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SENATE
FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Tuesday, 6 September 2005

Members: Senator Hutchins (Chair), Senator Johnston (Deputy Chair), Senators Hogg, Nash and Stott Despoja

Substitute members: Senator Bartlett for Senator Stott Despoja


Senators in attendance: Senators Hogg, Hutchins, Johnston, Kirk, Ludwig, Nettle and Sterle

Terms of reference for the inquiry:

To inquire into and report on:

a) The response of Department of Immigration and Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade, Attorney-General’s Department and their respective Ministers to Mr Chen Yonglin’s approaches or requests to the Australian Government for asylum and/or a protection visa;

b) The application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visas by Department of Immigration and Multicultural and Indigenous Affairs, Department of Foreign Affairs and Trade and their respective Ministers;

c) The involvement of Department of Foreign Affairs and Trade and the Minister in the deportation, search and discovery of Vivian Solon, and;

d) any related matters.
WITNESSES

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Committee met at 4.18 pm

CHAIR (Senator Hutchins)—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today the committee will conduct its fourth public hearing into asylum and protection visas for consular officials and the deportation, search and discovery of Vivian Solon. The terms of reference were referred to the committee on 16 June 2005. The committee called for submissions by 8 July and is due to report to the Senate on the terms of reference relating to Ms Solon on 15 September 2005.

Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from action arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence before the committee. I remind witnesses 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, should you at any time wish to give any part of your evidence in private, you may ask to do so and the committee will consider your request.
[4.20 pm]

DANIELS, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Department of Immigration and Multicultural and Indigenous Affairs

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WILLIAMS, Mr Jim, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch, Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—I welcome officials from the Department of Immigration and Multicultural and Indigenous Affairs to the hearing. I invite you to make a brief opening statement which will be followed by questions from the committee.

Mr Rizvi—I thought it might be useful if I updated the committee on steps being taken to address the issues arising out of the Palmer report and out of our own examination of Ms Solon’s case. As you would be aware, in publicly releasing the Palmer report the government accepted the thrust of the report findings and recommendations. It accepted that mistakes had been made in respect of both Ms Solon and Ms Rau. Mr Palmer identified systemic weaknesses which contributed to the length of Ms Rau’s detention and failure to identify her identity and mental health needs. In his preliminary analysis Mr Palmer found the same systemic problems are involved in Ms Solon’s case. The government and the department have apologised to both Ms Rau and Ms Solon. The government has strengthened the role of the Ombudsman in respect of immigration matters. The Ombudsman’s inquiry into Ms Solon’s case is nearing finalisation. The final report is expected to be released publicly in late September or early October.

A range of initiatives have been introduced to address some of the systemic weaknesses identified by Mr Palmer. These include: creation of detention review manager positions in each state to review all cases of detention within 48 hours of the decision to detain and review of all ongoing detention cases; review by state and territory directors of all decisions to detain when a claim of Australian citizenship is made—this review is separate to the review by detention review managers mentioned above; and establishment of a national identity and verification and advice unit and formal escalation of identity matters to the unit within tight time frames. The
unit facilitates access to identification capabilities of other agencies, assessment of cases and advice on avenues of investigation to confirm a client’s identity. All decisions to remove unlawful noncitizens are now cleared by an SES officer. Improvements have been made to mental health services at Baxter and there is the establishment of a detention health task force to assist in implementing the government’s response to those parts of the Palmer report that go to the health care of detainees. Finally, there is a restructure of the border control and compliance and unauthorised arrivals and detention divisions to better focus on detention and compliance matters.

The government also accepted Mr Palmer’s recommendations for a wider rethinking of the way DIMIA handles its responsibilities in relation to compliance and detention. The government appointed a new executive team at DIMIA to drive the organisational change. A change management task force has been appointed to develop a full implementation plan, including timetable and costings, that will go to the minister later this month. Once considered by the government, the plan will be tabled in parliament. A further implementation report will be tabled in parliament 12 months after that.

On the first day in the job the new secretary of DIMIA issued an all-staff message on the changes that are needed. On 8 August the new secretary gave an all-staff briefing on the change agenda. He summarised these changes under three broad headings: a more open and accountable organisation; fair and reasonable dealings with clients; well-trained and supported staff. With your indulgence, Mr Chairman, I would like to provide the committee with a copy of these messages and briefings.

CHAIR—Thank you; that is appreciated. We have some questions that we would like answered so that we can complete what will form an interim report for the Senate next week. You may not be able to answer the questions now but it would be appreciated if you could, and if you could get answers back to us quickly. Can you advise us what the difference is between removal and deportation?

Mr Williams—Deportation is a term that is not used greatly under the Migration Act anymore since changes made in 1994. Deportation applies to people who are permanent residents of Australia who have committed a serious crime which carries a term of imprisonment of 12 months or more—or an aggregate of 12 months; I am not entirely sure of the details. Deportation can be ordered by a delegate in those cases. Removal really applies to all other cases. It is the term used in the act to apply to an unlawful noncitizen who overstays a visa, or an unauthorised arrival who arrives and who is being removed from the country. So deportation has a specific meaning relating to criminal deportees.

CHAIR—So someone has ‘deported’ stamped, figuratively, on their file? A few weeks ago a paedophile was deported to England. Was he deported?

Mr Williams—I am not sure, because—

CHAIR—Is that the sort of circumstance?
Mr Williams—It could be. There are some overlapping powers with people who have committed crimes, and sometimes people in that situation are removed also. A deportation order has to be signed and carried out.

CHAIR—And that clear difference between deportation and removal has been there since 1994?

Mr Williams—as I recall, yes.

CHAIR—So the question is: was Ms Solon removed or deported?

Mr Williams—Removed, as I understand it.

Ms Daniels—if I can add to Jim’s response: deportation is effected under section 200 of the act, which is the deportation power. That, in large measure, was overtaken by section 501, which deals with character provisions. So, as Mr Williams was saying, deportation is not an avenue of removal from Australia—or deportation from Australia—that is much used at the moment, because section 501, the character provisions, has overtaken it in large measure. But the answer remains that—

CHAIR—Ms Solon was not removed under the character provisions.

Ms Daniels—No. She was removed outside any character provisions.

CHAIR—who in DIMIA would have been advised that Ms Solon was being removed?

Ms Daniels—There is on record an email on 19 July 2001 from the Queensland office alerting a number of DIMIA officers—a couple in central office—that the removal was scheduled. That will be in the documents that you have received. If you would like those details, I am sure I can find them.

CHAIR—if you would not mind.

Ms Daniels—There was an email of 19 July 2001 to the then deputy secretary and branch head—

Mr Williams—the previous occupant of my position.

Ms Daniels—as I said, that is in the documents you have received and it outlines the history of the case and brings to the attention of those recipients the fact that the removal was taking place. The bottom line of that email says it is referred for information. It is forecasting the removal.

CHAIR—so the documentation to advise the deputy secretary was by email?

Ms Daniels—yes, it was.
CHAIR—Is that standard practice for removal?

Mr Williams—Yes, it is.

CHAIR—Is that still the practice for removal?

Mr Williams—Yes, it is still standard practice for a range of people in the department to be informed about removal by email. There are other procedures as well, but that is common.

CHAIR—What was the level of seniority of the officer who made the decision to remove Ms Solon?

Ms Daniels—Can I just correct something. I said the email was to the then deputy secretary. The person I am referring to would have been the division head rather than the deputy secretary.

CHAIR—So it was not the person who holds Mr Williams’s—

Ms Daniels—No. That was the second recipient of the email.

CHAIR—So it went to the division head as well as the deputy secretary?

Ms Daniels—No, the division head and the branch head, who would occupy the position that Mr Williams currently does.

CHAIR—I will go back. Who made the decision to remove Ms Solon from Australia?

Ms Daniels—I would need to check, but I suspect that the person who sent the email that I just referred to would have been the head of the compliance area in the Brisbane office at the time. That is not to say, though, that that person would have made the decision, so to speak, to remove Ms Alvarez Solon. The sequence of events that preceded the removal is documented on the file. I am not sure that I can explicitly say that a particular individual, to the extent that I know the records, actually took that decision to remove.

CHAIR—So it was not a single officer that would have made that decision? Or was it a single officer who communicates a decision?

Ms Daniels—It is a sequence of events. In this case, the sequence of events was that the person dealing with Ms Alvarez Solon determined that they were an unlawful noncitizen. In that case, there was a removal process that followed as a consequence of that. But I am not in a position to answer the question, if it is a legal one, as to the point at which a precise decision was made to remove her.

CHAIR—Would the manager of the head of compliance have advised the division head? Is that the sequence?

Ms Daniels—Yes, that is the email I am referring to on the 19th.
CHAIR—What was the level of the officer who would have advised the head of compliance that Ms Solon was going to be removed? Or are they the same people? Or is there a group of people who sit down in Brisbane, Sydney, Melbourne or wherever and make a decision that someone is an unlawful person here who needs to be removed?

Ms Daniels—The compliance officers involved in this case in the Southport office would have initially been involved in the assessment that the individual, in their view—

CHAIR—that is not the manager, is it?

Ms Daniels—the person who sent the email is, I am quite certain, from the Brisbane office where Ms Solon was transported after she had been discharged from the hospital, and the removal process took its effect from that point.

CHAIR—we have the division head and then we have the manager, compliance. Is the Brisbane office the Southport office—are they the same office?

Ms Daniels—No, they are not.

CHAIR—So the Southport office assessment officer was the one who made the decision to remove Ms Solon?

Ms Daniels—I need to check the record. Bear with me.

CHAIR—you can see where I am coming from, Ms Daniels.

Ms Daniels—I can.

CHAIR—I do not want to know names; I just want to know the level of officer that actually made the decision to remove Ms Solon, how it was communicated and then how it was effected.

Ms Daniels—if I have it correct, the officers who were dealing with her case from the Southport office would have been at about the APS5 or APS6 level. I will check.

Senator NETTLE—in the documents that you have given us, we have a form that looks like it refers to part of the Migration Act, in which a particular officer is down as the officer for the purposes of the Migration Act. They have filled in a form to say that they have a reasonable suspicion that Ms Alvarez is an unlawful noncitizen and a removable. We have a name on that form, which looks like it shows that they are the officer responsible for the decision. They reasonably suspect the person of being unlawful and they should be removed. Is that correct?

Ms Daniels—that would be reasonable. I would probably need to check on precisely what form that is. If you have a reference, Senator, we can find it quickly.

Senator NETTLE—which of the numbers in the top right-hand corner would you like me to read out? Is it S427A?

Ms Daniels—Bear with us.
Senator NETTLE—The name of that person is subsequently on another letter signed as being from the compliance section. I am trying not to say the name of the person. I am wondering whether locating that form helps us to answer the question that the chair was asking about the level of seniority of that person now?

Ms Daniels—My colleague had previously confirmed that the officers involved in dealing with the case at the Southport level would have been at the APS5 or APS6 level. I do not know whether you heard that.

Senator NETTLE—In the earlier email you were referring to, from the head of compliance in the Brisbane office and sent to the division head who subsequently became the deputy secretary—is that who we are talking about?

Ms Daniels—Yes.

Senator NETTLE—The officer who appears to have approved Ms Solon’s removal is cc’d in that email?

Ms Daniels—A different name?

Senator NETTLE—No. The form I have for ‘Unlawful citizen; should be removed’ is signed by somebody who is cc’d in the email you were just talking about.

Ms Daniels—Right. There are two forms I will refer to. They are quite similar. Mr Williams might be able to help me here. The number on the first form is AA92. This is a form signed on 13 July 2001, which is the day after Ms Alvarez Solon was discharged from hospital. To go back to Senator Hutchins’ question, this is one form which indicates that the person who has signed the form asks that a person be held as an unlawful noncitizen and then moves on to indicate that that person would subsequently be removed. That is the point at which Ms Alvarez Solon was discharged from hospital and came into immigration detention. The second form that you referred to in the first instance is, if I understand correctly, the ‘Direction to accompany and restrain’. That would be for the person taking Ms Alvarez Solon to the airport. It is an instruction from the Brisbane office for an officer to accompany her to the airport.

Senator NETTLE—Thanks for explaining that. I have only the second form. They both refer to defining that Vivian Solon was a suspected unlawful citizen.

Ms Daniels—Yes.

Senator NETTLE—To determine which officer made the decision that she was reasonably suspected of being an unlawful citizen, which of those two forms do we look at?

Ms Daniels—I might need to verify that I have this correct, but on the basis of the two forms in front of me I would say it is the first form dated 13 July, at which point Ms Alvarez Solon came into immigration detention. Prior to that she was holding a bridging visa and hence was not in immigration detention. It would be this form which provides the authority for her placement in immigration detention on the basis of the assessment that she is an unlawful noncitizen.
Senator NETTLE—Can you tell us the level of the person who signed that form?

Ms Daniels—An APS5, I am told. We might want to verify that.

Senator NETTLE—What about the other form—was that by an APS5 or 6?

Ms Daniels—I am not sure; I suspect it was a 5 or a 6 but we should take that on notice to make sure we are correct.

Senator LUDWIG—When they made the decision to remove, did they examine the file, particularly the file of the record of interview that was taken by the person who interviewed Ms Solon at the time and which also indicated that she was an Australian citizen? Did they review that file in detail or was it done remotely from that?

Ms Daniels—Are you asking: did they review the file?

Senator LUDWIG—Yes.

