal course of events.

Mr Irvine: One would expect that people would be deported or another country would be sought.

Senator BARNETT: The *Sydney Morning Herald* in an article on 4 May states that 21 IMAs had received adverse security assessments. I do not know whether you are aware of that, but the question is: where are they now?

Mr Irvine: I cannot answer that question.

Senator BARNETT: Are you able to take that on notice?

Mr Irvine: I think that is a question that should be put to DIAC. That is a question that is actually in their bailiwick. We will have to go to DIAC.

Senator BARNETT: Yes, you would. But can you confirm that that is an active assessment as per that media report in the *Sydney Morning Herald* on that day?

Mr Irvine: I cannot confirm what the number was on that date but I can confirm that the current number is 28.

Senator BARNETT: Thank you. I am now moving to another area. It relates to wiki leaks. But as Senator Ludlam also has questions in this area I will wait.

Senator TROOD: Gentlemen, I wanted to ask you a couple of things about budget statements, which is where I intended to begin with this examination but was deflected by

other things. To begin with the question of the staffing of the agency, the budget statement on page 238 says that the staffing is set to increase to 1,769 from 2011-12 and we were at 1,724 for the year just completed. I understand that, but what particularly intrigues me is the quest that is contained in your annual report to reach 1,860. My question is, first of all: is the 1,860 still the staff objective for the agency and why is it that you are quite considerably below that objective at this stage?

Mr Irvine: The figure of 1,860 was set and agreed by the government following a comprehensive review of the security intelligence function and resources devoted to it by the late Mr Allan Taylor. The government of the day accepted the recommendations and a figure of 1,860 by 2011 was set. That remains our objective. Over the last two years we began to fall behind in our recruitment to meet that objective. There are a number of reasons for this. The first was that, while we were able to meet the objectives quite reasonably in terms of overall numbers in the first years, they were, if you like, the easy recruitments. As we looked for particular categories, especially in the operational areas, we began to find that it was harder to get the number of qualified people that we wanted and we fell behind quite considerably. The reasons for that is that it is harder to get the right sorts of people in a very, very competitive employment environment, particularly for computer and IT specialists. That was certainly a problem. It is possible—and we have looked at this and we are rectifying things—that our advertising was directed towards the wrong areas.

Another reason was that in terms of net recruitment we stayed still during last year. Part of the reason is the rapid growth that had occurred earlier on was settling. Generation Y tend to move on and our separation rate went from a very, very low figure of two or three per cent closer to where you would expect it to be in the Public Service—somewhere between six per cent and seven per cent. We were actually losing more people while we were trying to recruit more people.

I am pleased to say that this financial year we will meet our target of between 45 and 50 net growth. What it all means is that our growth has actually been delayed, because those sorts of bad years, if you like, by 1½ years.

Senator TROOD: So the 1,860 is still the government approved figure for the establishment of the agency—is that correct?

Mr Irvine: There has been no change to that figure, no.

Senator TROOD: I see. You are struggling for the reasons you have explained to reach that mark.

Mr Irvine: Yes.

Senator TROOD: I see. Regarding the separation rate that you have referred to, which has risen, do you keep statistics on the reasons for separation?

Mr Irvine: We have started to keep statistics, but have really only done so in the last six to nine months. The reasons for separations are pretty standard and are in line with the reasons across the Public Service. These include transfer issues where people do not want to come to Canberra—we are an organisation that has state outposts, and movement between those and Canberra can cause issues—employment issues for spouses and desire for promotion and advancement in another job. Rarely do people separate because they are totally

disenchanted with the organisation. It is the normal, standard reasons that explain mobility within the Public Service and between the Public Service and the private sector.

Senator TROOD: Have you undertaken any particular measures to try to improve your recruiting? For example, has there been any change in the criteria used for selecting staff?

Mr Irvine: No.

Senator TROOD: You said you had reconsidered your advertising efforts, but have you redirected those efforts so far? Are there other things you may have done to try to lift the numbers?

Mr Irvine: I think an important thing to say is that we have taken a policy decision that we are not going to lower our standards. Given the security and other considerations involved in an organisation of this nature, you do not solve any problems but are more likely to create problems for yourself if you reduce the qualifications and security standards that you require of people entering the organisation. We are looking at our advertising. We have also been able to process a lot more people; we are employing more psychologists to assist us in the psych part of the employment assessment process. There are a number of other issues that we are addressing.

Mr Fricker: We have introduced the new human capital framework strategic workforce plan in response to the factors that the Director-General was just talking about. We have looked at our entry-level program to think more about growing resources and growing people within the organisation as opposed to trying to find very highly specialised skills and expertise ready-made for us in the labour market. We have looked at career fairs and what we can do about reaching out and having a more overt presence as an employer of choice. We have looked at advertising on social media such as Facebook et cetera to try to attract with a more focused, intelligent recruitment process. We have been looking a lot at what we are doing strategically with our workforce to make sure we are not relying on the traditional methods of running a campaign, interviewing a batch of people and creating a merit list et cetera. We are looking at lateral transfers, talent spotting and whatever it takes to get the right people into the organisation and develop the qualifications and skills sets that we need in the right way without compromising our very stringent security and vetting standards.

Senator TROOD: I am glad you added that last bit, because the phrase 'whatever it takes' may not sit comfortably with the ASIO aspiration, I think.

Mr Fricker: Whatever it takes to get the right person in. It is all about differentiating ourselves as the employer of choice.

Senator TROOD: That is a better qualification, I think. You might try the Qantas magazine. I noticed on a recent flight that your competitors are advertising in the Qantas magazine. I do not know whether they have had any greater success by doing so, but they are certainly there in all their glory. Finally in this area, do you now have a target year when you think you may reach the 1,860, or is it something to do in the future?

Mr Irvine: If we cannot maintain what we look like achieving this year—that is, a net growth of about 50 people—we should achieve the target in the next year and a half to two years. Currently our head count is 1,735. The target is 1,860. I am hoping that in two years we will have met that target.

Senator TROOD: Good. Thank you. You may actually have answered this in earlier questions that were put to you by several senators with regard to the assessment of IMAs, but there is a budget measure of savings, in this case, of \$6.9 million over four years through risk based targeting. Is risk based targeting the new procedure that you have introduced in relation to IMAs, or is it something else?

Mr Irvine: Frankly, all of our security assessments for all visa categories have to be based on a form of risk management—a form of assessment as to whether or not a person warrants more extensive checking. It is my intention that ASIO continue to devote extensive resources—and those resources were increased last year—to the IMA cohort because that is an area of great pressure. At the same time, for all the other visa categories, we have looked at our risk based processes and we believe that we can reduce resources in some areas to those processes.

Senator TROOD: So everything you do is risk based—

Mr Irvine: Yes.

Senator TROOD: Or risk managed, obviously. But you have managed to quantify \$6.9 million in savings from the way in which you do business. Now, help me out if I have misunderstood this, but that would involve either a less comprehensive form of risk management or undertaking fewer assessments. It is not clear to me how you can save nearly \$7 million without cutting some of the activity that is required with regard to security assessments.

Mr Fricker: Senator, we looked long and hard at where we could find savings measures without compromising our operational effectiveness. There is very labour intensive area in terms of handling referrals for protection visas from DIAC. We have just developed the framework, which we have described in some detail, that we have applied to the IMAs. It is the same application of the same techniques and philosophies to apply those same process improvements to that protection visa stream in order to accomplish those savings over the four-year period.

Senator TROOD: So this is largely in the area of IMAs, is it?

Mr Fricker: IMAs are—

Senator TROOD: Or is it applying IMA experience to other parts of the organisation?

Mr Fricker: Precisely.

Senator TROOD: I see. I understood you to be saying that the refinements you have undertaken there were in large part a consequence of DIAC referring requests for assessment at a different point in the assessment process. So that seems to be driven by an external agency, in part, rather than by any savings you can undertake in your own agency.

Mr Irvine: Senator, because we have been under pressure in the IMA area, last year we undertook a review of the actual bureaucratic processes that we go through internally, within ASIO, and we were able to streamline them to get a more effective result. So some of these savings will be achieved through process efficiency areas. We will be able to do things faster with fewer people, across the board. Secondly, we have looked at the actual risk management and asked ourselves whether in certain categories, including in the IMA category, we need to check those people to that particular degree, and there have been savings achieved there.

Senator TROOD: Does that mean over-assessing some individuals, Mr Irvine?

Mr Irvine: In the past, certainly with IMAs, yes, because the policy was that we assessed everyone to the fullest extent. Everyone got a complex investigative assessment as a matter of policy even though it was producing very, very few adverse assessments.

Senator TROOD: Obviously the assurance we need is that by changing these arrangements there is no danger that we are going to be releasing into the Australian community people who we would otherwise not be releasing into the Australian community, who present a risk to the Australian community.

Mr Irvine: In the intelligence business there can be no absolute guarantees, but we believe that the processes that we have introduced give us about as good an assurance as you can expect, and in some ways a better assurance because it is enabling us particularly in the IMA stream to focus more resources on the more complex cases and not to dissipate those resources in extensive investigations of cases that are clearly going to turn out not to be complex.

Senator TROOD: Thank you. That concludes my questions on that area but I have further questions for later.

Senator BARNETT: Just to follow-up, Mr Irving, where I was before, I have just a couple of supplementary questions. I am interested to know whether you fast-track the security clearance of asylum seekers from time to time and whether you have been instructed by government to do so from time to time?

Mr Irvine: I think you asked me a similar question last time I was before estimates. The answer to that question is that ASIO has been working on the priorities given to us by DIAC. There was a period last year when, because of accommodation pressures and so on, DIAC asked us to focus on the least complex cases in order to hasten the process through to permanent residency in Australia, and we did that. We are also asked from time to time by DIAC to hasten cases where DIAC assesses that there are particular humanitarian or other reasons, and we do that as well.

Senator BARNETT: In terms of this criteria that you come up with with DIAC, is that something you are going to be able to make available to this committee on notice in due course, or is that something you would consider operational?

Mr Irvine: I would consider that very much operational, Senator.

Senator BARNETT: All right. Let me ask another question then. Do you make an assessment based on geography? If the asylum seekers is from some particular geographic location, can you give a blanket coverage or comment that, yes, that country is not a security risk and therefore we will give them the big tick and we will not provide an appropriate assessment? Do you do it on a geographic basis? How do you make this assessment?

Mr Irvine: You have to make the assessment on a range of factors, and no one factor stands alone. For example, looking at the whole issue of visa applicants, you would think applicants from the United Kingdom, the United States or whatever—New Zealanders do not necessarily apply for visas in quite the same way—would not be security checked, but in fact it is possible that there is a need to check visa applicants from those sorts of countries. First of all, as I said in my opening remarks on this subject, it is not geographically based, it is not ethnically based and it is not religiously based. It is a compendium of factors.

Senator BARNETT: In toto, but each of those would be part of the assessment process. Is that correct?

Mr Irvine: Yes, some of those factors would be taken into account, but no one of them in isolation.

Senator BARNETT: But all of them in toto? They would all be factors to be considered.

Mr Irvine: Yes, and a lot of others as well, which I will not go into.

Senator BARNETT: What I have not asked you tonight is: how many security assessments has ASIO conducted for non-IMA applications? I am wondering if you have that figure. Do you have a comparison for the last couple of years?

Mr Irvine: If we talk about onshore protection visas and other permanent visa entry subclasses, in the period from July 2010 to 30 April ASIO conducted a little bit over 10,000 assessments.

Senator BARNETT: On notice, is that something you could break down for us in terms of the categories of those 10,000?

Mr Irvine: Onshore protection visas are about 256; other permanent visa subclasses—I cannot break that down any further, although I did undertake to try to come back to the committee with that—are approximately 9,800.

Senator BARNETT: Did you say you were going to come back to the committee with it?

Mr Irvine: I will see if we can; I am just not sure how detailed our metrics are in that area.

Senator BARNETT: Do you have a figure for the previous 12 months?

Mr Irvine: In the previous 12 months, for both of those two categories it was 11,000, and we are currently running at 10,000.

Senator BARNETT: Do you have a breakdown of onshore protection and other visa subclasses?

Mr Irvine: Yes, and they break down again. In the 2009-10 financial year, there were 989 onshore protection visas and 10,419 other visa subclasses.

Senator BARNETT: Thank you very much; I appreciate that. I will do my five minutes of questions on WikiLeaks, if I could. I will ask a few questions about that. Firstly, can you advise the committee of whether WikiLeaks has published any ASIO information, advice or evidence?

Mr Irvine: I do not think I can confirm that. These were United States cables. There is information of interest to ASIO in those, but I would not want to comment on the detail.

Senator BARNETT: Okay. Is Wikileaks a foreign political organisation as far as you are concerned?

Mr Irvine: Under the current terms of the ASIO Act, in terms of foreign intelligence, no, because we only deal with state sponsored threats to security.

Senator BARNETT: Do you have the power to collect and assess Wikileaks information? Do you make assessments of that Wikileaks information, and on what basis do you do so? This is obviously outside of Australia, and I am just wondering on what basis you have a certain power or authority to undertake that assessment.

Mr Irvine: ASIO has the power under section 4 of the act to conduct investigations and to advise the government in respect of threats to Australian security, and that would apply to any threat as defined under the act.

Senator BARNETT: If you provided a brief to your minister—you report directly to the minister, is that right?

Mr Irvine: The Attorney.

Senator BARNETT: Your report directly to him. If you provided a report to the minister and you marked it 'urgent', would you expect the minister to read such a report within, say, 24 hours? What would your expectation be?

Mr Irvine: My expectation and my experience is that the Attorney turns over documents provided by us in an appropriate and orderly way and in good time.

Senator BARNETT: I can understand where you are coming from. If it is marked 'urgent', what would that ordinary course of events be?

Mr Irvine: We do not actually mark things 'urgent'; if there is something that requires the Attorney's attention urgently, we take it to him.

Senator BARNETT: So you stand there and watch him read the paper or briefing paper?

Mr Irvine: No, not always.

Senator BARNETT: But you take it there and you leave the document and then depart?

Mr Irvine: It depends. We have regular arrangements for the minister to sign warrants, and that is almost always done on a sign-and-return basis: he reads them, signs them and hands them back to us—or his office does. Other submissions that we make to him, he reads in his own time.

Senator BARNETT: For sure; but if there is something extremely important that is a top security type matter—and I am not going into operational matters; I am talking about procedure and protocol—you would normally take the document or file and get a sign-off that it has been collected?

Mr Irvine: Those are the arrangements that we have with the Attorney. They have worked extremely well. If you had another Attorney he may want to do things differently, but overall the turnaround of documents with the Attorney's office is entirely proper and appropriate.

Senator BARNETT: Would you call it prompt?

Mr Irvine: Yes, I would.

Senator BARNETT: If there was a matter that you would consider high security and very important, would you consider his attention to such a matter prompt within, let us say, 24 hours?

Mr Irvine: Frankly, if the matter was urgent, I would draw it personally to the attention of the Attorney.

Senator BARNETT: And it would be dealt with promptly.

Mr Irvine: It always has been, yes.

Senator BARNETT: Finally, if I could just ask about your advice on the Wikileaks website—you have obviously reviewed that and assessed it. Do you peruse it from time to time?

