COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Administration and operation of the Migration Act 1958

TUESDAY, 11 OCTOBER 2005

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Tuesday, 11 October 2005

Members: Senator Crossin *(Chair)*, Senator Fierravanti-Wells *(Deputy Chair)*, Senators Bartlett, Joyce, Kirk and Ludwig

Participating members: Senators Abetz, Barnett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Humphries, Lightfoot, Lundy, Mason, McGauran, Milne, Murray, Nettle, Payne, Parry, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senators Bartlett, Crossin, Fierravanti-Wells, Kirk, Joyce, Ludwig, Nettle and Parry

Terms of reference for the inquiry:

To inquire into and report on:

- the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the processing and assessment of visa applications, migration detention and the deportation of people from Australia;
- the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia;
- the adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention;
- the outsourcing of management and service provision at immigration detention centres; and
- any related matters.

WITNESSES

BLOOMFIELD, Mr John, Director, Compliance Policy and Case Coordination Division, Character, Cancellations and Investigations Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

CASEY, Mr Dermot, Assistant Secretary, Detention Services Division, Detention Health Taskforce Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

DANIELS, Ms Yole, Assistant Secretary, Compliance Policy and Case Coordination Division, Compliance Framework Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

DOHERTY, Mr David, Assistant Secretary, Detention Services Division, Detention Infrastructure Management Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

EYERS, Mr John, Assistant Secretary, Parliamentary and Legal Division, Legal Services and Litigation Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

FLEMING, Mr Garry, Assistant Secretary, Case Management Support Branch, Compliance Policy and Case Coordination Division, Department of Immigration and Multicultural and Indigenous Affairs 2

FREW, Mr Todd, Assistant Secretary, Entry Policy and Procedures Branch, Border Security Division, Department of Immigration and Multicultural and Indigenous Affairs 2

HUGHES, Mr Peter, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs 2

ILLINGWORTH, Mr Robert, Assistant Secretary, Refugee Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs 2

KARAS, Mr Steve, Principal Member, Migration Review Tribunal and Refugee Review Tribunal 3

LYNCH, Mr John, Registrar, Migration Review Tribunal and Refugee Review Tribunal 3

MANN, Mr Neil, First Assistant Secretary, Compliance Policy and Case Coordination Division, Department of Immigration and Multicultural and Indigenous Affairs 2

O'CONNELL, Ms Lyn, First Assistant Secretary, Detention Services Division, Department of Immigration and Multicultural and Indigenous Affairs 2

O'NEILL, Ms Judith, Assistant Secretary, Refugee, Humanitarian and International Division, Humanitarian Branch, Department of Immigration and Multicultural and Indigenous Affairs 2

RIZVI, Mr Abdul, Deputy Secretary, Department of Immigration and Multicultural and Indigenous Affairs 3

STORER, Mr Des, First Assistant Secretary, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs 3

TONGUE, Mr Andrew, First Assistant Secretary, Change Management Taskforce, Department of Immigration and Multicultural and Indigenous Affairs 3

WALKER, Mr Douglas, Assistant Secretary, Legal Coordination Office Branch, Parliamentary and Legal Division, Department of Immigration and Multicultural and Indigenous Affairs 3

Committee met at 7.03 pm

CHAIR (Senator Crossin)—I declare open this meeting of the Senate Legal and Constitutional References Committee. This is the sixth hearing of this committee's inquiry into the administration and operation of the Migration Act 1958. The inquiry was referred to the committee by the Senate on 21 June 2005 and is being conducted in accordance with the terms of reference determined by the Senate. The committee has received over 200 submissions for this inquiry. The inquiry's terms of reference require the committee to consider the administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs with particular reference to: the processing and assessment of visa applications, migration detention and the deportation of people from Australia; the activities and involvement of the Department of Foreign Affairs and Trade and any other government agencies in processes surrounding the deportation of people from Australia; the adequacy of health care, including mental health care and other services, and assistance provided to people in immigration detention; and the outsourcing of management and service provision at immigration detention centres and any related matters.

[7.04 pm]

BLOOMFIELD, Mr John, Director, Compliance Policy and Case Coordination Division, Character, Cancellations and Investigations Branch, Department of Immigration and Multicultural and Indigenous Affairs

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KARAS, Mr Steve, Principal Member, Migration Review Tribunal and Refugee Review Tribunal

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CHAIR—Welcome. Witnesses are reminded of the notes they have received relating to parliamentary protection of official witnesses. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to be heard in private session. We will begin by welcoming representatives from the Department of Immigration and Multicultural and Indigenous Affairs and from the Refugee Review Tribunal. We have the department's submission that was lodged with us. It has been numbered 205 for our purposes. Before I invite you to make an opening statement, are there any amendments or alterations to that submission?

Mr Rizvi—No.

CHAIR—I also want to remind senators that, under the Senate's procedures for the protection of witnesses, departmental representatives should not be asked for opinion on matters of policy. If necessary, they must also be given the opportunity to refer those matters to the appropriate minister. I now invite the department and then the tribunal to each make an opening statement. At the end of that we will go to questions. Mr Rizvi, we will start with you.

Mr Rizvi—Before I begin my opening statement, I will just refer to the questions on notice that we received from the committee. We have provided answers to the bulk of those questions on notice throughout the course of today. There are a small number of questions which are still outstanding, and we hope to have those cleared and with the committee very shortly.

CHAIR—Thank you.

Mr Rizvi—Since this inquiry was called on 21 June, there have been significant changes to the work of the department which fall within the committee's terms of reference. I would like to take the opportunity to alert the committee to the range of legislative and other changes which have been implemented in recent months. On 17 June the Prime Minister announced sweeping

changes in relation to detention arrangements. These have been progressively implemented in legislation over the past three months.

The government amended the Migration Act on 29 June to provide an additional non-compellable power for the minister acting personally, allowing her to specify alternative arrangements, known as a residence determination, for a person's detention and to impose conditions to apply to that person. The Prime Minister's announcement also referred to the government's decision to broaden eligibility for the removal pending visa, which was originally introduced in May, to allow more long-term detainees to be released from detention. In addition, the government has amended the Migration Act to provide an additional non-compellable power for the minister, acting personally, to grant a visa to a person in detention.

These changes allow more flexibility in responding to the individual circumstances of each person's situation. In order to increase the openness and accountability of detention, the legislation also provides for the Commonwealth Ombudsman to review the cases of long-term detainees. Amendments currently before the Senate will further strengthen the Ombudsman's role in migration matters. The government is also currently working to introduce into legislation processing time limits on both departmental decision makers and the Refugee Review Tribunal so that protection visa applications are decided within three months of being made at each of the two levels. These amendments were included in a bill introduced in the Senate on 15 September. It should be stressed that the department and tribunals have been working assiduously since June to meet the processing time limits contained in the bill, even before it has been passed.

On July 14 the government tabled the report to the Palmer inquiry into the Cornelia Rau matter and indicated that it accepted the broad thrust of the report's recommendations and findings. The department has worked hard to develop a detailed implementation plan to respond to the Palmer report's recommendations. This plan was tabled in parliament on 6 October, along with the Ombudsman's report on the Vivian Alvarez matter and the government's response to that report. The minister and the secretary have extended a sincere apology to Ms Alvarez. This is clear acceptance of the recommendations made by both Mr Palmer and Mr Comrie, which are reflected in the package of measures announced by the minister on 6 October.

Two-hundred and thirty million dollars has have been committed over five years to measures that are in line with DIMIA's move to become more open and accountable and to have a much stronger client focus and well trained and supported staff. Key measures are: first, to establish a college of immigration border security and compliance to deliver comprehensive, tailored operational training for DIMIA officers, with an emphasis on quality assurance and decision making; second, to continue improving the delivery of immigration detention health services, including through the development of a long-term detention health service delivery strategy; third, to improve case management and coordination, including a 12-month pilot program to develop a community care model in partnership with community organisations; fourth, to improve immigration detention facilities themselves; fifth, to improve client services and feedback response management; sixth, to improve quality assurance, internal audit and decision-making review; and, finally, to improve records management.

Much of this work is already under way. Organisational change has been a key focus, and the new secretary of the department, Mr Andrew Metcalfe, upon commencing with the department

on 18 July, immediately established a change management task force, which has developed the implementation plan to improve the structure and workings of the department.

The legislative changes I have outlined complement a range of administrative changes already in place which are aimed at improving detention and removal processes. These include: the creation of detention review manager positions in each state to review all cases of detention within 48 hours of the decision to detain and within 24 hours where identity is in doubt, and to review all ongoing detention cases; the review by state and territory directors of all decisions to detain where a claim of Australian citizenship is made; the establishment of a national identity and verification and advice section; the clearance of removal actions by an SES officer; improvements to mental health services in detention facilities; the establishment of a detention health task force; and a restructure of the border control and the compliance and detention divisions of the department. Mr Metcalfe has also emphasised to all staff that the culture of the department must be focused on the three main goals: a more open and accountable organisation, fair and reasonable dealings with clients, and well trained and supported staff.

Our focus is on giving clients the best outcome within the law and the level of service that we would expect ourselves. We are engaging more with our key critics and stakeholders to further improve the way we work. Mr Metcalfe has also implemented a leadership training program which all executive level staff will undertake, given their key role in driving the change we are making to our culture and our behaviours, and our need to focus better on clients. All of these important changes will have a significant positive impact on the way the department administers the Migration Act. Thank you for the opportunity to make an opening statement.

Mr Karas—I have not prepared a formal opening statement, other than to remind senators that the function of the tribunal is to provide a mechanism of review that is fair, just, economical, informal and quick, and that the tribunal strives to meet its statutory functions at all times. By way of background, most people would be aware that the Refugee Review Tribunal was established in 1993. The cases lodged for the financial year just passed numbered almost 3,000, whereas the cases finalised numbered a little over 3,000, and we still have a little over 1,100-odd cases on hand.

The average time to finalise cases has come down dramatically—11 weeks in relation to detention cases and 22 weeks for what we regard as community cases. Hearings were held in some 2,370-odd cases and an interpreter was required in 89 per cent of the hearings, which involved 65-odd languages and dialects. The registrar and I are quite happy to take any questions which you might have.

In relation to the Refugee Review Tribunal, we have undertaken a number of wide ranging administrative measures, and work practice changes are still being undertaken by both members and staff. These measures include file management with DIMIA and seeking the cooperation of the migration industry, particularly in relation to the legislation that is presently before parliament in relation to finalising applications for review within 90 days.

The new litigation procedures have been agreed with DIMIA and the departments to not only expedite the reviews as such but also to obtain the material that is necessary for the tribunals to be able to proceed with those reviews. A new memorandum of understanding with DIMIA is shortly to be executed to facilitate an efficient and effective operational relationship and to meet

the statutory obligations that exist between both the department and the Refugee Review Tribunal. At the same time I should point out that the Refugee Review Tribunal is progressing the implementation of system changes to the existing tribunal case management system and is at an advanced stage of development of a new joint case management system to facilitate reporting requirements, case management, procedural change and data exchange and case linking with DIMIA.

Senator BARTLETT—I appreciate that we have Senate estimates in a little while, so I will try not to go to broad things that we could touch on there. The terms of reference for this inquiry are to look at the administration of the Migration Act, obviously with some focus on areas that are acknowledged as being a problem. There has been a lot of talk about culture change within the department. It is an ongoing process, and you have outlined a range of things that are happening. I would like to get a sense of whether there is consideration being given to legislative change as well to assist in the changes that are believed to be necessary or is it purely being seen as an administrative rearrangement?

