

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

In relation to the drafting of the 5 Security bills (Security Legislation Amendment (Terrorism) Bill 2002 [No. 2], Suppression of the Financing of Terrorism Bill 2002, Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002, Border Security Legislation Amendment Bill 2002 and the Telecommunications Interception Legislation Amendment Bill 2002):

- (a) how many hours were involved in the drafting of these pieces of legislation;
- (b) provide the cost of drafting these pieces of legislation.

**I am advised that the answer to the honourable Senator's question is as follows:**

The following table sets out information about the time spent, and the salary costs incurred, in drafting the specified Bills for introduction.

<b>Bill</b>	<b>Time spent (see notes 1 and 2)</b>	<b>Total salary cost of Bill (see notes 3 and 4)</b>
	<b>Days</b>	<b>\$</b>
Border Security Legislation Amendment Bill 2002	59	23,900
Suppression of the Financing of Terrorism Bill 2002	16	5,729
Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002	15	5,869
Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]	38	15,609
Telecommunications Interception Legislation Amendment Bill 2002 (see note 5)	9.75	4,079
<b>Totals</b>	<b>137.75</b>	<b>55,186</b>

Notes:

1 The number of days spent by each drafter has been estimated by reference to activity (as shown in the drafting files—eg instructions received and drafts sent out), work reports, work diaries and timesheets. It has also involved consideration of what other Bills the drafter was working on during the same period. The estimates are necessarily very rough. In 3 cases, the drafters concerned are unavailable (one has left OPC, one is overseas and one is on maternity leave), and estimates of their work have been made by other drafters working with them on relevant Bills (these estimates are presumably even less reliable than the drafters' estimates of their own work).

2 In addition to the days shown for the purposes of calculating salary costs, there were a total of 3.5 unpaid days worked (eg weekend days or, for one drafter who works part-time, days on which he would not normally work and for which he is not paid). Also, drafters are not paid overtime, so a drafter who worked, for instance, a 10-hour day would only be paid for a 7.5-hour day.

3 The costs shown in the table represent only salary costs. They do not include other parts of a drafter's salary package (eg employer superannuation contribution or provision of a vehicle, where applicable), or "on-costs" of a drafter's employment such as accommodation, IT equipment or the salaries of support staff.

4 The salary costs shown have been calculated using current salary figures. However, almost all drafters involved have received some kind of salary increase in the last year, so some of the work costed would have been done when the drafters were in fact receiving slightly lower salaries.

5 Only a small part of the Telecommunications Interception Legislation Amendment Bill (items 6, 7, 8 and 15 of Schedule 1) deals with measures that are primarily aimed at terrorism, so only that part of the Bill has been accounted for in the estimates of drafting time and cost.

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

Was any advice given, either by the drafters or through your office, during the course of the development and delivery of those (anti-terrorist) bills that there was a possibility that the contents of at least some of these bills might be unconstitutional?

**I am advised that the answer to the honourable Senator's question is as follows:**

There were discussions between the drafters and instructors about the constitutional basis of some provisions of some of the Bills, and about appropriate approaches to constitutional issues arising in the course of drafting. No advice was given, either by the drafters or through OPC, to the effect that the contents of any of the Bills as introduced might be unconstitutional.

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 28 May 2002:**

Clarify whether the OPC prepared a file note/memo regarding constitutional concerns in relation to the above security bills.

**I am advised that the answer to the honourable Senator's question is as follows:**

Several file notes and memorandums were prepared dealing with constitutional issues that arose in the course of drafting the Bills and that the drafters wanted their instructors to consider or seek further advice about.

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

In relation to the ASIO bill:

- (a) provide any information regarding its development;
- (b) number of hours spent on the drafting;
- (c) clarify whether there were any file notes/memos regarding constitutional concerns.

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) The Bill was developed as part of the package of counter-terrorism legislation in accordance with instructions.
- (b) The work done on the ASIO Bill was initially done in conjunction with work on the Security Legislation Amendment (Terrorism) Bill 2002, and is covered in the figures given for that Bill in answer to Question on Notice 149. In addition, a further 4.5 days work was done on the ASIO Bill separately before it was introduced.
- (c) Several file notes and memorandums were prepared dealing with constitutional issues that arose in the course of drafting the Bill and that the drafters wanted their instructors to consider or seek further advice about.

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

Confirm whether the OPC is currently working on the redrafting of the 5 Security bills.

**I am advised that the answer to the honourable Senator's question is as follows:**

As at 28 May 2002, parliamentary amendments were being prepared for the Security Legislation Amendment (Terrorism) Bill 2002, the Suppression of the Financing of Terrorism Bill 2002 and the Border Security Legislation Amendment Bill 2002.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

What are the classifications of the administrative personnel from AGS associated with the BCI royal commission?

**I am advised that the answer to the honourable Senator's question is as follows:**

As of 28 May 2002, there was one administrative employee (a legal secretary) working as part of the AGS team assisting the Royal Commission into the Building and Construction Industry.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 28 May 2002:**

Was the AGS involved in the drafting of the discussion papers recently released by Commissioner Cole of the BCI royal commission?

**I am advised that the answer to the honourable Senator's question is as follows:**

Please see the response to question on notice number 43.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator Cooney asked the following question at the hearing of 28 May 2002:**

What proportion of the amount \$4,491,567 billed up to 15 April 2002 for the Royal Commission into the Building and Construction Industry represents AGS fees?

**I am advised that the answer to the honourable Senator's question is as follows:**

At the hearing on 30 May 2002, the Secretary of the Attorney-General's Department tabled information relating to the fees paid to legal firms by the Royal Commissions. That information indicated that up to 15 April 2002, the Royal Commission into the Building and Construction Industry had paid AGS the following fees (excluding GST):

- \$4,491,567 - for dedicated services, including AGS employees assisting the Commission on a full time basis
- \$260,477 - for collateral services, including pass through costs incurred by AGS as well as some additional fees that do not form part of the dedicated team's services provided to the Commission.