Mr Irvine: I am not sure that we do as a matter of course. I am not sure what you want me to say. The answer to that question, frankly, is: I do not know, actually, whether we are looking at the WikiLeaks website but, were we or were we not, we would not be commenting.

Senator BARNETT: No. Fair enough. I am not going into operational matters. But what I wanted to ask was: you referred to the release of the US files, and that caused some broad discussion in the media and in the public arena, for sure, and you were very alert to that at the time—is that a fair comment? Is that true?

Mr Irvine: The matter was drawn to our attention and issues related to it were drawn to our attention, yes.

Senator BARNETT: As to what was released, would you consider that irresponsible of WikiLeaks?

Senator Ludwig: It does seem like we are asking for conjecture on another entity's purpose, and I do think we are now straying into operational matters, quite frankly, in terms of the detail.

Senator BARNETT: I certainly do not want to go into operational matters. I will conclude with this question relating to the WikiLeaks leaks, as it were: can you advise—and you do not have to answer this question, and you can take it on notice as well if you wish—whether they were illegal?

Mr Irvine: I cannot answer that question. I am not the appropriate, and my organisation is not the appropriate, authority to respond to that question.

Senator BARNETT: Then let me ask another question: did you make an assessment and provide your assessment on that material and that advice, that information, to your minister?

Senator Ludwig: It does sound like an operational matter.

Senator BARNETT: Is that operational? It did not sound like an operational question. I am asking if you provided advice on the WikiLeaks leaks that we have referred to in our discussions in the last 15 minutes to your minister?

Mr Irvine: Let me put it this way: yes, I have discussed the WikiLeaks issue and advised the minister on certain national security aspects in respect of that, yes.

Senator BARNETT: Thank you.

CHAIR: We are going to dinner now.

Proceedings suspended from 18:32 to 20:01

CHAIR: We continue with our examination of the budget estimates of the Legal and Constitutional Affairs Legislation Committee. We have before us an officer from ASIO, Mr Irvine. Senator Ludlam has the call.

Senator LUDLAM: I am going to pick up where Senator Barnett left off before the dinner break, which is on the subject of the WikiLeaks organisation. I understand you said it is not strictly within the current meaning of the ASIO Act that you would necessarily be able

to surveil a civil society organisation like WikiLeaks. Is that the correct rendering of what you said?

Mr Irvine: There are no restrictions on the subjects of ASIO investigations except those prescribed in the act. It does not matter whether they are civil organisations, individuals or states. If there is a suspicion or a concern that there is a threat to security as defined in section 4 of the ASIO Act then ASIO can investigate that matter. It does so according to its perception of the seriousness of the potential threat, the imminence of that threat eventuating and so on.

Senator LUDLAM: In the instance of WikiLeaks, which we understand ASIO did give a bit of time to, did your assessment of the threat posed by that organisation meet those criteria?

Mr Irvine: I would not want to comment in any way on that. That is an operational matter. I would leave the answer there.

Senator LUDLAM: Can you tell us when ASIO started monitoring the work of WikiLeaks?

Mr Irvine: I am not even confirming that we have monitored WikiLeaks.

Senator LUDLAM: Is the capacity of ASIO to advise the government or to protect Australia's security limited, in your view, by your current legislation in relation to an organisation like this, which operates in a bit of a grey area?

Mr Irvine: No, I do not believe if WikiLeaks or any similar organisation were considered to be a threat to security that there would be any limitation on our ability to investigate that organisation.

Senator LUDLAM: Okay, and again just to test your view: you are not necessarily acknowledging tonight that you do believe they are a threat to Australia's security?

Mr Irvine: I am not confirming or denying; no, I am not acknowledging that.

Senator LUDLAM: That is what I thought. There was reporting in the media earlier this week, I think it was a piece in the *Sydney Morning Herald*, referring to a so-called 'WikiLeaks amendment' in the proposed legislation that is currently before the legal and constitutional affairs standing legislation committee, which effectively broadens the range of activities that ASIO would be able to undertake. Are you aware that officers of the department are referring to a specific amendment within that piece of legislation as a WikiLeaks amendment?

Mr Irvine: I read that article, frankly with some bemusement. The amendments to the legislation were considered long before WikiLeaks arrived on the scene in the way it did.

Mr Wilkins: Senator, were there officers of the Attorney-General's Department who called it that?

Senator LUDLAM: That I was referring to then? Yes. I do not think there is any suggestion that ASIO officers were referring to it in that way, but it was officers of the A-G's Department.

Mr Wilkins: I would not have referred to it as that.

Senator LUDLAM: Nobody is named in the article. Does everybody need to set on the record that they have never referred to the amendments in that way? Minister?

Mr Wilkins: No, I am just saying it is not the departmental view, let me put it that way.

Senator LUDLAM: Maybe the department might be able to help us out because you will not be in a position where you are compromising ASIO's operational secrecy as to whether it is the view of the department that the range of ASIO's activities need to be broadened so that they can directly assess the activities of an organisation like WikiLeaks.

Mr Wilkins: Our view would probably be that they have powers to do that if they need to already.

Senator LUDLAM: Based on whether they think the traditional definitions that have been there for a long while about whether our national security is being compromised?

Mr Wilkins: Based on section IV of their act.

Senator LUDLAM: Okay. The thing is that that bill proposes to expand the range of things that ASIO can investigate based on, for example, Australia's economic wellbeing, and that considerably broader range of activities could conceivably be encompassed under the framework of our economic wellbeing. That is much broader than national security, I hope you would agree.

Mr Wilkins: It is a component now of what we think of as national security. National security has expanded, as you have seen from the national security statements that the government has been putting out. There is now a much larger range of threats that would impinge on issues which we would refer to as national security.

Senator LUDLAM: Okay, so national security now refers explicitly to commercial—well, it does not yet, but it will if the bill goes through.

Mr Wilkins: It can. Not every commercial matter is going to be in that league.

Mr Irvine: Equally importantly, foreign intelligence can include all of those matters. The purpose of this bill is to align the definition of foreign intelligence given that ASIO has the power to collect foreign intelligence in Australia at the formal request of the Minister for Defence or the Minister for Foreign Affairs.

Senator LUDLAM: Mr Irvine, have you read the Law Council's submission to this committee on that bill?

Mr Irvine: No, I have not.

Senator LUDLAM: I commend it to you. They have used unusually strong language for the Law Council, which is a reasonably conservative organisation, in relation to these particular amendments that I am referring to that say, 'We'll give you virtually unfettered power which has two effects'. Firstly, it makes it very difficult for the parliament to know what ASIO is up to because at the moment, as we have discussed before, you are constrained to a relative narrow range of activities and these are to be substantially broadened, and, secondly, it also makes it difficult for the parliamentary joint committee and the IGIS to assess whether or not you are meeting your benchmarks because the benchmarks will henceforth be—

Mr Irvine: May I interrupt there? It does not make it difficult for the IGIS; the IGIS has unfettered access to all ASIO records, files and activities.

Senator LUDLAM: But what the IGIS does is assess whether you are in compliance with your act or not.

Mr Irvine: Exactly.

Senator LUDLAM: That is their job and the act henceforth will say: you can do more or less anything you like as far as the Law Council's reading and seriously undermines the role of the IGIS. If you have not seen the submission, I know it is going to make it slightly difficult to comment on, but it is very, very strong language, and only they have unfettered access to your records but they cannot do anything if there is no apparent breach because you are operating virtually unfettered.

Mr Wilkins: Senator, can I perhaps get Tony Sheehan to address that.

Mr Sheehan: Thank you. Going back to Mr Irvine's point: the amendment to which the senator is referring in relation to the definition of foreign intelligence will not give ASIO unfettered powers; it relates to the definition of foreign intelligence that allows a request to come through for ASIO to collect in accordance with all the current limitations that are otherwise honoured in respect of collection of foreign intelligence, which includes the requirement for the Attorney to issue a warrant for that purpose. It does not provide unfettered powers to ASIO in that respect.

Senator LUDLAM: Have you reviewed the Law Council's submission or any of the submissions that have come through to this committee on this?

Mr Sheehan: I am aware of it. Mr McDonald knows the Law Council review in more detail.

Mr Wilkins: Do you want to pursue it?

Senator LUDLAM: It looked as though Mr McDonald was going to address that question.

Mr G McDonald: I think one of the main things to note is that this definition is not used. It has been used previously in other contexts such as with other intelligence and security agencies. It needs to be understood that this is not for any sort of willy-nilly circumstance; it is actually to do with our national economic wellbeing, so it would have to be something of considerable importance.

Senator LUDLAM: I am sorry: importance to who?

Mr G McDonald: In terms of our national economic wellbeing, Senator.

Senator LUDLAM: What kind of criteria would you use to gauge that?

Mr G McDonald: An example of that would be—and this is something that people do have in mind with these amendments—is major cyberattacks, for example. Nowadays much of our industry and much of our economic infrastructure, which is very, very connected to our national security, is owned by the private sector as well as the Australian government, the state government and the like and they can be targeted by individuals, not other countries, who could threaten our national economic wellbeing. A major organised crime syndicate which had been effective in attacking, say, our banks could cause a loss of confidence in the banking system and then do considerable damage to our economy. That would be an example of something major of that nature.

Another one, which is particularly important, is to do with the proliferation of nuclear biological, chemical and conventional weapons technology. In the old days, everyone would think: that would have to be controlled or initiated by a foreign power, which is the traditional side of it; however, there is a lot of money in it. There is a lot of money in these sorts of

activities, and so you could have individuals threatening our national economic wellbeing in that way.

Another final area, which is important, is the environment side such as illegal fishing operations or wiping out whole species of fish and the like. You could have a situation where you had individuals doing that and affecting our national wellbeing in that way. So they are just three examples of the sort of thing we are talking about. It is not like minor—

Senator LUDLAM: You gave me examples but not criteria. The fishing example in particular was interesting. Which of those things could ASIO not currently intervene in?

Mr G McDonald: There would be circumstances where they would not be able to intervene in all three of those.

Mr Sheehan: As we are talking here about the definition of foreign intelligence collection, it is a key point that we make consistent the definition of foreign intelligence with the other relevant legislation.

Mr Irvine: If I could just add a little bit there: section 17 of the ASIO Act specifically authorises ASIO to collect foreign intelligence within Australia on behalf of the government. This is done under warrant at the request of the Minister for Foreign Affairs or the Minister for Defence. So it is not ASIO rushing off and doing things in this foreign intelligence area off its own bat. It does it in collaboration with other authorised foreign intelligence collectors in accordance with their acts as well. Where we have a difficulty—and why this amendment is actually important—is where the definition of foreign intelligence under the Intelligence Services Act, which governs the activities of DSD and ASIS, is different from the definition of foreign intelligence under the ASIO Act. The reason for this is they were written at different times with different circumstances in mind. Why we are now concerned to align that definition is because we increasingly have to deal with the threats to security or other foreign intelligence collection requirements of the government in regard to non-state actors as well as to state actors. Currently, where the Minister for Foreign Affairs or the Minister for Defence would require us to collect foreign intelligence in Australia on subjects where the perpetrators or the subjects of that collection are non-state actors, we cannot do so.

Senator LUDLAM: I might leave this topic. I wonder—if it is not out of order, Madam Chair—whether I could invite Mr McDonald to review the two submissions that I have referenced—one from the Law Council and the other from Patrick Emerton from Monash University—and then direct correspondence to this committee on that bill. Both submissions are very strongly worded. If you do not already have something—Mr McDonald?

Mr G McDonald: I might be able to—

CHAIR: In relation to what inquiry, Senator?

Mr G McDonald: The inquiry that is afoot at the moment on the bill that is directly relevant to ASIO.

Senator Ludwig: Chair, I think we are now using estimates to further—

Senator LUDLAM: That's all right. I put the question through the chair, Minister.

CHAIR: I am just about to go there.

Senator Ludwig: It does seem a little—

CHAIR: If we have a current inquiry into that legislation, that is probably the best place. I am not trying to avoid your questions being answered but this witness will no doubt come before us in a public hearing and we will just gather all the information together on the transcript on one day in a consolidated form for all of us to use. So the legislation is—

Senator LUDLAM: If there is going to be a public hearing, then I will—

CHAIR: The legislation into the—

Senator LUDLAM: It is before this committee.

Senator Ludwig: I am happy for it to be foreshadowed and of course Mr McDonald is now seized of the issue—

Senator LUDLAM: That is helpful.

Senator Ludwig: What I am yet concerned about—

CHAIR: Every legislation we have before us we have a public hearing date planned—

Senator Ludwig: If it comes in through an estimates hearing, then it is open and there is not an opportunity as there is in a normal committee to maybe use the private areas.

CHAIR: Yes, and I think there are other members—

Senator Ludwig: Secondly, the other members who are not there might find the information beneficial. Thirdly, just because the information comes back through here to Senator Ludlam does not necessarily mean that it ends up in the committee to form part of the committee's information and recommendation.

Senator LUDLAM: I will take the chair's advice.

Senator Ludwig: But I do not want to—

Senator LUDLAM: Mr McDonald, if you are really keen—

Mr G McDonald: We have already written a full submission to that committee which covers all these issues, including the Law Council's submission. So we have already written a full submission on it for the committee.

CHAIR: We knew you would. That is great.

Senator LUDLAM: I will move onto another topic, if I may. Has ASIO cooperated with the Egyptian intelligence services in the past?

Mr Irvine: ASIO has quite a considerable number of foreign liaison relationships. We do not make those relationships public.

Senator LUDLAM: Okay. You might have to take the following question in a general sense. Has the recent turn of events in Egypt affected cooperation with security services there?

Mr Irvine: I would answer that in the way you would expect.

Senator LUDLAM: Okay. There is an inquiry underway by the IGIS into the actions of relevant Australian agencies in relation to the arrest and detention overseas of Mamdouh Habib, from 2001 to 2005. Has ASIO been called on to cooperate with that inquiry?

Mr Irvine: ASIO is cooperating fully with that inquiry.

Senator LUDLAM: Can you please sketch for me, to the degree that you are able, what that means? Is it documents, meetings? What is underway?

Mr Irvine: That means that the Inspector General of Intelligence and Security, in pursuing that inquiry, has sought access to documents and ASIO officers, and we have been cooperating fully.

Senator LUDLAM: If the IGIS inquiry finds that the relevant agencies—but I will confine this question to ASIO—did know about Habib's whereabouts during the period into which IGIS is inquiring, what kind of sanctions would apply to those who told parliament otherwise?

Mr Irvine: I think that is an entirely hypothetical question. I would prefer to await the report of the inspector general.

Senator LUDLAM: Has IGIS indicated how long that inquiry is expected to take?

Mr Irvine: I think the inquiry was due to finish by the middle of the year. That was the original conception, but I think it might be expanding out. That is really in the hands of the inspector general.

Senator LUDLAM: I understand. Are you aware of the contents of an 840-word statement by an Egyptian intelligence officer that names an Australian official who witnessed the torture of Mamdouh Habib in Guantanamo Bay?

Mr Irvine: I have read the press report of that.

Senator LUDLAM: Have you seen the original source document?