Mr Rizvi—A range of legislative change has taken place in recent months as I outlined in my opening statement. Other legislative change is in the process of being implemented. Much of that change is very significant in nature. Beyond that I am not in a position to comment on what other change the government may contemplate, but legislative change in this area, as you would be aware, is not unusual.

Senator BARTLETT—No. Has the department been following the evidence and submissions, particularly in the public hearings to date? Some of the things that have particularly struck me include the evidence of the Edmund Rice Centre that I know you would be aware of, the general claims about the fairly widespread problems with information getting to where it needs to go and the evidence from Ms Marion Le last Friday about a range of cases that she has been involved with. Are there any general responses you can give the committee about some of those issues? They are different but, firstly, in relation to the Edmund Rice Centre allegations which have been raised before in estimates, is the department looking at giving a comprehensive response to what they have put forward?

Mr Rizvi—There were a number of cases that Ms Le identified and what we have been trying to do from the evidence that Ms Le provided is pin down specifically which cases they were. I cannot recall whether in each instance she actually named the individuals. We have been looking into that and trying to get to the bottom of the particular cases. In terms of how far we have got with that, I can ask the people who are looking into that to respond to that side of it. Whilst those people are responding to that, I will have further conference amongst my group as to how we might respond to the Edmund Rice allegations.

Mr Hughes—As Mr Rizvi said, we are looking through Ms Le's evidence to see if we can relate the points she made to individual cases. We have not completed that process yet because, as you know, she gave the evidence quite recently and I do not think they are all named. For example, one of them—I think a case on Nauru—may in fact have been assessed by UNHCR rather than by us. We are just working through to relate the things that she said to specific cases as we know them.

Senator BARTLETT—I do not particularly want to drill down into individual cases, partly because it is not appropriate and partly because we do not have time. Whilst I realise that you and migration agents such as Ms Le come at cases from different perspectives, from my experience of looking at statements from various ministers Ms Le is widely seen as somebody who knows what she is talking about and, I gather, has proved to be fairly helpful, particularly with the Nauru cases. You can say 'yes' rather than just nodding if you like. The concern I have is more about the amount of time, energy and money that get used—the inefficiencies involved in these sorts of cases when they become more than merely one or two. They seem to be consistent with the problems that were raised by the Palmer and Comrie reports about information flows, tracking and those sorts of things. Are we just going to have to accept that all of these individual cases will have to be chased down every rabbit hole time after time? Is that just the innate nature of this type of activity or are there things we can do to improve the situation?

Mr Hughes—There are probably two answers to that. I think you are right on the first one: it is the innate nature of the business that you get very complicated cases. Also, with some parts of the case load, where you have very volatile country information and changing situations in different parts of large countries—you are dealing with different ethnicities, religious subgroups and political affiliations in a volatile and changing environment—there will be different views on what the situation is at a particular time and how that should affect the assessment of cases. Particularly when people have been assessed at a certain point in time and have not left Australia—or Nauru in the case of Nauru—and a year or two have passed in a volatile environment, further assessments will be necessary. They may come to a view that is different from the earlier view. One general point that I could make, which I think I have made before at estimates, is that regarding the case load on Nauru, for example, which gives us an interesting benchmark, both UNHCR and the department assessed a significant number of those cases. Over time the positive outcomes of both UNHCR's assessment and our assessment were in fact very similar. So we have an interesting test case there with a case load where the international organisation responsible for these matters was doing some of the assessments and our officials were doing some of the assessments. The results came out very close—not exactly the same, but very close.

Mr Rizvi—Your question also went to issues of systems and information available across the department. I might ask Mr Andrew Tongue, who is the head of our change management task force, to comment on what is being done to address the system interconnectedness issues.

Mr Tongue—A large part of the department's systems framework was built to handle a large transaction processing load. As far as that goes, it handles that load fairly well. Where it begins to break down is where we have complex cases with lots of interactions between the department and a client. What we are doing early in the change process is trying to bring in an integrated name search facility so that we can look across our systems at clients, which I would say is a first step. We are also looking to move to a new case management framework around complicated cases. That will involve developing a software tool that allows us to get a client-centric view rather than a transaction processing built-up view. It is a bit similar to the single client window that Centrelink has moved to. You could draw parallels with where the tax office is going with its new integrated approach to clients. In the tax office they are using a customer relationship management system. We are certainly conscious of the need to, if you like, take the systems from where they have been and add a layer over the top that allows us to do better on

complex cases. Part of the $230 million that the government has allocated to us will start down that track but it is a big system redesign exercise and we are certainly working towards it.

Senator BARTLETT—Thank you. Did the conference on the Edmund Rice Centre produce any findings?

Mr Rizvi—We have some material in respect of the Edmund Rice Centre claims, but it is probably not as comprehensive as we would like it to be. If we could take that on notice then we could provide in writing our responses to the specific matters raised by the Edmund Rice Centre. If we are able to identify the cases that Mrs Le has identified in her evidence, we would also provide written responses to those allegations if that would be suitable to the committee.

Senator BARTLETT—Thank you.

CHAIR—Before the night progresses too far, we would really appreciate a two-week turnaround time on those if that is possible so that we can give the secretariat as much time as possible to draft the report.

Mr Rizvi—We will try to do our absolute best. Of course, it will be a matter of trying to pin down which case was being referred to and that may be difficult in some instances where not all of the details of that case were provided during the evidence.

CHAIR—But for questions on notice, if we could look at, say, two weeks, that would be appreciated.

Mr Rizvi—We will try our best.

Senator BARTLETT—One example I wanted to ask about touched on the adequacy of the initial assessments. If the initial assessment is right, obviously it saves everyone a lot of difficulty down the track. There was a group of, I think, 53 people on board the boat that arrived on Christmas Island a couple of years ago. My understanding is that all of those people were rejected at initial assessment and consequently, in various batches over the course of two years, eventually all of them were accepted, although I know some were by ministerial discretion. On the surface it would be a cause for concern that everybody is knocked out at the first go and then, after various arm-wrestling, pushing, prodding, appeals and everything else at a lot of expense, cost, trauma et cetera and two years detention for some of them, they all get through. Is there any response you could give to that?

Mr Hughes—Yes, there is. I think perhaps you might have provided part of the answer in your question when you said that on the surface it looked strange that a group who were initially assessed as not requiring protection ultimately were all allowed to stay in Australia permanently. If you look at the history of those cases, there were a small number initially found by the RRT to require protection of those that the department found did not require protection.

Subsequently—and it is a bit more complicated than this—there were a larger number of cases that were found by the RRT to require protection on review; but my recollection is that in those decisions the RRT members were quite clear in saying that the things that caused them to find that people required protection were things that happened after the departmental assessments. In

other words, they said it was events related to the publicity of their cases, as I recall, after the department had found that they did not require protection. So they were quite clear on that point in those decisions, and I think there were also a small number where the minister intervened to grant protection, and that ultimately meant the whole caseload was able to stay.

CHAIR—The bells you can hear mean that a quorum has been called and government senators must leave. We others can stay, though.

Senator BARTLETT—We can arrange for more quorums to be called if they ask you difficult questions! I realise we have not got much time, so I will probably make this my last question. We have had evidence presented about quite a large number of people on student visas who have ended up in detention. That sort of thing was presented in Melbourne. One of the issues that struck me from that, as well as the section 501 actions, is the perhaps disproportionate nature of the penalty that can occur. Somebody who has what might be a fairly minor breach of a student visa could end up paying an extraordinarily heavy price. Using the word 'flexibility' that has been applied a few times already tonight, how much flexibility is there in those sorts of circumstances if somebody is found to be working 22 hours instead of 20 or something like that? Is there some other response that is not going to lead to such a big penalty?

Mr Rizvi—In terms of the 20 hours work, it is certainly true that the regulations as currently drafted do not provide a significant degree of flexibility. That is something that we are looking at. Having said that, the level of generosity within the work right provisions of the student visa that Australia provides—that is, 20 hours during term time, and during holidays they can work full-time—is quite considerable. It is a matter of balancing whether you provide more generous work rights with how you enforce that. I agree that with the way the provisions are drafted at the moment there is relatively little flexibility, and that could certainly be addressed. At the same time, the level of work rights Australia provides is quite considerable, and 20 hours of work during a week in which university courses are being conducted and the person is expected to be attending full-time also suggests that there is a fair amount of generosity on the other side.

Senator BARTLETT—In the case of the Australian guy who was born in Sweden and lived here, the department is appealing that; is that right?

Mr Rizvi—That is correct.

Senator BARTLETT—I might not explore that one until we get the learned judgment from on high. I think I might very generously cede to others to ask some questions.

Senator LUDWIG—Do you recall the submission by Ms Rost about student visas? I put a number of questions on notice and you have answered some of those. Is there any work you are currently undertaking in reviewing that area with DEST on how to address the student visa issues and, more broadly, the issues that are associated with them? These are my issues in a sense, but I am sure you are aware of them—I think Senator Bartlett raised one about the hours.

The other area is the education providers and how they ensure that there is a good educational outcome and a good experience for the students, whom you then grant visas to and allow to come in—that might be your area of interest. As I understand it, MARA quite competently looks after the migration agents. With regard to the people who assist—I use that term very

narrowly—people to gain student visas for educational institutions or might provide a link for that, if I can use a broader term, you might be looking at how to ensure that they act appropriately, like the migration agents now do under the watchful eye of the MARA and the like.

There are also the subsidiary issues that come from that—I know there is a lot in this, but if I keep going you have always got it on record. There are the issues of how education providers then ensure that, when they access and seek students from overseas, they are acting in good faith and the education providers have good outcomes. There are those sorts of broader issues. I can list more, but I am sure you are aware of even more than I could list here. The real nub of the issue is what work you are doing in that area.

Mr Rizvi—As you said, Senator, you have raised a whole collection of issues there. Perhaps I might divide them up into a series of blocks. The first one there relates to student visa cancellation and cancellation processes and the issues that arise there. We certainly want or are pursuing an outcome that enables genuine students to continue to study, be successful in their studies and, at the completion of that study, have the choice, as they wish, of either going home or seeking to migrate to Australia. In terms of Australia providing that onshore pathway to skilled migration, we have probably acted more quickly to provide those pathways and to create those pathways in a more transparent way than any other country. As a result, we have benefited the education industry itself in becoming more competitive and we have benefited Australia more generally in being able to access young, highly skilled people.

Having said that, what we do need to guard against are situations of the kinds that you have identified—firstly, where a non-genuine student is really not attending classes and is perhaps bringing down the repute of Australia's education export industry and thereby creating difficulties for the system. That raises issues of student visa cancellation, and what we want to do is make sure the processes that operate there get the balance right. To try to improve the settings that are in that area, we are holding further consultations with industry, DEST and other government agencies, particularly state government agencies, to see if we can calibrate that better. Hopefully, as a result of those consultations, a set of arrangements will emerge which is both suitable to the industry and also suitable to ensuring immigration integrity.

The second issue you raised was the issue of education agents. Education agents essentially have three broad roles. They play an immigration advisory role and, to the extent that they are playing an immigration advisory role within Australia, they must be registered with the MARA. If they are not, they are in breach of the MARA regulations. Offshore, they are not required to be registered, and that raises a whole different set of issues.

Secondly, agents become involved in advising students about courses in Australia and about what courses might be most suitable to students. Thirdly, education agents often become involved in issues of student welfare and the management of student welfare issues. In respect of the immigration related activities of education agents, former Minister Hardgrave issued a discussion paper identifying a range of options on how we might take those issues forward. The feedback we received from industry was that on the one hand the migration agent industry is strongly of the view that education agents should be subject to MARA regulations, but on the other hand the export education industry is strongly of the view that they should not.