Following discussions with the Royal Commission into the Building and Construction Industry, AGS is able to advise that the whole of the former amount represents AGS legal fees.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 30 May 2002:**

Is the AGS in a position to provide a breakdown – starting with the HIH royal commission – of the number of employees, both administrative staff and lawyers, which comprise the fees (clarification by Minister Ellison on L&C445 – how many lawyers and staff were involved in the generation of those costs)?

**I am advised that the answer to the honourable Senator's question is as follows:**

With respect to the Royal Commission into the collapse of HIH, as of 30 May 2002, the legal fees paid or due to AGS, had been generated by:

- 7 lawyers for various times over the period since the commencement of the Royal Commission, with 5 engaged on a full time basis as at 30 May 2002
- 1 senior legal assistant, full time
- AGS lawyers not in the team assisting the Commission but to whom matters have been referred - the aggregate of the time involved in such matters over the life of the Commission is estimated to be under the equivalent of one person month.
- In addition, in the initial period after the commencement of the Royal Commission, AGS provided certain IT and other support services, which involved the equivalent of one full time person for a period of approximately four months.

With respect to the Royal Commission into the Building and Construction Industry, as of 30 May 2002, the legal fees paid or due to AGS, had been generated by:

- 19 lawyers, full time (including two junior solicitors who act as associates to Commissioner Cole)
- 3 lawyers, short term
- 1 legal secretary, full time
- 1 lawyer who is an ongoing employee of AGS, who worked full time with the Commission in the early months and who has since returned to other duties at AGS
- AGS lawyers not in the team assisting the Commission but to whom matters have been referred - the aggregate of the time involved in such matters over the life of the Commission is estimated to be under the equivalent of one person month.
- In addition, during the period before the Royal Commission had established contracts for the provision of IT, document capture and other support services, AGS provided certain such services, which involved the equivalent of four full time persons for a period of approximately four months.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 30 May 2002:**

The figures provided by the BCI royal commissioner are up to 15 April 2002. Provide invoices rendered after 15 April 2002.

**I am advised that the answer to the honourable Senator's question is as follows:**

Following discussions with the Royal Commission into the Building and Construction Industry, AGS is able to advise that up to 27 May 2002, AGS had invoiced a total of \$5,629,204 exclusive of GST, of which \$4,959,354 was for legal services, \$275,562 was for administrative, IT and document services provided by AGS employees, and \$394,288 in respect of reimbursement of disbursements, mainly document capture, photocopying and travel services. At that date, work valued at \$217,116 had been performed but not yet invoiced.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN INSTITUTE OF CRIMINOLOGY  
QUESTIONS ON NOTICE

**Senator Payne asked the following question at the hearing of 28 May 2002:**

Is the AIC's view that the experiment of electronic voting in the ACT was sufficiently broad to provide a reliable assessment of how we might protect against fraud and problems with authenticity in this process?

**I am advised that the answer to the honourable Senator's question is as follows:**

Although the ACT trial of electronically-assisted polling provided an opportunity to test one system of electronic polling, it was unable to assess some of the wider security issues that would arise in on-line or Internet-based voting, such as might take place from homes or kiosks. The ACT trial, while successfully using one method of identifying voters, also did not make use of public key infrastructures that would be needed to authenticate securely the users of more extensive on-line voting procedures. Nonetheless, the technology used in the ACT election provided evidence of a number of ways in which electronic voting can improve the efficiency and effectiveness of electoral procedures, particularly concerning computer-assisted casting of votes and counting of ballots.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 28 May 2002:**

Provide a breakdown of costs to date that the agency has incurred in relation to Mr Habib and Mr Hicks.

**I am advised that the answer to the honourable Senator's question is as follows:**

The direct cost, up to 30 May 2002, of the investigations in relation to Mr Habib and Mr Hicks are \$429,000 and \$145,000 respectively.

In both investigations the majority of the costs relate to the salaries of the staff involved.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

What are the current attrition rates in the APS? Can comparative figures over a reasonable period of time be provided showing levels and length of service of individuals who have moved in previous years?

**I am advised that the answer to the honourable Senator's question is as follows:**

	1999 calender	2000 calender	2001 calender	2002 (YTD*)
<b>Attrition Rate</b>	12%	15%	10%	5%
<b>Average length of service</b>	9.4	8.0	6.3	5.5
<b><u>Operational Level</u></b>				
Protective Service Officer Trainee	-	7	1	10
Assistant Protective Service Officer	2	3	1	1
Protective Service Officer Grade 1	67	67	48	29
Protective Service Officer Grade 2	6	10	3	-
Senior Protective Service Officer	1	6	3	-
Senior Diplomatic Protection Officer Grade 1	-	-	1	-
Protective Service Superintendent	1	1	-	-
<b><u>Administrative</u></b>				
APS1/2	-	1	1	-
APS3/4	1	1	4	-
APS5/6	2	6	4	3
EL1/2	3	6	8	3
SES	1	1	-	-

\* YTD = "Year To Date" as at 13 June 2002.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 30 May 2002:**

Indicate whether the APS have made inquiries to determine there is sufficient accommodation for the additional 25 officers in Nauru.

**I am advised that the answer to the honourable Senator's question is as follows:**

The additional 25 officers will be accommodated in a dormitory style facility within a Hotel on Nauru. The existing APS personnel are also accommodated at this Hotel however have individual rooms.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

Is there a protocol or MOU between the APS and DIMIA in relation to the provision of officers for detention centre duty when emergencies arise, such as disturbances and demonstrations?

**I am advised that the answer to the honourable Senator's question is as follows:**

No. The nature of the services provided by the APS in support of DIMIA has, since 1998, been ad hoc, that is resulting from a specific incident where the requirement is additional to the ongoing support provided by the contracted service provider, Australasian Correctional Management. Requests for support from DIMIA to the APS are normally short notice requests related to a risk assessment in relation to specific events or situations at an Immigration Detention Centre (IDC). Additionally, the nature of the situation requiring support from the APS is unpredictable and therefore difficult to define within a formal agreement.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

- (a) Isn't this pretty unusual practice to not have an agreement in place?
- (b) Is there a reason there isn't a written agreement?