Mr Irvine: I have not, no.

Senator LUDLAM: Has ASIO had any contact with the intelligence officer from Egypt who is mentioned in the press statement?

Mr Irvine: That is a leading question, because it assumes that there was an Australian intelligence officer involved.

Senator LUDLAM: No, it was an Egyptian one. I do not think it was an Australian intelligence officer.

Mr Irvine: I do not know, because I do not know who the so-called Egyptian intelligence officer was.

Senator LUDLAM: So you do not acknowledge that he necessarily exists? You have seen the press reporting of that?

Mr Irvine: I have no corroboration of that at all.

Senator LUDLAM: Has ASIO done anything to investigate the allegations that he has made?

Mr Irvine: There is an entire inquiry going on.

Senator LUDLAM: Not by ASIO—by IGIS. Has ASIO done anything to investigate the allegations?

Mr Irvine: In the process of assisting the inquiry, we are providing all documentation to the inspector general, so we are letting the inspector general conduct the inquiry.

Senator LUDLAM: But ASIO has not done anything directory to corroborate, confirm or deny, or otherwise, that report?

Mr Irvine: I am sure that there are views in ASIO on the subject, but that really is a subject for the inspector general.

Senator LUDLAM: I recognise that there would certainly be views. That was a reasonably straightforward question as to whether you have done anything to corroborate the reporting.

Mr Irvine: I cannot answer that off the top of my head.

Senator LUDLAM: Did you want to comment, Mr Fricker?

Mr Fricker: I was just going to comment that there has been a great deal of information put before this committee, at previous estimates hearings, which has been quite a thorough and forensic description, with a time line presented and what information was known over that period. I was simply going to say that a great deal has been put on record. Everything we are able to put on record has been put on the record. We do not have anything further to add to that information. And of course, as the director-general has just said, this is the subject of an inspector-general's inquiry at the moment.

Senator LUDLAM: It does not actually go to the nature of the question that I am putting to you. Since the last estimates hearing this information has come to light. These allegations have been made, and what I am trying to work out is what action ASIO has taken since then, of your own motion, to confirm or deny the reporting.

Mr Irvine: The short answer is that we are relying on the independence of the Inspector-General of Intelligence and Security to examine the whole issue of Mr Habib's claims, and we are making all the information available to her.

Senator LUDLAM: So you have not attempted to independently verify that information?

Mr Irvine: I am not sure how we would.

Senator LUDLAM: You are a spy agency. That is what you do. I am not asking you to spell out how you would do it, I am just asking whether you have.

Mr Irvine: I rest my answer on the previous response.

Senator LUDLAM: Which is 'maybe'.

Mr Irvine: Which is: the inspector-general is inquiring into this matter; the inspector-general has all of the files, and access; and that, I think, will be conclusive one way or the other.

Senator LUDLAM: Are you aware that the alleged document was shown to government solicitors three days before they suddenly paid Mr Habib an undisclosed amount to drop his lawsuit claiming that Australia was complicit in his CIA engineered rendering in 2001, his transfer to Egypt and his subsequent torture?

Mr Irvine: I am not aware of that, no.

Senator LUDLAM: Is anybody interested in providing some info on this one?

Mr G McDonald: Yes, I can assist. I can assure this committee that decisions about the settlement were made prior to and without reference to such statements. I can absolutely assure you of that.

Senator LUDLAM: It's a total coincidence? Events occurred in 2001 and within three days of that document coming to light a payment was made? That is remarkable.

Mr G McDonald: I can absolutely assure you that that document was not taken into account or anything with that settlement. The interesting thing about these settlements is that there is a process leading up to them which takes some time to crank up. It is certainly the case that—

Senator LUDLAM: How long had this one been going for?

Mr G McDonald: This had been going on many weeks before. I do not have the precise dates before me but I know that it certainly went earlier than December.

Senator LUDLAM: Anything further to add?

Mr G McDonald: No.

Senator LUDLAM: Some time prior to December. Was a proposition put to Mr Habib or did he approach the Australian government for a settlement?

Mr G McDonald: I am in a position where the settlement and the whole discussions about that are subject to a confidentiality agreement. I think if we start going into details like that I might be in danger of creating difficulties there with that agreement.

Senator LUDLAM: All right. Just tell us as much as you are able, without trespassing on the confidentiality agreement, about the process that led up to and resulted in that settlement being offered and then accepted.

Mr Wilkins: I think it is probably a decision made by ministers in the context of cabinet based on legal advice from various quarters, and I do not think we can go further into it than that, actually. Certainly the material that you are interested in, to the best of my recollection, was never involved in it and never put before ministers and did not form any part of their reasoning. But it was a cabinet process and therefore there are very strict limits to where we can go on that. Besides, as Mr McDonald has said, some of the clauses of the agreement itself preclude opening up processes because of the confidentiality that we agreed.

Senator LUDLAM: That is very neat indeed. I wonder then if you could tell us—and maybe if you would like to, because some of this I am getting just from open-source reporting—whether, as to the reports that the document was shown to government solicitors prior to the settlement being reached, that was the case or not.

Mr Wilkins: I do not know.

Senator LUDLAM: It was reported that it was. Could you just confirm whether that is true or not.

Mr Wilkins: I cannot confirm that that is true. I do not know.

Senator LUDLAM: Mr McDonald, have you got anything that would shed some light?

Mr G McDonald: I would have to take that on notice. I do not know.

Senator LUDLAM: I have just got one or two other questions, so I will let you keep researching that one. Are you aware of the investigation of this parliament's Privileges Committee relating to information that was provided to this legal and constitutional affairs committee on the question of allegations of torture and the rendition of Mr Habib in 2008?

Mr G McDonald: Excuse me; I did not hear that question because I was checking my notes about the earlier question. I do have something in the note here to suggest that the Government Solicitor did have a copy of that statement. So I will just confirm that now.

While I was looking that up I was not listening to your question properly, so I am sorry about that.

Senator LUDLAM: That is okay. Let us just confirm that, though. So in fact the government solicitors who are referred to in that reporting had cited the document referred to before the settlement was signed, but they had been in the process of reaching some kind of agreement for weeks before they had seen it?

Mr G McDonald: Yes.

Senator LUDLAM: My final question is on the Privileges Committee report that was related to evidence that was tendered to this committee years ago now—2008, I think; no, actually, it was well before that—on the question of allegations of the torture and rendition of Mr Habib.

Mr G McDonald: I am aware of the fact that there was a Privileges Committee report, yes.

Senator LUDLAM: I will come back for two other brief issues. One of them is the review of the intelligence community that was announced right before Christmas last year. The government announced the terms of reference for the 2011 independent review of the intelligence community. It covers the six security and intelligence agencies in Australia. Mr Irvine, can you just tell us how ASIO has been engaged with this review and what you are required to make available?

Mr Irvine: ASIO certainly fully supports the independent review of the intelligence community. We have been heavily involved in IRIC and activities related to the review. We have prepared a number of submissions for the review. I and my officers have met the two reviewers on several occasions. We have been able to show the reviewers aspects of our work that they have requested to see. I am not sure there is much else I can say, beyond the fact that, as I said earlier, we welcome the review and we are working closely with them to respond to questions and issues they raise with us.

Senator LUDLAM: Would you be required to make available materials to reviewers? Normally the only person who gets to see that kind of stuff outside your agency is the inspector-general.

Mr Irvine: I am not sure if we are necessarily required to, but we certainly would. If this review is going to be independent, objective and effective then they have got to see everything they want to see.

Senator LUDLAM: Okay. So there is—

Mr Irvine: If they were not, I would be explaining to them the nature of the sensitivity, and I would leave it to them to cite. Obviously, for example, the names of our sources and so on they would not be interested in.

Senator LUDLAM: I suspect not. For the establishment of the Counter Terrorism Control Centre in the last budget there was \$9.1 million over four years, and that will be shifting into your headquarters. Is that correct?

Mr Irvine: It is in our current headquarters at the moment.

Senator LUDLAM: It will remain co-located when you move into the gigantic palace?

Mr Irvine: Yes.

Senator LUDLAM: Is the staffing still 10, or has it expanded since we last spoke about it?

Mr Irvine: I think the nominal staffing is 10; I do not think we have quite got to that number yet.

Senator LUDLAM: I think you said before that there would be seven from ASIO and one each from DSD, ASIS and the AFP. Does that still sound about right?

Mr Irvine: Yes, that is right. DSD, ASIO and the AFP have provided senior, high-quality offices to that control centre.

Senator LUDLAM: Nothing but the best. What is the control centre actually doing?

Mr Irvine: The purpose of the control centre to ensure that the government's counterterrorism effort both at home and overseas is properly coordinated between the various agencies who conduct Australia's counterterrorism effort—between the collectors of intelligence and between the consumers. It is responsible not simply for assisting in the coordination of the federal government effort but also for ensuring that the cooperation and coordination in the flow of intelligence backwards and forwards between federal and state authorities is optimal. One of the big problems in intelligence, particularly in relation to counterterrorism, is ensuring that the right piece of information gets to the right person at the right time; that is part of its job.

The other key element of the work of the CTCC is to establish the priorities for our counterterrorism effort, both at a strategic level and at what I will call a granular level in terms of individual investigations and so on. It is designed to ensure that the collectors of intelligence are collecting according to the right priorities, that we are coordinating the collection and that the collectors can look at those priorities and plan their resource dispositions accordingly. It also performs a role in evaluating the quite granular intelligence that comes in to ensure that the collectors are in fact meeting real, genuine requirements.

Senator LUDLAM: Thanks very much. I think that is probably the most expansive statement that we have heard on that to date, so I appreciate that. Mr MacDonald, I have one final question for you on the subject we were discussing a few moments ago. You just confirmed for us, I think, that the Australian Government Solicitor cited that document a short while before—you did not acknowledge a time period—the settlement was reached. At what point did they become aware of the existence of the document?

Mr G McDonald: That is all I know about it, actually. I think they probably received it after we had organised the meeting to discuss the settlement, so it was provided to them very close to that meeting.

Senator LUDLAM: What I am interested to know is at what point they became aware that such a document even existed as opposed to when they saw it.

Mr G McDonald: I do not know the answer to that. I think it was at that time. I can check with the Government Solicitor as to whether they were aware of it before then, but I imagine it would only have been then.

Senator LUDLAM: I do not know that that is necessarily a safe assumption, so can you take that on notice for us, please.

Mr G McDonald: Yes. That is why want to take notice.

Senator LUDLAM: Did they become aware of it at the point that it was presented—'here it is'—or had they been aware of it for weeks, perhaps even as early as December.

Mr G McDonald: Certainly my knowledge is that they were aware of it only then, but I will check.

Senator LUDLAM: Much appreciated. Thanks for your time.

Senator TROOD: Mr Irvine, in the last estimates I put on notice a question to you—I think it was question 102—about the Hizb ut-Tahrir organisation. You responded to my question by saying that, in essence, the Department of Immigration and Citizenship was the responsible authority in relation to visas and that your attention was not drawn to the presence of these Hizb ut-Tahrir members in Australia, since they had not been referred to you by the department—that is, DIAC—and they were not a proscribed organisation, and therefore they did not come to your attention. I think that summarises the thing.

Mr Irvine: Yes.

Senator TROOD: This may not surprise you, but I have received from DIAC a response to another question, in which they said these kinds of questions about Hizb ut-Tahrir should be put to ASIO. So I am coming back to you on some matters. I understand your answer and the process that you are outlining to me there. What I cannot understand is why these individuals, or this organisation, apparently have not come to your attention, because it is a very unsavoury organisation in many ways. In particular, my understanding is that there is a movement alert list, and I think their names were not on the movement alert list, so that was presumably the reason why they did not ask you to check their credentials. But, as I am sure you are well aware, there are arrangements under the Migration Act in relation to people of concern, and there are various criteria that apply to people of concern, one of which is the holding of extreme views such as belief in the use of violence as a legitimate means of political expression. You are no doubt very familiar with Hizb ut-Tahrir's activities, or at least its rhetoric—its polemic, in fact—but perhaps I can just give you the flavour of some of the things they advocate. There was a report in a newspaper in London in 2007, in which the global leader of Hizb ut-Tahrir, Ata Abu Rashta, said the group called for the 'destruction' of Hindus living in Kashmir, Russians in Chechnya and Jews in Israel:

The Caliphate ... will liberate the countries and the people from the influence of the Kafer ... and its allies and the tyranny of its men and followers.

Elsewhere they have said things like:

When we talk about the question of violence, we mean in regard to the establishment of an Islamic state; it's not a case of we're against violence, full stop ... When it comes to Israel, it's a completely different issue ... Israel has to be removed militarily and HT supports any and all attempts to do so.

The rhetoric goes on and on and on, advocating violence against a whole range of seeming opponents of Islam, and in particular violence directed at Jews and the Jewish state. Perhaps you can help me and explain why the people who are members of an organisation of this kind are not amongst those who would be people of concern and would therefore excite the attention of the authorities when they seek a visa.

Mr Irvine: Senator, I cannot explain why it was that those people were not drawn to our attention. But had they been drawn to our attention, we would nevertheless have had to look at them in terms of the organisation to which they said they belonged, and that organisation is

not a proscribed organisation in Australia despite the extremely unsavoury, unpleasant nature of their various claims. It is not proscribed in the United Kingdom either, interestingly. The organisation is entitled to hold meetings and conferences like any other group, and to invite people to it. Had we been asked to make a judgment on that, I would not speculate on what that judgment would be because it would very much depend on the individuals, what we knew about the individuals, and so on.

Senator TROOD: I do not invite you to do that, Mr Irvine; I appreciate the limitations of your position. The DIAC fact sheet about these matters advises that the movement alert list is a result of the department's liaison with security agencies, among others. Now that clearly is you.

Mr Irvine: The movement alert list is a list of individuals—it is a very fallible document; there are people who perhaps should be on it who are not—and it is an immense assistance to us. ASIO has quite a significant role in placing names on that list, but if people are not on that list, they would not necessarily be drawn to our attention.

Senator TROOD: No, but you are not telling us are you that just because an organisation is not proscribed that the members of that organisation would not find themselves on the movement list or subject to visa restrictions?

Mr Irvine: No, I am not saying that. But nor am I saying that every member of that organisation would necessarily be on the list.

Senator TROOD: No, I appreciate that. The things that this organisation advocates, I think we have used similar language—unsavoury and a whole lot worse—

Mr Irvine: Obnoxious I would say.

Senator TROOD: I would agree with that characterisation as well, deeply obnoxious. In fact, I would think it goes further; they incite violence against particular members of the community. Are these not matters that come to your agency's attention? Are these not matters that would excite your attention in relation to individuals who are part of an organisation of this kind?

Mr Irvine: To answer that question I would be treading quite closely on operational matters, but you can assume that where we have evidence or suspect that there is a significant threat to security, and that matter were brought to our attention, that we would have a look at it. What our judgment would be, given the particular thresholds we have, which are designed to protect the individual against unnecessary or gratuitous penalty, I cannot predict.