Ms Daniels—Obviously I cannot answer because—

Senator LUDWIG—Is it the normal procedure to do that? Are you required in terms of making a decision to remove someone from Australia to pull out the file, look at the file and see that you have got it right? It seems to me to be a simple question.

Mr Williams—The procedures at the time did call for a check list to be followed—that certain factors would be determined and resolved and removal would then follow. On a small technical issue, because of the way the act is structured, there is technically no decision to remove. Removal is a duty that an officer is required to carry out if a person is an unlawful noncitizen and they have not applied for a visa, or they have applied for one and it has been refused. The act is structured in such a way as to suggest there is a process that an officer must follow, and removal must occur if those factors are met. The policy at the time required that somebody tick off those factors.

Senator LUDWIG—So there is no person, when you go to remove, who then goes back, pulls open the file and has a quick check to make sure they have got it right?

Mr Williams—The policy at the time was—

Senator LUDWIG—No, that seems to be a simple question. Have I got it right? There is no person at that time who had the responsibility to look at the file to determine whether the person should or should not be removed—in other words, that all the i’s had been dotted and the t’s crossed?

Mr Williams—Are you talking about this particular case?

Senator LUDWIG—Yes. I am not talking about any others. We can get to those later, I guess.
Mr Williams—I am answering that there is a process that was required to be followed under the policy that those factors be determined and removal occur once those factors had been decided. Whether it occurred in this case, I do not know.

Senator LUDWIG—So you do not know. Have you checked to see whether it did occur?

Mr Williams—I have not.

Senator LUDWIG—Has anyone from the department?

Mr Rizvi—I guess that goes back to the core of the question that has arisen in the correspondence between the chair and the minister—that in this particular case the matter has been referred to Mr Comrie, who is working under the aegis of the Ombudsman. Within that inquiry, we have cooperated fully with Mr Comrie and the work that he has been doing. In that context Mr Comrie has interviewed all of these people and would have, I imagine, asked the specific questions that you are referring to. As this matter was being examined by Mr Comrie, it was made clear to us that we should not duplicate what he was doing or in any way impinge on what he was doing. As a result, we have not interviewed the individual staff concerned.

Senator LUDWIG—All right. I will come back to that. I think we have had the discussion about how you then deal with planning in future when you do not know exactly what happened in the immediate past.

CHAIR—with respect to the decision to remove Ms Solon, Mr Williams, you were talking about a process—I am not sure whether you used these exact words—of the facts being satisfied. Is that decision to remove made by a single officer or is it made by a number of officers? In this case was it made by a single officer or more than one?

Mr Williams—It would normally be discharged by a single officer, I would imagine.

CHAIR—Was it done in this case?

Ms Daniels—There were a number of officers involved in dealing with Ms Alvarez during April, May, June. You will have papers relating to interviews that were held with her. At the point that she came into immigration detention, which is represented by the form that I detailed a minute ago, it would appear—on the basis of that form—that one officer made an instruction to an ACM officer to hold this person in immigration detention. So that is probably the answer to the question about whether it is one officer or multiple officers who make that decision. This form would represent that person’s decision that this person is an unlawful noncitizen, and it authorises an ACM officer to hold that person in detention.

CHAIR—So it was a single officer who made the decision, expecting, as Mr Williams said, that the facts were met to effect the removal.

Ms Daniels—that the sequence of events led to a removal, yes.

CHAIR—Is the sequence of events the same as the facts?
Mr Williams—Yes. To meet the requirement under the Migration Act, the person needed to be an unlawful noncitizen and have no visa application that had not been determined. Those sorts of facts need to be determined and, under the way the act has been structured since 1994, removal is then a duty.

CHAIR—A duty of that particular—

Mr Williams—A duty of an officer, and carried out, I guess, collectively by the agency.

CHAIR—What was the level of seniority of the officer who made the connection that Ms Alvarez and Ms Solon were the same person?

Ms Daniels—in 2003? There were a number of players involved again. One of those people was a very junior officer, at the APS2 level, and other officers would have been at the APS5 or 6 level.

CHAIR—So the APS2 saw the connection and then he or she advised the APS5 or 6?

Ms Daniels—I think that would go back to Mr Rizvi’s question. I am afraid I cannot say what those individuals did with the information, but the sequence of events that is represented by the system access log would indicate that a number of players quickly became involved in accessing the system and became aware of the situation.

CHAIR—Did the APS5 and 6 have titles? I am not all that familiar with the acronyms for—

Ms Daniels—I would be surprised. We would have to check whether the APS5 or 6 would have a title. They may have, but I would be surprised. We can check, if that is helpful.

CHAIR—What I am gathering, Ms Daniels—and Mr Rizvi may intervene—is that this is subject to the Comrie inquiry.

Ms Daniels—The discussions with those individuals are, yes.

CHAIR—So the APS2 did report his or her concerns up the ladder that Ms Solon and Ms Alvarez were the same person?

Mr Rizvi—I think what Ms Daniels is trying to say is that, on the basis of the documentation that we have, we can identify those individuals who accessed the records. We can identify those and we can see when they accessed the records et cetera. What we are unable to do at this stage is to advise you what interactions took place between those individuals when they became aware of this information and to what level they escalated the knowledge that they had acquired from accessing this material. Those are the questions that I think Mr Comrie has actually been interviewing these staff in relation to.

CHAIR—The email structure that you mentioned earlier seems to be—as I think you said, Ms Daniels, or Mr Williams; I cannot recall—an accepted document or form of communication. So did the APS2, whoever he or she is, email someone to say that they thought Ms Solon and Ms Alvarez were the same person?
Ms Daniels—There is no record of that having happened on the file records that we have.

CHAIR—Did they write to someone to advise that she was the same person?

Ms Daniels—Again, there is no record. However, when that request came through in July 2003 from the Queensland missing persons bureau, there is evidence from the access log systems that there were extensive checks of various systems during July-August by various people that then preceded the advice back to the Queensland missing persons bureau in August.

CHAIR—As I understand it, there is no record of the request by the Queensland police.

Ms Daniels—There is a record.

CHAIR—That they were seeking to locate Ms Solon?

Ms Daniels—Yes.

CHAIR—Is that when the APS2 put together Solon and Alvarez?

Ms Daniels—Yes. On 14 July 2003, a request came from the Queensland missing persons bureau requesting information and records about Vivian Solon, also known as Cook, also known as Young, because she had been reported as missing and there had been a four-year-old child who remained uncollected from the child-care centre at Brisbane. It was as a consequence of that request that came to central office, as distinct from Brisbane, that these extensive system checks were done quite rapidly and the connection was made, as we have said previously to the committee, very rapidly at that point involving the officers we just referred to.

CHAIR—Central office is where, again?

Ms Daniels—Here, in Belconnen.

CHAIR—So it was an APS2 in Canberra who uncovered—

Ms Daniels—that was one of the players involved in the searches at that time.

CHAIR—So there is no record of communication between various levels highlighting the fact that this could be the case?

Ms Daniels—There is a fair quantity of paperwork that was generated as a consequence of that request, all of which the committee has. But between the arrival of that request in central office in Canberra and the response to the Queensland missing persons bureau the subsequent month, there obviously were extensive file searches; there were screen dumps from various systems, which are on record; and there were requests for files from Canberra to Brisbane. As a consequence of that, in August 2003 the response went back to Queensland missing persons indicating that yes, they were one and the same person.

CHAIR—DFAT has on record—we have correspondence dated 9 September 2003—a suggestion that a DFAT officer contacted DIMIA officers to ascertain whether Grace Olajay
worked for them and, further, whether they remember a case along the lines of details given about an Australian citizen called Vivian Alvarez Solon/Cook/Young, who was removed from Australia by DIMIA representatives who did not realise at the time that she was actually an Australian citizen. Did DFAT in fact follow up the suggestion?

Ms Daniels—I probably missed that. I understand the context of the email.

CHAIR—DFAT has on record—dated 9 September 2003—a suggestion that a DFAT officer contacted DIMIA officers seeking to find out whether a Grace Olajay worked for them and, further, whether they remembered a case of an Australian citizen called Vivian Alvaraz Solon Young who was removed from Australia by DIMIA representatives who, at the time, did not realise she was an Australian citizen. My question is: did DFAT follow up this suggestion?

Ms Daniels—The sequence of events at that point was, as I understand it, that DFAT had received an inquiry from the Queensland police asking if they could check on the details of Ms Olajay. The context of that request to DFAT was as you have just outlined. DFAT communicated with their colleagues in Manila. The embassy in Manila subsequently were able to confirm that Ms Olajay was not an embassy employee but rather an employee of the Overseas Workers Welfare Administration. DFAT Manila received advice back saying that Ms Olajay was not from the embassy, that they were able to speak to her, that she did not remember the incident, and that they would need to go to the main office of the Overseas Workers Welfare Administration to get more information if that was requested. That information, as I understand it, was passed back to Queensland police.

CHAIR—Did DIMIA get any further information from those sources?

Ms Daniels—We do not have any records that DIMIA was involved in that exchange. That is not to say that they were not, but we do not have records that that happened.

CHAIR—Did a DIMIA officer get contacted by DFAT?

Ms Daniels—On the papers that I have in front of me, there is no evidence that a DIMIA officer was part of that exchange.

CHAIR—At what point did DIMIA assume responsibility for the welfare of Ms Solon, and at what point did this responsibility end? This is going back to 2001. She was in the correctional centre when she got the removal order, wasn’t she?

Ms Daniels—She was discharged from the hospital; she spent one night in Silverwater accommodation, which I think is a women’s refuge; she came into detention on 13 July and I would say that, at that point, she became the responsibility of DIMIA and remained so until she was removed.

Mr Williams—She was technically detained by Immigration but not held in an immigration detention centre or, as I understand it, a prison—

Ms Daniels—No, she was held at the motel in Brisbane for the week prior to her removal.
CHAIR—She was held in the motel?

Ms Daniels—Yes.

CHAIR—I was just looking at the removal documents and it looks like they were made out to someone who seems to be a correctional centre officer or something like that.

Ms Daniels—Yes. That document that I just had is addressed to an officer of Australian Correctional Management, who would have had responsibility to hold her at the motel after she had been taken into immigration detention.

Senator KIRK—So she was technically held in immigration detention under the guard of the ACM.

Ms Daniels—Yes.

Senator KIRK—And that was for a week.

Ms Daniels—From the 13th to the 20th. Prior to that, while she was in hospital, from the time that our officers met with her early in May, there was a series of bridging visas granted to her on the basis that she was suspected to be an unlawful noncitizen. So to keep her lawfully in the community in the hospital, these bridging visas were granted to her and then, on the 13th, she became an immigration detainee.

Senator NETTLE—I refer to the second of the two forms we were talking about before—the one that was signed to say she was reasonably suspected of being an unlawful citizen. Do you know which one we are talking about?

Ms Daniels—Yes.

Senator NETTLE—It is addressed to the officer in charge of the Arthur Gorrie Correctional Centre. Why is that?

Mr Williams—I do not know the details of the case, but the company that DIMIA uses to provide escort and detention services in Queensland is headquartered at Arthur Gorrie Correctional Centre. I imagine this request was directed to the officer in charge of that centre because his or her staff would have been providing the escort services. The person would not have been detained in that centre, but staff from that centre would have been involved in the detention and escort services that DIMIA contracted.

Senator NETTLE—Are you talking about ACM?

Mr Williams—Yes.

Senator NETTLE—Are you saying that ACM were based at Arthur Gorrie?

Mr Williams—That is right. They operate Arthur Gorrie and DIMIA had a contractual relationship with them at the time, and ACM staff provided services for detention and escorts.
That is where they were administratively based, and I imagine that is why the order was directed to the correctional centre.

**Ms Daniels**—The arrangements were made on the same day, 13 July, for a booking for a single room at the motel on the ground floor level because of Ms Alvarez Solon’s situation. As Mr Williams explained, the guarding services, so to speak, would have been provided by the provider that he mentioned—ACM.

**CHAIR**—Was she in the hands of the police and the hospital system from the time that Lismore hospital contacted DIMIA and said that there was this possible illegal person until 13 July? Is that correct?

**Ms Daniels**—I cannot say that she was in the hands of the police because I have no evidence of that. From, I think, 2 or 3 May when the hospital first contacted DIMIA, we were aware of the existence of Ms Alvarez Solon. We had interactions with her and the various interviews that we have spoken about. Let me repeat for clarity: from the point when she was discharged from hospital, she then became an immigration detainee because her bridging visa had ceased and hence the removal process commenced.

**CHAIR**—She was still given bridging visas until 13 July. Is that correct?

**Ms Daniels**—Yes.

**CHAIR**—Was she still under detention?

**Ms Daniels**—No. She was hospitalised and, from our perspective, lawfully in the community on the basis of her holding a bridging visa, which gives her lawful status.

**CHAIR**—Could she have walked out of hospital, if she were able to?

**Ms Daniels**—Certainly.

**CHAIR**—Was anyone from immigration or the police involved?

**Ms Daniels**—No, there would have been no basis for that.

**CHAIR**—Until 13 July when she was put into this motel, you said there were escort services keeping her under scrutiny.

**Ms Daniels**—They are guarding services.

**CHAIR**—Was there a guard on the door?

**Ms Daniels**—I am not sure whether they are actually at the door, but they are there because of the fact that the person is in immigration detention.
Mr Williams—In order to maintain detention, the act requires that they be in proximity to the person who is being detained.

CHAIR—I assume they probably would have been at the front door.

Mr Williams—I have no idea, but they would have been in the proximity.