There we face a dilemma. What we have sought to do is try to identify ways in which we can go forward in that area. One of the ways in which we can go forward is, firstly, to work with the education industry onshore to encourage more education agents to become MARA registered, and we are working with MARA and with the education industry onshore to try to encourage that. Offshore, we are consulting with the industry on the possibility of a legislative change that will remove the requirement for a migration agent to be either an Australian citizen or a permanent resident. That would enable overseas education agents to at least have the option of becoming MARA registered, and thereby to come within that framework.

However, we accept that not all of those agents will necessarily choose to go down that path. What we have done, therefore, is try to work with offshore education agents to train them and encourage them to enter into administrative contracts with us, which means that they are committed to abiding, at least administratively, by a code of conduct and a code of behaviour associated with the lodgment of electronic student visa applications. We believe that process has worked very well. It has the strong support of the education industry and, whilst there are some concerns in the migration agent industry about us going down that path, we believe it is the most practical way of going forward in the interests of Australia's education industry, the interests of the overseas students and the interests of the agents themselves.

Senator LUDWIG—How many overseas students are in Australia at any one time?

Mr Rizvi—That figure fluctuates, as you might imagine. During the Christmas holidays the figure is lower and during term times the figure is higher. During the Christmas holidays it will get down to as low as 150,000; during term times it can be as high as 200,000 to 200,000-plus in relation to people who are on student visas. I think it is useful to remember that many people come to Australia and undertake studies on visitor visas and on working holidaymaker visas as well. They would not be included in those figures.

Senator LUDWIG—How many student visa classes are there in total? Some of these questions I think I have put on notice. It is a question of reflection and looking at some of the answers you have given me. I do note that you indicated there are still answers to come for a couple of questions.

Mr Rizvi—I am advised that the number is seven.

Senator LUDWIG—For some of the questions I am asking in this area I am happy for you to qualify your remarks with, 'I have provided that,' or 'I'm about to provide it,' or 'We're waiting for the minister to sign it and will shortly provide it.'

Mr Rizvi—We have provided you with a table of student visa grants by sector. Some of the student visas have more than one sector, and so the lines there will not necessarily equate with the student visas.

Senator LUDWIG—That is why I thought to unpack it a little more. I know I have been around here a while, but I would still like a lot of information that you have. In the student visa categories, how many breach—I use that as a loose term, but I am sure you will correct it—the legislation and require remedial action? I am curious as to what type of remedial action you take and how often you take it.

Mr Rizvi—I think there are two parts to this. There is the part which is essentially within the purview of the education provider. For example, a student may be attending, say, Sydney University and may be at the margins in terms of performance. We know that good education providers generally tend to counsel students who may be at the margins and will give them one, two—perhaps three—opportunities to pull up their socks. Once an education provider reaches the point where they are saying, 'You're just not meeting course requirements. We've given you enough opportunities; that's enough,' that is the point at which they tend to report the student to us. It is at that point that the student is sent a letter—the 28-day letter—advising them that they should report to the department of immigration to discuss their visa status. That is the process we would then pursue, and that has its own pathway.

Senator LUDWIG—At that point, is there any scope for abuse by the university—there is a range of issues; I did not want to slur them badly—where it might have a non-compliant student or a non-fee paying student—those sorts of issues which can end up in your court. Do you depack that information that they send you or do you just act on the end result?

Mr Rizvi—We will receive that same letter, advising the student to come in. If the student comes in within the 28 days, the student can put forward arguments for why the visa should not be cancelled and in that context we can take matters into account. If the student does not report to us within the 28 days, it is hard to discuss something with a person who has not reported.

Senator LUDWIG—I think that is reasonable. That was the first part. What is the second part?

Mr Rizvi—The second means by which a student may come to our notice is if we locate the student in a compliance field operation and, on the basis of the evidence that we find, we find that the person has either not been attending classes or has been working in breach of the visa work conditions, and that may lead to visa cancellation. Since the 2001 changes to the student visa regulations that were introduced, the level of noncompliance amongst students has steadily declined. The rate at which students are not complying has gradually been declining, and that has been reflected in the student visa risk assessment levels, which have also commensurately been declining. I will come back to another issue later.

Senator PARRY—With respect to the total number of decisions that DIMIA makes each year regarding visas, what is the total decision-making volume?

Mr Rizvi—In terms of visa decisions that we would make in any one year, we would make approximately 3.5 million visitor decisions in a year. Of those, about 2.9 million would be electronic travel authority or ETA national visitor visas and probably around 600,000 non-ETA visitor visas. In addition, we would probably process in the order of 180,000 student visas in a year. We would now process well in excess of 100,000 working holiday-maker visas. We would process around 100,000 other temporary entry visas—temporary work visas generally. This year we will process around 140,000 permanent resident visas through the migration program, and we will process around 13,000 humanitarian visas. That would not include compliance decisions and it would not include citizenship decisions, which would be on top of all that.

Senator PARRY—You mentioned the breakdown of electronic travel authorities and non-ETA. What are the ETA countries and what are the non-ETA countries?

Mr Rizvi—Perhaps I might do it by exclusion. The ETA countries are essentially all countries in Western Europe, the United States and Canada, Singapore, Japan, South Korea and Malaysia. All other countries would be non-ETA countries. I am sorry; I forgot: Hong Kong Special Administrative Region and, of course, Taiwan are also ETA countries.

Senator PARRY—Madam Chair, can we ask that a list be provided, if that can be taken on notice, of all those countries?

Mr Rizvi—We can provide a comprehensive list.

Senator PARRY—There has been an accusation, I suppose, levelled at DIMIA about being racist in certain respects. What is the approval rate for non-ETA countries? Has this been increasing or decreasing?

Mr Rizvi—For non-ETA visitor visas, the approval rate has over the last six years been steadily rising. In 1999-2000, the approval rate for non-ETA visitor visas was just over 87 per cent. In 2004-05, it was just under 92 per cent. There has been a steady rise since that time in our approval rate for non-ETA visitor visas. At the same time, the non-return rate for non-ETA visitors to Australia has been steadily declining. In 1999-2000, the non-return rate was around six per cent and in 2004-05 it has now fallen to around two per cent. The overstay rate is different from the non-return rate in that the overstay rate relates to someone remaining unlawfully, whereas the non-return rate can include a variety of circumstances where people, whilst indicating an intention to undertake a genuine visit to Australia, have sought to remain for a variety of reasons. The overstay rate has fallen from around 0.75 per cent to around 0.5 per cent during those same six years. At the same time, the number of non-ETA visitors arriving in Australia and then subsequently applying for protection visas has fallen from around 0.65 per cent to less than 0.3 per cent now. So that is telling us that overall the absolute number and the rate at which we are saying yes in terms of visitor visa applicants is rising, and has been rising strongly, and the rate of noncompliance has been declining quite strongly.

Senator PARRY—How does this compare with other countries? Are there other benchmark countries that you could compare this rate with?

Mr Rizvi—We do monitor the situation in a range of other countries. In particular, we compare ourselves often to the United Kingdom, Canada and the United States. Certainly the experience of those countries has been quite different from ours. Visitor visa refusal rates in the United Kingdom have in recent years increased quite strongly for higher risk countries. At the same time, concerns in the United Kingdom, Canada and the United States about overstay rates and, indeed, the general overstayer population in both the United Kingdom and the United States is much higher than Australia in terms of both the absolute number and per capita.

Senator PARRY—Is there a cost to the government for overstays and do you know what that cost is? Do you have a per person cost? What would be the significant cost basis?

Mr Rizvi—There would be a range of costs that would arise and it would depend on the circumstances of the case. There are costs for DIMIA associated with locating, removing and, where necessary, detaining overstayers. We may be able to pull out some per capita costs in regard to that; we would have to take that on notice. There are perhaps wider costs associated

with overstayers who may be seeking to access the labour market and with the issues that raises for the Australian labour market. Secondly, there may be overstayers who are seeking to access inappropriately other government services and benefits. The estimation of those costs, as you would understand, is quite difficult.

Senator PARRY—To compare other countries' processing times with the ETA system in particular, can you give us an indicative processing time for an electronic travel authority?

Mr Rizvi—Unless the particular case involved matches with our movement alert list, the bulk of cases lodged under the ETA system are approved in a matter of seconds. It is simply a systems check. As long as the systems check does not reveal a match of concern, a person would be advised in a matter of seconds that they have received their visa.

In respect of non-ETA countries, we are developing electronic arrangements with those countries. As you would be aware, Senator, your own state is the state in Australia where we process those visas. We have now introduced electronic processing arrangements for visitors from all EU accession countries and from a range of Gulf countries. Those visas are generally also processed relatively quickly, unless there is a match associated with either the movement alert list or some other security related concern.

Senator PARRY—How does that fit in with world standards? Do we have world's best practice in relation to ETAs?

Mr Rizvi—Certainly, I am not aware of any other country in the world that has an ETA system. I am not aware of any other country in the world that has moved to an electronic visa-processing arrangement for non-ETA countries such as the one we have introduced, for example, in the gulf. As a general rule, most comparable countries have tended to move towards what we call a short interview regime. That is where, for example, if you apply for a visitor visa to, say, the United States, you would usually have to go to the consulate, and you would be subject to a very brief interview. The interview could be as brief as a minute or two. Our view is that that approach is not particularly cost effective. It may give the appearance of leading to better decisions, but we have found that an interview of a minute or two does not really add very much value to the decision-making process. It is much better, we believe, to develop the kind of electronic arrangements that we have in place, which are far more cost effective and provide a better client service, faster processing times and, we believe, significantly better outcomes.

Senator PARRY—Are you satisfied with the security arrangements in that, if there was an alert, it would come through to you from other relevant agencies?

Mr Rizvi—We work very closely with the relevant security agencies in Australia on both the construction and operation of the movement alert list and how it can be improved. There is significant work that is happening on developing movement alert lists that are shared across different nations. We believe that we have probably one of the most comprehensive movement alert lists anywhere in the world. In addition to that, we are advised by the relevant security agencies that the security checking regime we have in place in Australia, which works through the visa-processing system and in conjunction with them, is probably superior to those that operate both in the United States and in the United Kingdom.

Senator JOYCE—So there are 180,000 standard visas, 100,000 working holidays, 100,000 temporary work visas, 140,000 permanent residencies and 13,000 humanitarian visas—there is well over half a million people there. That is a lot. Have I missed any in that group?

Mr Rizvi—I think you may have not included the visitors.

Senator JOYCE—How many visitors would there be?

Mr Rizvi—There would be about 3½ million visitors a year.

Senator JOYCE—Three and a half million visitors—golly gosh, that is a lot!

Mr Rizvi—Three and a half million visitor visas, and that number probably does not include the processing of people across Australia's borders—that is, in and out of the airports.

Senator JOYCE—It is well in excess of four million people that you are trying to transfer; you are doing a pretty good job. Four million people you are getting through—for our population, do you think that would be a lot more than most other countries?

Mr Rizvi—In per capita terms, I think it would be fair to say that, from an immigration perspective and from a temporary entry and permanent entry perspective, we are probably one of the most open countries in the world in terms of the volume of those movements.

Senator JOYCE—We are one of the most open countries in the world and there are well over four million people coming in and out of here. How many people have we actually got detained?

Mr Rizvi—I am advised that, as at 23 September, we had 748 persons detained which is, I think, one of the lowest levels for quite a few years.

Senator JOYCE—So with over four million people coming in and out, we have managed to detain 748. That is not many, is it, really? Seven hundred and forty-eight out of four million—I reckon that is a pretty good result. How does that compare with other countries that would have four million people wandering in and out? If they only detained 748, you would have to say they were pretty fair, wouldn't you?

Mr Rizvi—Certainly the volume of immigration detainees in places such as the United States and the United Kingdom would be much higher than Australia. Whether it is higher in per capita terms I could not say; I would have to do the calculations.