Senator TROOD: I understand that and I applaud your attention to human rights, which is what you are underscoring here in your answer to this matter. This particular organisation may not be proscribed here and it may not be proscribed in Britain, but it seems to me stretching credibility, given the relationship that exists between ASIO and British intelligence agencies, that this organisation and the people who belong to it, and these two individuals, have not been previously a matter of some interest to you.

Mr Irvine: I am not aware of whether the two individuals were on the movement alert list or not; I suspect, from the case, probably not. We do cooperate closely with allied agencies, but I do not think you must necessarily assume that every individual who comes into Australia will be subject to that level of scrutiny.

Senator TROOD: Mr Fricker, are you keen to add to this matter?

Mr Fricker: Just a couple of points of detail. I am just reading the answers that we provided to you and I think we have fallen into an assumption which I am not sure we made. I do not think we ever confirmed whether we did or did not receive a security referral from Immigration on those individuals. I am just a bit concerned that we have slipped into a pattern of speech where we are all saying that they were not referred to us and we did not examine them. I do not think we actually confirmed whether or not those individuals were referred to us.

Senator TROOD: I had thought that you had responded previously that part of your explanation as to why this matter was not investigated was that DIAC had not brought it to your attention and therefore you had no knowledge of it.

Mr Fricker: I am just reading our answer here. We described the criteria that applied, as we have described earlier in this session; the system by which they may be referred to us; and then, if they were referred to us, we would have applied our security assessments.

Senator TROOD: As I would expect you to do.

Mr Fricker: But I do not think we have said whether or not these individuals are on the movement alert list and I do not think we have said whether they were or were not referred to us. Just as a point of detail, I do not wish us to create the record that—

Senator TROOD: It may be that DIAC was of that mind.

Mr Fricker: It may be the case, Senator. I am simply saying, for the purpose of this discussion, we are not going to the specifics of those individuals and whether they are—

Senator TROOD: I will not delay the matter but it does concern me that this has occurred; that seemingly these individuals were allowed to come to the country, seemingly without any attention taking place in relation to their arrival in the country or indeed their departure.

Mr Irvine: We would not be able to comment on any action or activity that we undertook in relation to that conference or any other.

Senator TROOD: I think I am right that in fact it was DIAC who informed the committee that they were not on the list and therefore they were not referred.

Mr Irvine: That may be.

Senator TROOD: Which is why it did not come to your attention.

Mr Irvine: On the information available to me, I just do not know.

Senator TROOD: There seems to have been, on the face of it, a systemic failure here in terms of looking at these individuals. It may be that, as you apply your criteria, they would have been given a visa and they would have come here and all the interests were concerned; but that they can come from an organisation like this and nobody pays any attention to them is a matter of concern. Have you had reason to investigate the matter since I raised it previously?

Mr Irvine: I would not comment on that.

Senator TROOD: I leave on the table my concern about what seems to be a failure here and perhaps invite you, if you have not done so, to deal with my concern any way you think appropriate.

I have one other matter to raise. I want to refer you to a matter which gained some notoriety earlier this month, and that is the whistleblowers who appeared on *Lateline* talking about their activities in the defence security agency. I realise that that is not a matter directly under your interest, except insofar as these three whistleblowers implicated ASIO in their revelatory interview with *Lateline*. As you may know, one of the accusations or allegations they made was that they falsified documents while they were serving in the agency, and that of course meant filling in gaps where people had incomplete biographies. My understanding is that some of those individuals' records were sent to your agency for examination. Can you tell us whether or not those falsifications were picked up by your organisation?

Mr Irvine: I am certainly aware of the claims made on *Lateline* by three individuals that false information in relation to security clearances had been passed to ASIO, and we took those allegations very, very seriously. The Department of Defence is actually the lead agency in this matter, and we are working with it. I understand that the claims of inappropriate vetting practices have been reviewed by the Department of Defence and have not been substantiated. I think that is probably all I can say on this matter. It is our job to conduct various checks and vets on information passed to us by the Defence Security Agency, and to the best of my knowledge the inconsistencies that those three individuals have alleged have not been substantiated.

Senator TROOD: So you regard the assessment by the defence department as conclusive that there were no compromises in the process, and you therefore have not investigated any further—is that right?

Mr Irvine: We have certainly looked at the issue from our point of view and, as I say, we have not substantiated it. In the absence of any other information, if that has been the result of a Defence investigation, until it proves otherwise we would accept their judgment.

Senator TROOD: Have you investigated the processes by which you receive requests from the DSA to undertake vetting, or have you investigated some of the cases which were alleged to have been compromised?

Mr Irvine: We do not know what cases are alleged to have been compromised. I assume that has been the subject of the Defence investigation. As for the processes, I am not sure that this is, from ASIO's point of view, an issue of process. The allegation goes to the accuracy of information that was passed to ASIO by Defence.

Senator TROOD: Yes. Have you tried to test the accuracy of that, or have you, as I said, regarded the investigation by Defence as conclusive that there were no inaccuracies?

Mr Irvine: In the normal course of our following up on information passed to us by Defence, we would in fact be looking at the accuracy of some but not all of the information in the Defence files. At the moment I can say that we have not found anything to substantiate the claim.

Senator TROOD: But you have undertaken an investigation in light of these revelations—is that correct?

Mr Irvine: We have certainly looked at the issue, but I cannot tell you the extent to which we have gone through the individual cases.

Senator TROOD: I guess what I am seeking from you, Mr Irvine, is an assurance that what are quite serious allegations that have implications for your agency have been taken seriously—and you have given me that assurance—and have been acted on as a consequence.

Mr Irvine: We have certainly been in touch with the Department of Defence to make sure that they have taken the accusations seriously as well.

Senator TROOD: I see. Good. Mr Fricker?

Mr Fricker: I think that just concluded the line of information. I was simply going to add that we have not undertaken, and we do not intend to undertake, an investigation of the Security Vetting Agency's processes. Obviously, after the allegations were made, we sought assurances from the defence department about their investigation of those allegations, and we were sufficiently assured by Defence that those claims had not been substantiated and they were looking into it.

Senator TROOD: I am sure it will not surprise the defence officials to know that this could well be an issue that we raise with them next week.

Mr Fricker: Yes. All of the agencies involved in doing highly classified security clearances, top-secret security clearances, are very closely aligned through an organisational inter-agency security forum, where we regularly meet to ensure that we are all meeting agreed minimum standards for security vetting. There is ongoing scrutiny of each other's practices, and we regularly report through the Secretaries Committee on National Security on the performance of security across those agencies. So these things are monitored and managed on an ongoing basis, and there is a well-established network of the security vetting areas to ensure that we can deal with instances such as this.

Senator TROOD: Mr Fricker, were these matters relating to vetting for top security clearances or did they involve other security levels as well? Do you know?

Mr Fricker: I cannot be sure of those details. I have a general feeling but I am not sure of the actual details. If you were intending to put that to Defence, it would probably be the most appropriate agency to ask.

Senator TROOD: Well, do you typically do vetting at all levels on behalf of the DSA?

Mr Fricker: ASIO's role in the process is as follows: Defence do most of the clearance process, and then at one point in the process the details of the applicant for the clearance are passed to ASIO for us to check against our databases and our data holdings. So, whatever the information is that we receive from Defence, we use that information to check and we return the result to Defence, advising whether or not there is any match with our holdings. So the search and the matching we conduct are based on the details provided to us by Defence.

Senator TROOD: I see. And that could be investigation you are undertaking into an individual for the various levels of vetting that they are seeking; is that right?

Mr Fricker: We perform that check, and the final clearance level is given by the Defence Security Authority.

Senator TROOD: Okay. Thank you.

CHAIR: Mr Irvine, I have a few questions for you. I want to ask you if you have read or are aware of an article that was in the *Sydney Morning Herald* on 14 April entitled 'Britain is taking another look at its anti-terrorism laws, so why can't we?' It was a commentary by George Williams about Britain now conducting a major revision of its antiterrorism laws 'to better protect democratic rights'. I am just wondering if you are aware of that, because I think in that article there is some sort of unwritten or assumed view that perhaps there are some safeguards and accountabilities that we do not have in place. I wanted to ask you about that to try and correct the record or put some thoughts on the record, really.

Mr Irvine: Yes, I have read that article.

CHAIR: Let me quote from it. It says:

For example, Australia is alone among comparable nations in granting its intelligence agency ASIO the power to interrogate citizens who are not suspected of terrorism for the purpose of gathering intelligence. People can be detained for up to a week and forced to answer questions on pain of imprisonment.

I think you can answer some questions for me without in-depth knowledge of the article—have you read the article?

Mr Irvine: Yes, I have. I vaguely recall reading the article, yes.

CHAIR: Okay. Let me put it this way then. Do you believe Australia has become complacent about its antiterrorism laws?

Mr Irvine: No, I do not. First of all, let me say that the government is in some ways addressing this issue with the fact that it has appointed an Independent National Security Legislation Monitor, who has been empowered to inquire into various aspects of our counterterrorism laws, including the question and detention regime. As I recall that article, it made quite a number of assertions—and I do not think these are the exact words—implying that our counterterrorism legal regime was somehow extremely draconian and so on.

CHAIR: I think the view is also that it is a bit hotchpotch and that we have just reacted on each occasion, rather than had some sort of broader, visionary plan in comparison to Britain, which is now trying to do that. I think what it does not do—although I am sure the author is aware of this—is acknowledge the safeguards that already exist. I was going to ask you about that for the record.

Mr Irvine: I agree with that characterisation of that particular article. It does worry me from time to time that, when there is debate about the counterterrorism laws, insufficient attention or consideration is given to what you call the safeguards. If we are going to debate those laws, I think it is important that we do understand the context in which, and the rules and regulations under which, they must be implemented. For example, the fact is that ASIO may request a warrant to question and, in some cases, detain a person for the purpose of obtaining intelligence in relation to terrorism. That is done when relying on other methods of collecting intelligence would be deemed ineffective. The second thing is that detention is by the police; it is not by ASIO. It may only occur when there are grounds for believing that the individual may alert someone to an inquiry that is going on, may fail to appear or is not able to help, making it necessary to seek such an order.

CHAIR: So the laws are not draconian, in your view?

Mr Irvine: That is a matter for debate.

CHAIR: For civil liberty debaters.

Mr Irvine: My point is, if you are going to have the debate, you ought to also debate it in the context of the safeguards that are in place. The statute specifically requires that people subject to questioning must be treated with humanity and respect for human dignity. They must not be subject to cruel, inhumane or degrading treatment by anyone exercising authority under the warrant. The Attorney-General must consent to the issuing of the warrant. The warrant can only be issued by a judge or a federal magistrate if that officer, the judge or federal magistrate, is satisfied that it will substantially assist the collection of intelligence that is important in relation to terrorism.

Another point that is often ignored is the fact that the questioning of the individual must take place in the presence of a prescribed independent person—a former judge or, alternatively, a current judge, President or Deputy President of the Administrative Appeals Tribunal. The person may contact a lawyer, who may also be present for questioning.

CHAIR: I think the laws are quite comprehensive, and we probably have a number of examples. So there are safeguards and accountabilities in place that oversee the powers of the police and, in particular, ASIO powers?

Mr Irvine: And regulate them quite carefully as to how that questioning process is to be carried out.

CHAIR: Is this where our laws are then far more robust than the current British laws that are in place?

Mr Irvine: I would not want to comment on current British laws, but let me say that I think our laws do provide appropriate safeguards. There is more: you can have a video of the questioning process, the Inspector-General of Intelligence and Security may be present at the time, and so on.

CHAIR: So you would not be suggesting we would wind back any of our counterterrorism laws, particularly in light of the fact that bin Laden is now dead?

Mr Irvine: The nature of our counterterrorism laws ultimately is a matter for the government. My view in regard to the questioning powers is that they have been used, I think, on 19 occasions and have assisted considerably in a number of investigations. We have not used and have not needed to use—and I think this is a good thing—the powers in respect of detention.

CHAIR: But one thing the article does not say—which you would now say publicly for us on record—is that there are stringent safeguards and accountabilities in place that are very well regulated in relation to counterterrorism.

Mr Irvine: I believe that there are stringent safeguards in place, and if there is to be a debate about these laws then you need to take that into account. I would make one other point too if I may, and that is that these coercive powers are not solely the preserve of the ASIO writ and the counterterrorism rules. Coercive powers of a similar sort rest with the ACC and the Ombudsman. The Inspector-General of Intelligence and Security has the power to compel people to give information. I think the ACCC has similar sorts of powers, but not exactly the same, and I do not know what the safeguards with those particular powers are.

Senator BRANDIS: Very few, Mr Irvine; there is no end of coercive powers in commercial agencies, believe me.

Mr Irvine: Thank you for enlightening me, Senator.

CHAIR: Thanks for clarifying that. I think there is a need to put some additional comments on the record in relation to that article.

Mr Irvine: Thank you.

CHAIR: I think we do not have any other questions for ASIO.

Senator BRANDIS: Yes, we do.

CHAIR: You do, Senator?

Senator BRANDIS: I do. Let me come down to the front stalls.

CHAIR: I thought we were at the pointy end of your questioning, Mr Irvine. I am sorry.

Senator BRANDIS: Mr Irvine, how many security assessments did ASIO conduct in 2010 in relation to suspected unlawful non-citizens arriving by boat?

Mr Irvine: The figures for 2010 for what we call 'irregular maritime arrivals'—

Senator BRANDIS: That is your term, is it?

Mr Irvine: It is not mine; it is the term the government is using.

Senator BRANDIS: Whatever happened to 'suspected unlawful non-citizens'? Anyway, irregular maritime arrivals—yes?

Mr Irvine: In 2010, the number of security assessments ASIO conducted specifically and only in relation to those was 2,822. That is 2009-10.

Senator BRANDIS: That is the financial year, is it?

Mr Irvine: Yes, I am going by financial year if that is all right.

Senator BRANDIS: Let us go back one, then. What about 2008-09?

Mr Irvine: In 2008-09 it was 207.

Senator BRANDIS: So, between 2008-09 and 2009-10, the number jumped from 207 to 2,822.

Mr Irvine: Yes.

Senator BRANDIS: Reflecting the sharp upward spike in the number of irregular arrivals, of course.

Mr Irvine: That is correct.

Senator BRANDIS: You would not have the figures for 2010-11, but what are the most recent figures you have?

Mr Irvine: The most recent figures I have go from 1 July 2010 to 30 April 2011, so they are less than a month old, and the comparable figure is 1,331.

Senator BRANDIS: Which, if annualised, would be a little less than—

Mr Irvine: Slightly less.

Senator BRANDIS: Slightly less, but still very substantially higher than the year before that. Of the assessments that were carried out in each of those periods that you have

identified, how many of the assessments were negative assessments—in other words, to put it in an informal way, in how many was the person regarded as a security risk?

Mr Irvine: The term of art is, 'They were issued with an adverse security assessment.'

Senator BRANDIS: Well, how many adverse assessments were there?

Mr Irvine: In 2008-09, there were two. Sorry—we are only talking about maritime arrivals, right?

Senator BRANDIS: Yes.

Mr Irvine: Boat people.

Senator BRANDIS: Boat people.

Mr Irvine: There were none. In 2009-10, there were five.

Senator BRANDIS: And in 2010 until April 2011?

Mr Irvine: Twenty-eight.