CHAIR—Were they there 24 hours a day?

Mr Williams—That would normally be the case.

CHAIR—Did your responsibility end when she was put on the plane or when she was taken off the plane in Manila?

Mr Williams—It is a little bit of a grey area, I guess, but detention would probably have formally ceased when the person left Australia. Whether that is when the aircraft was pushed back or whether it was when the aircraft left Australian airspace is a question for the lawyers. But detention would probably have formally ceased at that point. But, as I understand it, in this case and in many other cases, the person concerned was escorted—accompanied—by an officer contracted or arranged by DIMIA. So there is a responsibility for that person until they arrive at the destination country. So whether there is technically a detention occurring at that time is a legal question, but there is a responsibility.

Senator Hogg—When they arrive at the destination, what authority does that officer have in law?

Mr Williams—No legal authority. Whilst the aircraft is in transit, the escorting officer derives authority from the pilot of the aircraft, who is responsible for safety on board. In most cases, as a matter of practice, the pilot is informed about the presence on board of a removee. On arrival at the country of destination, the person is just another passenger disembarking. They may be accompanied through processes for administrative convenience or assistance, or they may not. It depends on the country concerned and the airport and its layout and configuration and things.

Senator Kirk—I just wanted to go back a step to the period during which Ms Alvarez was being held by DIMIA between 13 and 20 July. We understand that she was being held in a hotel under the supervision of ACM. What services, if any, did she receive during that period? I am concerned mainly about whether or not there was any offer made or taken up of psychological or psychiatric assistance to Ms Solon.

Ms Daniels—From the records that we have on file, and they are limited to that, we can ascertain that the request was made, as I said before, for a ground floor unit.

Senator Kirk—She made that request herself?

Ms Daniels—I do not know whether she requested it, but the people arranging the accommodation in the hotel—

CHAIR—Was that because of her injuries?
Ms Daniels—It was because of her situation, yes—her limited mobility.

Senator KIRK—Going back a step again, who requested that she be held in the hotel?

Ms Daniels—We have again on the file record—this is on 12 July, before the detention actually took effect—that she was walking with a walking frame and was not taking any medication. It said that it would be the preference for her to be accommodated at Villawood—this was thinking that they might move the person down to Sydney. They made an assessment that the Brisbane Women’s Correctional Centre was not considered appropriate for her, presumably on the basis of her situation. Hence the decision was made to accommodate her at the hotel. Have I answered your question, Senator Kirk?

Senator KIRK—I think you have given me more information, which has probably confused me even more. She was actually in Queensland at this point—is that correct?

Ms Daniels—Yes. I have a note here, which may be more helpful, from 13 July, which said: ‘It would be appreciated on this occasion’—this is us communicating with the airport motel—‘if you could provide her a ground floor room as she has limited mobility and experiences difficulty using stairs.’ That was the arrangement for accommodation. Meals were provided to her and the escort.

Senator KIRK—And this was the airport motel just outside Brisbane?

Ms Daniels—Just outside the airport.

Senator KIRK—Going back to the question I asked, did she receive any psychological or psychiatric assistance?

Ms Daniels—I was starting that, yes. We have records that she was accommodated and that meals were provided for her and the escort. There is no record that I am aware of that there was a question that counselling services were provided to her. We spoke last time about the medical assessment by Dr Wynn.

Senator KIRK—And that occurred during that period between the 13th and the 20th?

Ms Daniels—Yes.

CHAIR—Can I ask two questions. First, when you advise the airline that someone is being removed, what do they put into effect? Do they put into effect anything that is different from what there is for other passengers travelling? Do they put them in a special part of the plane up the back?

Mr Williams—It really depends on the passenger and the profile of risk that the person might present to the airline. They rely on DIMIA to provide them with an assessment of the risk as we know it—the person’s background, whether they have a criminal record, whether they have been detained, whether there are indications from the time they were detained that there is a risk of violence and whether there are any other factors that we know of, such as medical issues or drug
use. That is then put to the airline. Usually an escort arrangement is agreed—if there is a need for an escort—between DIMIA and the airline, and DIMIA usually meets the cost of that.

CHAIR—In the documents that you have provided us, is there any risk assessment of Ms Solon that you gave to the airline? What airline was it?

Ms Daniels—No, we do not have papers to that effect on file. There is a record, though—and this is in the email to the division head that we mentioned previously—that the provision of an escort in this case was to assist with her travel, not because of her demeanour. So I would deduce from that that there was no assessment that she was at risk. It was rather to facilitate her travel, given her circumstances, that the escort was provided.

CHAIR—Is the fact that she was still immobile the reason the escort was given?

Ms Daniels—Because of her assessment details.

Mr Williams—This is the standard form that airlines—

CHAIR—So you have the Solon form there?

Mr Williams—There is a form here. A risk assessment is a standard form that is required for the airline at the time.

CHAIR—Is that the one for Vivian?

Mr Williams—I believe so.

CHAIR—Could we be given a copy?

Ms Daniels—You will have it on your records, but we can certainly give you a copy now.

CHAIR—So the assessment is that she is not a risk in terms of danger but she is immobile. And it was a Queensland police officer who was sent with her—is that correct?

Ms Daniels—Yes.

CHAIR—Would she have had medical training to deal with some of the problems?

Ms Daniels—Not that I am aware of.

CHAIR—I am assuming that she probably had no psychological or psychiatric training either.

Ms Daniels—I do not think we have anything on the escort.

CHAIR—Also, why was it seven days once the detention had taken effect? Is there a reason it was seven days?
Ms Daniels—I cannot comment specifically on this case. However, it would be a question of time to organise a travel document and to make arrangements, such as flight details. That presumably might take this length of time.

CHAIR—Is a police escort usual?

Mr Williams—It is usual. There is some legislation covering the carriage of persons in custody that is administered by the Department of Transport and Regional Services. My recollection of the legislation at the time—and this comes from the international convention on air travel—is that it is a police type person. That is how it is described in the convention. That usually follows through as practice.

CHAIR—So that is in the convention. Fair enough. I will move on. Ms Solon had been involved in what could have been called a serious assault or road accident. Did DIMIA pursue this matter with the relevant police authorities when they were advised by Lismore hospital what had happened to her?

Ms Daniels—There is no record of that on the file.

CHAIR—So the action DIMIA took was to see whether or not she was legally here.

Ms Daniels—The interviews that are on record as having taken place were seeking to assess her arrival circumstances and her situation, and to make an assessment as to whether she was or was not entitled to stay in Australia.

Senator KIRK—And that took place between 3 May and 12 July?

Ms Daniels—Yes. I am not sure whether that final interview was on 12 or 13 July.

Senator KIRK—So she was taken into what was effectively detention on 12 or 13 July?

Ms Daniels—Yes.

Senator KIRK—So it was at that point that DIMIA essentially assumed responsibility for her care?

Ms Daniels—Yes.

Senator KIRK—At that point, I assume, Ms Solon was advised of the fact that she was an unlawful noncitizen and was facing deportation. What in the way of advice was given to Ms Solon in relation to her legal rights? At that point—one a person has been advised that they are in fact unlawful and they are going to be removed—are they told, ‘You have a right to obtain legal advice’? I am wondering what the process is.

Ms Daniels—A person taken into immigration detention would normally—and I cannot say that this has happened in this case, or that we have no record that it happened in this case—be given a piece of information which we call a ‘very important notice’, a VIN, which explains the detention that they are about to enter and, amongst other things, would tell them that they have
the right to access consular officials. I cannot remember what the specific words are in respect of access to legal services, but the document is intended to tell people about their situation and their rights within that context.

Senator KIRK—So they are given effectively a piece of paper, or a document?

Ms Daniels—Yes; it is a several-page document.

Senator KIRK—Is that written in English? Is it also available in other languages?

Ms Daniels—It is available in multiple languages—I think it is 18 or 19, but we would have to check on that.

Senator KIRK—Would you not have a record of whether or not she had been provided with that? Would you not want to ensure, from the department’s point of view, that you had covered all your bases, so to speak?

Ms Daniels—What you are saying is reasonable, but there is no record on the file to confirm or otherwise that that information was provided.

Senator KIRK—So the answer to my question is, ‘We don’t know whether or not she was advised that she was entitled to seek legal advice’?

Ms Daniels—Yes—we do not know.

Senator NETTLE—We were talking before about the ACM officers at the airport, and Senator Hutchins was talking about whether or not they were outside the door. I note that one of the documents that you provided for us is a ‘possible question tips for Senate estimates’ document. In that document, there is a series of questions about Ms Alvarez suffering fits or seizures whilst in the care of DIMIA. In the answer to that there is a file note recording that there had been no medical queries brought to the attention of ACM staff, and it looks like it says, ‘One officer in regular attendance had a nursing background.’ I read from that that if you are looking to this ACM person to provide you with advice about whether or not she had had a fit then presumably they were in the room with her, rather than at the door, as Senator Hutchins put to you previously.

Mr Williams—I do not know what the documents show, but I do not imagine that there is any real way of telling. I would imagine that they would have had constant interaction during the day, because the detaining staff would have been required to be in proximity and to have a line of sight, or at least be satisfied that the person was in their care and control.

CHAIR—They would give a report to the Brisbane office or the central office, would they not, saying—

Mr Williams—They may do, but—

CHAIR—that they had checked that she was there at 2.15 pm and again there at 5.15 pm?
Mr Williams—That is common practice in centres. In this setting it may not have been adopted—I do not know.

CHAIR—I am assuming that this airport motel is where a number of people who are to be removed sometimes stay. Would you have an arrangement with this motel that that is where they stay, or is there a series of hotels?

Mr Williams—Hotels and motels are used fairly commonly, and I have heard of this one being used from time to time.

Senator NETTLE—Mr Williams, when you were talking before—I think it was in relation to this document about risk assessment for the airline—you were talking about drug use. Were you referring to personal drug use or chemical restraint?

Mr Williams—I do not understand your question.

Senator NETTLE—You were talking about the risk assessment that you provide for the airlines when somebody is being deported, and, among a number of things that you mentioned, you mentioned drug use. Do you want to expand on ‘drug use’? Does that relate to personal drug use—addiction to illegal substances—or does it relate to any drugs that the person may be on as a result of chemical restraint?

Mr Williams—What I was intending to refer to was that the airline may be interested in knowing whether the person has a history of drug use, which might be relevant to whether or not the person poses a threat to the aircraft or its safety whilst in flight. I think in the past we have made clear that Australian government policy is that chemical restraint is not used—medication is not used—as a means of restraint in relation to detention or removal.

Senator NETTLE—Yes, I have heard you say that before. I will move to another question. In your tips for answering Senate estimates questions, there is the question: when did DIMIA know that they were dealing with or had deported an Australian citizen? The answer that is provided there is: July or August 2003. We have the documents that refer to the wiping of the debt for Ms Alvarez. I am trying to understand—and we have talked about this a little bit before—why the debt was wiped. Was there any suggestion that you may have been dealing with an Australian citizen at the time the debt was wiped?

Ms Daniels—According to our records, there is no suggestion of that. When we raised this last time, we mentioned to you that, at the point that those debts were waived—and I am not sure whether that is the technical term—there were some 10 cases in that minute that went to the officer authorised to progress the waiving of the debts for that to happen. So Ms Alvarez was one of 10 people whose debts were in question.

Senator NETTLE—In the documentation that you have provided to us that relates to that debt, the person who appears to be signing off for the writing off of the debt—that is the terminology here—is the manager of the investigations and enforcement section. That name is the same name as that of the person who authored the email that you were talking about previously—to the divisional head at the time.
Ms Daniels—Yes. That is right.

Senator NETTLE—Does that seem correct—that the person who is wiping off the debt is the same person that was telling the later deputy secretary of the department what was going on with the removal of Vivian Alvarez?

Ms Daniels—that would seem to me quite reasonable—that the person who has responsibility for the compliance and investigations area would advise people in central office that something was about to happen and would then follow the process through. They would have been receiving a submission from their officers and they would then proceed to start the process of writing off the debt.

Senator NETTLE—I was just trying to check that we were talking about the same people, because you were describing the author of that previous email as the head of the compliance area in Brisbane, and with regard to the writing off of the debt they are the manager of the investigations and enforcement section.

Ms Daniels—I am not sure of the correct title that that person held, but it is one and the same person. I know that.

Senator NETTLE—I want to ask about the organisation of the arrangements for Ms Alvarez in Manila. The last time DFAT appeared before the committee, we asked them about any involvement they might have had in organising arrangements for Ms Alvarez at the time she arrived in Manila. The Hansard indicates that they said that they were not involved in that process. Going to your ‘Tips for answering Senate estimates questions’, regarding the involvement of DIMIA it talks about initiating inquiries to arrange assistance during the week that she was in DIMIA’s care. It refers to another document, which the committee also has, where DIMIA is in contact with a centre for multicultural care—a community group. This is something that, for me certainly, has been unclear in the series of questions we have been asking. At the moment, we have DFAT saying, ‘We weren’t involved,’ and all I know about DIMIA’s involvement is that answer that is written there. Is there any more information that you can provide to clarify DIMIA’s role in care arrangements for Ms Alvarez when she reached Manila?

Ms Daniels—I do not think I can provide any more than what you already have. I can say that it is clear that there was concern for her wellbeing during that week and that, in the context of the document you are quoting now, there were various interactions with social workers—

Senator NETTLE—What is unclear to me in reading that document is who had responsibility for organising arrangements for her.

Ms Daniels—For her reception?