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) The situation is no different from other agencies seeking APS support on an ad hoc basis, separate from and sometimes in addition to, any contractual relationship that may exist.
- (b) Requests for support from DIMIA to the APS are normally short notice requests related to a risk assessment in relation to specific events or situations at an Immigration Detention Centre (IDC). Additionally, the nature of the situation requiring support from the APS is unpredictable and therefore difficult to define within a formal agreement.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

Is there a written agreement in relation to the provision of services for DIMIA's off-shore processing centre on Nauru?

**I am advised that the answer to the honourable Senator's question is as follows:**

Yes, but not between the APS and DIMIA. The initial tasking of the APS in relation to Nauru arose from the People Smuggling Task Force High Level Working Group, chaired by PM&C. An Operations Order released by PM&C defined the support that was to be provided by the APS.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

- (a) Continuing with APS duties at detention centres, specifically Woomera during the Easter demonstrations, have APS done an analysis of APS involvement during that incident?
- (b) What operational lessons have you learned?
- (c) Does this get fed back into your training programs?

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) On 9 May 2002 the Australian Federal Police hosted a debrief between State and Commonwealth agencies that contributed to the response to the Woomera demonstrations. The officer in charge of the APS detachment provided a report to the Director, APS outlining the events involving the APS.
- (b) The principle lesson to arise from the Woomera experience was that closer coordination between the APS and the relevant State or Territory Police Service during the planning phase of a joint operation would facilitate a clearer definition of command, control and coordination responsibilities during the conduct of the operation.
- (c) This lesson has been built into operational management training conducted for tactical commanders and will be included in a proposed revision of APS Operational Guidelines.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

Mr Studdert advised this committee that APS planned to respond to DIMIA's calls for providers of Detention Centre Management services. The current provider ACM, is responsible for a very wide range of services such as medical, facility infrastructure, educational to name but a few. Is it likely that APS will be undertaking to provide the full range of services, presumably in some subcontracting set of arrangements, in its bid for this work?

**I am advised that the answer to the honourable Senator's question is as follows:**

The APS is currently in a consultative management arrangement between the Secretary of the Attorney General's Department and the Commissioner of the Australian Federal Police. No formal decision to bid has been made.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN PROTECTIVE SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 30 May 2002:**

The committee notes that APS will be providing services to the new Christmas Island facility when it is built, will you also be providing the same services to the new facility being built in South Australia?

**I am advised that the answer to the honourable Senator's question is as follows:**

The APS believes that the facilities at Christmas Island and Baxter (in South Australia) will be serviced by the successful tenderer for the IDC services contract. Accordingly, if the APS were to bid and were to be successful, then it would be required to operate in these locations.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Have you an indication of how much that (supplementary funding for container x-ray machines) might be and for what it would be used? Would it be for the maintenance or the training components of it? Is there any additional information (breakdown)?

**I am advised that the answer to the honourable Senator's question is as follows:**

In the May 1999 Budget the Government provided \$9.3 million capital funding and \$2.8 million per year ongoing, for x-ray units capable of scanning full shipping containers. Following a review of all the available x-ray technology and the establishment of a preferred supplier panel, Customs launched a project in January 2001 that will build integrated sea cargo examination facilities incorporating container x-rays infrastructure and make associated changes to Customs procedures pre and post x-ray examination.

Customs signed a contract with Chinese manufacturer Tsinghua Tongfang NucTech Co. Ltd on 30 May 2001 for the acquisition of two container x-ray inspection systems. These systems will be located in the ports of Melbourne and Sydney, with facility commissioning dates of September 2002 and late 2002 respectively. Each x-ray system costs \$5.5 million. This includes the machine, installation and one year's warranty.

In the May 2002 Budget the Government provided \$39.8 million over four years to expand the Container X-ray Strategy into Brisbane and Fremantle. These funds include \$13.8 million additional capital funding which will be used to acquire two further systems – one for Brisbane and another for Fremantle. The Brisbane facility will be based on the Sydney/Melbourne model, and is scheduled to be operational early in 2003. A decision on what system to use in Fremantle will follow from an analysis of business needs, but Customs is looking to have a site operational late in 2003.

In the May 2002 Budget the Government also provided \$9.2 million over four years for the purchase and operation of additional pallet x-rays that will work in conjunction with the container examination facilities.

The estimated cost to Customs to run three facilities in 2002/03 is \$15 million, rising to around \$20 million per year in the out years. These costs cover employee, property and supplier expenses such as maintenance.

Customs estimates that internal funding of \$10.6 million per year will be required to operate the three facilities in a full year. These funds are in addition to the funding provided in the 1999/2000 and 2002/003 Budgets and the money currently spent on container examination.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 31 May 2002:**

Provide the current figures for notices of objection (update from June 1999). Do you have agents for licensees?

**I am advised that the answer to the honourable Senator's question is as follows:**

As at May 2002, the number of Notices of Objection in place are as follows:

Copyright Act 1968;	19
Trade Marks Act 1995:	123
Olympic Insignia Protection Act 1987:	1

Copyright, Trade Mark and Olympic Insignia Protection legislation allow an authorised user or exclusive licensee to lodge a Notice of Objection. The lodgement is normally supported by a letter of authorisation. An industry association may act as an authorised user or exclusive licensee with the appropriate written authorisations.