Senator JOYCE—Isn't it true—in regard to letting people in, especially people coming in on humanitarian grounds—that only Canada accepts more people per capita than Australia?

Mr Rizvi—I might ask Mr Hughes to comment on that.

Mr Hughes—I will answer that in slightly broader terms. Australia has consistently been in the top three in terms of offshore humanitarian settlement, along with the United States and Canada. Whether we are second or third with Canada depends a little bit on how you count the numbers in any given year and what period you use, but certainly we are consistently in the top

three resettlement countries. On a per capita basis, we would be much higher than the United States in terms of humanitarian resettlement and, again, with Canada it really depends on how you do the calculations.

Senator JOYCE—So with a figure of 748 out of four million, if you are coming to Australia you have got less than a one in 4,000 chance of being detained. At one in 4,000, you would have to be doing something pretty wrong to be picked up, wouldn't you?

Mr Rizvi—I would agree that our rate of detention at the moment is, in per capita terms relative to the number of movements, quite low. With the announcements that the government has made in recent times, unless there is a spate of unauthorised arrivals and unless circumstances change quite considerably, we would imagine that figure would continue to decline.

Senator JOYCE—Sometimes the impression out there is that we have got tens of thousands of people locked up, and that if you stumble over you will get locked up. Really, your chances of getting locked up are right up there with crocodile attacks and shark attacks.

Senator FIERRAVANTI-WELLS—I want to pick up on that point and look at it in the bigger picture. You commence your submission at page 7 by saying that the purpose of the Migration Act is to regulate, in the national interest, the coming into and presence in Australia of non-citizens. So, stepping back from the detail and looking at the bigger picture, particularly in terms of the announcements that are going to be made, how do you see the assessment of DIMIA's processes changing in the near future, in the foreseeable future, and in, say, six to 12 months time?

Mr Rizvi—I might ask Mr Tongue, who is the head of our change management task force, to respond to that.

Mr Tongue—I will take it at the high level. The $230 million package we have turned into approximately 60 major projects. A number of those projects—in fact, most of them—involve deliverables within 120 days, so that is by Christmas. They go to most aspects of the department's operations: systems, training, supervision, support for staff and so on. Some of the projects will be completed by Christmas. There will be an end point; there will be a delivered product as part of the change process. Some of them involve the development of national frameworks around case management detention services, IT and other areas. Those national frameworks will provide a platform for the organisation for several years into the future. There are a range of other projects, on the other hand, that involve development work and that we will work up. For example, there is a pilot for care arrangements for people who may be detained to be removed and placed out in the community, and that pilot will run for 12 months.

So what we have tried to do is structure the package around the future of the department in the delivery of migration services. In the short term, we know there are some things we need to do and we have committed to delivering them within 100 days. In the medium term, we need some development work and we have committed to doing that development work within 100 days and then have things rolling out across next year. In the long term, we have committed to developing a number of national frameworks that will provide the building blocks for the future of the department. With $230 million over five years, we will have the cabinet implementation unit

checking our progress quarterly and I imagine we will be seeing you at Senate estimates as well, checking that we are delivering on what we have said we will do.

Senator FIERRAVANTI-WELLS—On the litigation issue, can you provide us with some information on the costs of litigation to the Commonwealth for defending cases and, in particular, the success rate. Having spent many years as a lawyer with the Australian Government Solicitor I observed first-hand many cases that DIMIA ran, so I would be very interested to see some of the figures on litigation. I would also appreciate it if you could provide—and this is likely to be done on notice—information on costs which have been left unpaid by overstayers when they depart Australia. In other words, I would like to know the total value of the debts that are never recovered by the Commonwealth when people leave the country. Also, could you let me know what happens to them in relation to the movement alert list.

Mr Eyers—There are a number of issues there which I will have to take on notice. But, certainly, as far as the costs are concerned, the costs of litigation to the Commonwealth in the immigration sphere are quite significant and have been significant for a number of years, and that is largely due to the number of cases which are undertaken in any year. We currently have a litigation caseload of around 3½ thousand active cases before the courts and the AAT. We receive approximately 5,000 new cases each year—we have for the last couple of years—and we resolve just in excess of 5,000 each year. The numbers are fairly large. For the last financial year, 2004-05, our spend on litigation external to the department was in the order of $36.8 million and the internal cost of managing that litigation is somewhere in the order of $5½ million.

As far as our success rate in litigation is concerned, in recent times that has been very high. We certainly take great care to seek to defend only those cases where we have reasonable grounds for success and I think that is reflected by our success rates. In the financial year 2002-03, we were successful in 92.5 per cent of cases that were defended before the courts; in 2003-04, that improved to 94 per cent; and for the last complete financial year, 2004-05, it was 95 per cent.

As far as legal costs are concerned, I would have to take that on notice and provide some information to the committee. Certainly, having regard to the number of cases and the success rate that we have before the courts, many millions of dollars a year are largely written off under the Financial Management and Accountability Act. I will take it on notice and provide the numbers to you.

Senator FIERRAVANTI-WELLS—When you provide those statistics, could you also give us some analysis—without referring to names—of cases and the reasons why cases inevitably find their way up through the court system to the appeals processes. They are often totally non-meritorious cases. I would appreciate it if you could, when providing those statistics, give a bit of a snapshot of the history of some of those cases all the way through the system, and particularly through the appeals processes.

Mr Eyers—I will certainly provide statistics regarding the number of cases at the various levels. Of course, at any stage people have the right to appeal their cases all the way to the High Court by way of an application for special leave. Certainly, they are not bound in the way that the Commonwealth is bound by being a model litigant under the legal services directions, so

there is no requirement on them to ensure that there is either sufficient merit or public interest in the case and they can continue to litigate the case all the way to the very highest court in the land.

Senator FIERRAVANTI-WELLS—I appreciate that, but I would like the other side of the picture to be shown—that is, the rather litigious approach that has developed in this industry, and often in circumstances where the cases are not meritorious. I have observed this at first hand, having been in the Federal Court when not very flattering comments have been made by judges in relation to the total lack of merit of some of these cases, which are really, in effect, clogging up the system. That picture of what is happening there ought to be provided to the Australian public in order to give some balance on that issue. Could you also tell me a little about the movement alert list, in particular in relation to those people who have racked up debts and who subsequently may wish to come back into the country.

Mr Rizvi—Those persons are placed on the movement alert list because they have a debt to the Commonwealth. Should they—and this is the case even if the debt is written off—seek to apply to return to Australia, one of the conditions that would have to be considered in the visa process would be the repayment of that debt. The debt can be waived in some circumstances where there are compassionate factors that have to be taken into account but, as a general rule, the expectation would be that the persons would repay the debt as part of the visa application process they might make to return. Some of those persons may also be subject to a brief exclusion period.

Senator FIERRAVANTI-WELLS—Could you give me an average figure regarding overstayers. I appreciate that in some instances the costs are higher but could you give us the average legal debt left by an overstayer. Also, much has been made of sections 501 and 201. Could you tell us a little about those criminal justice visas.

Mr Rizvi—I might take those in two parts. I will refer first to section 501 and then I will refer to criminal justice visas. Senator, you asked earlier about legal debts and detention debts. I will ask Ms Lyn O'Connell to comment on the detention debts.

Ms O'Connell—The amount billed during the 2004-05 financial year for detention debts was just over $30 million—$30,860,000. In terms of the number of people that it applied to, approximately 4,600 people were billed with respect to that debt. In terms of the payments received during that period, they amounted to just over $1 million—$1,197,000—during that financial year in relation to those detention debts.

Senator FIERRAVANTI-WELLS—What is the success rate in terms of recovery of those debts?

Ms O'Connell—The long-term debts?

Senator FIERRAVANTI-WELLS—Yes.

Ms O'Connell—The success rate after the person has left the country is very remote.

Mr Rizvi—In respect of section 501, of course we are guided predominantly by the legislation in respect of section 501, which was amended by the parliament in late 1998. In that regard, we are guided both by the second reading speech that was made about the objectives of that particular provision and by a formal section 499 ministerial direction that is tabled in the parliament about how that particular provision should be administered. If I might, I will read some segments of that second reading speech. I also note that this particular change to the bill, as I understand it, was a bipartisan change and was in fact supported by both sides of the parliament.

Senator NETTLE—It was supported by the major parties.

Mr Rizvi—Yes, the major parties. I do apologise, Senator. The couple of relevant segments are:

The purpose of this bill is to ensure that the Government can effectively discharge its fundamental responsibility to prevent the entry and stay in Australia of non-citizens who have a criminal background or have criminal associations.

… … …

The provisions must also enable the Government to remove those non-citizens who are detained following convictions for crimes committed in Australia.

Experience over recent years has shown that the existing legislative provisions are inadequate for this task. This is despite the fact that they were amended as recently as 1992 with the express purpose of improving the Government's ability to deal with visa applicants and visa holders with a substantial criminal background.

My recollection is that this was against the background of a number of cases that occurred in the mid-1990s where the government was unable to remove non-citizens who had committed very serious violent crimes in Australia, but because of the nature of the provisions the government decisions were overturned in the courts. The government took the view at the time that that was an outcome that it did not agree with.

The section 499 ministerial direction goes into further detail in respect of the kinds of crimes that are of particular concern and the kinds of crimes that are specifically identified in the 499 direction, relating in particular to violent crimes or crimes against the person. A range of particular types of crimes are mentioned in that direction. It is those directions that I suppose are the key to guiding our decision making in this area.

Senator FIERRAVANTI-WELLS—Could you explain the role of the Commonwealth Director of Public Prosecutions and the role of the AFP in relation to criminal justice visas?

Mr Bloomfield—The purpose of the criminal justice visa is to provide the mechanism whereby law enforcement agencies can either bring somebody to Australia or keep somebody in Australia who is not a citizen of Australia and who otherwise has no lawful right to be here or to come here for the purposes of criminal justice. That person could be either a witness or subject to a prosecution.

There are basically two stages to the process. The first stage is where a body such as the Commonwealth Director of Public Prosecutions or the Australian Federal Police or another law enforcement agency or body seeks the presence of the person in Australia. In the Commonwealth sphere, they go to the Attorney-General's Department, who then issue a criminal justice certificate. Usually the role of the AFP or the sponsoring agency is to provide an undertaking to look after the person, pay any costs that may accrue and, where they are brought into Australia, pay the costs of their departing from Australia.

In turn, once the criminal justice certificate has been issued, the department of immigration can then grant a visa. The effect of the visa is to allow the person to travel to Australia if they are not already here, or to remain at large in the community—or in jail if they are held in criminal detention—without being in Immigration detention. The other effect of the certificate which is granted by the Attorney-General's Department is that, for people who are in Australia, it stops them from being removed, whether or not they are lawful. So it allows those agencies to effectively keep people here and not create a conflict with our act.

Senator FIERRAVANTI-WELLS—There have been some assertions made previously in the inquiry, but I will put some questions on notice in relation to those matters. I would now like to move on to the question of migration agents. Could you explain for the inquiry the role of migration agents in the system in dealing with visas, and the sorts of visas that they deal with.

Mr Rizvi—Currently there are approximately 3,200 migration agents registered with the Migration Agents Registration Authority. They deal with a wide range of visas, from family visitor visas right through to permanent resident visas, protection visas and business visas. Some agents do specialise in certain visa types. So, for example, there will be some agents who will specialise in the student area or the general skilled migration area or business visas or protection visas or whatever. They do tend to develop those specialisations.