Senator NETTLE—Yes, and for her care in Manila. There are comments that indicate it was a social worker that organised those arrangements with the Catholic nun. Was DIMIA tasked with the responsibility to ensure that they or somebody else found appropriate care arrangements for Ms Alvarez in Manila? Who had responsibility for that?
Ms Daniels—Okay. It is not simple by any means. The file note relating to the request from the DIMIA person in Manila on 20 July might encapsulate what happened during that week. We looked at it last time.

Senator NETTLE—I think I have that in front of me. Does it have a list of three questions at the top? Is that the one?

Ms Daniels—It is three questions that were asked by the PMOC in Manila.

Senator NETTLE—Yes, I have that.

Ms Daniels—The answer says that a social worker in Australia had arranged for assistance as necessary. Hence there was no further requirement for embassy staff to assist. It could be, but I am speculating, that during that week various avenues of assistance were pursued and that, at some point, there was a belief that the arrangements had been made by the social worker. I am just speculating on that. I cannot give you any firm answer to your question, because what happened during that week is confused.

Senator NETTLE—Yes. I am confused. Can we go back to that issue of responsibility. I agree we have this document that says a social worker organised for a Catholic nun to meet them. Did DIMIA arrange for that social worker to organise that? I am just trying to work out who had responsibility for arranging her care.

Ms Daniels—My reading of the records for that week is that DIMIA was looking for the provision of services to Ms Alvarez Solon on arrival. There is an email to one of DIMIA’s staff earlier in the week alerting DIMIA staff in Manila—although it does say DFAT, it is the email address for a DIMIA staff member. It is DIMIA Brisbane talking to DIMIA Manila, indicating that Ms Alvarez Solon was in a difficult situation. I have just come across it here: they say they would be, ‘enormously grateful if you could make inquiries about services that might be able to assist her on her return.’ This was on 16 July. This is from DIMIA Brisbane to DIMIA Manila. As the week wore on, there were discussions with other players—social workers. A nun visited—that may well be the social worker, I do not know—Ms Alvarez in the motel, and from that point it does become confused as to who took the arrangements further. In that sense, Senator, I cannot really answer your question as to who took responsibility for making those arrangements because the responsibility may well have shifted during that week. Mr Williams might have a more authoritative view on what happens now—what could have happened or should have happened in terms of making reception arrangements.

Senator NETTLE—Just before we get to that: I understand you are saying that you cannot tell me who had responsibility after that week, but can you—and you have referred me to the email about DIMIA seeking to get care—tell me whether, before that time, DIMIA had that responsibility or took that responsibility?

Ms Daniels—It would be part of the removal process that would lead to our assessment as to whether there would or would not be some form of reception arrangement. Again I probably need to go to Mr Williams.
Mr Williams—DIMIA is carrying out the removal, so it is obviously important that DIMIA be satisfied that some arrangements are in place, where that is necessary. It is often not, but in this case it obviously was. If the officers were satisfied that another agency was capably handling that, then it might be that you would bow out of the actual arrangements. But, in a case where there was a need for some sort of on-arrival support, DIMIA would need to at least kick that off—make that happen in the initial stages.

Senator NETTLE—It would seem, from what both of you are saying, that that would be part of DIMIA’s responsibility but that responsibility might subsequently be carried out by another department overall.

Mr Williams—if it is being satisfactorily discharged by somebody else or another agency, then that is usually satisfactory from our perspective.

Senator NETTLE—We have asked before in this committee about processes for ensuring that a deportation like the deportation of Vivian Solon does not occur again. I want to ask about the recent attempted deportation of a particular asylum seeker. Can you describe for us what processes have been put in place, as a result of Vivian Solon, to ensure that any future deportation—and that would include the deportation that I am talking about—occurs in the appropriate manner?

Mr Williams—Can you give me some more information about which case you are talking about?

Senator NETTLE—Yes. A Palestinian asylum seeker deported on Wednesday of last week spent three days in Dubai and is now in Villawood detention centre.

Mr Williams—I can give you some information about that. That case is quite different to the case of Vivian Solon. There was no issue about identity, for example. Nor was there a dispute or an issue about whether the person was in Australia unlawfully. The person concerned was an unauthorised boat arrival, I think, and as is common in those cases his entry was observed. He was amongst others who were intercepted, by DIMIA or other agencies, entering the country unlawfully. So those two issues are quite different.

Senator NETTLE—I agree there are two different issues about the circumstances of the people. What I am trying to understand is the process by which somebody is deported. In the opening statement, there was a comment that all decisions to remove people are now approved by an SES officer. I agree that there are different circumstances, but I am trying to understand any process that has been put in place as a result of Solon and how that may have impacted on the deportation. The case that I am asking about is an example of a deportation which was carried out and obviously subsequently it was decided that it was not appropriate to be doing that deportation, which is why the person is back in Villawood. So people looking at it from the outside might ask, ‘Was that a case of a wrongful deportation of somebody, because they have subsequently come back?’ That is why I am putting it into the same category, because people will look at it and ask, ‘Is that a wrongful deportation?’ Tell me what processes you have put in place to ensure you do not have wrongful deportations. I am asking around the example of this other one, which also looks as though it could be a case of a wrongful deportation.
Mr Williams—Perhaps my colleague in the refugee division can add something, but I will just talk about the process by which removal is supervised now, since the Palmer inquiry and other things.

Senator NETTLE—Sure.

Mr Williams—Procedures have changed and are different.

CHAIR—Would we be able to get a copy of the new procedures?

Mr Williams—Yes, I can give you something.

CHAIR—Are they in this brightly coloured folder?

Mr Williams—No. I can give you a document that is a pretty good summary. It is a minute that has been sent to the operational areas of the department by the deputy secretary, setting out a number of arrangements, including a draft new instruction for removal which is still a work in progress but which has been sent to officers as an interim guide to improved processes.

CHAIR—if we could have that, we would appreciate it.

Mr Williams—I ask the committee to bear in mind that there is more work to do on that document. There are a number of issues. Where there are identity issues, for example, we have a process by which the department places much greater focus on trying to establish the identity of individuals who are coming to notice. Such cases need to be reviewed by a senior officer in the compliance area within a very short period of time and, if there is an identity issue, referred to the national identity verification assessment unit in Canberra for detailed work on trying to establish identity.

There is also the network of detention review managers that Mr Rizvi referred to at the beginning. They are required to supervise decisions to detain and decisions to refer identity issues off to the necessary area to ensure that we have somebody else at a senior level overseeing those sorts of decisions being made in the field. When a case gets to removal stage, the deputy secretary has directed that an SES officer needs to be satisfied that the removal power exists and needs to be exercised. As I mentioned before, under the way the act has been structured for the last 10 years or so, there is no formal decision to remove, but there are a number of facts that need to be established, and an SES officer now needs to sign that off.

In a case like the one you are referring to, the key things are these. Has the person’s identity been established? Is the person an unlawful noncitizen? Are there any visa processes in force that would prevent removal? In this case, there were not. Are there any litigation processes in force that would prevent removal—such as court injunctions? In this case, there was a court injunction, but not one that was communicated to the department until after the person had left. But the department was able to ensure that that matter was heard whilst that person was in transit and the matter was eventually withdrawn by the person concerned.

Senator NETTLE—Yes, because they had been deported.
Mr Williams—No. The department agreed with the court that onward travel would be held up until the court was satisfied or the orders were either discharged or continued. The department went to great lengths to make sure that the person was able to be accommodated in transit before reaching their final destination, so that that court process could be resolved.

Senator NETTLE—I understand a court process occurring in a domestic Australian court about trying to stop somebody from being deported. You can understand the circumstance where lawyers decide not to proceed with that when the person is in Dubai.

Mr Williams—that may or may not be the case. I do not know. But certainly the department, in good faith, sought to ensure that we were represented in court, that we were able to put arguments relevant to the court’s decision and that the removal was not fully completed until the court was satisfied.

Senator NETTLE—What about at the time the injunction was granted? I understand that went to the Federal Court at six o’clock and that the person was deported on a 7.10 flight out of Sydney. As you said, the department was not aware of the injunction that had been granted by the court until after the person had already left Australia.

Mr Williams—the department was not aware. The department was not notified. The department was not asked to be present. The department did not become aware of it until an hour after the person had left.

Senator NETTLE—My question was going to be this: what did the department do to ensure that they were able to receive a decision about an injunction that had occurred?

Mr Williams—the department has 24-hour operations and is available. We need to be notified. We need to be told that a court case is ongoing. We were not, for two hours.

Senator NETTLE—Can I go back to what you were describing before about an SES officer checking that the process was okay for the removal. You went through the checks about that, and we were up to the one about court cases. Is one of those checks about whether there has been—in this case—any communications or agreement reached by the Australian government in relation to actions occurring at the United Nations? The United Nations Human Rights Committee, in this case, had an interim request that the person not be deported. Is that one of the checks that that SES officer has to make to check that the process has been followed properly before someone is deported?

Mr Williams—Yes, that would be something that the officer concerned would have to be satisfied about, and they would have to be sure that the government process required to respond to that committee had been discharged.

Senator NETTLE—Do you know the circumstances in this case?

Mr Williams—that occurred in this case.

Senator NETTLE—Can you explain to me how the SES officer was satisfied that the department or the government had responded appropriately to that interim request from the UN?
Mr Williams—Maybe I could ask my colleague to respond.

Mr Illingworth—Very close attention is paid to cases where individuals lodge complaints to the voluntary complaints mechanisms under the ICCPR and the convention against torture. In this case, a complaint had been made to the Human Rights Committee. In relation to the complaints, that mechanism is a voluntary mechanism. There is nothing in the views expressed by the committee as a result of those complaints or requests made by those committees to states party to the protocol regarding the treatment or handling of individuals while they make their views known which is binding on the states. Nonetheless, we look at each individual case. In this case, after a considerable period of time, the view was taken that the request was unwarranted and that there was no impediment to removal. That was a view which was formulated before the departure was arranged.

Senator NETTLE—Are you aware of any other circumstances where an interim request for a person not to be deported has not been complied with?

Mr Illingworth—I am not sure whether this is the only instance, but it is a recent occurrence. I could not say that it is the only occurrence.

Senator NETTLE—Could you take it on notice to find out whether there has been any other occasion on which that has not occurred. I absolutely understand that these are voluntary. It is the nature of international human rights law. But Mr Williams said that the checks before somebody is deported include this. Why do you bother putting it there as a check if the government’s intention is to completely ignore it anyway?

Mr Illingworth—These issues are dealt with on a case-by-case basis. Each case will have its own circumstances and its own merits. There are other Human Rights Committee and Committee against Torture complaints which are raised from time to time in relation to people in Australia, and the way that they are handled will depend on the circumstances of the case. In this particular case, the view was taken after we received the complaint in January last year, researched it and considered it, and after the Australian government responded in October 2004. When it got to almost a year later, the view was taken that it was not warranted to wait any further. That took into account the actual substance of the complaint that had been made and the outcome of the investigations which had been undertaken subsequent to that. It also took account of the fact that this person’s claims had already been through a domestic process which had found that he was not owed protection. A Refugee Review Tribunal decision had concluded the same, and that had subsequently gone through a Federal Magistrates Court challenge, which also upheld the RRT decision. That had then also gone through a full bench of the Federal Court challenge, which upheld the Refugee Review Tribunal decision. There had been a long history to this case. As I say, each case is looked at on its merits.

Senator NETTLE—We both know, though, that this is a case that is still before the Human Rights Committee, quite possibly determining that very issue.

Mr Illingworth—They do not make determinations. They can formulate views—

Senator NETTLE—Yes.
Mr Illingworth—but they are not binding on Australia.

Senator NETTLE—That is correct. I understand that the government is informed when the Human Rights Committee will make a decision or if the case is being raised at a particular meeting. Can you tell me what information the Australian government had about whether or not this person’s case was being raised, for example, at the meeting they had in Geneva in July or if it is to be raised and a view reached at the upcoming meeting in October? I understand that the government is informed by the Human Rights Committee about which meetings the cases will be raised at. Can you tell me about that?

Mr Illingworth—We receive general information about the planning of the committee and its intentions, but the final timing of a hearing and formulation of views of the committee are essentially in the committee’s hands and are subject to change depending on a range of factors. For example, in this case, there was a period where an extension of time had been requested by the other party and that was granted. That pushes out processing times, if they are the right words, for the committee to reach its conclusions. It has a number of competing requests or complaints to examine from a range of different countries around the world. It is always balancing its workloads and setting its internal priorities. We had waited a considerable period of time and the view was formed that, at this point, the complaint was not warranted. In essence, while we understood that a hearing would be scheduled and held, we were not in a position to take any guarantee that that would have actually occurred.

CHAIR—We will have to adjourn for a moment. We have a division in the Senate chamber.

Proceedings suspended from 5.47 pm to 5.57 pm

CHAIR—We will recommence. Senator Nettle has one or two more questions to ask.

Senator NETTLE—I need to be reminded of where we were again. You were talking about—

Mr Illingworth—It was the Human Rights Committee complaints process, I think, for this case. We were discussing—

Senator NETTLE—Yes. Was the government informed of a timeline about when a conclusion would be reached?

Mr Illingworth—I understand that there were some predictions, but I am not sure of a firm time. I would need to take that on notice and check with my colleagues in other agencies.