Senator BRANDIS: That is interesting. Do you have a view—and, if you do, are you able to share it with us—as to why the negative security assessments on an annualised rate were roughly six times as high on a slightly lower number of irregular maritime arrivals in the most recent period?

Mr Irvine: I think I have to give you a very general and perhaps somewhat obvious answer: we have been dealing with cohorts of people who have provided, if you like, more subjects for adverse assessments; that is one thing. The second thing is that, during the course of 2009-10, at the request of the department of immigration, we were focusing a very considerable amount of assessment activity on what we will call the less complex cases.

Senator BRANDIS: You might have to flesh that out.

Mr Irvine: I have been through this at some length before but, prior to the beginning of this year, we were assessing as a complex case every person coming through, and they were receiving the full investigative assessment. And we were putting, as it turned out, a lot of effort into assessing people who, after a short while it was clear, were not going to get an adverse assessment. Since then, and particularly in the last three or four months, we have been able to devote our attention to what I will call the more complex cases, the cases that had been put off because we had to work on DIAC's priorities—

Senator BRANDIS: I see. So are you saying that some of the 28 would have been in the previous year's figures but for the fact that the assessment of those people was delayed because of the large numbers?

Mr Irvine: I suspect that almost all of them would have been—I suspect. But certainly a very large number of them would have been.

Senator BRANDIS: But does that mean, correspondingly, that there would be people in the July 2010 to April 2011 period in the same category—that is, people whose assessment has been delayed or deferred because of ASIO trying to keep up with the volume of casework?

Mr Irvine: Yes, and because of our new streamlining processes we are now able to devote a much greater amount of our resources to these complex cases and have been doing so for the last three months. That is what is throwing up, I think, more adverse assessments.

Senator BRANDIS: I suppose that the more of these assessments ASIO does the greater the body of knowledge that it accumulates in relation to the circumstances of different cohorts of these people, so the more efficiently assessments can be done.

Mr Irvine: In principle, yes; generally speaking, yes.

Senator BRANDIS: Were all these assessments done on Christmas Island, or were some of them done at onshore detention centres?

Mr Irvine: The assessments are mostly done in Canberra, with interviews and information collection in the location where the subject is. But from our point of view—

Senator BRANDIS: But at what point, if at all, do ASIO officers conduct the interviews?

Mr Irvine: At a point in the investigation. From our point of view, it does not really matter whether the person is on Christmas Island or in a detention centre in Australia; our assessment for the purposes of that person's being granted permanent residence can take place anywhere. The interview, if there is an interview—and there usually is—can take place anywhere.

Senator BRANDIS: But you do not usually bring these people to Canberra, do you?

Mr Irvine: No; we go to them, wherever they are.

Senator BRANDIS: That is what I thought. Therefore, ASIO officers conduct the interviews, and, on the basis of the interviews, they might match other data that you have available to you, and the document might be finalised here in Canberra. But I am just talking about the interview stage with the regular maritime arrival. In each of those cases, an ASIO officer attends upon that person where they happen to be detained. Is that correct?

Mr Irvine: Where a person has been referred to ASIO for a security assessment, we will interview that person wherever that person is.

Senator BRANDIS: Yes. That is what I was getting at. How many officers—and by that I mean equivalent full-time officers—does ASIO have at the moment deployed to the task of carrying out security assessments in relation to irregular maritime arrivals?

Mr Irvine: I cannot off the top of my head give you that figure; it would probably be encroaching on the operational detail in terms of the disposition of ASIO—

Senator BRANDIS: I do not want to know where they are; I just want to know a raw aggregate number.

Mr Irvine: Sorry; I meant on the relative resources ASIO devotes to each subject.

Senator BRANDIS: But—

Mr Irvine: To each of our investigative processes.

Senator BRANDIS: Does it follow from that that you are not even able to give me an estimate?

Mr Irvine: No, I would not give you an estimate at this stage.

Senator BRANDIS: All right. Plainly there has been since the 2008-09 year a massive increase in the demand on ASIO in relation to the conduct of these assessments, with a tenfold increase in the number between 2008-09 and 2009-10 at an almost constant annualised level in the most recent reporting period. Was there between 2008-09 and 2009-10 a corresponding increase in the ASIO staff establishment?

Mr Irvine: To give you a fairly full answer on that, I think you would not simply look at the question of resources. When it was clear that the numbers of people requiring to have the full ASIO assessment—and that was everybody—at that time, ASIO took a number of steps. The first thing we did was to look at our actual bureaucratic assessment processes. Was there duplication? Were we doing certain things excessively? And so on. We actually got some professionals assistance to look at those processes and to assist us to really speed them up. That proved successful, but it was not sufficient. The second thing we did was that we took resources from within the agency for what we call 'surge' programs to really focus on getting as many clearances—and at this stage they were what I will call the less complex clearances—through as fast as possible.

Senator BRANDIS: You would certainly say that an increase in one year from 207 to 2,822 was a surge.

Mr Irvine: I think that is probably an understatement.

Senator BRANDIS: I am known for my weakness for understatement!

Mr Irvine: It was certainly a very big demand on the organisation.

Senator BRANDIS: And what else? That is two approaches. Is there another approach?

Mr Irvine: The third thing we did when we realised that we were only barely keeping our heads above water, if that—and I did explain this in response to other questions earlier—was that, not we, the government made a couple of significant decisions. Firstly, ASIO would not check everyone consecutively as they came in; that we would not waste time checking people who were not in fact going to get a permanent visa for refugee status, we would only check those people for whom it had been determined that they were eligible for refugee status. The second process was that we then, also at the request of the government and working closely with the Department of Immigration and Citizenship, DIAC, found ways to streamline the process in a cooperative arrangement between DIAC and ASIO so that ASIO could free up most of its resources to focus on the most complex of the cases.

Senator BRANDIS: But doesn't that mean, under that streamlining arrangement with DIAC, that DIAC officers were doing some cases—you would say, I suppose, the simpler cases—which had previously been done by ASIO officers?

Mr Irvine: I would not characterise it that way. Right across the board, for all visa categories, DIAC assists ASIO in the implementation of an ASIO managed assessment process.

Senator BRANDIS: But you were effectively subcontracting some of this work to DIAC, weren't you? It might have been done under your supervision and according to your requirements, but it was being done by another agency rather than by you in a lot of cases.

Mr Irvine: It is supervised by us. We participate in it. I currently have people working with them. But I have to say, Senator, that has been the practice for all protective visa applications and, indeed, all visa applications since time immemorial. There is a process whereby DIAC refers people to ASIO, and ASIO stipulates the criteria under which that happens and manages and supervises that process.

Senator BRANDIS: Yes. What else did you do? You told us four things: efficiencies, tasking of resources from elsewhere within the agency, limiting checks to people who were

classified as eligible for refugee status and streamlining the process by cooperation with DIAC. What other steps did you take, if any?

Mr Irvine: We are also working with DIAC to improve the IT connectivity so that we can—

Senator BRANDIS: That is part of streamlining the process.

Mr Irvine: It is, but it just happens to be another one of the things in the list.

Senator BRANDIS: Anything else?

Mr Irvine: No, I cannot think of any.

Senator BRANDIS: What strikes me with rather blinding force here is that in none of the four categories of measures that you have described to the committee was there additional resourcing by government. You have told us you made what you did more efficient—that is good. You have told us you reallocated resources within the agency, so I imagine that was absolutely necessary when there is a more than tenfold increase—indeed, close to a fifteenfold increase—but, nevertheless, those are officers taken away from other important work. You limited checks to eligible refugees—that is sensible. And you streamlined the process by involving DIAC officers to act on your supervision. But nowhere do you say, in the face of this increase from 207 to 2,822 in a single year, that you actually increase the aggregate number of ASIO officers rather than introduce these efficiencies and reallocate officers within your agency.

Mr Irvine: We certainly reallocated officers within our agency. And in addition—

Senator BRANDIS: Sorry to interrupt but the officers you reallocated were presumably at the time immediately prior to their reallocation doing important work.

Mr Irvine: Yes, but it is the function of a CEO to prioritise, and that is what I had to do.

Senator BRANDIS: Of course. I am not blaming you; you did not create the circumstances in which Australia's borders got completely out of control—we know that. It is perfectly rational for a CEO of any organisation to say, 'We had a huge surge in demand on one of our core responsibilities; therefore we reallocated staff from other important work to meet because we prioritise.' That is fine. But it does not mean that there was not an additional need which demanded more resources in aggregate to be added to your establishment. That does not seem to have happened.

Mr Irvine: It has and it has not. It has in the sense that ASIO this year has had a net increase of staff of 45 people.

Senator BRANDIS: That is not many: from 1,724 to 1,769.

Mr Irvine: Or thereabouts.

Senator BRANDIS: That is what is in table 2.1 of the PBS.

Mr Irvine: So we have actually been recruiting more people.

Senator BRANDIS: Yes, but, honestly and truly, when you have a surge from 207 to 2,822 in the demands of this core function, leaving to one side all the other important work ASIO does in respect of domestic counterterrorism, for example, and you have an increase in staff from 1,724 to 1,769, it could hardly be said that the increase in your staff is matching the demands placed upon them.

Mr Irvine: That is true, but the other issue that we have to take into account is our ability to attract and obtain extra staff. ASIO have still not filled the staff allocations for which we have been funded four years ago. We have had a period of great difficulty in attracting the right sort of staff.

Senator BRANDIS: That might be so, and I understand there are language competency skills and issues like that. That is what an economist might call a supply-side problem. You have a demand-side problem.

Mr Irvine: I do.

Senator BRANDIS: There has been, on my rough mental arithmetic, a fourteenfold increase in the need for ASIO to make security assessments for irregular maritime arrivals, and your staff establishment in aggregate has increased negligibly. Is that right?

Mr Irvine: I would not say negligibly, but it is a fact that we have not been able to attract and employ, train and bring online—

Senator BRANDIS: Or been resourced for—

Mr Irvine: and bring online—

Senator BRANDIS: And been resourced for—

Mr Irvine: In a sense we are resourced, because we still have not met our recruitment quotas.

Senator BRANDIS: All right. If you feel unable to tell me the numbers of staff that have been deployed in preparing security assessments for irregular maritime arrivals, I assume you are not permitted to tell me how many staff have been allocated from within your organisation; but may I take it that every one of the staff that have been reallocated from within your organisation was reallocated from other security related work?

Mr Irvine: Security related work as opposed to administrative work?

Senator BRANDIS: Yes.

Mr Irvine: I cannot say it would be 100 per cent—

Senator BRANDIS: But largely?

Mr Irvine: But I would think, largely, yes.

Senator BRANDIS: Okay. That will do. Thank you. A couple of other things, Mr Irvine—can I take you to Budget Paper No. 2, please, the summary of the budget measures. I just wanted to ask you briefly about the budget measures that affect ASIO. The first one is on page 96, the second item.

Mr Fricker: Senator, we are at a slight disadvantage. We have the yellows but we do not have the budget paper.

Senator BRANDIS: You have to bring Budget Paper No. 2 to these hearings! There you go—somebody has got one. Foresight! This is the summary of the budget measures by department, and the budget measures within the Attorney-General's Department and agencies begin on page 94. The first that affects ASIO is the second item on page 96. It is one of several items where the government has cut back spending on border protection. This one is entitled 'Border security—Australian Security Intelligence Organisation protective security assessments—improved targeting'. The note says:

The Government has identified savings—
those are weasel words for 'cutbacks', as of course you know—

Senator Ludwig: They are savings, unless you want to add your commentary.

Senator BRANDIS: The money you are not spending. Sure, Senator Ludwig. We all know the game of euphemism in budget papers—

Senator Ludwig: And you particularly, by the sound of that.

Senator BRANDIS: It says:

The Government has identified savings—
cutbacks, in other words—

of \$6.9 million over four years through risk-based targeting of additional security checking of applicants—

Senator Ludwig: So you are continuing to do that? If you are going to read it out, read it out accurately.

Senator BRANDIS: I am reading it word for word—

for Protection Visas by the Australian Security Intelligence Organisation. Irregular Maritime Arrivals will remain subject to mandatory security checks and there will be no impact on the processing time for any visa category.

Savings from this measure will be redirected to support other Government priorities.

Well, that is a line item at the end of every one of these cutbacks. So Mr Irvine—

Senator Ludwig: Again, I would ask the record to reflect that that is not an accurate reading of the budget paper—that you have ad-libbed again.

Senator BRANDIS: No, that is not right. Have a look at it, Senator Ludwig. You may be unfamiliar with it.

Senator Ludwig: You did at the end, and you know it. The transcript will show that you did.

Senator BRANDIS: You may be unfamiliar with Budget Paper No. 2; I am not surprised that you are. In any event, let me go back to—

Senator Ludwig: I am surprised that you have it in front of you again and you do not follow the PBS.

Senator BRANDIS: I know the Labor government is very sensitive about the cutbacks to national security expenditure on border protection. If you want to get political, Senator Ludwig—

Senator Ludwig: You can make those statements—

Senator BRANDIS: we can get political. But I want to drill down into the detail, please.

Senator Ludwig: I am happy to allow you to drill down into the detail. What I object to is your adding commentary that is inaccurate.

Senator BRANDIS: I understand how sensitive the government is on this issue.

Senator Ludwig: And I understand how difficult you are on the issue. It begs the question whether or not you can actually read it. But, anyway, let us see how you go.

Senator BRANDIS: I think most people think I can read, Senator Ludwig.

CHAIR: Let us see if we can finish asking questions in this area.

Senator BRANDIS: Now, Mr Irvine, going to that line item, this budget measure, the \$6.9 million of cutbacks starting in the current budget year, over the forward estimates—

Senator Ludwig: Does it say 'cutbacks' or are they reflected as 'savings'?

Senator BRANDIS: Senator Ludwig—

Senator Ludwig: You are the one who is reading it into the record.

Senator BRANDIS: I am not reading the text now; I am asking a question.

Senator Ludwig: I am sorry; it did not look like you were reading, again!

Senator BRANDIS: Mr Irvine, the \$1.7 million reduction—

CHAIR: Senator Brandis. Minister, did you need to say something?

Senator BRANDIS: Are you calling me to order when I am being interrupted by the minister?

CHAIR: I am just wondering who is—

Senator BRANDIS: I am asking the questions.

CHAIR: That might be true, but Senator Ludwig also made a comment then and I just want that repeated.

Senator BRANDIS: Well, the *Hansard* will record it. I have the call and I am asking questions of Mr Irvine—and you did not give the call to Senator Ludwig.

CHAIR: Senator Ludwig, I am giving you the call now to see if you need to make a comment here.

Senator Ludwig: No thank you, I am happy for Senator Brandis to ask me questions. If he continues to add a commentary which is not fair, I think I do have an opportunity to engage in the banter that Senator Brandis seems to want to engage in. I will otherwise remain silent while he asks his questions.

Senator BRANDIS: Are these \$1.7 million reductions over the forward estimates reductions in relation to the very activity about which we have just been speaking—that is, the preparation of security assessments in relation to irregular maritime arrivals?

Mr Irvine: No, they are not in relation to irregular maritime arrivals. ASIO makes security assessments in respect of a wide range of visas.