An agent, for example a trade mark attorney, may lodge documents on behalf of any owner, authorised user or licensee provided the owner, authorised user or licensee of the right completes and signs the appropriate forms. The Notices currently in place were lodged as follows:

	Owner	Licensee / authorised user	Representative association
Copyright Act	15	3	1
Trade Marks Act	93	29	1
Olympic Insignia Protection Act	1	0	0

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 31 May 2002:**

Provide an update on the numbers of consignments and importers for each year including 1998-99, 2000-01 and to the present, in the areas of CD sound recordings, computer software, videotapes, DVDs, books - including electronic books and periodicals - and sheet music (identifying the spike associated with the Olympics)

**I am advised that the answer to the honourable Senator's question is as follows:**

A search of Customs commercial database holdings for the categories of goods requested, show the number of consignments and importers (rounded up or down to the nearest hundred) are:

		1998-99	1999-00	2000-01	2001-March 02
CD Sound Recordings	Consignments	12300	13600	14200	11100
	Importers	2200	2500	3200	2400
Other Sound Recordings	Consignments	9900	9900	10300	7800
	Importers	1500	1400	1400	1200
Computer Software	Consignments	41900	39900	40400	21800
	Importers	10300	9900	9000	5300
Videotapes	Consignments	9100	8700	9000	6300
	Importers	3600	3600	3800	2900
DVDs	Consignments	11700	16100	16300	13300
	Importers	3700	5000	4600	3700
Books (including Electronic books and Periodicals)	Consignments	87300	114400	121000	85200
	Importers	18700	19000	39000	29300
Sheet Music	Consignments	10100	10400	15500	10600
	Importers	7800	8100	10100	7300

The annual figures do not indicate a spike in the number of consignments due to the Sydney 2000 Olympics. However, Customs seizures of infringing intellectual property increased during the lead up to the Olympics. Customs seized more than 133,000 items in 121 seizures, under the Sydney 2000 Games (Indicia and Images) Act 1996, in the years 1998-99 to 2000-01.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 31 May 2002:**

Your submission to the inquiry into copyright enforcement stated that, in the 12 months to 30 April 1999, Customs seized more than 60 consignments of goods for infringements of copyright, ranging in value from under \$1,000 up to \$45,000.

- a) Provide an update of that information, your rate of seizure of consignments and their values, to the nearest quarter.
- b) Provide the number of consignments of goods seized for infringement of copyright, the types of goods in those consignments and the range of values.
- c) Provide details on how many seizures, the scale and the type of operation.

**I am advised that the answer to the honourable Senator's question is as follows:**

- a) Seizures under the Copyright Act 1968 are set out below.

	1998-99	1999-00	2000-01	2001-March 02
Copyright Act 1968	77	115	95	32

Seizures of goods that infringe intellectual property are also made under the Trade Marks Act 1995 and the Commerce (Trade Descriptions) Act 1905. The figures for those seizures are also provided.

	1998-99	1999-00	2000-01	2001-March 02
Trade Marks Act 1995	682	708	700	768
Commerce (Trade Descriptions) Act 1905	10	23	10	5

The value of intellectual property consignments seized range from \$1 to \$55,000.

- b) The types of goods seized by Customs includes:

Toys	Film, Video & DVD
Cosmetics, Toiletries & Perfumes	Books
Watches and clocks	Appliances
Handbags, Sporting & other bags	Mobile phone accessories
Recorded Music	Stationery
Games Software	Figurines and Novelty items
Non-games computer software	Fishing rods
Clothing Footwear & Clothing accessories	Jewellery, Sunglasses & Personal accessories

- c) Customs cargo examinations are conducted on a risk assessment basis. Any time that Customs examines cargo, for any purpose, regard is had to intellectual property implications. Goods are seized if intellectual property infringements are identified and a Notice of Objection is in place. Intellectual property rights owners are encouraged to assist Customs by providing information on infringing goods that will allow better targeting.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 31 May 2002:**

Regarding the Marine Unit:

1. Give me a breakdown, in percentage terms, of the type of training that you undertake.
2. What level of requirement is involved in firearms training? Provide a breakdown of what firearm training they are required to undertake, whether it is small arms, sidearms, rifles?
3. What are the operational requirements?
4. Detail where ACS are working up new and enhanced training packages and what level of training is required?
5. If a new training package has to be developed, is it going to be put out to tender and, if so, how much will that be? If it is internal, what is the budget?

**I am advised that the answer to the honourable Senator's question is as follows:**

1. Breakdown of training

*Initial Customs Marine training*

The initial training given to new entrant Customs marine officers is typically an 11 week package consisting of: a three-week induction course; one week radio communications and tender rollover training; four weeks use of force training; culminating in a three-week onboard at sea period called workup training.

The three-week induction course is broken down into two weeks of general Customs training including briefings from principal clients such as Environment Australia, the Department of Immigration, Multicultural and Indigenous Affairs, the Australian Quarantine and Inspection Service, the Australian Fisheries Management Authority and the Great Barrier Reef Marine Park Authority. The third week usually consists of specialist investigation training and the powers of officers for the detention and search of suspects.

The most intensive part of the training is the four-week Use of Force, Conflict Management and De-Escalation Training conducted by the Australian Federal Police (AFP). This course covers both the legislation that enables Customs marine officers to bear arms in the course of their duty and the physical demands of doing so. Approximately 20 percent of the course is devoted to basic self-defence and the use of batons and spray in the protection of themselves and other officers or third parties. Approximately half of the course is devoted to understanding and gaining competency in the use of pistols, rifles and shotguns. The remainder of the course covers the legislative, team building, revision and other aspects associated with the delivery of use of force. This initial training is undertaken by Customs marine officers at the AFP's premises in Canberra. At the conclusion of the course all officers must

undergo a rigorous scenario based assessment. It is mandatory that officers achieve a pass in the assessment phase before they can become fully-fledged Customs marine officers. It is also a requirement that every officer issued with a use of force permit by the AFP undergo a rigorous one-week recertification process before the anniversary of that permit.

Approximately one week of the initial training is devoted to instructing the new officers in the correct use of radio communications equipment and in the procedures required to safely right an overturned small craft in a seaway. In most cases training then culminates in a three-week onboard period under the scrutiny of Customs' own marine standards supervisors. This involves the first four days being conducted alongside while officers are instructed in the basics of how to operate a Bay Class patrol boat. The following two and a half weeks are then spent at sea operating and becoming familiar with the at-sea working environment of a patrol boat. Included in this are several scenario based evolutions that cover such eventualities as a man overboard, fire fighting, flooding of compartments, conducting at sea boarding training and general mariner skills. The only addition to this training is that the marine engineers receive one additional week of specialist training in the main propulsion system of the Bay Class patrol boats.