Senator NETTLE—The last question I want to ask is about notification to the Human Rights Committee that there was an intention to deport. I note comments that have been made by DIMIA today in relation to when the Human Rights Committee was notified. I have seen a copy of an email from the person in the Human Rights Committee who had to be notified which states when they were notified. In their email it says it was the day after the person had been deported. They were sent an email which included an attachment of a letter from DIMIA dated the day before, but that email was not sent or received until 22 hours after the person had been deported. I wondered if you wanted to make any comment about that.
Mr Illingworth—I am not aware of the email to which you refer. The material I am aware of is that a communication was passed to our post in Geneva to be delivered late on the 30th or early in the morning on 31 August. My understanding is that that message was sent to the secretariat on the day of the removal. We are looking at some of the timings of what happened on that day, given some comments that we have heard about receipt of the message by the secretariat, but I think it is important to bear in mind that Australia is under no obligation to provide any advice to the secretariat about a decision to remove this individual. In terms of the legal position, it may choose to notify the secretariat that a removal is about to occur—or has occurred, as the case may be—according to the decision of government.

Senator Nettle—Maybe you could check when the email was received. Could you take that on notice—when the email was received by the human rights commission. Justice North, who was hearing the injunction case in the Federal Court, noted from the bench that he had been handed a copy of the UN Human Rights Committee letter in which the Australian government had undertaken, first, not to remove while the UN committee considered the matter and, second, not to remove without advising the UN committee that it intends to do so. You just said to me that you do not believe that the Australian government was under any obligation to notify. That is what Justice North said in the Federal Court case about the injunction on this issue. Maybe you would like to go back and check that issue.

Mr Illingworth—The evidence I gave you was stating the general position in international law. It was not relating to this particular case, but was in a broader sense than that. Certainly if there are allegations that there were particular undertakings in relation to this case, I am happy to look at that.

Senator Nettle—They are not allegations; it is what Justice North read out in the Federal Court. You might want to go back and check that.

Mr Illingworth—I do not know the source of that.

Senator Johnston—Ms Daniels, could you look at this Qantas Airways duty security controller document. I think it is ABO7. Do you have that in front of you?

Ms Daniels—No, but I will in a second. Is it the one we just copied for you?

Senator Johnston—Yes, it is the one you just copied.

Ms Daniels—Sorry, I have just handed it back.

Senator Johnston—Starting from the top, you will note that there is a ‘Faxed’ stamp. I am not sure what number—being the day in July—that was stamped. It looks like a ‘6’ to me, but it may well be an ‘8’. Can you hazard a guess as to what day that is?

Ms Daniels—I can see what you are saying. The fax details at the top of the sheet—

Senator Johnston—Mine is cut off. What does yours say?

Ms Daniels—it says 19 January.
Senator JOHNSTON—That is an interesting date.

Ms Daniels—Sorry?

Senator JOHNSTON—That is the electronic thing at the top. That is the most recent copy sent to you.

Ms Daniels—What is that?

Senator JOHNSTON—If it is January, it is probably not material. Is it an ’05 date?

Ms Daniels—It is an ’01 date.

Senator JOHNSTON—It is a January ’01 date?

Mr Williams—I have a feeling that might be when the version of the form was sent to us from Qantas—the template form. That is a guess.

Ms Daniels—That would make sense.

Senator JOHNSTON—that is a very good explanation. I think that is quite logical. Anyway, it was the 16th, 17th or 18th when the document was faxed.

Ms Daniels—Yes.

Senator JOHNSTON—Given that it was signed on the 17th by the officer, if it was faxed on the 16th, that would be problematic. It is logically, I suppose, the 18th. But I am not sure that I can tell from that.

Ms Daniels—Mr Williams has just observed—and I agree with him—that it looks as though it might have been changed by hand to the 17th.

Senator JOHNSTON—Yes. So the stamp reads ‘18’, but he has changed it to the 17th. That is interesting in itself.

Ms Daniels—The stamp might actually read the 16th.

Senator JOHNSTON—Yes. I am very confused about it. But, notwithstanding that, you will note that the flight date is the 20th.

Ms Daniels—Yes.

Senator JOHNSTON—So that all of these arrangements have taken place some three or four days—depending on how you want to read the form—before the deportation took place, if you follow me.

Ms Daniels—Yes.
Senator JOHNSTON—So in relation to the process whereby it was determined that this lady should be deported, we now have a document from some days previous indicating that she is to be deported and mentioning a specialist officer from Queensland police. If you look in the first box, you will see the third question down: ‘Are escorts aware of Qantas standards for escorting persons in custody?’ Obviously very few people would be aware of that and very few people would be accredited. Senior Constable J Beare is a fairly unique police constable. In other words, this is a constable who does transfers with persons in custody. Do we know if Constable Beare is a male or a female?

Ms Daniels—A female.

Senator JOHNSTON—Which would be even more rare, on that basis. It is very rare that there are females in custody in Australia—relatively. You would agree with that, I am sure.

Mr Williams—I am not sure that that necessarily follows. Detainees—and, I imagine, prisoners under the control of the Queensland police—are moved around a state like Queensland and nationally and internationally by air all the time. Quite a number of officers would have had experience with this.

Senator JOHNSTON—That is interesting evidence. In your experience, Mr Williams, there are a number of Queensland police officers who have a relationship with DIMIA in terms of delivering people offshore; is that what you are saying?

Mr Williams—Arrangements have varied over time and by state, but in Queensland I think it has not been uncommon for Queensland police officers to provide the service.

Senator JOHNSTON—But this constable would be a very readily identifiable person—a female who, in this instance, if you look down further, is simply charged with the duty of providing assistance to the passenger to board and disembark. What does it cost DIMIA to have this police officer go to Manila?

Mr Williams—At the very least, it costs an airfare, and probably reasonable costs.

Senator JOHNSTON—So there would be overnight accommodation, which would be reasonable. It is a reasonable undertaking.

Mr Williams—Yes.

Senator JOHNSTON—Just in passing, the chair has drawn my attention to the fact that the date looks as if it has been fiddled with down there. There is either a fluorescing with a coloured pen on the original—and I do not know who has the original—or it has been whited out and changed. Can you see where the marks are on the bottom? Do we have any information for the committee on that?

Mr Rizvi—From the original—and I think I have the original, or at least it appears that way—it is green fluorescent over the 17th.

Senator JOHNSTON—Green fluorescent. Thank you.
Mr Rizvi—Someone has highlighted that.

Senator JOHNSTON—That is exactly what I wanted to know. Thank you. You will note also that one of the questions says, ‘Does the person have a history of physical abuse?’ It is the fourth question on the right-hand side in the question box. All the questions have been marked ‘no’. It goes on to say ‘or violent criminal history’. Obviously violent criminal history is not that relevant. But we do have on our records that this lady is the subject of physical abuse, don’t we? Notwithstanding our records, the person completing the form has marked that question ‘no’. In relation to the contact person, I do not want to use the person’s name but can you tell me what rank and position that person has? The contact name is up in the top right-hand corner. Who is that person in terms of that person’s position?

Ms Daniels—I think we mentioned earlier that that person, who was also the person who signed the form on 20 July—I cannot remember who drew it to our attention—is an APS5 or APS6 in the Brisbane compliance area.

Senator JOHNSTON—Just for people who are not familiar with Public Service gradations of standing, can you say what 5 and 6 are?

Ms Daniels—How can I describe it?

Senator JOHNSTON—What is the lowest?

Ms Daniels—APS1, going through to APS6 before we start the executive levels—executive 1 and 2.

Senator JOHNSTON—So this is a relatively senior person in Queensland.

Ms Daniels—I would not say a relatively senior person. I would say a middle ranking person.

Senator JOHNSTON—So this is a middle ranking person but at the top level before going to the next level. What is the next level?

Ms Daniels—It is the executive levels, but the executive levels are below the SES levels.

Senator JOHNSTON—What comes after the executive levels?

Ms Daniels—The SES levels.

Senator JOHNSTON—So they are top of the bottom section?

Ms Daniels—That is a reasonable way to describe it, yes.

Senator JOHNSTON—Thank you for explaining that form. In the notes that I have in the first few pages of the information you have given us in the 2,500 folios, I note that the OWWA says that it received two letters from the Queensland Police Service, one dated 10 September 2003 and one dated 15 September 2003. In the second one, they indicate they are sending an
officer to Manila to look for the person in question: Ms Solon Alvarez Cook Young. Do we have copies of those two letters?

**Ms Daniels**—I do not recall them. You are asking for the letters from Queensland to OWWA in September 2003?

**Senator JOHNSTON**—Yes.

**Ms Daniels**—I think I can say that we do not have them.

**Senator JOHNSTON**—I will give you the references so that you can track them down. The Philippine embassy wrote to Mr Foskett on 18 May 2005. Turning to the second paragraph on page 2, it says:

In items 6 to 7 OWWA clarified that two weeks after it had received the 10 September—

10 September 2003—

letter from Queensland police, it called OWWA to check if OWWA had received the said letter. During the call the Queensland police expressed the intention to send an officer.

There are two letters because there is a further reference to a letter on the 15th in the notes at paragraph 6 of the OWWA case facts. In paragraph 6 they talk of the 15 September 2003 letter. Notwithstanding all of that, do we have the letters?

**Ms Daniels**—Just let me correct what I have just said, because Mr Rizvi has drawn to my attention two entries in the chronology of 15 September 2003 and another one, which I would need to refresh my memory on; I am sorry.

**CHAIR**—You will have a chance right now because we have to attend a division in the chamber.

**Senator JOHNSTON**—I want to know whether we have copies of those letters. The next question will go to the six times that the mission sought to contact OWWA, as claimed in those documents, and whether we have a paper trail.

**Proceedings suspended from 6.13 pm to 6.24 pm**

**Senator JOHNSTON**—I am looking at the consular-in-confidence email of 19 May 2005 from Tony Hely to Doug Foskett. Mr Hely is the head of mission in Manila?

**Ms Daniels**—Yes, I think so.

**Senator JOHNSTON**—In paragraph 2 of that email, Mr Hely refers to the report that I referred you to with respect to those letters. Have we had any advance on that, by the way?

**Ms Daniels**—I do have those letters.
Senator JOHNSTON—Could we have copies, please?

Ms Daniels—I think you have them.

Senator JOHNSTON—Of the letters dated 13 and 15 September 2003?

Ms Daniels—Sorry, we are back to where we were a minute ago.

Senator JOHNSTON—We have not got those letters?

Ms Daniels—Are you asking about the letters from the Queensland Police to OWWA?

Senator JOHNSTON—Yes.

Ms Daniels—I do not recall them.

Senator JOHNSTON—You do not recall them? It is not necessarily likely that you would have them in the circumstances, but I thought you might have them, with all of the inquiries that have gone on. Let us come back to this email. It refers to the detailed report that I have referred to previously and says:

We would simply also observe that OWWA's detailed report stands in stark contrast to their response to our six enquiries for information in the course of our search for Alvarez.

Do we have any discrete record of the six inquiries?

Ms Daniels—I do not think so.

Senator JOHNSTON—What sorts of inquiries are those? They are just phone calls, are they?

Ms Daniels—Sorry, if this is the ambassador talking to DFAT Canberra, that may be one for DFAT. I am sorry, I cannot answer that question.

Senator JOHNSTON—That is one for DFAT?

Ms Daniels—They are DFAT documents.

Senator JOHNSTON—Okay. The only document they were able to produce was a file note from Grace Olajay to the effect that she had accompanied Ms Alvarez to the South Super Highway Medical Centre. Do we have a copy of that?

Ms Daniels—Not that I recall, but let me check. Not that I recall.

Senator JOHNSTON—I note that in one of these documents here at the top of these things there is a handwritten note. I cannot make much of that other than to say that the author—it is after the birth certificates and all of that sort of stuff—acknowledges that there is another name
for Ms Alvarez or Ms Solon and that name is Cook. This is the first time that I have been aware that there is a fourth reference. We have Solon, Cook, Alvarez and Young. Can we clarify that?

Ms Daniels—The name ‘Cook’ did come to attention earlier. When the request came to us in July 2003 the names given as possible alternative names were Solon, Cook and Young.

Senator JOHNSTON—What can you tell us about Cook?

Mr Storer—It is in the chronology. On 16 July 2003, Ann Harkness sent to Natalie Catlin a request for information about Vivien Solon Young, aka Cook, aka Solon, aka Alvarez, regarding her citizenship status and whether citizenship was ever revoked.

Senator JOHNSTON—So there are potentially four second names—and I am trying to be as non-anglicised as I possibly can.

Mr Storer—Yes.

Senator JOHNSTON—Have we done computer searches and an analysis on each of those four names inside your system?

Ms Daniels—We have.

Senator JOHNSTON—What is the name of the search? There is a particular type of search you use. It is a search engine type thing. I remember discussing it.

Ms Daniels—Wild-card searches?

Senator JOHNSTON—Have you done wild-card searches on all of those four names?

Ms Daniels—Mr Kennedy might be able to elaborate, but we have done searches on the full range of names. It is important to note that some of those names are very common names that would be very multitudinous in the responses that the system provided.

Mr Kennedy—we have done searches using all of our search software and the various systems. Each system that has client data has slightly different search routines. The only one that has a wild-card search capacity is the TRIM, the registry system.

Senator JOHNSTON—Knowing what we know about her, would we expect her to be on that system?

Mr Kennedy—It depends on the name that is stored in the system.

Senator JOHNSTON—But we would expect one of those names, being her, to be on the system?