As a general rule, we believe that the bulk of migration agents are honest and provide a useful service in assisting visa applicants who may not have the capacity to understand the visa requirements to go through the processes. At the same time, I would have to say that there are also agents who are quite unscrupulous who will often charge visa applicants exorbitant fees for providing often a very minimal service. We get a quite substantial number of complaints, which we then forward to the Migration Agents Registration Authority, from clients who have been charged very substantial amounts of money for minimal service. That is of concern.

At the same time, we also encounter agents who seek to lodge what we would regard as vexatious applications—applications with little prospect of success—essentially to delay departure from Australia. The Migration Agents Registration Authority has been working very hard to try and deal with the unscrupulous end of the industry. It has met with some success in recent years. The vexatious applications legislation—the bill that was introduced by the government, by Senator Vanstone, about 2½ or three years ago has been very effective in reducing the number of vexatious applications lodged by certain agents, certainly by those we had in our top 80 list of agents who were lodging vexatious applications. The Migration Agents Registration Authority, as I said, has been quite effective in sanctioning many of those agents. Having said that, we believe there is still a long way to go. There are still quite a number of quite unscrupulous agents still out there charging exorbitant amounts of money and undermining Australia's immigration system.

Senator FIERRAVANTI-WELLS—I understand there is a migration agents task force being set up.

Mr Rizvi—We do have a migration agents task force that investigates particular agents who appear to have contravened the requirements of the MARA legislation. Those people are investigated and, where evidence is gathered that meets the requirements of the DPP, those matters are taken forward for a brief to the DPP for the DPP to take forward.

Senator FIERRAVANTI-WELLS—Have you got some statistics in relation to that? Have there been any collected in preparation for the work for the task force? You do not need to provide it, but do you have some statistics on that work—particularly if there have been any changes in the patterns, if I can say, of behaviour of migration agents since the legislation that has been introduced—and could you make a general comment on it? If you could provide me with some statistical information in relation to that, I would be most grateful.

Mr Rizvi—I might make some general comments and then I will provide the detailed statistics.

Senator FIERRAVANTI-WELLS—Thank you.

Mr Rizvi—It is certainly true that, immediately prior to the vexatious applications legislation, which sought to penalise agents that were lodging significant numbers of applications with almost no chance of success, we had something in the order of 80 migration agents who had lodged, in total, in the order of 1,600 protection visa applications over a period of eight months, with a zero success rate. That is, none of the 1,600 got up at the primary level, the review level or at the judicial review level. There were 80 agents lodging some 1,600 applications.

In the period immediately following that legislation, the number of applications lodged by those 80 agents fell to around 100, and we are looking those agents in the context of that legislation. So it is clear the legislation has had a very significant impact in discouraging agents from lodging applications with little to no chance of success. We can provide that information in more detail.

Senator FIERRAVANTI-WELLS—I would like to tie this in with some of the money that have been set aside—the $230 million—in terms of counselling to give people a true picture of what the situation is, rather than perhaps some fanciful, being led up the garden path type advice, which not only can lead to wrong advice being given by unscrupulous people but also potentially result in a detrimental situation for the person simply because of the advice they have been given. Would you care to comment on that?

Mr Rizvi—Part of the $230 million involves pilots we are proposing to run, at this stage in Sydney and Melbourne, with an amount of around $7 million allocated to it. Part of that pilot will involve us, particularly around complex cases, working with community organisations around the provision of counselling services to people. This is hopefully to assist them, if you like, at arm's length from the department and to assess in a realistic way the chances of success or otherwise. The pilot will also include the provision of a range of other services—mental health services, health services and the like—around those complex cases.

Senator FIERRAVANTI-WELLS—I think there was a case that had some media notoriety in this area last year. I think the case was in the ACT and involved the Morris family. Are you aware of that situation? Would you like to comment in relation to that?

Mr Walker—I am aware of the circumstances of the case. First of all, I think you are talking about the bridging visa circumstances of the case. I will give an outline of the bridging visa framework available for ministerial intervention and how it operates. Bridging visas are basically there to maintain the lawful status of a person while they have an outstanding application. That bridging visa flows through both the primary stage and any merit review stage and ceases 28 days after the deemed notification of the tribunal decision. In effect, under the legislation, that is seven days for deeming, so it is practically 35 days after the tribunal decision has been handed down.

The situation with ministerial intervention is that it is not an application process; it is a request that can be made by any person—be it a visa applicant, be it a third person. In many cases, as senators would be aware, that can be parliamentarians as well. The request is not an application for a bridging visa. The person who is the subject of the request is entitled to the grant of a bridging visa subject essentially to meeting character requirements, which in most cases would not be an issue, but an application has to be made. The issue there basically is that, when the request has been made, an application for a bridging visa would also have to be made, otherwise at the end of what is effectively that 35-day period, the person would become an unlawful noncitizen because the original bridging visa would cease.

In the Morris case, my recollection was that in late September 2004 the MRT handed down its decision affirming the primary decision. On the same day as that decision, a request was made to the minister. However, no application for a bridging visa was made at that time. The bridging visas for the Morris family ceased in early November. DIMIA compliance officers visited the family with the purpose of basically assisting them with maintaining or obtaining lawful status, and bridging visas were subsequently granted as a result of that visit by the DIMIA compliance people. That is a thumbnail sketch.

Senator FIERRAVANTI-WELLS—In light of what we have been saying about migration agents, was an agent involved in this case?

Mr Walker—Yes, an agent was involved.

Senator FIERRAVANTI-WELLS—Is this the sort of circumstance where advice ought to perhaps have been given?

Mr Walker—Given that the bridging visa regime relating to ministerial intervention was brought into effect in 1995, I think that an agent should be aware of the requirement for an application to be made in relation to a ministerial intervention request.

Senator FIERRAVANTI-WELLS—Who was the agent involved in this case?

Mr Walker—I think it was Mrs Marion Le.

Senator FIERRAVANTI-WELLS—Right, that witness gave evidence before. I will put the rest of my questions on notice.

CHAIR—Senator Fierravanti-Wells, I think we need to be very careful here about naming particular people. In the circumstances—

Senator FIERRAVANTI-WELLS—Given that it was in the public forum, I think that it was—

CHAIR—Excuse me, Senator, I am speaking as chair of this committee. Under the parliamentary standing orders of this committee, we will need to be very careful about that and offer that migration agent a right of reply to that questioning. Senator Nettle.

Senator NETTLE—I want to start by asking about dob-ins. We have had evidence from a number of witnesses concerned about dob-ins or anonymous adverse information, in particular where it is not provided to the applicant or their representatives so that they can respond. Could you explain the procedure for dealing with dob-ins or adverse information, in particular any protocols that you use for checking the veracity of information in that dob-in?

Senator JOYCE—Do they call them dob-ins?

Senator NETTLE—Yes, that is their word.

Ms Daniels—Information comes to the department through a number of sources that might lead to the department investigating and possibly taking compliance action. Dob-ins from the community is one of them. The others include, for example, information from DIMIA systems, data matching, student providers and a range of other information.

When a dob-in is received, the normal procedure would be to register the information and to try and assess, as you suggest, the veracity of the information. That can be done in a number of ways. If the information mentions a particular person, then we would have access to systems to check whether that person's status is as it is alleged to have been.

If we can build up a sufficient amount of information that would lead us to conclude that the person who is the source of the dob-in is, for example, an unlawful noncitizen, then it could result in compliance action in relation to that particular individual. But it is not in any way a random or arbitrary process. It needs a good level of consideration and determination, based on the information that provides context to that dob-in.

Senator NETTLE—Is there a system for checking the veracity of that information or is it different in every case?

Ms Daniels—It would be different in every case. In Sydney, for example, there is an assessment unit which looks at all dob-ins that come to the department and puts them through that process of investigative analysis so that they either proceed to compliance action or are effectively put aside. The dob-in may be enhanced later on by the presentation of additional information.

I should probably distinguish dob-ins into two categories. One might lead to compliance action if there is enough information to support that. The other might lead to some sort of investigation based on fraud, or some other investigation that does not necessarily or immediately result in compliance action. A dob-in might say that a person living here is an unlawful. A dob-in might say that there is a systemic amount of fraud in some component of the migration program. Each of those would be dealt with quite differently. One might lead to compliance action. One might be dealt with by the investigations area.

Senator NETTLE—You mentioned the Sydney office. We heard from one of the witnesses at our hearing last Friday about the case of a Kosovar family, the Bitanis. Somebody had entered the DIMIA office in Sydney and provided information that became part of the file and continued on in that case. Another example we heard on Friday was of a photo of a birthday party that was used as part of adverse information. I understand that in those cases those dob-ins stayed on the file all the way up to the ministerial intervention stage, even though, from the evidence we heard on Friday, the veracity of those dob-ins had not been checked. Can you explain that? Is it common practice for them to stay on the file right up to that point, even though they have not been checked? In the case that we heard about on Friday, the migration agent who was giving evidence explained the way in which those dob-ins had been discredited. What happens at that point? Is there an automatic review? Is there an apology? How does that operate?

Ms Daniels—I would expect that information relating to an individual would normally get onto that individual's file. However, on the basis of the process that I have just outlined to you, I would expect that, where an allegation or dob-in is assessed and—to use your words—discredited, that record would be amended to indicate that that dob-in had been assessed and investigated and the outcome of the process. I cannot comment on the particular case you are mentioning. Maybe Mr Frew knows more about that.

Mr Frew—I can speak specifically about the case that you are talking about that was raised on Friday. Prior to doing so, I will add a little context around this particular case. A number of people arrived in Australia in December 1999. The Bitanis, whom you mentioned, were a part of that group. There has been great deal of work on these particular cases over the intervening period of years and it is fair to say that they are, individually and together, particularly complex cases. Regarding the statements that were made on Friday about the dob-ins et cetera, the comment that I would make is that, as Ms Daniels said, if information is received it is recorded on a file. Investigations must then occur and if something is closed off or whatever the file is suitably recorded.

In respect of this particular case, there were a couple of dob-ins—it was correct as stated by the witness last Friday—which led to, amongst other things, searches of documentation which supported the view that the people had in fact changed their identity. This particular family, the Bitani family, have been determined by the government of Serbia not to be citizens of Serbia. This is to say that documents that were presented to us in the name of Bitani, asserting who they were, were tested by the government of the country they were purporting to be from and found not to be authentic documents. The question of whether they changed their identities, based on the information of the fact that their documents were disproved by the allegedly issuing authority, I would submit to you is now a matter of record.

Senator NETTLE—I will not ask any more questions on that case. On the issue of whether the information is shown to the applicant, we have had a variety of evidence on that issue. Can you clarify whether that adverse information is shown to the applicant or to their representatives?

Mr Frew—The information I have about this specific case—

Senator NETTLE—I am not asking about specific cases. I am asking more generally whether, in these adverse information or dob-ins, the information is shown to the applicant or their representative.

Ms Daniels—In the normal process I would say that that is not necessarily the case. For example, a dob-in might be quite general in its context and quite readily discredited. There would be no basis on which to provide that necessarily to the client. However, the client would always have access to their files should they seek it under freedom of information. If, however, something led to a more fulsome investigation as distinct from, as I mentioned before, a compliance action, then interviews might need to be taken with various players, including the person against whom the allegation was made, and obviously the person's agent could be part of that process.

Senator NETTLE—I understand that where freedom of information requests have been made for the release of dob-ins they have been denied. I am not saying that happens in every circumstance, but they have been denied. I am talking about a situation in which you have tested the veracity of the information and you think it is worth while so it has stayed on the file and been used. Where a freedom of information case is denied, what is your capacity to test more of the veracity of the claim if you are not able to get the response of the applicant to that information? If they are not able to get the information then you cannot get their response. How does that limit your capacity to test the veracity of the claim?