Therefore, the breakdown of the initial Customs marine training is about 27 percent on the induction course, 9 percent radio communications and tender roll-over safety training, 37 percent AFP use of force course, and about 27 percent in practical mariner skills training. At the conclusion of this program officers are placed on the National Marine Unit (NMU) crew roster and generally put to sea with other more experienced officers.

#### *Other Training (non-legislative requirements)*

Marine officers within Customs also undertake additional training to acquire specific skill sets for the execution of their duties and in providing support to the community. Although not exhaustive, this includes: bridge [wheelhouse] resource management skills; ship master's medical first aid training; senior first aid training; specialist engineering training; and continuation training in the legislative requirements of Customs.

#### *Other Training (legislative requirements)*

In order to put a Customs patrol boat to sea, the crew have to meet a minimum requirement with respect to personal qualifications that are defined by legislation.

A nominal crew of eight is composed of:

- 1 x Customs Level 3 Commanding Officer
- 1 x Customs Level 3 Engineering Officer
- 3 x Customs Level 2 Officers
- 3 x Customs Level 1 General Purpose Officers

Marine Qualifications required are:

- Commanding Officer - Master Class IV (endorsed to 200nm)
- Engineering Officer - Engineer Class 3
- Level 2 Officers - Master Class V (endorsed to 200nm) and Marine Engine Driver 1
- Level 1 General Purpose Officers - There are currently no mandatory qualifications required for a Level 1 to enter the NMU, however a Coxswains Certificate, Marine Engine Driver 3, elements of shipboard safety and a restricted radio operators certificate are highly desirable.

## 2. Firearms training

The four-week NMU Use of Force course delivered by the AFP trains officers to a higher standard than that given to AFP's own recruits. This is primarily because the NMU officers receive additional training in the use of rifles and shotguns. The breakdown of training time is approximately 10 percent basic self-defence; 10 percent on the use of batons and sprays; 25 percent in the use of pistols; and 25 percent on the rifle and shotgun. The remaining 30 percent of training time is devoted to the legislative framework and other aspects of the course such as drill revision.

The course completes with each NMU officer being assessed individually by the AFP instructors before a use of force permit is issued. The use of force permit is a mandatory qualification for Customs marine officers.

## 3. Operational requirements

As noted above, at the conclusion of the training, and provided the officer passes, an AFP use of force permit is issued. This permit details the competencies that the individual officer has been assessed as possessing and those skills must be revalidated annually before the anniversary of the permit. Without that permit the officer is not authorised to engage in use of force delivery situations.

## 4. New and enhanced training packages

Training in relation to the new Border Security legislation will in the main be an extension of the current arrangements for use of force training.

With the introduction of the new legislation there will be an implication in regard to powers of officers training. Marine officers are provided this training internally as part of their induction. Training will need to be amended/expanded as appropriate to the new legislation.

As the legislation will provide for an increase in the number of officers who will be able to authorise carriage of firearms there will need to be awareness training provided to these officers. This would be by way of issuing of Guidelines and Standard Operating Procedures rather than classroom training.

5. Resources for new training

Any extension of use of force training will be under current arrangements with the AFP.

It is anticipated that resources for this and other amendments to training will come out of current budgetary allocations. No additional funds have been provided for Border Security Legislation training.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator Cooney asked the following question at the hearing of 31 May 2002:**

Provide a list of all the powers of Customs officers under the *Migration Act 1958*.

**I am advised that the answer to the honourable Senator's question is as follows:**

The term, "officer" is defined in subsection 5(1) of the *Migration Act 1958* (the Act) to include "a person who is an officer for the purposes of the *Customs Act 1901*, other than such an officer specified by the Minister in writing for the purposes of this paragraph...". Customs officers are, therefore, officers for the purposes of the Act and can *prima facie* exercise all the powers of officers under the Act (see attachment A). As a matter of policy, however, Customs officers generally only exercise a limited number of powers.

The term, "authorised officer" in subsection 5(1) is also defined to include Customs officers authorised in writing by the Minister or the Secretary to be authorised officers for the purposes of specific provisions of the Act. A list of powers exercised by authorised officers is set out at attachment B.

Additionally, section 165 of the Act defines "clearance officer" to mean "an officer, or other person, authorised by the Minister to perform duties for the purposes of this Division [Division 5]." Customs officers are, therefore, also clearance officers for the purposes of Division 5 of the Act.

Customs officers most commonly exercise powers as "clearance officers" under sections 165-175 of Division 5 of the Act. These provisions deal with the processing of passengers at airports and sea terminals for the purpose of immigration clearance. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) and Customs have formal arrangements concerning the processing of passengers at the border. Passengers are required to provide evidence of identity to a clearance officer. Based on the evidence, the clearance officer will either grant or refuse immigration clearance to the passenger.

From time to time, Customs officers are also instructed to exercise powers under sections 188 and 189 of the Act. Section 188 enables officers to require a person suspected of being a non-citizen to show evidence of being a lawful non-citizen. Section 189 imposes a statutory obligation on officers to detain persons whom they know or reasonably suspect to be unlawful non-citizens in the migration zone, and if such persons are outside the migration zone, where the officer reasonably suspects that they are seeking to enter the migration zone. In addition, officers may, but are not obliged to, detain such persons in, or seeking to enter, an excised offshore place.

## ATTACHMENT A

Customs officers may exercise powers as “officers” for the purposes of the following provisions of the Act:

S 91W - Power to require applicant for a protection visa to produce documentary evidence of identity, nationality or citizenship for inspection;

S 180 - Power to detain, without warrant, designated persons not in immigration detention or who have escaped from immigration detention;

S 181 - Power to remove a designated person from Australia;

S 192 - Power to detain visa holders whose visas are liable to cancellation;

S 198 - Power to remove an unlawful non-citizen from Australia;

S 198A - Power to take an offshore entry person from Australia to a declared country;

S 198B - Power to bring a transitory person to Australia from a country or place outside Australia for a temporary purpose;

S 199 - Power to remove dependents of unlawful non-citizens from Australia;

S 223 - Power, under search warrant, to enter and search buildings, premises, vehicles, vessels or places for valuables, and to seize such valuables, of detained non-citizens or deportees liable to the Commonwealth for certain costs;