Senator BRANDIS: I understand that.

Mr Irvine: Irregular maritime arrivals are one category, but various onshore protection visas—in fact, any other visa stream—can be subject to comprehensive security assessments by ASIO, usually on referral from DIAC according to the system I mentioned to you.

Senator BRANDIS: All right; I understand that. Are you telling me, in effect, that the budget for carrying out security assessments for irregular maritime arrivals has been quarantined from these cutbacks to all categories of security assessments?

Mr Irvine: In effect, yes. Indeed, more resources have gone into it.

Senator BRANDIS: Is this then not a very good example of the cost to other priorities of ASIO—in this case, security assessments in relation to entrants other than irregular maritime

arrivals—of the surge in irregular maritime arrivals and the need for ASIO to allocate resources to do those security checks?

Mr Irvine: Yes, in the sense that, inherent in every prioritisation process when one takes resources from one area to another, there will be a diminution in activity in the other area.

Senator BRANDIS: Sure. I understand that. We were talking in conceptual terms before but now we can quantify this by reference to the budget measure itself. It is \$1.7 million a year for each of the four years over the forward estimates. Is that right?

Mr Irvine: That is correct, yes.

Senator BRANDIS: The next budget measure that directly affects ASIO is to be found on page 105:

National Security—Australian Security Intelligence Organisation—operating costs of new central office
I will come to the table in a moment, but the note says:

The Government will provide \$30.6 million over four years to the Australian Security Intelligence Organisation (ASIO) towards increased operating costs for its new central office accommodation in Canberra.

That is the building that is currently being built, isn't it?

Mr Irvine: Yes.

Senator BRANDIS: Then it says:

The balance of the operating costs will be met from within existing resources.

If we look at the table that appears above that note, we see a reduction of \$25.3 million in 2010-11, a reduction of \$7.5 million in 2011-12, an increase of \$28 million in 2012-13, an increase of \$21.1 million in 2013-14 and an increase of \$14.2 million in 2014-15. I want you to help me interpret this table, please. Does that indicate that, although in the outyears—that is, 2013, 2014 and 2015—there will be an allocation to ASIO of about \$54 million in new money, that is to be offset by the reduction in the allocation to ASIO in the current financial year and this year's budget—that is, 2011-12—of some \$32-odd million?

Mr Fricker: I think that what you just said is essentially correct. There is a combination of factors here. We have used those savings in this financial year as an offset in the next four years of \$30 million over the four-year period, on top of which we are also offsetting those ongoing expenses by a \$30.6 million reduction in our budget over the four-year period.

Senator BRANDIS: We can look at these across the out years—that is fine—but the reality is that there has been a cut of \$25.3 million in the existing financial year, 2010-11, and a cut of \$7.5 million in the next financial year, 2011-12, albeit that is going to come back to you if these figures remain constant in years to come.

Mr Fricker: That is correct. But I would not characterise this year's figure as a cut; we were working towards providing some savings in this financial year for that purpose.

Senator BRANDIS: I do not want to re-agitate the rather sterile debate I had with Senator Ludwig before, but—

Mr Fricker: But the numbers are correct; I do not want to dispute the numbers.

Senator Ludwig: It does not take only me to point that out, Senator Brandis.

Senator BRANDIS: What is described in this papers as a saving, however you slice it, means less money.

Mr Fricker: The numbers are the numbers—that is correct—but it was a deliberate strategy to move ahead and accommodate the costs of the new building.

Senator BRANDIS: By the way, Mr Irvine, when is the new building expected to be completed?

Mr Irvine: It is pretty much on time. We expect the building to be handed over for ASIO occupancy around the middle of next year and that we will be moving progressively after that.

Senator BRANDIS: Over how many months?

Mr Irvine: I am not sure exactly.

Mr Fricker: It will probably go into 2013—the move will take some time.

Senator BRANDIS: Do it slowly, Mr Irvine! The next and last of the budget measures that are described in this budget statement is the one immediately below that one on page 105. It is titled 'National Security—Australian Security Intelligence Organisation training and overseas liaison activities—savings through improved targeting'. There is that word 'savings' again, Senator Ludlam. The note says:

The Government has identified savings of \$8.8 million over four years in the Australian Security Intelligence Organisation (ASIO). Savings will be achieved through a risk-based re-prioritisation of resources for training and overseas liaison activities.

This will not impact on ASIO's operational capabilities.

Saving from this measure will be redirected to support other Government priorities.

What training and overseas liaison activities will be cut back as a result of this reprioritisation?

Mr Irvine: It is an issue of both reprioritisation and greater efficiencies. Currently, we participate with another agency in providing counterterrorism training to certain friends overseas.

Senator BRANDIS: Are you able to say which agency that is?

Mr Irvine: Yes, I think I can say that that is ASIS.

Senator BRANDIS: I thought it might be.

Mr Irvine: Also, jointly we help other countries to improve and develop their counterterrorism efforts. We have found that we can achieve a variety of efficiencies in that process. There could be some reduction in the training provided, making it much more focused, and that is what essentially we are doing. With regard to foreign liaison activities, I will not comment on that too much because I do not want to get into the operational details relating to with which foreign liaison partners we are doing that.

Senator BRANDIS: I am not asking you to. I just want a sense of the kinds of programs that are falling victim to the reprioritisation. Looking at the three ASIO programs the subject of budget measures as identified by the government, in 2011-12, we are taking \$1.7 million away from additional security checking. That is the budget measure on page 96. We are taking \$7.5 million away from operating costs, which we expect to offset by money coming back in the out years, and we are taking \$2.2 million away in 2011-12 and indeed in each of

the three subsequent out years from training and overseas liaison activities. In the financial year for this budget, the 2011-12 year, ASIO on those three measures alone is having \$11.4 million taken from it by the government.

Mr Irvine: Of that order.

Senator BRANDIS: Thank you.

Senator Ludwig: Just to put it in perspective, the government takes national security very seriously. Look at the funding history from 2007 when it was a total of \$291.5 million. In 2008-09 it was \$352.7 million, in 2009-10 it was \$405.5 million, in 2010-11 it was \$349.6 million and it continues in 2011 to \$347.4 million and in 2012-13 to \$437.9 million and 2013-14 to \$434.6 million. So if you start back when this government came into office –

Senator BRANDIS: Is this a political advertisement for the Australian Labor Party?

Senator Ludwig: Then it was \$291.5 million—

CHAIR: Everyone is entitled—

Senator BRANDIS: No, this is an abuse of the process of the committee, Chair. I have a point of order. Questions were asked and the questions were answered responsibly. At one or two points in the discussion where the form was not a question and answer but in response to what might be fairly be characterised as some observations I made, Senator Ludwig felt it upon himself to make some observations. This is not a response to any observations I have made. I put a question to Mr Irvine and Mr Fricker, it was answered briefly and responsibly. That is the end of my questions. If it is the practice of this committee that at the end of questioning by an opposition senator a government minister at the table is at liberty to give a speech, then you should make it clear the practice of this committee admits that. If it is not the practice of the committee, this is an abuse of the committee's process and if you were a neutral chairman of integrity you would rule it out of order.

Senator Ludwig: You are an extraordinary person.

CHAIR: Minister Ludwig, Senator Brandis has made a point of order and I am responding to that. This is budget estimates. During the budget estimates you are entitled as any other senator, Senator Brandis, to ask questions. The minister at the table, representing the minister, is entitled to make any statement in relation to clarifying the budget papers and the processes that are before us. Minister Ludwig, if you have some words of clarification that you need to provide to us, I welcome you doing that.

Senator Ludwig: I was just clarifying that when you look at the budget papers, the funding history of this organisation, from 2006-07 at \$227.6 million to when Labor came into office from 2007-08 when it was \$291.5 million and in out years up to 2014-15 at \$415.1 million, you can see the trend has been significant throughout that period. Yes, the savings measures of approximately \$5 million per annum provided by ASIO will not impact upon the agencies with core national security responsibilities of protecting the security of this country.

Senator BRANDIS: Senator Ludwig, I ask a question of you arising from your speech. If you looked at the 2007-08 portfolio budget statements for ASIO—that is, the last budget of the Howard government—I think you would find the uptick in the three subsequent years which you have identified were allocations in the out years in the Howard government's last

budget and the declines in the years subsequent to that are declines in the out years budgeted by your government commencing in 2008-09.

Senator Ludwig: That is why I took us to 2014 which could not have been the out years of the Howard government which was 415.1—a significant increase over the period.

CHAIR: Is there any other point of clarification you need to make, Minister, because I would welcome you to do that now.

Senator PRATT: Chair, I have a question that seeks clarification. I note that Senator Brandis and the member for Stirling on 12 May had said that Labor weakened our national security by cutting back on \$6.9 million worth of ASIO checks of asylum seekers. I wanted clarification on whether that statement was correct.

Senator Ludwig: That is not correct. The savings were achieved through ASIO's security assessment work not related to the assessment for irregular maritime arrivals but rather to other protection visas. I think Senator Brandis had elicited that information as well. He was wrong on that point.

CHAIR: Mr Irvine, it would seem we have come to the end of questioning for ASIO this evening. I thank you and Mr Fricker for joining us this afternoon and this evening.

Australian Government Solicitor

[21:58]

CHAIR: Mr Govey, good evening and welcome to our estimates hearing. Do you have an opening statement that you want to provide for us?

Mr Govey: No, Madam Chair, I do not.

Senator BRANDIS: I have one question, could I ask it?

Senator BOYCE: Chair, I do not have any problems if Senator Brandis does ask the one question that he tells us he has to ask.

CHAIR: Senator Brandis then, we will go to you for your one question.

Senator BRANDIS: I should say, Madam Chair, that you should respect the convention that the opposition like the government decides the allocation of the call among opposition or government senators respectively.

CHAIR: Senator Brandis, with all due respect, I am the chair and I will call people as I see fit. Senator Boyce has actually been here a number of times and has indicated very early in the piece that she had questions for AGS. Out of courtesy I have called her before you. If you have made an arrangement now to ask your one question, please go ahead and do that.

Senator BRANDIS: Mr Govey, are you aware of a speech given in the Western Australian parliament today by the Labor Party shadow Attorney-General, Mr Quigley, concerning your office?

Mr Govey: I am aware that a speech was given, but that is about the limit of my knowledge.

Senator BRANDIS: Presumably you are going to pursue the matter. Do you regard the allegations that Mr Quigley has made in relation to your office and a senior employee of your office as serious allegations?

Mr Govey: I do not even know what the allegations are.

Senator BRANDIS: I do not think it is for me to re-articulate in this forum or to endorse necessarily what Mr Quigley said in the Western Australian parliament today, but he is the shadow Attorney-General of that state and a member of the Labor Party frontbench. I do know what he said. The claims, if true, would be extremely serious so I assume you will pursue them.

Mr Govey: I will certainly look at what was said.

Senator BRANDIS: Thank you.

Senator BOYCE: Mr Govey, has the AGS been asked to provide legal advice in relation to the plain packaging of cigarettes?

Mr Govey: I will not be able to say very much about that, primarily because it will be a matter for the client agency, which I think in this case would be the department of health.

Senator BOYCE: So the answer is: yes, you have been asked for advice?

Mr Govey: I would expect that we have been involved in relation to that matter, yes. Again, that is as much as I know.

Senator BOYCE: So, yes, you have been asked for advice?

Mr Govey: I understand so.

Senator BOYCE: And the client was the department of health?

Mr Govey: When I say yes to that I do not know whether it is a request that we have fully acted on or whether it is a request that is outstanding. But, in accordance with the usual convention, I would not be in a position to provide information even if I was more aware of it because it is a matter, as I say, for the health department.

Senator BOYCE: You would not be able to tell us what the advice was, but you can tell us, surely, the details around whether you were asked for it, when you are asked for it, if you have supplied it yet or not.

Mr Govey: In the ordinary course, even those questions are a matter for the client agency rather than for us as the solicitor.

Senator BOYCE: Would a request have been made to you specifically by the department or would it have come via the Attorney-General's Department?

Mr Govey: It probably would have been made directly to us.

Senator BOYCE: The other question I am interested in is the ambit of the advice that you were asked to provide, whether it covered intellectual property and branding, and the value thereof.

Mr Govey: I am not in a position to answer that question.

Senator BOYCE: Who would be in a position to answer that question?

Mr Govey: The health department.

Senator BOYCE: Could you take on notice my question about when the advice was provided and see if you are able to answer that?

Mr Govey: We will take that up with the health department.

Senator BOYCE: Thank you.

Senator BARNETT: Mr Govey, are you or any of the members of the AGS on a joint parliamentary committee inquiring into plain paper packaging or similar issues?

Mr Govey: I am not aware that we are involved in that but it is possible that I would not be.

Senator BARNETT: Could you take that on notice?

Mr Govey: Certainly.

Senator BARNETT: Can you also advise when you were instructed to be part of that committee, task force or whatever the group was called, when you had those meetings, what officers were involved in those meetings and if you provided any briefing notes regarding those meetings. Can you take that on notice?

Mr Govey: I will.

Senator BARNETT: You have answered Senator Boyce's question with regard to taking that on notice. Can you provide the dates when you were instructed and the dates when you provided the advice—is that something you are able to do?

Mr Govey: I will take that on notice. We will take that up with the health department.

Senator BARNETT: That would be useful. Briefly, on another matter, are you able to provide the committee with a status report on the High Court case regarding the Queensland government and the Commonwealth chaplaincy services?

Mr Govey: I think that question is better asked of the Attorney-General's Department. I do not know whether Mr Faulkner would know anything about it. Again, I think the best thing to do would be for us to take that on notice, if we could.

Senator BARNETT: Are you acting—

Mr Govey: We are acting; yes we are.

Senator BARNETT: I know it is before the courts and I understand a judgment has not been handed down. I am wondering whether there is any further status report that can be provided regarding that matter.

Mr Wilkins: It is DEEWR, so you need to talk to them about it.

Mr Govey: There is one piece of information I can give you: my notes say that it is due to be heard by the High Court in August.

Senator BARNETT: That is useful.

Mr Govey: That is probably as much as there is to be said.

Senator BARNETT: Have they had preliminary hearings—you can tell us that. Is that correct—in March or April?

Mr Govey: I do not know whether that would have been the occasion on which the special leave application was heard.

Senator BARNETT: Possibly. Could you take that on notice. I am just asking for a status report. Do we have a date in August?

Mr Govey: No.

Senator BARNETT: When do such matters become clear to members of the public?

Mr Govey: I will have to take that on notice as well.

Senator BARNETT: If you could. I am just seeking an update on that. I am not seeking any legal opinions.

Mr Wilkins: It is set down for hearing on 9 to 11 August.

Senator BARNETT: So it is set for three days?

Mr Govey: Yes.

Senator BARNETT: Have you appointed counsel for that hearing? If so, could you advise who that might be.

Mr Wilkins: We think it is the Solicitor-General, but I am not sure of that.

Senator BARNETT: I am happy if you take it on notice.

Mr Wilkins: We will take it on notice.

Senator BARNETT: Finally, on another matter, can you provide a status report on the Federal Court matter regarding Salo—where that is up to? I understand judgment is pending. Do you have any further information you can give the committee?