Mr Kennedy—Yes. None of the searches brought up any evidence of the name Cook. I can tell you what the records are in respect of the names that we have in respect of each system. The
key systems are the ICSE system, which deals with clients in Australia, and the TRIP system, the travel and immigration processing system, which are the movements, border and entry systems. In respect of TRIPs, the principal name is Vivian Solon Young, with a birth name of Vivian Alvarez Solon.

Senator JOHNSTON—Is that hyphenated?

Mr Kennedy—It is not hyphenated.

Senator JOHNSTON—So it is just two words?

Mr Kennedy—with the name Vivian Solon Young, Young is recorded in the system as the principal name and the principal surname, and Vivian and Solon are shown as given names. In the case of the birth name, which the secondary name on the record, Vivian Alvarez are shown as given names and Solon is the family name. When the search routines go away and search, they bring back likely matches. Those matches are then scored according to how close they are to the data that was put in. If a search were done on Solon, for example, it might find Vivian Solon Young but it would not come back as a highly scored search. So it may be well down.

Senator JOHNSTON—When you say ‘well down’, what does that mean?

Mr Kennedy—in the case of both ICSE and TRIPs, the searches bring back up to 200 matches. In fact, behind the scenes, the searches find at least 10,000 matches. Those matches are then scored, and the 200 most closely representing the data that was put in are brought back.

Senator JOHNSTON—Can we access the 10,000?

Mr Kennedy—probably not, Senator. I do not know the answer to that question; I would have to find out for you.

Senator JOHNSTON—but we have accessed the 200 in each name?

Mr Kennedy—yes.

Senator JOHNSTON—and we have no records other than the ones you have given us?

Mr Kennedy—that is right, and as Mr Palmer noted, the record of Vivian Alvarez, which would have come up as the secondary name, came up at about the 70th name in the search returns. In respect of the name Cook, there is no record relevant to Alvarez Solon Young at all.

Senator JOHNSTON—and the only reference to Cook comes from that reference from the Queensland Police Service?

Ms Daniels—yes, it comes twice—it is in the September 2003 approach and it is also mentioned in the September 2004 request.

Senator JOHNSTON—do we have any idea of the origins of the use of the name Cook?
Ms Daniels—I think I have seen some media reference to the surname of Cook, but apart from that—

Senator JOHNSTON—But the media reference did not explain that it was a former husband or a de facto partner or her mother’s maiden name or anything like that?

Ms Daniels—I do not recall, Senator.

Senator JOHNSTON—Coming back to this document—and my memory fails me and I do not have all of the material before me—as I understood it the two- or three-hour questionnaire that was completed prior to the deportation was completed on 19 July.

Ms Daniels—that questionnaire was completed on the 12th or the 13th.

Senator JOHNSTON—Of July?

Ms Daniels—Yes—and probably on the 13th.

Senator JOHNSTON—So the chronology is that the questionnaire is done, she says she is an Australian citizen and then there is this form. So we know, or we trust, that the decision to deport her was made somewhere between the 13th and either the 16th, 17th or 18th, depending on when this document was completed?

Ms Daniels—I would say that the decision to detain her was made on the 13th, in line with the document we talked about earlier. At that point, because the assessment was that she was an unlawful non-citizen—

Senator JOHNSTON—Was that the date of the expiry of her bridging visa?

Ms Daniels—Yes. At that point the removal arrangements would have started, and hence within a couple of days we had flight arrangements made.

Senator JOHNSTON—When the visa expires, to be declared an unlawful non-citizen, what happens? Does it just happen as a matter of statutory effect or is there a declaration process where the department says, ‘No more visa—unlawful non-citizen’?

Ms Daniels—the assessment that she was an unlawful non-citizen would have been, according to the papers, made reasonably early in the piece; hence the granting of the bridging visa to give her lawful status while she remained in hospital.

Senator JOHNSTON—I will just correct you. She was potentially an unlawful non-citizen but for the granting of the visa?

Ms Daniels—Yes.

Senator JOHNSTON—So the visa protected her from deportation?
Ms Daniels—It gave her lawful status.

Senator JOHNSTON—It gave her lawful status, and we trust that we do not deport people with lawful status.

Ms Daniels—No. The records indicate that the bridging visa granted to her—I think it was for a day, on 12 July—was for a day, and on that day the accommodation was at the Silverwater accommodation. So she would have been lawful on that evening, and then she became unlawful at the expiry time of that visa.

Senator JOHNSTON—Did she apply for the one-day visa?

Ms Daniels—We have a number of bridging visa application forms for her. I am not sure whether we have one but we can—

Senator JOHNSTON—Can you see where I am going on this? I am looking for you to tell me that you arbitrarily granted her a one-day visa, as a matter of convenience, given her location and health. I am then looking to see what happened for the grant not to continue. What process was undertaken? Somebody had to say, ‘Yes, we know that she’s going to be an unlawful non-citizen if she doesn’t have a bridging visa.’ That took place previously, and we might come to that later too. But there is a process where she becomes unlawful. Does it just happen or does someone decide, ‘No more visa; she’s now unlawful’?

Ms Daniels—Mr Williams might be able to add to this. While Ms Alvarez was hospitalised, it would be reasonable to expect that there would be no question of removing her, simply because she was hospitalised and receiving medical attention and hence provided with a bridging visa to maintain her lawful status. From the point at which she was discharged from the hospital—and Jim can correct me if this is wrong—she would become available for removal. Would that be right? Hence the decision not to grant a bridging visa would seem reasonable in the circumstances, because the removal process was able to be commenced, as distinct from when she was hospitalised and not able to be removed.

Senator JOHNSTON—So you surmise that the discharge from hospital was the event that meant she was then available to be deported?

Ms Daniels—Yes.

Senator JOHNSTON—Such that the deportation decision was made well back in the piece—when was that?

Mr Williams—As I explained, the decision to remove is a duty arising from whether somebody has, on our assessment, no authority to remain. So no formal decision is taken; somebody simply has to establish the facts. We had some discussion earlier about whether there was evidence on the file, and, as I understand it, the file does not show that assessment as having been done. That would normally be what would be required.

Senator JOHNSTON—The normal circumstances were that an assessment would be made—
Mr Williams—Yes.

Senator JOHNSTON—as to the long-term status of the person?

Mr Williams—that is right.

Senator JOHNSTON—A decision would be made that they would be deported or not, and that is a discrete process?

Mr Williams—an determination would probably be made that removal was necessary.

Mr JOHNSTON—When you say ‘determination’, does it mean the completion of a form?

Mr Williams—the policy requires the completion of a form.

Senator JOHNSTON—What is the form?

Mr Williams—as I understand it, there is no such form that we have been able to find in the papers.

Senator JOHNSTON—Let me ask the question again: is there a proper form for the determination?

Mr Williams—I believe there was a form in the policy at the time.

Senator JOHNSTON—which was a what?

Mr Williams—it was a kind of checklist.

Senator JOHNSTON—Yes, but what was the name of the form? They all have names or numbers.

Mr Williams—I will check that. It is an MSI 54. I will have to go through it and find the description of the form.

Senator JOHNSTON—we would like to know the name of the form that evidences the determination.

CHAIR—is that a record of interview with suspended unlawful noncitizens?

Mr Williams—No.

Senator LUDWIG—You are saying that there should have been a form but you do not have a record of that form?

Mr Williams—I am saying that there should have been a form.
Senator LUDWIG—There should have been a form, you have looked at your records and you do not have that form. You do not know two things: you do not know whether it was completed and lost or whether it was never completed. Is that right?

Mr Williams—I think that is right, yes.

Senator LUDWIG—Have you asked anyone about that form?

Mr Rizvi—that gets back to—

Senator LUDWIG—that is okay. As long as I can ask and you give me the standard reply, I have at least asked.

Senator JOHNSTON—I am sorry I did not warn you about this before we had that last break. I did not anticipate that we would go there.

Ms Daniels—I can see the form that Mr Williams is looking at and I do not recall that on the files.

Senator JOHNSTON—What is the form that you would normally look for? Correct me if I am wrong when I say that you would normally have the form.

Mr Williams—There is a checklist form attached to MSI 54 that would normally be on the file.

Senator JOHNSTON—What is the checklist form actually called?

Mr Williams—It is just called a checklist. ‘Steps for removal, when and if required’ is what it says here.

Senator JOHNSTON—It is a form that is a checklist for removal, when and if required?

Mr Williams—Steps for removal, when and if required.

Senator JOHNSTON—Just take us through that form. What does it actually ask and what do you have to complete?

Senator LUDWIG—Can we have a copy?

Senator JOHNSTON—We would love a copy of it.

Mr Williams—It is really a process list. It talks about obtaining a travel document or entry visa for return to the person, agreeing on a date and a place of destination, arranging escort, booking tickets, arranging—

Senator JOHNSTON—What you have just said to me tells me that that is a confirmation form of the decision. I am looking for evidence of an actual process of decision—that is, I have
interviewed this person; considered the antecedents of this person; and looked at her passport and visa or whatever the documentation might be; and I have resolved that she is an unlawful noncitizen and should be removed. Does that just happen inside someone’s head?

Mr Williams—I have to cast back to 2001 and what the policy said at the time.

Senator JOHNSTON—I understand that this is not easy.

Mr Williams—The policy requires that removal must occur as soon as reasonably practicable. It then sets out the circumstances under which—

Senator JOHNSTON—Practical upon what though?

Mr Williams—‘Reasonably practicable’ is not defined in the act.

Senator JOHNSTON—All of the things that you are telling me about are post the determination that she is an unlawful noncitizen.

Mr Williams—That is right.

Senator JOHNSTON—Where is the determination process though? Where is the evaluation? Where is the weighing of the indicia of status?

Mr Williams—The key thing would be the determination that the person is an unlawful noncitizen and needs to be detained.

Senator JOHNSTON—Have you ever made such a determination yourself?

Mr Williams—I have, yes.

Senator JOHNSTON—Take us through the process. What do you do?

Mr Williams—It is a long time ago. I am not talking about the case; I am talking about—

Senator JOHNSTON—Person X.

Mr Williams—if you are locating a person for the first time, it would be a question of asking them who they are, seeking documentation to establish the identity that they are providing, looking for those departmental records that might support the identity that they are asserting, drawing all that material in, including other evidence that might be available—for example, material available through exercise of a search warrant—taking those factors into consideration and making a determination about whether reasonable suspicion exists that the person may be an unlawful noncitizen.

Senator JOHNSTON—So we go from examining the evidence and what the person has said to forming an opinion. In your case, you mentioned a suspicion.
Mr Williams—Yes.

Senator JOHNSTON—Do you put that opinion or suspicion to the person?

Mr Williams—You would normally do that; that would be good administrative practice.

Senator JOHNSTON—Do you do it in writing?

Mr Williams—I am not sure.

Senator JOHNSTON—So you have interviewed the person, and I take it that over some time you give them every opportunity to produce all the documents needed. You probably cross-reference their entry records and whatever else you might have—whether previous visas have expired and all that sort of stuff—and you make a determination. What I am asking is: is it simply a situation where the officer, having had a suspicion, comes to a conclusion on the evidence that the person is an unlawful noncitizen?

Mr Williams—Yes.

Senator JOHNSTON—But there is nothing in writing and there is no actual process; it is all up to the opinion of the officer?

Mr Williams—That process may well happen in the field, so, yes, it may be that the decision to detain someone is made having taken all those factors into account very quickly and without a written record, but there will be written records produced as the case is managed from then, including a detailed interview.

Senator JOHNSTON—Let me give you an example of what I am looking for. If I am going to be charged with an offence in Australia, usually there is firstly a video record of interview, or there is a complaint—that is a document that sets out the basis for the allegations. Do we have any such process in the determination of whether a person is an unlawful noncitizen?

Mr Williams—Yes. An interview occurs very quickly after the person is first detained. As I say, that may well happen in the field. The interview follows a fairly well-established pro forma that exists in policy.

Senator JOHNSTON—Do we have a copy of that interview—that pro forma—for this particular person, Ms Alvarez Solon or Young or Cook?

Ms Daniels—By way of the normal process to determine whether somebody is an unlawful noncitizen, if compliance officers in normal operations encounter somebody who they suspect might be unlawful, on the basis of community information or system records that have informed the application for and granting of a warrant, for example, there would need to be quite detailed supporting evidence to justify a warrant. If somebody is located, then—

Senator JOHNSTON—There would be a sworn statement for a start, wouldn’t there?

Mr Williams—No, it is not an arrest warrant.
Ms Daniels—It is a search warrant.

Senator JOHNSTON—Don’t you have to swear a statement in front of someone to get a warrant?

Ms Daniels—Not in the parameters of the Migration Act. But when somebody encounters somebody they suspect to be unlawful, a range of checks can result. For example, the primary one would be checking on our systems. Sometimes there is fairly objective and clear evidence about person X in front of you, whose identity is not an issue, because the system record confirms that their visa has expired or this person does not have work rights and they are working somewhere. This case is complicated by the fact that Ms Alvarez had no movement records that could be determined on the system and, because the people conducting the interviews that happened during May, for example, would have seen an assessment that she is likely to be an unauthorised arrival—which you have in these papers.

Senator JOHNSTON—What date in May?

Ms Daniels—This is 4 May. This would be the first interview. The person writing this says:

I consider it most likely that the above named was an unauthorised, undocumented arrival.

Then there are a couple of other interviews—

Senator JOHNSTON—When that interview is conducted, is it conducted by one officer alone?

Ms Daniels—This interview in May was conducted by a compliance officer from the Southport office—

Senator JOHNSTON—Which is usually about what grade? We talked about grades.