S 225 - Power to require masters of vessels arriving in Australia from overseas to muster vessel’s crew, and to require crew members to produce identity documents for inspection;

S 226 - Power to require persons in charge of resources installations brought into Australian waters from places outside Australian waters, to muster persons on board the installation and to require persons on board the installation to produce identity documents for inspection;

S 227 - Power to require persons in charge of sea installations brought into Australian waters from places outside Australian waters, to muster persons on board the installation and to require persons on board the sea installation to produce identity documents for inspection;

S 245F - Power to board and search aircraft landed in Australia and specified ships outside the territorial seas of foreign countries, examine goods found on the ship or aircraft and require persons on the ship or aircraft to answer questions and produce certain documents in their possession;

S 245FA - Power to search persons on certain ships or aircraft under S 245F without warrant;

S 245FB - Power to return persons to ships detained under S 245F where officer is satisfied it is safe to return the person;

S 245G - Power to board certain ships on high seas, ask persons on board questions and require persons on the ship to produce certain documents;

S 245H - Power, at the Direction of the Secretary, to move and destroy hazardous or unseaworthy ships reasonably suspected of contravening the *Migration Act* in or outside Australia;

S 249 - Power to prevent persons reasonably suspected of being unlawful non-citizens from leaving the vessels on which they arrived in Australia;

S 251 - Power to enter and search certain vessels (other than those covered by S 245F) reasonably suspected of carrying unlawful non-citizens or persons seeking to enter the migration zone who would, if in the migration zone, be unlawful non-citizens;

S 252G - Power to request persons entering detention centres to undergo screening procedures;

S 253 - Power to detain, without warrant, a person reasonably supposed to be subject to a deportation order; Power to detain, without warrant, persons released from detention subject to conditions who have breached those conditions;

S 257 - Power to question persons in immigration detention to determine whether they are unlawful non-citizens, removees or deportees; Power to move those persons from place to place;

S 260 - Power to detain a vessel at the direction of the Secretary where, in the Secretary's opinion, the master, owner, agent or charterer of the vessel has been guilty of an offence against the Act;

S 261G - Power to retain possession of a thing claimed under S 261F whether or not proceedings for the condemnation of the thing have been instituted.

## ATTACHMENT B

Customs officers may exercise powers as “authorised officers” for the purposes of the following provisions of the Act:

S 17 - Authorised officer may decide whether a particular flight is a pre-cleared flight;

S 231 - Authorised officer may require masters of vessels arriving in Australia to provide a list of persons on the vessel;

S 252 - Authorised officer may, without warrant, detain certain persons to search for weapons or documents which may provide grounds for cancelling the person’s visa;

S 252AA - Authorised officer may, without warrant, conduct screening procedures in relation to certain detainees to determine if he or she is hiding weapons;

S 252A - Authorised officer may, without warrant, and under authorisation of the Secretary of the Department, SES Band 3 Employee of the Department, or magistrate, conduct strip searches of certain detainees to determine if he or she is hiding weapons;

S 252C - Authorised officer may, in specified circumstances, take possession of, and retain, things found while conducting screening procedures or strip searches;

S 252D - Authorised officer may apply to a magistrate to retain for a further period a thing found during a screening procedure or strip search;

S 252G - Authorised officer may request a person about to enter detention centre who is reasonably suspected of carrying certain dangerous things, to permit an authorised officer to inspect the things in the person’s possession;

S 258 - Authorised officer may photograph and measure a person in immigration detention in order to identify the person;

S 261B - Authorised officer may seize a thing in Australia where it is forfeited under S 261 of the Act;

S 268BL - Authorised officer may inspect documents given to him or her relevant to visa monitoring, take and retain extracts from such documents and retain copies of such documents;

S 268BM - Authorised officer may retain documents given to him or her for the purposes of the Act, an investigation, or to enable evidence of an offence to be secured for the purposes of a prosecution;

S 268BP - Authorised officer may apply to a magistrate or a tribunal member [Administrative Appeals Tribunal] for an order that the officer retain documents for a further period;

S 268CA - Authorised officer may, under a monitoring warrant or with the consent of the occupier, enter premises [defined to include a vessel] for a visa monitoring purpose and exercise monitoring powers;

S 268CB - Authorised officer may enter premises for a visa monitoring purpose at reasonable times of the day and night with the consent of the occupier of the premises;

S 268CD - Authorised officer may apply to a magistrate or tribunal member for a monitoring warrant in relation to premises under subsection 268CA(1);

S 268CI - Authorised officer's monitoring powers include searching premises, examining things on, or activities conducted on, the premises, taking photographs, making video, audio recordings or sketches of any activity or thing, inspecting documents on the premises, and making copies of such documents;

S 268CJ - Authorised officer on premises with consent may ask the occupier questions relevant to a visa monitoring purpose;

S 268CK - Authorised officer on premises under a monitoring warrant may require the occupier of the premises to answer questions relevant to a visa monitoring purpose;

S 268CO - Authorised officer may operate electronic equipment on premises in order to exercise monitoring powers;

S 268CP - Authorised officer may secure electronic equipment on premises for specified periods to access information relevant to a visa monitoring purpose, where the operation of the equipment requires expert assistance;

S 268CQ - Authorised officer may, in specified circumstances, apply to a magistrate or tribunal member for an extension of the period in which to secure electronic equipment;

S 268CR - Authorised officer on premises under S 268CA may, without warrant, exercise certain powers of search and seizure where circumstances are sufficiently serious and urgent;

S 268CT - Authorised officer may apply to a magistrate or tribunal member for a thing seized under S 268CR to be retained for a further period;

S 268CZC - Authorised officer may apply to a magistrate or tribunal member for a warrant under S 268CE by telephone, fax or other electronic means;

S 269 - Authorised officer may require and take securities for compliance with provisions of the Act or Regulations;

S 488 - Minister may authorise an officer of Customs to read, examine, reproduce, use or disclose movement records for the purposes of a law relating to customs or excise.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN CUSTOMS SERVICE  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question after the hearing of 31 May 2002:**

In relation to enhanced Coastwatch communications capability:

- a) Outline what the current “communications capability” for Coastwatch is and the shortfalls which have caused a need to increase that capability
- b) Clarify the phrase “the inter-operability of communications equipment with existing air and surface assets”
- c) Explain how this increased capability will actually “facilitate secure and reliable communications with surveillance command and control centres”
- d) How will the enhanced capability interact with the communications capability of the other agencies/departments involved in aerial coastal surveillance, given that Coastwatch is outsourced?