Ms Daniels—Again, I would probably need to draw that distinction between two types of dob-in. There could be a dob-in that might quite readily lead to some compliance action. For example, there might be an indication that somebody might be an unlawful citizen residing at a particular place and that might lead to a compliance action that determines whether the person is unlawful. The unlawful person might depart Australia. I am not sure that is what you are referring to. I think you are referring more to an investigation of an allegation of, say, fraud where somebody might have entered into a contrived marriage or something along those lines. Is that more what you are thinking of?

Senator NETTLE—We have had quite a lot of evidence about people who are on protection visa claims. Normally they are in detention and there has been adverse information provided at some point which has impacted on their capacity to prove their claims. We visited a guy in Villawood who had been there six years who had adverse information on his file. I do not know whether in that circumstance he was able to access it or not. We have had many of those sorts of examples where people are refugees and have not been able to access that information.

Ms Daniels—That might raise a different set of circumstances which would need to be considered in the context of the processing of an application. If that is what you are referring to, I will need to refer it to my colleagues.

Mr Walker—Perhaps I can help, Senator. Under the decision-making code of procedure in the Migration Act, adverse material has to be put by the decision maker to an applicant. In relation to dob-in information, it is the material that is relevant, that is pertinent to the decision. As Ms Daniels said, some of the information may well be disregarded, discounted—in which case it would not be part of the decision-making process and would not need to be put to the individual. The actual situation with dob-ins, and part of the issue that relates to why some of it may not be available to a person under FOI, is that it may well be provided in confidence. That in itself raises some issues around the veracity of the information if the person is going to provide it in confidence and not wish to have themselves identified as dobbing the person in or the provider of that information. That clearly goes, as I said, to the veracity, the credibility, of the information that is provided, and that is something the decision maker has to balance up.

In putting adverse material to the individual, or the applicant visa holder if it is a cancellation—and let us say it is a letter—the requirement is not to put the actual letter; it is the substance, the information that is in there. And, as I say, it is certainly a requirement to put that adverse material, the relevant pertinent material that a decision maker decides could influence the outcome. If it has been discounted, that material may well remain on file for record-keeping requirements but it may not form part of the decision-making process.

Senator NETTLE—Thank you. I will go on to another question. We have had a lot of evidence and received submissions criticising the decision-making process. We have had comments, in relation to both the initial DIMIA decision and the RRT, about officers being suspicious from the start. We have had comments about a culture within the department and the RRT looking for a reason to knock people back. We have had criticisms of the inquisitorial method of investigating that seems designed to catch people out on inconsistencies. We have had witnesses criticise the decision-making process for not making allowances for language difficulties, fear of authorities, cultural factors and the effects of post-traumatic stress. I note that the Comrie report concluded:

> ... that the culture of DIMIA was so motivated by imperatives associated with the removal of unlawful non-citizens that officers failed to take into account the basic human rights obligations that characterise a democratic society.

Do you believe that the cultural problems that have been identified in the compliance and detention areas of DIMIA also extend to the decision-making areas of DIMIA? Are decision-making staff driven by an imperative to catch out or knock back asylum seekers who they believe have arrived here in an unauthorised manner?

Mr Rizvi—I might take that decision at a broad level. Are you referring to all visa decision making or are you particularly referring to protection visa decision making?

Senator NETTLE—Protection visa.

Mr Rizvi—If I might, I will take that question at a broader level firstly, then I will ask Mr Illingworth to comment on protection visa decision making. In terms of general visa decision making, and as I highlighted to Senator Parry earlier, in, for example, the visitor visa area our approval rates are continuing to rise and have been steadily rising for some time. Indeed, as a general rule—the protection visa situation can be somewhat different—our view is that a high approval rate is usually a reflection of a good system, because it is a system that communicates

requirements clearly, it gets those requirements and that information to the applicant so that the applicant can make their own assessment of whether they will be successful or not and whether they will meet their requirements, and as a result of which approval rates should generally be rising. That is certainly the case in the vast majority of visa categories across DIMIA.

The protection visa area is somewhat different and, before I ask Mr Illingworth to comment, I would draw the senators' attention to, for example, the small case study that Mr Hughes referred to. In a case load broadly similar on Nauru, where the decision making was done partly by the UNHCR and partly by DIMIA, the outcomes were broadly in alignment. That is, the outcomes of DIMIA officers' decision making were broadly in line with the international body that is the authority in respect of protection visa requirements. I make that comment at a general level, and I ask Mr Hughes and Mr Illingworth to comment further.

Mr Hughes—I think Mr Rizvi has rightly pointed to the comparability of DIMIA and UNHCR outcomes on Nauru for broadly similar case loads. Senator Nettle you raised the question of the depth of examination of cases. Let us take the large group of unauthorised boat arrivals over the years 1999 to 2001. I think a high proportion of those people came without documents. So the starting point was that not much was necessarily known about the facts of people's cases. Clearly, matters have to be gone into with a reasonable amount of detail if there is no documentation to support individuals' cases. Looking at the particular group of unauthorised boat arrivals that came between 1999 and 2001, and picking a couple of nationalities, the actual outcomes at the primary stage were, for Afghans for example, that 85 per cent were approved at the primary stage, and, for Iraqis, that 89 per cent were approved at the primary stage.

I do not think you would have those kinds of rates of acceptance of people as refugees if there were some predisposition to be refusing cases, or some negative state of mind. Those rates are very high and, looking at those particular statistics, I do not know of any other country in the world that had, for those case loads, such a high positive determination rate at the primary stage. So I think that, if you look at the big picture indicators, and whilst there might be dispute and difference of view over cases that were not found to require protection, I think those approval rates—of 85 or 89 per cent for those particular nationalities, Afghans and Iraqis, at that stage—indicate that cases were being looked at in a positive way and with an open mind.

Senator NETTLE—There was an article in the *Australian* newspaper yesterday about a woman in immigration detention who, undergoing a caesarean section, had a security guard in the operating theatre while she gave birth. I note that there is a comment from DIMIA at the end of that article, that it is not normal procedure to have GSL officers in a delivery room or an operating theatre. And I understand that, when this question has been asked previously, the answer has been that it is up to GSL as to how they deal with this issue.

Given that comment that it is not normal procedure for GSL officers to be in a delivery room or an operating theatre, is this something that DIMIA has pursued? I have seen your answers previously, so I understand it is up to GSL how they administer that. I do not know what the likelihood is of somebody about to give birth absconding, but that decision is something that you leave to GSL. If you believed they had made the wrong decision—and that seems to be reflected in this, because it is not normal procedure—do you have any process in your contract with GSL

so you can say, 'This is not appropriate'? Are there any penalties; is there any check-up that you can do as to whether or not that is appropriate?

Mr Fleming—It is certainly the case that it is not normal. It is not the starting point for a procedure that you would have GSL officers in the delivery room. In this particular case, there was a female officer present in the room. That was not because the woman giving birth was considered a flight risk but because her husband was at the birth and he was considered a very high flight risk and there were multiple exits from the room. So that was assessed as the most effective way of managing that risk while still being able to have the father present at the birth and also in an attempt to do it as unobtrusively and with as much respect for privacy as possible. As for pursuing issues with GSL under the contract, I will hand over to Ms O'Connell.

Ms O'Connell—Senator, you asked whether there were some standards set in the contract?

Senator NETTLE—I have been through the contract and the standards with people previously in estimates. The issue is what level of GSL staffing there is when detainees are in a hospital situation. This may not be the case but, if there were a case where you believed that it was inappropriate for them to have the guards there, is there something in the contract that allows you to pursue that with them?

Ms O'Connell—There is, and there is also an opportunity for us under the contract to apply sanctions if we think that the action does not meet the sorts of standards that we have set.

Senator NETTLE—Can you point out for me where that is in the contract? I do not have it here with me—or you can take it on notice.

Ms O'Connell—I will have to take that on notice and get back to you. I am happy to do that.

Senator NETTLE—No worries. Thanks. I will put the rest of my questions on notice; there are quite a lot.

CHAIR—Thank you. I have a few questions I want to ask now. In response to a question from Senator Joyce, I think you said that as of 23 September you had 748 people in detention. Can you give us a breakdown of how many of those have been there for less than a year, one to two years, two to five years or more than five years?

Ms O'Connell—Yes, certainly, if I can use a couple of other break points that might be satisfactory to you? Less than three months is the first break point.

CHAIR—Yes.

Ms O'Connell—Forty-three per cent of those 748 people in detention have been detained for less than three months.

CHAIR—You do not have numbers?

Ms O'Connell—Yes. I just have to add them up. I can give you the full amount if you—

CHAIR—Just read us what you have got.

Ms O'Connell—Less than one week, 16 per cent, which is 118 people; between one week and one month, 13 per cent, which is 99 people; and between one month and less than three months, 14 per cent, which is 105 people. It is adding those three amounts together that gives the 43 per cent who have been in detention for under three months.

CHAIR—Sorry, we might have to stop you there. This is a division this time. We will be back.

Proceedings suspended from 8.59 pm to 9.07 pm

CHAIR—We were going through the numbers before the break; essentially, I want to know how many people have been in detention less than a year; between, say, one year and five years; or more than five years.

Ms O'Connell—Four hundred and twenty-two people were in detention for under three months, which is 43 per cent; 99 people were in detention for between three and six months, which is 13 per cent; 16 per cent of them were in detention for more than six months and less than 12 months, which was 119 people; nine per cent of them were in for more than 12 months but less than 18 months, which was 67 people; seven per cent were in detention for more than 18 months but less than two years, which was 49 people; and, lastly, 12 per cent of them were in detention for more than two years, which was 92 people.

CHAIR—How does that compare over, say, the last five years?

Mr Rizvi—We will take that on notice. As a general rule, we could say that that is much lower than it has been over the last five years. But, to give you a precise figure, we will take it on notice, plot it out and give you much more detail.

CHAIR—Has the department ever hired a consultant or conducted an internal study about the long-term effects of detention on people? Have you conducted any research or studies on that?

Mr Rizvi—I might take that on notice, because the people with the expertise in that particular area are not here. But we can comment on what we are doing to improve the mental health situation in detention centres.

CHAIR—You would be aware of the extraordinary amount of evidence we had during our four days in Adelaide, Melbourne and Sydney. Repeatedly, time and again, experts provided us with evidence about the psychological impact of long-term detention. I was wondering if DIMIA has ever done anything about that or looked at that.

Mr Rizvi—We certainly focused on that issue for quite some time. On the specific question that you asked about research, if I may, I will take that on notice and provide you with information on specific research that may have been conducted. What I can provide and what I have here with me are the measures that we have in train now to improve the mental health screening and assessment processes and the management of mental health issues generally in respect of people who may be in detention.

I might just explain how we operate the mental health screening and assessment process, firstly, within the Baxter detention centre. In the first instance, all detainees who are received into immigration detention are screened for mental health concerns. The initial screening includes a suicide and self-harm assessment, which is undertaken on arrival by the receiving detention services officer. A voluntary client-rated Kessler 10 screening is undertaken, a clinician-rated health of the nation outcomes scale is undertaken and a mental state examination is undertaken. These last three examinations are widely used in mainstream mental health services. This is quite extensive, Senator; I might place the rest of it on notice.

CHAIR—You can place it on notice, because I have—

Mr Rizvi—It is quite extensive what we have got here in terms of what the department is doing on mental health issues within detention centres.

CHAIR—You can table that, if you would like.

Mr Rizvi—Thank you.

CHAIR—I would rather go to other questions. Actually, I want to ask you something. In some of the answers you gave us before about the issuing of visas, you said that in some instances it can take seconds. Have you ever done a check of that system?

Mr Rizvi—That system has been subject to both internal and external audit processes.