Ms Daniels—An APS6, middle management level. In this case the person was accompanied, as we said last time we met, by a person from the office who acted as an interpreter.

Senator JOHNSTON—Do we have the name of that person who was the interpreter?

Ms Daniels—Yes, we do.

Senator JOHNSTON—Good. What is the name of that person who was the interpreter?

Ms Daniels—This will be on the papers that you have.

Senator JOHNSTON—It is written on there? We have the name, do we?

Ms Daniels—You do.

Senator JOHNSTON—Just for the sake of the record, can you tell us what the name is?
Ms Daniels—It says:

Yuri Marshall, of this office, conducted ...

I think that is the right name of the interpreter.

Senator JOHNSTON—Mr Marshall is, in fact, a DIMIA employee.

Ms Daniels—Yes, that is right.

Senator JOHNSTON—Do you not see a problem just in that point alone that the interpreter is, in fact, an employee?

Ms Daniels—We discussed last time that we did not know, for example, whether this person was an accredited interpreter. Hence in hindsight it would have been far more desirable for an interpreter to be accredited and objective, not a DIMIA person.

Senator JOHNSTON—Have we done anything about that?

Ms Daniels—I can’t specifically say that we have instructed that this situation not occur, although I am well aware that for compliance operations when we need interpreters, which we regularly do, either in an office or in the field, the telephone interpreting service is used by telephone in the main, or in person if that is manageable.

Senator JOHNSTON—How firm is that, though? I note that your new secretary has laid out a whole list of broad issues. I would have thought that when an officer is making a determination about the potential status of a person which might result in a person being declared an unlawful noncitizen, if there were a language difficulty it was imperative that you have an accredited interpreter who was not a DIMIA employee.

Ms Daniels—I don’t know whether that is specified in our instructions, and we can check, but I think I can reasonably confidently say that we would be using accredited interpreters.

Senator JOHNSTON—As far back as May, there appears to be a determination by an officer that this person is potentially an unlawful noncitizen. Just tell me what intervening events there were between May and July—health was one. Was it the only one?

Ms Daniels—Intervening events—

Senator JOHNSTON—Was there a necessity for further inquiry?

Ms Daniels—Yes. There are records that indicate that officers were communicating with the hospital. For example, in May DIMIA was talking to the hospital saying that we would need to test the veracity of some of the claims or statements she was making, and depending on the outcome of that interview she may be detained. Hence there would need to be an assessment. We were saying to the hospital that we would need to make a suitable time, and subject to her medical condition we would conduct those interviews. During April the records show that Ms
Alvarez was transferred to Liverpool Hospital in Sydney for some treatment in relation to her injury, and then she came back later in the month to Lismore.

**Senator JOHNSTON**—But in April she wasn’t at risk of being determined as an unlawful noncitizen, was she?

**Ms Daniels**—Yes, she was.

**Senator JOHNSTON**—She was. So even further back than May, back in April—

**Ms Daniels**—Yes.

**Senator JOHNSTON**—When did she first come to the notice of the department?

**Ms Daniels**—The first file note we have, on 2 April—

**Senator JOHNSTON**—Forgive me for this, but for us to get all this detail back up again for these hearings is just like it is for you, I am sure, so we will just have to do our best to work through it. So, it was early April? And she was interviewed?

**Ms Daniels**—In early April, advice was received from the hospital that they had a patient in particular circumstances. Then, as I just said, there was some discussion about the need to interview her to verify her claims. Then to Liverpool, during April; transferred back to the Lismore hospital; and then again, subject to discussions about her capacity to be interviewed, the—

**Senator JOHNSTON**—On what date was she issued with her first bridging visa?

**Ms Daniels**—On 3 May, which was when the first interview happened with DIMIA officers. So, after she had come back to the Lismore hospital, the bridging visa was granted on the same day as the interview, I think—yes, ‘yesterday’: 3 May.

**Senator JOHNSTON**—So, the issuing of the visa—correct me if I am wrong—would suggest that the officials had determined that she was an unlawful noncitizen and issued the visa to protect her from deportation and/or being taken into custody?

**Ms Daniels**—The need for detention. That is a reasonable conclusion.

**Senator JOHNSTON**—So what happened in that month? Let us just go back to the issue.

**Ms Daniels**—In April or May?

**Senator JOHNSTON**—April to May is the crucial time.

**Ms Daniels**—Ms Alvarez was admitted to hospital at the end of March, early April.

**Senator JOHNSTON**—Yes.
Ms Daniels—There were discussions between the hospital and DIMIA early in the month. There was advice that she was being transferred for treatment.

Senator JOHNSTON—Was she visited?

Ms Daniels—No, there is no record of that.

Senator JOHNSTON—Were her doctors contacted?

Ms Daniels—By DIMIA? There is no record of that. There were discussions between nurses—and I am not sure whether there was a social worker involved at that stage, but there were hospital staff in discussion with the DIMIA Southport staff.

Senator JOHNSTON—Was DIMIA aware of the extent of her injuries?

Ms Daniels—Yes. The file note of 3 April makes it clear that she had been involved in an accident, and—

Senator JOHNSTON—In other words, how did you get that information? DIMIA simply said to the hospital, ‘Tell us about the injuries this woman has,’ and they gave that up readily, did they?

Ms Daniels—No. It was actually the reverse. It was the hospital social worker contacting DIMIA. In this file note, the nurse said that she had not produced a Medicare card, so they obviously did not have too much personal detail.

Senator JOHNSTON—Did she specify the injuries? Do you have a note of what the injuries were?

Ms Daniels—Yes.

Senator JOHNSTON—Just tell me what they were.

Ms Daniels—A Filipino female had been found, wandering the streets of Lismore, who had injuries to the body—cuts, bruises et cetera—and appeared to be destitute; admitted to the hospital on that weekend.

Senator JOHNSTON—Was there any further medical information given to DIMIA as to the extent of the injuries, because the injuries were more serious than that, weren’t they?

Ms Daniels—At that point, ‘How she came to be wandering the streets of Lismore’—I am quoting—‘is unknown. However, medical staff believe that it may have been some time, given her condition when she was admitted to hospital.’ It goes on to say that our DIMIA person had spoken to the head nurse. ‘Despite having undergone several tests, she appears to have some form of paralysis in her legs, cause unknown. Be examined again tomorrow.’ This is 3 April. We have a note that we could not identify her in DIMIA databases at that point.
Senator JOHNSTON—Was there any indication of neurological damage, head injury, brain damage or anything of that nature?

Ms Daniels—Just that she appears to have paralysis in the legs. I do not know whether that would go to your question.

Senator JOHNSTON—It may be neurological. So, in May we issued the bridging visa.

CHAIR—In that period, did DIMIA contact the police?

Ms Daniels—There is no record of that. It may have happened, but there is nothing—

CHAIR—Do you know if the hospital contacted the police? It does not look like it, does it?

Ms Daniels—Certainly not on our records.

CHAIR—There are a few chronologies in there—there are comments about 3 May, and somewhere you talk about April. One talks about her wandering the streets and being more the subject of a bashing than a car accident.

Ms Daniels—Yes, there is some—

CHAIR—It talks about what they thought she was here for, as did someone else.

Ms Daniels—Yes.

Senator LUDWIG—We left off some time ago, but we will return to the point. You indicated in your response that you could not, because of the Ombudsman, talk to some of the staff in relation to checking some of the factual information that the committee has asked for. When was the timeline for that? The Ombudsman came into it in March 2005, didn’t he? What I am trying to work out is the timeline between the points where you knew the task force was established, you found the task force—

Mr Rizvi—It would have been around the time that Mr Comrie was appointed.

Senator LUDWIG—Do you recall that date?

Mr Storer—Not precisely; it would be somewhere towards the end of April when Comrie was given the Solon case to follow up.

Senator LUDWIG—So from that point onwards. When was the statement then made that you should not talk to your staff? I am trying to clarify that the minister—I think it was McGauran—came out in late April, correct me if I am wrong, and indicated that there was a missing person.

Mr Storer—Yes.

Senator LUDWIG—I think that was 30 April, or thereabouts.
Mr Storer—Yes, that is what I am referring to.

Senator LUDWIG—But it was identified on 21 and 22 April, and there was a task force put together to try and find Ms Solon. There were those days, and we have talked about those, so I will not go over that part again. Then it was referred to the Comrie inquiry. On what date was this? Was it 30 April by Minister McGauran, with the 200 other cases?

Mr Storer—Yes, that is correct.

Senator LUDWIG—It was my understanding that it was there, at that point. When was the statement first made by the minister, or by someone, that you could not then talk to your own staff? I use that as a shorthand way of expressing it, but when was that statement made?

Mr Storer—At that stage, of course, it was referred to Mr Comrie. It was referred later on to the Ombudsman, after the Palmer inquiry came down in July.

Senator LUDWIG—When was it referred to the Ombudsman?

Mr Storer—It came under the Ombudsman whenever the Palmer report was issued. Do not hold me to this: I will go back and check, but I think it was 13 July, from memory.

Senator LUDWIG—All right, something in there. When did the Ombudsman make the statement that you could not inquire of your own staff because it might compromise his inquiry? It was at least from the middle of July onwards that you took that view.

Mr Rizvi—As I understand it, a conversation took place with Mr Comrie in which we were discussing the conduct of the inquiry. It was in that context that the team within DIMIA which was to support or assist Mr Comrie with interactions with relevant staff in DIMIA were advised that it would be best not to deal directly with those staff members, because Mr Comrie would be interviewing them. We do not have with us the precise date of that conversation but, if we can take that on notice, we can get you the precise date on which that conversation took place.

Senator LUDWIG—What date do you think it was around?

Mr Storer—I would imagine it would be fairly soon after the issue was referred to Mr Comrie, but we will get back to you on that.

Senator LUDWIG—So that was on the 30th?

Mr Storer—Of April, yes.

Senator LUDWIG—Did the Ombudsman reiterate that view in the middle of July? Do you recall whether the Ombudsman then reiterated that view?

Mr Storer—Yes. There was correspondence between the Ombudsman and ministers over the arrangements, and he made a public statement—

Senator LUDWIG—Yes, my recollection is that at some point he put out a statement.
Mr Storer—He put out a statement, and I think I might have it here—bear with me while I try to find it.

Senator LUDWIG—At least as early as 30 April you felt bound by the advice from Mr Comrie that you could not inquire of your staff?

Mr Rizvi—Yes. I think it was at that point that we felt it would be best that Mr Comrie’s inquiry proceed unhindered by any further investigations by us and that we should put in place arrangements to ensure that we could provide Mr Comrie with whatever assistance and support he needed.

Senator LUDWIG—And so, between the time that the task force was put together and 21 to 30 April, did DIMIA interview any of the staff involved to ascertain what had happened to Ms Solon?

Mr Rizvi—I am not aware of any interviews of that sort that were conducted by DIMIA.

Senator LUDWIG—Or checks or ringing them up? At that point it was clear to DIMIA, as I understand it, that an Australian citizen had been deported. You would have then searched your database, and at that point in time you had sufficient names to be able to identify her on the database.

Mr Rizvi—We certainly did extensive examinations of the records.

Senator LUDWIG—And the records show that?

Mr Rizvi—Yes. We certainly did that. But we conducted no formal interviews with the staff that were involved.

Senator LUDWIG—Why not?

Mr Rizvi—We felt bound by the advice.

Senator LUDWIG—No—this is before the 30th, before Mr Comrie had seized the matter; this was whilst you were still looking for Ms Solon. These people could have been able to provide vital information as to what had happened to her, as you had not discovered where she was at that point in time but you knew that you had deported an Australian citizen.

Mr Rizvi—I would have to take on notice what specific inquiries we made in the context of trying to locate her. We certainly made significant efforts to try to locate her. I cannot say whether we did that entirely off the papers or whether we talked to any of the staff involved in that context.

Senator LUDWIG—it is important, I think, to establish that. It seems to me that you would go and ask your staff, especially given that their names appeared on a number of records. They knew in 2003 that she was an Australian citizen who had been deported and they roughly knew that the OWWA was involved and that the Queensland police might have had a piece of the puzzle. They knew that at least they had a surname of Olajay, a person from the OWWA who...
had a piece of the jigsaw puzzle. They knew that DFAT had another piece of the puzzle. All of that information was available on your records. Now you are saying that you did not find that out until after the 30th—or did you know that before the 30th? It might be helpful to explain that to the committee as well.

Mr Rizvi—We certainly looked at the records before the 30th.

Senator LUDWIG—Yes.

Mr Rizvi—It is the part where you are asking whether we interviewed staff involved in that—I am not aware of whether we did or did not.

Ms Daniels—We did not.

Senator LUDWIG—Why not? It is more than curious; it is unusual. You are not that big a department!

Ms Daniels—My recollection is that, after the matter came to attention on 20 April—those couple of days before the Anzac long weekend—we examined the records we currently had. At the time, we did not have some of the DFAT papers you are referring to. We received them later, some as late as May. But we quickly assembled the documents that were readily available to us through DIMIA. My recollection is that after the long weekend in April—and we would have to check this—our understanding was that we were not to approach staff. So it was at that point, which was quite soon after we had assembled the information and had provided briefing to the minister and to the executive, and then—

Senator LUDWIG—Where did that come from? It could not have come from Mr Comrie, because you had not found her at that point.

Ms Daniels—We will need to check that.

Senator LUDWIG—Do you see why I have gone over the timeline? When you say that you had not interviewed staff because of Comrie it does not make sense. That was at least two weeks later.