Mr Govey: That is a matter for the Attorney-General's Department.

Mr Wilkins: Notice was addressed to the Classification Review Board this morning.

Senator BARNETT: You do not have an interest in the matter, Mr Wilkins, as Secretary of the Attorney-General's Department?

Mr Wilkins: I have an interest in lots of things.

Senator BARNETT: It has significant implications for your department and the Commonwealth.

Mr Wilkins: There was a half-day hearing on 4 March but the judgment has not been handed down yet.

Senator BARNETT: Thank you; that is most useful.

Senator PRATT: I want to quickly turn to a question asked about the Australian Government Solicitor's pro bono commitments with a particular interest in the work you are doing with Indigenous organisations.

Mr Govey: Is that particularly the LawHelp exercise—the project you are referring to?

Senator PRATT: I am not quite sure of the range of projects you have. I know that is one of them. I am not sure if it extends beyond that.

Mr Govey: I think that is the main one in the Indigenous area—that is, the provision of legal services to Aboriginal Torres Strait Islander corporations through the project called LawHelp, which is a referral service that we developed last year with the Registrar of Indigenous Corporations. These services have included providing a series of templates and guides to assist Indigenous corporations to better manage their obligations as employers. That is the only one I am aware of that has a particular focus on Indigenous matters.

Senator PRATT: They would have been identified because I would have expected that that kind of advice would be—knowing Indigenous corporations as I do—beyond their normal financial means or expertise in terms of coordinating it themselves.

Mr Govey: Certainly, my understanding was that this was felt to be an area of particular need for those corporations.

Senator PRATT: What is the process of deciding what pro bono work the AGS will take on?

Mr Govey: We have a national manager who is based in Melbourne. Whether suggestions come from within AGS or outside AGS, this person is responsible for evaluating the process, looking at whether there would be conflicts, looking at areas of particular expertise that we can bring to bear, seeing how it fits in generally with our approach to pro bono, and making a recommendation within the organisation.

Senator PRATT: Could you outline briefly what the approach to pro bono is in terms of the kinds of clients AGS is prepared to support?

Mr Govey: It might be better if I took that on notice, if I could, and give you a more prepared response. We could, if you are interested, give a more comprehensive range of the sorts of projects that we are involved in. But they are very broad ranging. Everything from secondments to organisations such as the public interest law clearing houses in a couple of jurisdictions and community legal centres and so on.

Senator PRATT: I have in front of me some of the information about the nature of the work. It is interesting to me how you have come to your own policy framework about what you choose to do. Clearly you do not take on, for example, cases that would come against the Commonwealth in some way and those kinds of things. In a sense you might be clearly offering services that other legal agencies are unlikely to offer in a pro bono sense, and would probably be filling a gap in terms of meeting the kinds of needs that some organisations and people cannot get met.

Mr Govey: Yes, I think that is fair comment. But we also work, as I indicated, very closely with a number of existing organisations that provide services.

Senator PRATT: Thank you.

CHAIR: There are no more questions for AGS tonight. Thank you. I now call the officers from the Insolvency and Trustee Services Australia.

Insolvency and Trustee Service Australia

CHAIR: Welcome. Do you have an opening statement? If not, we will go straight questions.

Senator WILLIAMS: I want to bring something to your attention. On 9 February 2011 we saw the headlines 'ASIC launches action to sink liquidator'. The article says:

THE corporate regulator has launched Victorian Supreme Court action to bar Melbourne-based liquidator Paul Pattison from practising after his own firm sank into liquidation last year.

Mr Pattison owes a heap of money to Bankwest and the Australian Taxation Office. The article continues:

Mr Pattison still operates as a bankruptcy trustee and liquidator through his new practice, Pattison Business Reconstruction and Insolvency Services, and he controls at least 100 files on company insolvencies and hundreds more on personal bankruptcies

But the Australian Securities and Investments Commission's court move precipitated an urgent meeting yesterday of the board of the professional body governing liquidators, the Insolvency Practitioners Association of Australia (IPA), which immediately suspended Mr Pattison's membership and began its own disciplinary proceedings against him.

I will just add another story, dated Tuesday, 1 March:

Melbourne-based liquidator, Paul Pattison, has voluntarily resigned from his company appointments following concerns by ASIC about his capacity to adequately and properly carry out his duties.

Mr Pattison resigned as liquidator or deed administrator of those companies and gave an undertaking that he would cease to carry out, consent to, or otherwise accept appointment as a liquidator ...

One experienced practitioner said that it "beggars belief" that a liquidator could go broke and yet continue to practice. Are you people familiar with this Mr Pattison?

Senator Ludwig: Before we go too much further, Chair: I wonder if we could have that made available to Ms Ingram and Mr McCosker. I am sure Senator Williams is familiar with my usual request.

Senator WILLIAMS: No worries at all, Minister.

Ms Ingram: Thank you, Senator. I am not sure it is appropriate that I go into detail in relation to an operational matter, but I can say that Mr Pattison, in his capacity as a trustee, is under review by us. I would not like to go into any more detail. We have been liaising with ASIC.

Senator WILLIAMS: The reason I bring this to your attention is that a chap contacted me from Melbourne after I did some media on the Senate inquiry into the insolvency practitioners industry, if we can call it that. I am not going to go into detail; perhaps I might be able to talk to you off the record. I would like to discuss something at a later date with you. Can I ask: did Mr Pattison have any role with ITSA, or was he a member of any committee of ITSA at any stage?

Ms Ingram: I am sorry; I would have to take that on notice. I am not aware that he has been. It is possible, in his capacity, if he is a member of the Insolvency Practitioners Association. They might have nominated him to a government body, or we have a bankruptcy forum. But I am not aware of that.

Senator WILLIAMS: I did see an affidavit today, lodged in court, that a person was saying that he is trustee of at least 350 personal insolvencies as we speak now. I just wanted to bring that to your attention. How long has ITSA been aware of problems surrounding this particular person? Or is that too personal, under the circumstances, to ask you?

Ms Ingram: I think that is going into a matter of detail in relation to an operational matter.

Senator WILLIAMS: I am not too sure where to go from here. You are saying that the person is under investigation. I think the best thing is that I discuss this with you privately, if that is possible.

Ms Ingram: Thank you, Senator. I would not even like to commit to saying that he is under formal investigation. We have processes that we have to go through. We do inspections; I think you are familiar with our system that we do annual inspections of trustees. We have done one earlier this year and all I would wish to say on that matter is that there is ongoing review. But I would be happy to take it offline.

Senator WILLIAMS: What I have quoted is already on the public record. It is from the media, so I do not think I have told any secrets there. I want to take you to another issue of concern to a constituent of mine. This person paid a \$50,000 deposit to buy a boat from a boat manufacturing company. The company went broke. He has done his \$50,000. He did receive

a letter from ITSA back in April 2010. He was sent a report of notice of bankruptcy dated 30 April 2010 and has not heard anything since. What is the process, when someone who lives away—this business was on the north coast of New South Wales and this person lives inland. He has done his \$50,000, he does not know what is going on now, he has not heard anything for 12 months. What is the process of these personal insolvencies?

Ms Ingram: You say it is a business. It is a bit hard for me to speculate. I presume it was a sole practitioner business and the individual went bankrupt owing debts to the person you are talking about. I can assure you that location should not impact on the creditor's ability to prove his debt and follow through and the trustee is obliged to keep the creditor informed of what is happening. I am sorry, I do not have enough information.

Senator WILLIAMS: I do not want to say too much on the public record so perhaps I might, if we have an opportunity for a few minutes chat, run it past you as well. Thank you.

CHAIR: Are there any more questions of Insolvency and Trustee Services Australia? No. Ms Ingram, thank you for staying most of the day until this hour.

Attorney-General's Department

[22:21]

CHAIR: Mr Wilkins, did you want to make an opening statement at the start of your department's time?

Mr Wilkins: No, thank you, Madam Chair.

CHAIR: We will go to Senator Fielding.

Senator FIELDING: This is an issue that I have been following for a little bit on the changing of names. To help people who may be listening in to this, under existing state laws criminals can change their name by deed poll and state systems of births deaths and marriages are not required to notify the police. This is changing in some states. To help provide further background on this I refer to an article on 13 July 2009 in the *Australian*. The article is headed, 'Criminals change their names by deed poll to evade police.' The article went on to outline that fear of breaching privacy laws was preventing police from being alerted when convicted criminals switch identities. It went on to say that this allows criminals to ditch their police record and has permitted wanted criminals to evade police during licence checks. The police association in New South Wales claims that this is putting officers' lives at risk.

The article also went on to say that if a criminal changes their name by deed poll, the new name is not passed on to police or other authorities unless it is for sexual and those sorts of cases. It said police relied on computer based intelligence systems in which they type in a person's name to instantly access criminal history and that police need to know whom they are approaching when they get out of their car and knock on the door. People are using this change of name loophole to hide their past. The police association also claimed that it was impossible to know how many crooks had changed their names to evade detection.

Given that background and given my previous questions here how long has the Standing Committee of Attorneys-General, SCAG, being aware of this dangerous change of name loophole that allows people to hide their criminal history from authorities?

Mr Wilkins: I do not know, Senator.

Senator FIELDING: I have raised it so you—

Mr Wilkins: I would have to take it on notice as to how long SCAG has known about that. I am told that it has been on their agenda since 2009.

Senator FIELDING: Could you take that on notice? I may have alerted you before but I need to check that myself.

Mr Wilkins: I think we might have even answered it before.

Senator FIELDING: So you will take that on notice then?

Mr Wilkins: Sure. We apparently did provide an answer to this in the Senate chamber.

Senator FIELDING: I am coming to some of that too. Are you aware that back in July 2009 newspapers in New South Wales and the radio and television had headlines—and this is to do with New South Wales to start with—that read 'Attorney-General staffer's criminal record undetected after name change'?

It went on to say that the reason the New South Wales Department of Attorney-General and Justice had no idea of a criminal conviction a person had was because she changed her name in 2002 without disclosing her criminal record. My question to the department is: how certain are you that there is not a convicted criminal—and I do not want to put any slight on any staff there at all; it is a general question—working in the federal Attorney-General's Department who has used a change of name loophole to hide their criminal history?

Mr Wilkins: As certain as anyone can be. We go through the proper probity checks et cetera.

Senator FIELDING: But you see the problem that we have: the New South Wales Attorney General did not know, but all of a sudden they were aware, and they immediately tried to enact legislation—

Mr Wilkins: I see the problem, yes.

Senator FIELDING: So since that report is there anything that the department has been doing with regard to this issue? Has anything changed in the department at all?

Mr Wilkins: You will appreciate, first of all, that births, deaths and marriages are essentially a matter for state governments. The current state of affairs in births, deaths and marriages registries are entirely a matter for state governments. They understand, and we all understand, that there are deficiencies in that system. One of the deficiencies is the one that you have pointed out, but there are lots of others as well. There are not only problems about possible criminals using aliases and not disclosing things because the BDM system, to be blunt, is pretty much something which is a bit like a sieve: there are lots of holes in it, and it is probably too difficult to plug without Draconian laws.

One of the things that we need to do, and which we have taken a lead on in the Commonwealth area, is the DVS—the document verification service—which allows for a better form of verification of identity through documentary checks. This is something that is now being rolled out across the public sector around Australia, and may well be something that the private sector can also use. It is a system where you can check to see whether or not a document has been actually issued in the name of a particular person. It gives the possibility, for example, where if you were a bank, and you were looking at the name and identity of a person opening a bank account, to check with the RTA or maybe foreign affairs and ask, 'Is there such a person for whom you have issued a passport? Is there such a person for whom

you have issued a registration certificate for a car?' It does not mean drilling down into their privacy, but it is a means of verification.

So this is the system which we are now in the process of rolling out. It is not part of the births, deaths and marriages system, but it could well be the shape of a solution to some of the problems that you are talking about. We do have buy in and cooperation from the various states and territories. We have just been waiting for Victoria to finally sign up to the matter—they are the only outstanding jurisdiction at the moment. This type of what we call DVS, or document verification system, could be used to overcome some of the problems that you are alluding to, without intruding on peoples' privacy and without, quite frankly, trying to fix up another system, which is the BDM system. Although, obviously, a birth certificate is some evidence, if it appears with other corroborating evidence of different sorts as well—if you came with three different documents—that would obviously create a higher form of probability that you are the person that you say you are.

That is something that was begun under the previous government, and has been continued under this government. It has bipartisan support, it has been supported across Liberal and Labor state governments and it is something which I think, without intruding too much into people's privacy, gives the opportunity to shore up some of those holes in identity that you are talking about. That is an answer to the question, I think.

Senator FIELDING: I think everybody knows this is a serious issue. I am wondering whether you know whether this is placing Australian Federal Police officers at risk, because sometimes they do not know who they are pulling up either because of this loophole in changing names or because of changing or hiding someone's criminal history. Are you aware of the Federal Police being concerned about this issue?

Mr Wilkins: I am not quite sure. You were asking about identity but now you are asking about criminal records.

Senator FIELDING: No, I am not. I am asking about this issue. This is an issue that SCAG picked up.

Mr Wilkins: SCAG picked up the issue of identity; that is true. The Document Verification Service would help in due course, presumably, the Federal Police. It would help to shore up some of the integrity of various systems of verification, because they would, if you like, be interconnected. So it will help that, yes. Otherwise, I am not quite sure what your question actually is.

Senator FIELDING: SCAG is already working out this problem and knows this problem is an issue. The whole idea of having the attorneys-general together is that it covers the states so there is a need for them to come on board. I am interested to know what the time frames are for fixing this problem. This is a serious issue in which I think the federal government can play a stronger role in making this happen.

Mr Wilkins: I think there are two things going on here. One is the document verification system, which has actually been approved, so SCAG has dealt with that. It is actually in place—virtually in place, being rolled out. You may be referring to some other process that I have confused with that—is that right?

Senator FIELDING: This is an issue the Attorney-General is dealing with.

Mr Wilkins: Yes, they have dealt with the document verification.

Senator FIELDING: I would like to know what the time frame is and when it will be completed.

Mr Wilkins: Okay.

Senator FIELDING: I will ask another question: is the federal government working with the attorneys-general to address the issue of people changing their name by deed poll with their criminal history disappearing? Some are claiming that it is the privacy laws at a state and federal level. I am interested to know what discussions have taken place around the table.

Mr Wilkins: I will need to take that on notice. It might be useful if we try to examine which bit of the SCAG process you are actually referring to. I have talked to you about what I think is the issue around identity, but there may be some other process that we need to identify that you are referring to. I am not ruling that out, but I am just a little unclear about what we are referring to here.

Senator FIELDING: Then the department is not working on the issue relating to the change-in-name loophole and the concerns that, at a federal level, the privacy laws are stopping state departments from passing on information to authorities when people change their name by deed poll?

Mr Wilkins: We are looking at this issue of change of name as part of a national identity.

Senator FIELDING: Where is that at?

Mr Rice: On the question about timing of the National Identity Security Strategy revision, we have that under consideration at the present time. We are negotiating with Commonwealth departments and also with state and territory governments around the form and focus of the strategy. One of the issues that will get picked up in that is the change-of-name issue.