CHAIR—When were they done?

Mr Rizvi—I would need to take the timing of those on notice, but we can certainly provide you with the details of those internal and external audits.

CHAIR—So you have confidence in the accuracy of that check?

Mr Rizvi—We have confidence that the check in respect of a person who applies for an electronic travel authority—which is then checked against the movement alert list and the document alert list—operates in a highly efficient manner. There are always going to be issues associated with name matching and we are continuing to improve the quality of the name-matching function within the system. In terms of name matching, that is operated on a risk basis; there is a risk assessment approach to that matching. We believe we have the settings for the risk assessment broadly correct, and that has been confirmed through the internal and external audits that we have undertaken.

CHAIR—But you cannot tell me when they were last undertaken?

Mr Rizvi—I do not have that information with me, but we will arrange to get that to you as quickly as we can.

CHAIR—Do you know off the top of your head if the audits have been done since the Palmer report or the Comrie report was provided?

Mr Rizvi—They would not have been done since the Comrie report was provided, as the Comrie report was tabled last week, and I do not think they would have been done since the Palmer report, which was tabled a couple of months ago.

CHAIR—So has ASIO ever expressed any apprehension about this check?

Mr Rizvi—We work very closely on the issue of MAL with ASIO. MAL is maintained through a very close partnership with ASIO and, if ASIO have any concerns in respect of MAL, we work in conjunction with them to address those concerns.

CHAIR—I asked you: have they ever expressed concerns about this check?

Mr Rizvi—I would have to take that on notice as to whether they have expressed specific concerns about it. As I said, the movement alert list is in many respects a centrepiece of our border security systems and, certainly, ASIO have repeatedly expressed very strong support for that system.

CHAIR—Would you say then that this is, say, a superior system to that of the United States? And, if so, on what basis have security agents perhaps made that comment?

Mr Rizvi—I think it is important to recognise that the movement alert list is part of a layered approach to security matters. It is one of a range of mechanisms and it is important to look at the full package of mechanisms and how they operate. Certainly, the advice that I have received—indeed, as recently as a couple of weeks ago—from the most senior levels in ASIO is that their view is that our arrangements are in many respects superior to those of the United Kingdom and the United States.

CHAIR—On what basis do they make those comments?

Mr Rizvi—I cannot advise you on what basis. They understand their own processes.

CHAIR—So it is just a broad comment that they provided you with? Is that what you are telling me?

Mr Rizvi—It was a broad comment that they made. An issue that has arisen, for example, is that, by comparison with the United States and the United Kingdom, the breadth of checking that we do for visa applicants subject to security checking is greater than that which is done in those two countries. That was certainly the advice that was provided to me. It was on that basis that they were saying that our arrangements are more comprehensive.

CHAIR—You talked about volatile country information. This might be something that the RRT may want to comment on as well. We heard a lot of comment about how information provided to the RRT or to DIMIA was not substantial, was inaccurate and was out of date. What interaction do you have with DFAT in terms of trying to provide accurate and up-to-date country information? What checks and balances do you have to ensure that that is the best source you have?

Mr Illingworth—For many years now Australia has maintained a Country Information Service in the department. There is an equivalent research facility in the Refugee Review Tribunal. Both those facilities communicate regularly with each other and share information. By way of general context, the Country Information Service in the department holds over 7½ thousand hard copy documents. That includes major reference works on human rights issues. We hold an electronic database which is searchable and desktop accessible, containing over 86,000 electronic items. We are putting documents into that at the rate of about 26,000 or more items a year. A very large percentage of those items are captured within one or two days of publication.

In addition, case officers are not shackled to using the Country Information Service. They are able search the internet or do other research and use information gathered in those ways if they believe that it is reliable and weighty, and provided that that information is accessioned into our holdings for audit trail purposes. We have about 15, and sometimes up to 19, people, who are full-time researchers that maintain the system and also provide a case specific research capacity. Essentially, that enables a case officer to task the search for particular case-specific information. That usually happens when searches of what is generally available through all of those sources do not turn up sufficiently precise information to deal with a particular issue related to a case. Those are the sorts of instances where we tend to use, for example, DFAT. But, in terms of our holdings, less than one per cent of the information holdings that we have are sourced from Foreign Affairs and Trade. The vast majority of the material we use is open source material and is gathered through our searches of available publications and through our liaison with other countries that are conducting refugee assessments, such as the UK.

CHAIR—Does the RRT want to make a comment about that?

Mr Karas—Yes. I would like to inform senators that the country research provided to tribunal members is of high quality, comprehensive, timely and authoritative, and the relevant source country information for the review of visa decisions is available to the members. The research officers also respond to queries from members and update, organise and index holdings of information for maximum accessibility by members in their decision making. All information used for country research purposes must be able to be cited and made publicly available.

The country research and library services section provides members and officers with relevant, current and authoritative country information. The research officers respond to queries from members, as I have indicated, and also update, organise and index holdings of information for maximum accessibility by members in their decision making. All information used for country research purposes must be cited and made publicly available, as I have indicated. And the members and research officers have access to a very wide range of information available electronically, in hard copy in the library or from each computer desktop. DIMIA's CISNet database is available in addition to major intergovernmental and non-government sources of information and a large number of specialist journals and international newswire services.

Another example of a database relied on by the Refugee Review Tribunal is Factiva, a subscription online database which offers comprehensive full text access to and retrieval of English language, current affairs and legal information which is updated continuously. Yet another important source relied on by members and staff is the information provided on request by overseas missions of DFAT through its people-smuggling, refugee and immigration section.

From time to time the RRT may also commission expert opinions from academics and leading commentators. Recently, Professor William Marley addressed members on Afghanistan and Dr Charles Tripp addressed members on the latest situation in Iraq. Country research products fall into the following categories: basic information packages, research responses, country indexes to research responses, resource guides, issue papers, topical information packages, standard paragraphs and materials. I think it would be true to say that our members have quite comprehensive country research products and information available to them. I will stop there.

CHAIR—We will have to suspend sittings again for a division.

Proceedings suspended from 9.22 pm to 9.32 pm

CHAIR—We will resume the committee hearing.

Mr Karas—I was just about to conclude my remarks in relation to the Refugee Review Tribunal and the Country Information Service and research that is available to members. In 2001, in Sydney, the Refugee Review Tribunal country research area co-hosted an international conference which was attended by counterparts and colleagues from overseas, from organisations from as far away as Finland and South Africa, if I remember correctly. So highly regarded is our country research section that we have had an officer on secondment to Ireland for six to nine months to help set up their country information service for the Refugee Appeals Tribunal there. The head of the Country Information Service previously also assisted in the South Pacific—I think in Fiji and Papua New Guinea—with country information sections.

We have regular updates for members. Two which I particularly want to mention are the current headlines that appear very regularly in material on Iraq and Afghanistan. The most up-to-date and current material is made available for members. My understanding is that the service is frequently utilised by members to ensure that the information that they are relying on is up to date.

CHAIR—Because of the divisions, I do not have time tonight to go through this. Mr Rizvi, could you or your officers go through the transcripts for me and identify where we had comment about the inaccuracy and inadequacy of information being given to the RRT? Could we perhaps elicit a response from your department about those comments, please? Would you take that on notice.

Mr Rizvi—To clarify, this was information being given by third parties to DIMIA or the RRT in respect of the—

CHAIR—Yes. I think that if you go through evidence of the four days of hearings, a number of people who appeared here before us, particularly a range of migration agents or lawyers, commented about the inaccuracy or inadequacy of country information given to the RRT members. I would like you to respond to those claims. There were not many but I do not have time to go through them tonight.

Mr Rizvi—We will go through the whole thing and identify all the allegations of inaccuracies in relation to the Country Information Service either held by DIMIA or in the RRT and, where we can pin that issue down, we will try to get a response to you.

Mr Lynch—If I could just add briefly to what the tribunal member Mr Karas had to say about country information: members of the tribunal do put adverse information, in the nature of country information that does not support claims of persecution, directly to applicants or their advisers at hearing. They certainly invite submissions on country information, which may be in the possession of the applicant or adviser, which may differ from or not be in the possession of the tribunal. As a matter of procedural fairness, even though there is no statutory requirement unless country information relates directly to that individual personally, there is no requirement to provide the information. As a matter of practice, all tribunal members do share with the applicant or advisers the information that they intend to rely on for the purpose of making a decision. That is a firm and well-established practice by all RRT members.

CHAIR—I want to go to the issue of applications now. Can you outline for me the reasons why a departmental officer will write 'refused to sign' when an applicant's signature is required on a travel document or an application form?

Mr Rizvi—This is in respect of a removal centre?

CHAIR—I am assuming so. Yes, it would be.

Mr Fleming—Essentially, that would be in a situation where somebody is subject to removal but is not cooperating with removal efforts. Sometimes we are able—and we can certainly apply—to obtain travel documents from other countries without the signature of the person.

CHAIR—So you are telling me that it is where someone would willingly and knowingly not agree to sign a document—is that correct?

Mr Fleming—That is correct, because they do not want to cooperate with efforts to remove them.

CHAIR—What is the difference between that and writing on the form 'unable to sign'?

Mr Rizvi—Are you referring in this instance to Ms Solon's case?

CHAIR—It may well apply to that, but I just want to know whether you can tell me the difference between 'unable to sign' and 'refused to sign'.

Mr Fleming—In the plain meaning of the words we would all have views about what that meant in the context of what—

CHAIR—I want to know how your department applies that.

Mr Fleming—In terms of what was intended by any particular officer who wrote 'refused to sign' versus 'unable to sign', we could certainly look at individual cases of that to see what was behind it. But perhaps where I would write 'refused to sign' it may be that somebody else would write 'unable to sign'.

CHAIR—Are you saying on behalf of your officers that those two terms can be interchangeable?

Mr Fleming—I would not think that. If it is somebody not cooperating and refusing to sign, I would think that the normal thing would be to write 'refused to sign'.

CHAIR—But there may be instances where that has happened and you have put 'unable to sign'?

Mr Fleming—I could not ruled that out.

CHAIR—Would there be cases perhaps where someone was unable to sign and people have put 'refused to sign'?

Mr Fleming—I could not rule that out either.

CHAIR—So perhaps, while for you and me they may be two totally different concepts, they may well be used in an interchangeable way. Is that the case? They may well be interchangeable?

Mr Fleming—I would not think that they would normally be interchangeable. Without looking at every individual case where that has happened and looking into it, I could not rule out that they had been used in a way other than what you and I would understand from their normal meaning.

CHAIR—We have to go to another division. I have two other areas to cover. I hope you are happy to wait. If you are not all under AWAs you might still be entitled to penalty rates!

Proceedings suspended from 9.40 pm to 9.50 pm

CHAIR—Can I take you now to some questions about the management unit. Can you outline for me why there are management units in our detention centres? What is their purpose and who are they designed to accommodate? I did ask if we were going to have any more divisions, on the basis that, if we were, we should not come back. We will be back. Sorry. If people are happy to go through until 10.30, I can probably finish then.

Proceedings suspended from 9.51 pm to 10.03 pm

CHAIR—I was asking you about management units. What is their purpose? Who are they designed to accommodate?

Ms O'Connell—The management units are there largely for a detainee's personal safety, or if they are a risk to either themselves or other detainees in the area. We have accepted the specific recommendations in the Palmer report in relation to the management units. In particular, recommendation 4.12 goes to DIMIA constructing a flexible intermediate facility which provides more appropriate accommodation for detainees who cannot be allowed to remain in the open compound. We will be taking those recommendations forward.

CHAIR—Are the management unit facilities specifically designed for that purpose? I am sorry, we will have to suspend proceedings again as there is another division.