**I am advised that the answer to the honourable Senator's question is as follows:**

a) Coastwatch currently uses the Australian Customs Service radio communications network, comprising long-range High Frequency (HF) and short range, line of sight Ultra High Frequency (UHF) capabilities. In 2000, all Coastwatch surveillance aircraft were equipped with satellite phones.

These systems have limited bandwidth and are constrained to voice communications only. In addition to voice transfer, the Inmarsat satellite system will allow reliable, high-speed transmission of data and pictures between the fitted surveillance aircraft, the Coastwatch National Surveillance Centre, Defence and client agencies.

b) Defence and some other agencies use the Inmarsat system. The provision of a common communications capability will allow exchange of surveillance information, particularly between Coastwatch aircraft and those similarly fitted surface assets that may be required to respond to a sighting.

c) The Inmarsat system can provide secure communications through the use of encryption facilities. The high capacity satellite link is not as affected by atmospheric or line of sight restrictions and will overcome the propagation issues currently experienced with the High Frequency network.

d) The Inmarsat satellite link provides communications that are compatible with other agencies using the same commercial satellite technology. Where client agencies do not have their own satellite technology capabilities, transmission of data and pictures from surveillance aircraft can be facilitated via the Coastwatch National Surveillance Centre in Canberra.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Is the Human Right's Branch of the Department involved in the development of a draft document dealing with homosexual de facto access to the Family Court to settle property matters?

**I am advised that the answer to the honourable Senator's question is as follows:**

No.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.1  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002.**

Does the Department have a timeline for the finalisation of the Civil Justice Division's protocol governing the receipt and investigation of serious complaints against federal judicial officers?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Attorney-General's Department, in consultation with the Department of Prime Minister and Cabinet, has undertaken preliminary work on a draft protocol.

Whether or not the draft protocol should be adopted, and its content, will ultimately be matters for the Parliament.

At this stage it is not possible to specify a timeline for finalisation of the development of the protocol.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 27 May 2002:**

Has any work been done in the human rights branches of the Department on the *Re Kevin* case?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Civil Justice Division contributed to the consideration of issues related to *Re Kevin* from a discrimination law and human rights perspective.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 27 May 2002:**

Was an opinion sought from those branches of the Department about the relevance of human rights principles to the *Re Kevin* case?

**I am advised that the answer to the honourable Senator's question is as follows:**

A separate opinion on the specific application of human rights principles to the case of *Re Kevin* was not sought in the course of preparing the Attorney-General's intervention in the case. As noted in the response to Question on Notice 178, the Civil Justice Division of the Department has provided input from a discrimination law/human rights perspective on issues related to this case.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

- (a) In relation to the McBain case, an amount was given as going to the AGS – was there additional work done by the Attorney-General, if so, provide the cost of that work.
- (b) Provide a figure for work done by counsel on the case.
- (c) What was the total cost paid to the Commonwealth as a result of the order of the High Court to pay costs of Dr McBain.

**I am advised that the answer to the honourable Senator's question is as follows:**

- (a) Additional work was done by the Attorney-General's Department in providing instructions to AGS and providing briefing to the Attorney-General in relation to the fiat and the Attorney-General's intervention in the High Court. The Attorney-General's Department does not maintain records of hours spent on particular policy issues. However, it is estimated that the salary costs of the work on this matter were approximately \$21,800.
- (b) The cost of work done by Mr Robert Orr QC of \$31,506.20 was included in the amount of \$235,240.49 given as going to AGS. The additional cost of work done by Ms Sofroniou as junior counsel was \$17,499.97.
- (c) No costs have been paid by or to the Commonwealth as a result of the order of the High Court to pay costs of Dr McBain. It will be a matter for the Bishops' solicitors to negotiate with Dr McBain's solicitors and for the Bishops to pay Dr McBain's agreed or taxed costs.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 31 May 2002:**

If there was an order to costs, what was the total cost paid by the Commonwealth as a result of the order of the High Court to pay costs of Dr McBain. Did any other parties receive legal assistance from the Attorney in this case. If so, what was the value of the assistance, what criteria were used to provide assistance to some parties and not to others.

**I am advised that the answer to the honourable Senator's question is as follows:**

The Commonwealth has not paid any costs as a result of the High Court costs order in favour of Dr McBain. The Attorney-General imposed a condition when granting his fiat to the Bishops that the Bishops would pay costs associated with the High Court proceedings brought in reliance upon the Attorney-General's fiat

No other parties received legal assistance.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

- a) In the Australian Industry Group v Automotive, Food, Metals, Engineering and Printing and Kindred Industries Union case, did the Attorney-General decline the request of the Australian Industry Group asking him to assume responsibility for the enforcement of the penalty?
- b) If so, provide a copy of the Attorney's letter to the Australian Industry Group.

**I am advised that the answer to the honourable Senator's question is as follows:**

- a) Yes.
- b) Attached is a letter from the Office of Attorney-General, dated 13 December 2000, to Mr Ron Baragry of Cutler Hughes and Harris, counsel to the Australian Industry Group.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Does the Department have a policy or guidelines on the enforcement by the Attorney-General of penalties for contempt of court? If so, please provide a copy.

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department does not have a written policy or guidelines on the enforcement of penalties for contempt of court. However, in general the Attorney-General does not intervene in private proceedings before the Federal Court unless there are special circumstances where the decision of the Court could impact on the legislative or executive powers or other interests of the Commonwealth.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

If such a policy or guidelines exist, have they been modified as a result of Justice Merkel's comments in that case?