Senator FIELDING: Is there some indicative time frame or is it open-ended?

Mr Rice: We are hoping to have the work completed by the end of the calendar year and substantially completed by the end of the third quarter of this year.

Senator FIELDING: Who exactly is working on that? Is there a working group?

Mr Rice: Yes: my branch, through the auspices of the National Identity Security Coordination Group which has representation from the Commonwealth and states and territories.

Senator FIELDING: Is there a project plan that you have got drafted up for that working group?

Mr Rice: We certainly do.

Senator FIELDING: Is that something that you could table for the committee?

Mr Rice: I think so.

Mr Wilkins: Senator, is it that project that you are interested in?

Senator FIELDING: Correct. It is a way of getting this issue resolved.

Mr Wilkins: Yes, but the DVS thing I spoke to you about is also a way of dealing with this issue, and it is part of the identity security strategy. The identity security strategy is much more than simply that.

Senator FIELDING: Thank you. Thanks, Chair.

Senator BOYCE: Chair, could I just ask a related question again?

CHAIR: Yes.

Senator BOYCE: Thank you. Mr Wilkins, adoptees often complain about the state based nature of the births, deaths and marriages registers as well, because often they were born in a state that was not the natural residence of their mother. Has this issue been brought to your attention? And, in your work on the registries, are you looking at it?

Mr Wilkins: It has been brought to our attention. I am a little vague as to where we are on that. It has been raised in a number of different contexts through SCAG. It is not really part of this exercise, but it has been raised as an issue around some of the work that SCAG has done, I think, on disclosure of information in the context of adoption.

Senator BOYCE: This is not so much about disclosure as about the difficulty of potentially having to search seven more registers.

Mr Wilkins: I am not sure that we are doing any work on that, as such, through SCAG.

Senator BOYCE: Would you mind checking and, if so, provide me with information?

Mr Wilkins: I am certainly happy to check and give you whatever information we have on that, yes.

Senator BOYCE: Thank you.

CHAIR: Are there any further questions? Senator Abetz.

Senator ABETZ: Thank you to the officials. I am asking this bracket of questions at this stage because you may direct me to some other particular area of the department. But the area that I am trying to canvass is the Australian government search for any assets that might be owned in Australia by Colonel Gaddafi or his family. Is the Attorney-General's Department or any part of it involved in that search?

Mr Wilkins: Let me think about that. I think it is probably largely a Treasury/DFAT issue, but let me just take a sounding.

Senator ABETZ: I was thinking there might be some law enforcement involved here, but—

Mr Wilkins: One of the complicating features is that, even if we were, I am likely to be relatively unhelpful because it is not the Australian government's practice to confirm or deny or go into mutual assistance requests. So insofar as this may be a request by a foreign government to do certain matters, we would not be in a position to confirm or deny that we had had such request.

Senator ABETZ: ABC radio kindly tells us that Mr Rudd had said that the federal government is investigating reports that Mr Gaddafi's sons may have made millions of dollars in investments in Australia. Mr Rudd goes on to say:

One of the reasons the Australian Government acted early with unilateral autonomous sanctions against the Gaddafi regime was to ensure we can now begin legal processes for establishing whether any financial assets are held in Australia," he said.

Because Mr Rudd told us about legal processes, I thought a good port of call might be the Attorney-General's Department. But if not, I am more than happy to be guided by you as to whether it should go to Treasury next week or Foreign Affairs next week. I am interested, at least, in whether what the foreign minister has put on the public record can be confirmed.

Mr Wilkins: Just by way of clarification: in so far as this has to do with any sort of response from another country for assistance, obviously, as I have said, the practice is that we would not confirm or deny that —

Senator ABETZ: Well, the foreign minister has put it out publicly.

Mr Wilkins: but in so far as this is in fact an autonomous initiative by the Australian government we can comment on it. I will ask Mr Tony Sheehan to speak to it.

Mr Sheehan: The Attorney-General's Department does not have an investigative function but we are aware that, from within our portfolio, appropriate agencies are joined up in respect of this. Obviously, relevant agencies would be the Australian Federal Police, AUSTRAC, along with the Department of Foreign Affairs. I am not aware of the specific operational details.

Senator ABETZ: Undoubtedly, if I were to ask them questions they would tell me they were operational matters and they could not comment. Are you able to advise us, in relation to this, which is the lead portfolio? Would it be Foreign Affairs? Would it be Treasury? Would it be Attorney-General's? I can understand there would be a lot of liaison and cooperation between departments.

Mr Wilkins: I would say DFAT, Senator.

Senator ABETZ: What if DFAT tells me it is you, Mr Wilkins? I will be back in October.

Senator Ludwig: We will take it on notice in any event so that at least it is registered here so that if you do ask of Foreign Affairs and they tell you to refer back to Attorney-General's we can then take that much of it on notice. We can at least inquire. What answer we may be able to give might be dependent on the nature of the inquiry.

Senator ABETZ: Thank you for that help. Can I ask, without putting people under too much pressure, would it be possible to come back with an answer tomorrow morning as to which is the lead agency?

Mr Wilkins: I will certainly check with the agencies concerned and see if we can do that.

Senator ABETZ: If you could, I would be obliged. Thank you.

Senator BARNETT: I want to get an update on a few matters. First of all, the Legal and Constitutional References Committee delivered a report on donor conception. It was a very comprehensive report and it was a unanimous report. It was delivered on 10 February. It is over 90 days since that was delivered. My understanding is that that is the standard time for a response to a Senate committee report. Frankly, I was very proud of that report. I know that the chair was as well, as were other members of the committee.

CHAIR: Perhaps they are taking their time because it is going to be so comprehensive.

Mr Wilkins: It is complicated by the fact that it requires a number of different departments to form views on what I understand is an important area of reporting. I have not read the report. I will make a point of trying to get to it tonight.

Senator BARNETT: By midnight would be fine.

Mr Wilkins: We are waiting on some legal advice and we need to cooperate with the Department of Health and Ageing and the National Health and Medical Research Council. It

is not an uncomplicated matter to respond to. I cannot give you a time frame but it is being taken seriously. We are attempting to prepare a response to the report.

Senator BARNETT: So it is fair to say that you have had the report, you have considered the report and you have taken advice from other departments, which I can fully understand, in HMRC, health and ageing and maybe FaHCSIA. And you have sought advice from the Australian Government Solicitor? Have you liaised with the various states and territory A-Gs or have you just been considering your own position first before proceeding?

Ms Pirani: Yes, Senator. We are very mindful of the committee's recommendation around a national register—

Senator BARNETT: That is right.

Ms Pirani: and it is the power of the Commonwealth in relation to introducing such a register. We are currently awaiting legal advice on that issue and we want to work with our colleagues in the Department of Health and Ageing before looking at some of the alternatives that the committee proposed around alternative schemes if a national scheme is not possible.

CHAIR: It is also about access to information, which may be something you might need to do in collaboration with Health. I think it would be fair to say that it is a major area that has had no attention.

Senator BARNETT: Yes. Put it this way: there would be hundreds and possibly thousands of donor-conceived individuals and their families who are waiting with bated breath for a government response to that Senate committee report. We do not normally make a huge issue of our reports, but that was one report that frankly deserves serious consideration. And it is past the 90 days so I thought I would ask you the question in light of the normal convention of getting a response from government within that time period. Did you want to say anything else, Mr Wilkins, at this stage?

Mr Wilkins: No, just that obviously we take this report seriously. I remember being involved in some of these issues when legislation was being drafted in New South Wales. I assume that the general concern of your committee was with uniformity—

Senator BARNETT: It is a key concern and that is one of the recommendations of a national register.

Mr Wilkins: A lot of the states already have this legislation but it is probably different in different places.

Senator BARNETT: It certainly is.

Mr Wilkins: Is that the key problem?

Senator BARNETT: Yes.

Senator PRATT: It is also the lack of retrospectivity in some of those state arrangements.

Mr Wilkins: That was a big issue, I recall, from discussions about that in terms of what the comparative expectations of donors versus children might be in those sorts of circumstances, and how do you get that balance right.

Senator PRATT: There is an issue in terms of whether the government would like to avoid the kind of history we have had with adopted people. If we do not resolve some of these

legal questions then there will be—there is already—a new generation of adults with the same questions.

Senator BARNETT: Thank you, Mr Wilkins. We will wait with bated breath. You can understand also that from my point of view there is an incentive there to get a response by 30 June.

Mr Wilkins: I understand.

Senator BARNETT: But that is just a personal matter.

Senator BOYCE: I have a few questions. Mr Wilkins, could you confirm that the Attorney-General's Department is a member of the Interdepartmental Committee on the Framework Convention on Tobacco Control Illicit Trade Protocol?

Mr Wilkins: We are on so many IDCs; can I just check. We do not know the answer to that.

Senator BOYCE: I have an answer to a question on notice from the Department of Health and Ageing in E11-053 that says you are—

Mr Wilkins: Does it tell me who is actually a member?

Senator BOYCE: No, it does not mention who the person is. But my next question was going to be: what is your role on that committee? So I may have problems getting an answer to that as well.

Mr Wilkins: I would imagine it is to give legal advice around issues of constitutional and international law.

Senator BOYCE: The constitutional aspect in terms of interstate trade and the like? Is that what you are saying?

Mr Wilkins: I would say issues arising around questions of law; that would be a logical thing for the Attorney-General's Department to be on such a committee about. But I can confirm that.

Senator BOYCE: If you could. And perhaps give me some more detail on the role that the Attorney-General has played on that committee. My next question is in regard to the Interdepartmental Committee on Plain Packaging of Tobacco Products. The Department of Health and Ageing says you are a member of that committee as well. Again, I would like some information on your role in that committee: who attends on your behalf?

Mr Wilkins: Our role on that committee would be similar. It would be to give some guidance on legal advice or to seek legal advice or to have input into legal issues. In this particular case it would be a member of the division of the Office of International Law that would be a member.

Senator BOYCE: How often does that committee meet? Could you provide a list of the meeting dates?

Mr Wilkins: I am not sure. Does Health not have that information?

Senator BOYCE: I will be asking Health for it as well.

Mr Wilkins: It is their committee. I will go and ask Health.

Senator BOYCE: I am more interested in how many occasions the Attorney-General's Department attended. If the answer is 'every meeting', that is fine.

Mr Wilkins: We will check to see when we attended, if that is what you want to see. It could be that we did not go to every meeting; it could be that we were asked to come for some meetings and not others. We can take that on notice.

Senator BOYCE: You will have heard me ask questions earlier of the Australian Government Solicitor in terms of legal advice around plain packaging of tobacco products and intellectual property issues. Could you tell me if the Attorney-General's Department has provided advice in either or those departmental committees on that topic?

Mr Wilkins: The answer is yes, we have.

Senator BOYCE: And when would that advice have been provided?

Mr Wilkins: There was advice provided on 17 December 2010.

Senator BOYCE: Yes.

Senator BARNETT: To whom?

Mr Wilkins: To the committee.

Senator BOYCE: This is the plain packaging of tobacco products committee?

Mr Wilkins: Yes. I am just looking at this, Senator, you will have to bear with me. We provided some advice on 16 December 2010, on 14 December 1995—

Senator BOYCE: 1995?

Mr Wilkins: Yes—not to this committee.

Senator BARNETT: To whom?

Mr Wilkins: I am not sure.

Senator BOYCE: On the topic of IP and plain packaging of tobacco products?

Mr Wilkins: Yes. Advice was also provided on 5 January 2001—obviously, not in relation to this particular committee. I think that covers it. If we discover any other dates or things that I have overlooked we can—

Senator BARNETT: That was all in writing?

Mr Wilkins: No.

Senator BARNETT: Was it all verbal? What was it—

Mr Wilkins: No. It was not all verbal and it was not all in writing.

Senator BOYCE: What are you actually looking at?

Mr Wilkins: They are on the committee, so sometimes they have input by giving verbal advice. I think that in each of the cases I mentioned it may have been in cooperation with the AGS or other people. But most of these would have had some element of a written note; I imagine it would be in writing.

Senator BOYCE: But you are looking at an entry which says, 'We gave advice on those dates,' are you? Is it telling you what the advice is, or is it minutes of meetings—

Mr Wilkins: No, it is a confidential note to me explaining what legal advice has been given.

Senator BOYCE: On that particular committee?

Mr Wilkins: On plain packaging issues.

Senator BOYCE: Okay. Now what can you tell us about that advice?

Mr Wilkins: Nothing at all, actually.

CHAIR: Been there many times!

Mr Wilkins: Except that I am sure it was excellent!

Senator BOYCE: 1995: I would not have thought that the advice of 1995 would exactly be a dangerous piece of information to release in 2011?

Mr Wilkins: No, that is a key piece of advice and it is still relevant. Obviously, it is advice to someone else, not this department—the client is another department, but in any event—

Senator BOYCE: You have given this advice to the committee—not to the minister, to the committee?

Mr Wilkins: The 1995 advice?

Senator BOYCE: All of them.

Mr Wilkins: Some of it. I am not told here who the advice was actually directed to, but what is obvious is that it is highly sensitive advice from the point of view of the position of the state.

Senator ABETZ: Just wait for the 30-year rule to kick in and you will get it!

Senator Ludwig: Twenty—it will not be long.

Mr Wilkins: I should say that—

CHAIR: You need to say it quickly, Mr Wilkins, because it is 11 o'clock.

Mr Wilkins: in relation to the 1995 advice, both Philip Morris and British American Tobacco have been attempting, unsuccessfully, to get access to that advice.

Senator BOYCE: You may not believe me, but I was not aware of that, Mr Wilkins.

Mr Wilkins: Right. But this advice, whatever your views about plain packaging, is clearly of critical importance to the legal position of the Australian government on this issue, so I am not about to reveal it. What I can tell you is who the recipients of the advice are, and then maybe you would want to take that—

Senator BOYCE: If you could tell me that, I would quite like to ask that question tomorrow at about 4.30 pm, Chair, if that is possible!

CHAIR: It being—

Senator BRANDIS: Why can't Senator Boyce finish, Chair? The minister delayed the resumption after the afternoon tea break by five minutes—

CHAIR: It just depends. Senator Brandis, I hear what you are saying—

Senator BRANDIS: by his lateness. It is not fair to Senator Boyce.

CHAIR: Yes, that is true. But if it is—

Senator Ludwig: In fact, you delayed it—

CHAIR: If it is one answer and three names, that is fine; but if it is going to lead to another three or four questions then that is not fine.

Senator Ludwig: If we are going to stick to those types of rules, I came back the other time at lunch and waited for five minutes for proceedings to commence.

CHAIR: And I am sure it will lead to other questions, so we are going to adjourn.

Senator Ludwig: I am happy for the question to be asked—

CHAIR: We will start tomorrow—

Senator Ludwig: I really am. I do not mind going for an extra five minutes.

CHAIR: at nine o'clock. I am sure it will lead to other questions.

Senator Ludwig: I do not mind going for an extra five minutes. If it were tied off tonight, it would be more useful.

CHAIR: We will start at nine o'clock tomorrow with the Australian Federal Police. The committee is adjourned till nine o'clock tomorrow.

Committee adjourned at 23:02