Proceedings suspended from 10.05 pm to 10.13 pm

CHAIR—The Senate has now adjourned, so we should be right. Are the management units specifically designed for this purpose?

Ms O'Connell—Yes, we took advice in designing and building the management units, and they were designed with that purpose in mind.

CHAIR—When did you take that advice?

Ms O'Connell—Prior to their construction. For example, if we are talking about Baxter, we took advice on the design prior to the construction of Baxter.

CHAIR—Can you provide me with information in relation to Baxter and the modifications at Villawood about when you took that advice and who you took that from?

Ms O'Connell—Yes, we will provide you with that.

CHAIR—So are the facilities, the infrastructure and the design of the management units the same in each centre? We went to Villawood, but I have not seen Baxter. Is there the same design in each of the centres, do you know?

Mr Doherty—There are underlying principles in the design that are similar, but the buildings themselves are quite different. The one at Baxter sits in a purpose-built demountable facility, whereas Villawood sits in a building that was originally designed as an accommodation unit some 40 years ago. They are not exactly the same.

CHAIR—There are small windows on the door into each cell in the unit at Baxter as well as a CCTV camera, but that was not the case at Villawood, was it?

Mr Doherty—I am sorry; I do not know the answer to that. I will have to take that one on notice.

CHAIR—You have not been to either of the management units?

Mr Doherty—I have, but not for some time.

CHAIR—I understand that there is a small window in the door of each of the units at Baxter.

Ms O'Connell—Yes.

CHAIR—My recollection is that there is either no window in some of the cells at the unit at Villawood or it is a very tiny one.

Ms O'Connell—I have visited both and my recollection is that there are observation facilities on the doors in both Baxter and Villawood. The reason for that is the ability to do regular observations for people who require it.

CHAIR—We saw a door at Villawood that did not have any window on it, though. That is why I am asking the question. I am trying to find out why there is such a difference or to get a comparison on the difference. We saw a steel door at Villawood with no window in it.

Ms O'Connell—In the management unit?

CHAIR—Yes.

Ms O'Connell—I would have to take that on notice.

Mr Doherty—Yes, we will have to take it on notice. We do not have the material in front of us.

CHAIR—I did not see any grassed area within the management unit at Villawood where detainees can exercise. Is that the case?

Mr Doherty—I do not recall there being a grassed area for exercise in the management unit.

CHAIR—Can you take that on notice as well?

Mr Doherty—Yes.

CHAIR—I have some questions on the Comrie report. I have four questions and we may have to put the rest on notice or wait until estimates. Prior to any recent changes, can you tell me what provisions existed to ensure that an officer—and, in particular, a senior officer—in a management role was immediately provided with some form of retraining or stood down after it became known that they had failed to carry out their duties in line with the Migration Act?

Mr Rizvi—I am sorry?

CHAIR—In the Comrie report three officers are identified. Can you tell me at what stage of the process—not the Comrie report process, but at what stage in this particular case—those officers were offered some form of retraining or stood down?

Mr Rizvi—Those persons, as far as I am aware, have not to this stage been stood down. The process of the Comrie report was such that, during its final draft stages, where the three individuals had been identified and commented upon adversely, those individuals were given the opportunity to comment on the content of Mr Comrie's report in respect of them. Mr Comrie took on board their comments and made whatever adjustments he felt appropriate based on those comments. Within that context, he then came to a conclusion that the actions of those particular officers warranted investigation in terms of the code of conduct under the Public Service Act. His investigation was within the Ombudsman Act and therefore he was not empowered to deal with matters under the Public Service Act. Once the report was passed to the secretary of the department, the secretary accepted the recommendations in Mr Comrie's report to then follow the appropriate procedures outlined in the Public Service Act. Those procedures are now being pursued.

CHAIR—Thank you for that but that was not entirely where I was heading. The Comrie report, at item 9 on page X, says:

The management of Vivian's case was very poor, lacking rigour and accountability. Migration Series Instruction 267 requires that a compulsory checklist be completed in removal cases. It was not complied with.

Did it take Comrie to find out that the check list had not been completed and therefore that the act, regulations or policy had not been complied with? When did you know that the check list had not been complied with?

Mr Rizvi—That is the check list associated with an interview conducted by a compliance officer. We were aware that that check list had not been complied with quite a deal earlier.

CHAIR—Can you give me a date?

Mr Rizvi—We may be able to give you an approximate date and then give you something more precise a little later.

CHAIR—Yes.

Mr Rizvi—We began examining the documentation in respect of Ms Solon in late April, and it would have been probably some time during May that we would have established that the check list had not been completed.

CHAIR—What action is taken with an officer in such a case? Are they stood down pending an investigation? Are they sent for retraining immediately? What action occurs as soon as you discover that that is the case?

Mr Rizvi—Where the check list has not been completed?

CHAIR—Yes.

Mr Rizvi—In respect of the individual instance of this case, because the Ombudsman was investigating the case and had indicated to us that we should not undertake interviews in respect of the individual officers that had been involved, when it was established that the check list had not been complied with we did not interview the individual officer, because it was the subject of an ongoing Ombudsman's inquiry. At a more—

CHAIR—I will just stop you there because I want to clarify something. You just said to me, though, that you believe that you found the form had not been completed in about April or May. Mr McMillan says that the whole investigation was not referred to the Ombudsman until July.

Mr Rizvi—I think what that refers to—and I will just confirm this—is the point at which it was officially referred to the Ombudsman under the Ombudsman Act. Prior to that, I think that in the first instance it had been referred to Mr Palmer or directly to Mr Comrie. I cannot recall the precise nature of that. That means that it had been referred to those gentlemen within the context of the inquiries that they were conducting and it subsequently was overtaken or incorporated within an inquiry undertaken within the framework of the Ombudsman Act. The

later date which you are referring to is the point at which it formally was referred to within the framework of the Ombudsman Act.

CHAIR—Why did that stop someone in the department taking some sort of action with these officers, though?

Mr Rizvi—Because it was at that point that Mr Comrie indicated to us that we should not interview the individuals concerned. As we were not in a position to interview the individuals concerned, it would not have been appropriate to take that sort of action until we had the full facts regarding the circumstances.

CHAIR—I would like you to take on notice for me the exact day that somebody in the department discovered that that form was not completed properly and the exact day that you got official information from Mr Comrie not to interview people. Three departmental officers are identified in this report. I understand one has retired. Are the other two officers still making assessments on cases?

Mr Rizvi—No, those officers are not making assessments on cases.

CHAIR—Have they been stood down? Have they been moved to another section? Are they being retrained?

Mr Rizvi—At the moment those officers are focused entirely on the function of responding to the requirements set out for them to respond to under the Public Service Act in respect of the issues that have been identified.

CHAIR—What are they specifically doing now on a day-to-day basis?

Mr Rizvi—On a day-to-day basis they are fully occupied with responding to the requests made within the framework of the Public Service Act for them to respond to the code of conduct issues that have been raised.

CHAIR—Can you provide me with the date when those people were removed as case officers? You might need to take it on notice.

Mr Rizvi—I will have to take that on notice.

CHAIR—I want to ask one question about the management units. Do you have a policy on how the management units operate?

Ms O'Connell—We certainly do.

CHAIR—Can you provide this committee with a copy of that?

Ms O'Connell—Certainly. I can give you the table of contents for it now, if you would like. It covers care plan arrangements, the review and who has authority to make a decision to place someone in the management unit. Would you like the index, at least? I can provide the full procedure on notice.

CHAIR—We will have the policy, if that is possible. In relation to the management units, what sort of critical authority is left up to the individual officer's discretion?

Ms O'Connell—Use of the management unit is not at the discretion of individual officers. The sole authority that is referred to in that procedure for placing somebody in the management unit is the GSL general manager of the immigration detention centre. So it is at the highest level within the detention centre.

CHAIR—So it is the GSL manager not the DIMIA manager?

Ms O'Connell—Correct. It is the GSL manager.

CHAIR—And you would say that they have a clear policy and a clear procedure to follow in order to come to that decision?

Ms O'Connell—Correct. They must also inform the DIMIA manager, and there is a process for regular review of that decision as well that involves DIMIA.

CHAIR—If any of those cases ever go to court, does DIMIA examine that policy and the reasons for those decisions?

Ms O'Connell—I am not aware of that circumstance having taken place. I do not know whether the review of that decision is something that is available for court review.

CHAIR—Finally, can you tell me how many psychologists or psychiatrists are now visiting Villawood and Baxter each week?

Ms O'Connell—If we deal with Baxter first, I think in terms of the overall health improvement, it is not just a matter of the psychiatrists but also a matter of the psychiatric nurses who have now been appointed.

Mr Casey—The psychiatrist visits Baxter now approximately on a fortnightly basis. It is a weekend visit—that is the visiting psychiatrist. I believe the staffing at Baxter is such that there are two or three psychologists who are employed through PSS at the facility. In addition, we have mental health nurses and general nurses, and the general practitioner from Port Augusta visits each day.

Ms O'Connell—Two psychiatric nurses.

CHAIR—Are they based at Baxter full time?

Mr Casey—Yes, they work at Baxter, at the centre.

Ms O'Connell—And they are available on weekends and nights as well.

Mr Casey—On call.

Ms O'Connell—There is an on-call arrangement.

CHAIR—Is there a psychologist or psychiatrist based there full time?

Mr Casey—There is not a psychiatrist based full time there, although a psychiatrist is available for consultation either through South Australian health by telephone, or the visiting psychiatrist, Dr Frukacz, could be consulted. There is not a psychiatrist on site permanently. There are psychologists, psychiatric nurses and a visiting general practitioner.

CHAIR—I just want to clarify something. Through all the division bells happening, I asked someone previously about 'refuse to sign' or 'unable to sign'. Can you tell me if there is a clear policy there or whether that discretion is left up to the officer in question?

Mr Fleming—I am not aware of a clear policy direction on the particular language to use, but I will check and we will get back to you, taking that on notice.

CHAIR—All right. In relation to that as well, how do you defend that position if it goes to court?

Mr Fleming—I am not aware of that issue having gone to court for testing.

CHAIR—It has not been raised in court? Can you take it on notice as to whether that issue—the difference between 'refuse to sign' and 'unable to sign'—has been contested in a court?

Mr Fleming—Okay.

CHAIR—Thank you. My apologies for the divisions tonight. It has certainly made it a little bit hard to follow. I just have one more question. When you decide to deport someone, is that the responsibility of the removal or normalisation unit? Who has the final sign-off when someone is deported? Which unit is that?

Mr Fleming—Before an enforced removal takes place, the procedures now are that the removal availability needs to be signed off by the state or territory director or another senior executive service officer.

CHAIR—So it does not go through to an assistant secretary?

Mr Fleming—Yes, that would be an SES officer. It would go through to that assistant secretary level or higher or, in some states, where the highest level we have is an executive level 2, that can be done at that level in those states.

CHAIR—Can you take on notice for me who were the officers who signed off on Ms Vivian Alvarez's deportation?

Mr Fleming—That would have predated the procedures that I was just talking about, but we can certainly include that in the on notice question.

Senator JOYCE—Do you believe that there is a different culture within DIMIA that is somehow disconnected from the minister?

CHAIR—I think you need to be careful about the nature of the questions that you ask public servants, as I alluded to in the opening statement.

Senator JOYCE—I will rephrase it then. Do you have a close working relationship with the minister, clearly understand what the minister says and what the requirement of the minister is? Is there is anything peculiar about DIMIA that would be different to any other department in the Commonwealth?

Mr Rizvi—My understanding would be that all departments would work closely with their ministers.

Senator JOYCE—I thought so too.

CHAIR—Thank you.

Committee adjourned at 10.34 pm