**I am advised that the answer to the honourable Senator's question is as follows:**

Not applicable. However, the Department is aware of Justice Merkel's comments.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

- a) Has the Department received any other requests to undertake prosecutions for contempt of court, or to enforce contempt of court penalties, apart from that of the Australian Industry Group (not limited to orders made in the context of industrial disputes)?
- b) Were any such requests acceded to?

**I am advised that the answer to the honourable Senator's question is as follows:**

- a) Attorney-General's Department is aware of the following further requests to undertake prosecutions for contempt of court, or to enforce contempt of court penalties:
- the Attorney-General has received correspondence from the Minister for Employment and Workplace Relations concerning the enforcement of penalties imposed by the Federal Court for contempt of court and for non-compliance with the *Workplace Relations Act 1996*; and
  - the Attorney-General received a letter dated 3 May 2002 from a solicitor for a party to a proceeding in the Federal Court relating to the disbursement of money from an account, allegedly contrary to an order of the Court. The letter asked the Attorney-General to investigate the matter as it was alleged to be a contempt of the Federal Court.

While Attorney-General's Department has used its best endeavours to answer this question comprehensively, the Department is not certain that it has identified every relevant case in which the Attorney-General has been requested to intervene, because of the general nature of the question.

- b) No.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Please provide a list of the occasions on which the present Attorney-General, Daryl Williams, has brought or intervened in proceedings concerning contempt of court or penalties for contempt of court.

**I am advised that the answer to the honourable Senator's question is as follows:**

- *Attorney-General (NSW) v John Fairfax Publications Pty Ltd; John Fairfax Publications Pty Ltd v Attorney-General (NSW)* (11 December 2001). This was an appeal to the High Court by the NSW Attorney-General from a decision by the NSW Court of Appeal invalidating sections 101A(7) and (8)(a) of the *Supreme Court Act 1970* (NSW). The intervention by the Commonwealth Attorney-General was in support of the validity of those provisions; and
- *Re Colina ex parte Torney* (1999) 166 ALR 548. This was a family law matter which raised a contempt issue. The Attorney's intervention was not on the contempt issue.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Has the Department studied the judgments of the Supreme Court of Victoria in the case of *McCabe v British American Tobacco*?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department has considered the judgment.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

The US Department of Justice and the Australian Competition & Consumer Commission have sought access to documents in evidence in that case.

- a) Has the Attorney-General's Department sought access?
- b) If not, does the Department propose to seek access?

**I am advised that the answer to the honourable Senator's question is as follows:**

- a) The Department has not sought access to documents submitted in evidence in the *McCabe* case.
- b) The Department does not propose to seek access to these documents.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Has the Department considered the implications of this case for a possible public lawsuit against tobacco companies to recover the public cost of treating smoking-related illnesses?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department of Health and Ageing has primary responsibility within the Commonwealth Government for tobacco related issues, including the issue of whether the Commonwealth should litigate against tobacco companies in order to recover health care costs. This Department's examination of *McCabe* was therefore not made for the purpose of considering possible public litigation against tobacco manufacturers.

This Department notes that an appeal in *McCabe* is due to be heard commencing on 26 August 2002.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Does the Attorney-General propose to raise the issue of a public lawsuit against tobacco companies at the next meeting of the Standing Committee of Attorneys-General?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department understands that the issue of Commonwealth, State and Territory Governments proceeding against tobacco companies will be on the agenda for the July meeting of the Standing Committee of Attorneys-General.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

- a) Do Justice Eames' findings concerning a number of national law firms (including Clayton Utz) have any implications for the national regulation of the legal profession?
- b) Do they have any implications for the outsourcing of Commonwealth legal work (e.g., Clayton Utz is on DIMIA's panel of law firms for migration matters).

**I am advised that the answer to the honourable Senator's question is as follows:**

- a) The regulation of professional conduct is an important issue in the development of a proposal to regulate the legal profession nationally.

Justice Eames' findings are illustrative of the circumstances in which a national scheme might regulate professional conduct, particularly in respect of national firms.

- b) The conduct of Commonwealth legal work is subject to the Legal Service Directions made under section 55ZF of the *Judiciary Act 1903*. Amongst the requirements imposed on Commonwealth agencies is that they comply with Model Litigant Directions be they represented by private law firms or otherwise.

Under section 55ZF the Attorney-General could, in appropriate serious circumstances, preclude Commonwealth agencies from engaging a specified law firm in all matters or in a particular matter.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 31 May 2002:**

Has the Department studied the judgment of the High Court in *Roxborough v Rothmans of Pall Mall* delivered on 6 December 2001?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Department is aware of, but has not studied in detail, the High Court's judgment in *Roxborough v Rothmans of Pall Mall*.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 27 May 2002:**

Why did the Attorney-General intervene in the Kevin (transsexual marriage case in the Family Court) case?

**I am advised that the answer to the honourable Senator's question is as follows:**

The case – known as *Re Kevin* – involved a female-to-male transsexual who underwent a marriage ceremony with a female and then filed an application in the Family Court of Australia for a declaration of validity of marriage.

The Attorney-General intervened to seek an order that the application for the declaration of the validity of the marriage be dismissed.

This action was undertaken because the *Marriage Act 1961* provides that a valid marriage is a union between a man and a woman. The Attorney-General took the view that, given Parliament's intention at the time the *Marriage Act* was passed, it cannot provide for a union between a post-operative transsexual man and a biological woman. In the Commonwealth's view any change from that position is a matter for the Parliament rather than the courts.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 27 May 2002:**

Has the Attorney-General or the Department received representations from any person or group in the community to pursue this intervention?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Attorney-General and the Department have received correspondence from a variety of individuals and groups supporting his intervention in the *Re Kevin* case.

SENATE ESTIMATES COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT  
OUTPUT 1.2  
QUESTIONS ON NOTICE

**Senator McKiernan asked the following question at the hearing of 27 May 2002:**

What has been the financial cost to date of the Attorney-General's involvement in this case?

**I am advised that the answer to the honourable Senator's question is as follows:**

The estimated legal costs for the preparation and presentation of the Attorney-General's intervention in the *Re Kevin* case has been approximately \$135,000 to date.