Mr Rizvi—Immediately after the matter came to our notice, a senior officer was appointed to pull together the files and whatever documents were available and to summarise what we knew from those documents. Exactly how long that took I cannot say at this stage. I do not know what gap there would have been between the analysis of the paperwork by that senior officer and the appointment of Mr Comrie to undertake the investigation. That is something I would need to take on notice and investigate a little further.

Senator LUDWIG—All right. There are a couple of chronologies. There are iterations within the 2,601 documents—2,602 now. Is there another or later version that you have been compiling, because it looks as though it was an iterative process—as more information came to hand you produced another chronology, then added to it and then produced it. Do you have the latest one? If you do, can you produce it in a way in which the committee can receive it in public, rather than our going through the process again of its being in confidence? In other words, it is
removed of the issues that might identify names that currently are not in the public arena—although some are, as you would appreciate, so it will not matter.

Mr Rizvi—We can do that.

Senator LUDWIG—That would be helpful. One of the issues people struggle with—I think everyone suffers from this and I take myself in point—is that they forget what happened and when it happened. The chronology is a good way of referencing it for recall. The other part concerns the staff we have been aware of, because you would have had a request from either the Ombudsman or Mr Comrie to be interviewed, and you would have had to release those staff to be interviewed. You would not have a role in that process, as I understand it, but you can confirm that that is right. In looking after the welfare of those staff, as employees of DIMIA, and to ensure that they have legal advice, advice about what Mr Comrie is seeking from them and advice on the Ombudsman’s role, powers and functions, as your responsibility and duty to employees, what actions have you taken for those identified officers?

Mr Rizvi—In respect of the officers who have been identified, or who we have been advised of by Mr Comrie as having been identified by him adversely in his report—

Senator LUDWIG—I am not even asking you about officers who have been identified adversely; I mean all of them.

Mr Rizvi—I thought I would start with—

Senator LUDWIG—Yes, I see you are going to disjunct them into those—

Mr Rizvi—Yes. We did different things for different people. Some of the people whom Mr Comrie interviewed were very peripheral to the whole process, so obviously how we deal with them is somewhat different from how we deal with the people who have been named adversely. The persons who have been named adversely have been offered the opportunity to seek legal advice, for which DIMIA will meet the costs.

Senator LUDWIG—Was that prior to being interviewed?

Mr Rizvi—No, that was subsequent to being interviewed, because prior to being interviewed we would not have known whether or not they were going to be named adversely.

Senator LUDWIG—What action did you take prior to their being interviewed? Were you provided with a list of people that Mr Comrie or the Ombudsman wanted to speak to and you then relieved them of their duties or informed them, or did they get a note? I am trying to work out the process as to how you, as the employer, released these people.

Mr Rizvi—I will ask Ms Deborah Tyler to answer that, as she was involved in directly liaising with Mr Comrie on the process, particularly in respect of the staff that Mr Comrie interviewed.

Ms Tyler—Mr Comrie himself made the decision as to who was to be interviewed, and he did that by a process of identifying every officer who had had contact with Ms Alvarez. He had both
our files and our information dumps from the various systems, so he went through and basically spoke, as far as I am aware, to every officer who had either had dealings with Ms Alvarez directly or who had interrogated the databases to look at her records.

**Senator LUDWIG**—He is not the employer, with due respect; the employer is DIMIA. How was that conveyed to the employer to then release those employees, should they wish to be released?

**Ms Tyler**—The process that was used was twofold, in the sense that where officers were still with DIMIA, it was the job of the response coordination unit to tick-tack with the individuals identified on preferred dates that Mr Comrie had and to arrange for them to be interviewed in an environment. The process followed was that we sent them out a notice of the intention to interview. We sent them out some very broad parameters of what they could expect in that interview, such as that they would be given the opportunity to add information, ask questions, that there was an intention to record their interviews et cetera. So they were given that broad information as part of the preparation for interview.

A separate process was identified for those officers who were no longer with the department. In relation to other agencies, where the individuals were still in the Public Service, contact was made with the secretary or head of agency and it was asked that they agree to a letter being sent from the Secretary of DIMIA to that individual requesting their cooperation with the inquiry and requesting that that individual contact the inquiry directly themselves. Where the individual was no longer an employee of DIMIA, the secretary of DIMIA wrote directly to that individual and asked them if they would agree to cooperate. Again, it was left to the individual to approach Mr Comrie directly.

**Senator LUDWIG**—In any of those letters, did the secretary indicate what rights the person had—whether they had to cooperate or whether they could refuse to be interviewed or whether they could seek legal advice prior to being interviewed?

**Ms Tyler**—He certainly did, in the general notice that went out to all staff within DIMIA.

**Senator LUDWIG**—No, in the letters that were sent to those people.

**Ms Tyler**—The information sheet that we provided to individuals did indicate that they could seek advice on legal questions and they were directed to a particular officer in DIMIA where they could make contact and raise those particular issues.

**Senator LUDWIG**—Was that in the letter that was sent by the secretary to the people who were identified by Mr Comrie within the department?

**Ms Tyler**—I must have misled you. There was not actually a letter from the secretary for people within the department who were still with the department. What happened was that those individuals were identified and it was up to us within the response coordination group to contact those individuals by email, which we did. Attached to those emails was an information sheet which did include information about their rights and the circumstances in which they could seek advice on legal matters by contacting a particular officer within DIMIA. The secretary only
wrote directly to individuals who were no longer employed by DIMIA but who were either still in the APS or no longer with the APS.

**Senator LUDWIG**—That is helpful. Perhaps the committee could have a copy of those three types of documents, devoid of any identification.

**Ms Tyler**—Certainly.

**Senator LUDWIG**—I do not need identification for any of those—just a sample copy, including the newsletter or the information sheet.

**Ms Tyler**—Yes.

**Senator LUDWIG**—That is the same information sheet that was sent to all officers as well? Did it differ?

**Ms Tyler**—In the sense that those attachments were not provided to individuals who were no longer with DIMIA.

**Senator LUDWIG**—But it was the same newsletter that went out to all DIMIA staff?

**Ms Tyler**—To all DIMIA staff who were still with DIMIA?

**Senator LUDWIG**—Yes.

**Ms Tyler**—Yes.

**Senator LUDWIG**—Did the unit keep a record of officers who declined to be interviewed?

**Ms Tyler**—No officers declined to be interviewed.

**Senator LUDWIG**—Did the secretary keep a record of those officers external to the department but still within the Public Service who declined?

**Ms Tyler**—No officers declined to be interviewed.

**Senator LUDWIG**—And those in the private field, having left both the department and the—

**Ms Tyler**—No ex-officers declined to be interviewed.

**Senator LUDWIG**—So you got a 100 per cent success rate.

**Ms Tyler**—Absolutely.

**Senator LUDWIG**—How many of those have sought legal advice within the department? Do you keep statistics on that?
Ms Tyler—My personal understanding is that three officers have sought advice, but I would like to take that question on notice.

Senator LUDWIG—By all means. You can take any question on notice if you are not sure of the answer. That is out of how many in total?

Ms Tyler—To the best of my knowledge—and I would prefer to get you the exact figure—I would say overall, in terms of the DIMIA officers, close to 50 people.

Senator LUDWIG—that is including the external people?

Ms Tyler—Yes.

Senator LUDWIG—and those who left the Public Service as well?

Ms Tyler—that is right.

Senator LUDWIG—in terms of the documents themselves, I will come back to one. I have finished with that element, I think. If you want to excuse the officer from the table, I am happy for that to occur. In the Palmer report, Mr Palmer said that part of the cultural change that needed to take place in DIMIA was a change to the emphasis on quantitative yardsticks as opposed to qualitative measures. I am curious about that phrase. This was at page 171. I suspect that you would know more about what he is referring to than I would. What does the term ‘qualitative vis-a-vis quantitative measures’ refer to? Is there something within your measurement system that also created the issues that we are now ventilating?

Mr Rizvi—My take on that—and I have not actually talked to Mr Palmer about the report itself; others in the department have—

Senator LUDWIG—you have a lot of talking to do after this.

Mr Rizvi—I think Mr Palmer is referring to the difference between measures which are readily quantified, such as numbers of various functions undertaken, numbers of decisions made and those sorts of factors, which really tend to go to issues of workload, as opposed to quality assurance measures, which might go to measurements of the quality of a particular process.

Senator LUDWIG—is there a measure that you use like how many widgets have to be completed? And is it tied to pay or work?

Mr Rizvi—in our agreement with the department of finance, our funding arrangement uses a relationship between a measure of workload and funding, yes.

Senator LUDWIG—is that the current model?

Mr Rizvi—that is the current model, yes.

Senator LUDWIG—How would that operate in a regional office—say your Brisbane office or your Southport office?
Mr Rizvi—Precisely how it operates in the compliance and detention area is somewhat different from how it operates in the visa-processing areas. In the compliance and detention area, the system of measuring physical quantities of outputs and relating them to funding is not used in the finance agreement. It is used much more in the visa-processing areas, where it is much easier to measure workload based on numbers of visas processed and that sort of thing. In the detention area, a more standard approach is used for funding, whereby estimates are made of the quantum required, or estimated to be required, for the coming year, and that is monitored through the year, based on demonstrated need.

Senator LUDWIG—Correct me if I am wrong, but does the funding model work this way in the compliance division? I would rather keep it in that area, because this is where we are focused and where Mr Palmer would have been focused. If you do so many compliance actions—that is, remove X number of people—that relates to how much funding you will get for that area or that office?

Mr Rizvi—I might get Ms Daniels to correct me if I am wrong on this, but my recollection is that the earlier agreement we had with the department of finance did go to compliance outputs in that fashion. But I understand that the current agreement is linked more to the volume of visa processing. As the volume of visa matters increases, the volume of flow-on funding to compliance commensurately increases—or decreases.

Senator LUDWIG—You might want to check your records and get back to the committee on that. And the model that would have been in place in 2001 when Ms Solon was removed would have been the earlier model that you referred to—one that related the number of compliance activities, that is removals, that were achieved to the funding that was available to that area?

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

Senator LUDWIG—I ask that because it would make sense in terms of Mr Palmer’s quest. It would also go in part to throw light on—I hasten not to use the word ‘explain’—why people are removed, and it relates to funding. You can see the drivers there.

Mr Rizvi—Yes.

Senator LUDWIG—The more we remove, the more funding we get’ or ‘We continue to have our job or our status or whatever it is that might be tied to it.’ It seems a wrong way of tying it, in my mind. But if that is how you did it, I would like to know—and whether you are still doing it.

Mr Rizvi—I would have to check exactly how that operated in the compliance area at that time. I will take that on notice. In the visa-processing areas, I should stress that what the funding model measures is the numbers of decisions made, irrespective of whether the decision was an approval, a refusal or whatever. It is neutral as to the nature of the decision. It merely seeks to measure the numbers of decisions made.

Senator LUDWIG—I will give you a scenario where, even if it is neutral, it can still be skewed, because it might be easier to say no than yes. There may be more work required to find
a yes than a no, so you do more noes—because it is easier. You get more output and you get more funding, so you do noes.

Mr Rizvi—In my experience, it is actually easier to say yes than to say no.

Senator LUDWIG—It is still skewed. That is my point.

Mr Rizvi—That is true.

Senator LUDWIG—It is not a qualitative measure; it is a quantitative measure with an outcome that is skewed. It is not value neutral as to whether it is a yes, a no or a referral to someone else because it is all too hard.

Mr Rizvi—I think you would be right if that was the sole measure that we used to monitor performance in the visa-processing area. It is not the sole measure we use. We use a variety of measures. Indeed, if that skewed effect was taking place, we would be seeing a rise in refusal rates. That is not happening.

Senator LUDWIG—Unless you do not need any more funding; so you maintain your level of funding. Say you have eight staff. You know that if you fall below a certain level and go to six or seven then you do not. But you do not want to draw attention to it, so you do not change what you are doing dramatically by increasing the number, because you do not want more funding. If it were examined, someone might say: 'Hang on a minute. You would not need any more staff if you looked at what you were doing.' I guess we can discuss that all night. I won’t, but you can see that I would like to understand this funding model a little bit better.

Mr Rizvi—Sure. We will take that on notice.

Senator LUDWIG—If that is what you are using, I would reflect upon it—but that is a matter for you.

Senator JOHNSTON—I will ask one question in line with that reasoning. Mr Rizvi, at the time, was the culture output driven so that each department kept detailed data of how many removals and visas there were? Was there an ongoing culture of increasing productivity, if you follow me? Was that the management style at the time? Everybody had a job to do. Each department had to function appropriately, and the measure of success—one department against the other—was the number of tasks performed. We see this all over the place. In this instance, was there pressure to meet that data requirement, those unitary numbers?

Mr Rizvi—I would accept that that is one measure that has been place and that it has probably been in place for a long time.

Senator JOHNSTON—I think that it is a good measure.

Mr Rizvi—But it is not the sole measure.

Senator JOHNSTON—That is right. Were there any documents that management had in the workplace that encouraged people on that measure? We have a problem with overstayers and
unlawful nonresidents—we acknowledge that. One of the ways to deal with that is to encourage the responsible officers to get on with the job. I would like to know if there was documentation around in 2001 that encouraged people to get on with the job and get these overstayers out. Do we have evidence of that culture and is that an explanation for what I think we are hearing as to the expediencies used in this particular example? If there is, can we have copies of the sort of crib-room or lunchroom posters that said, ‘We have so many overstayers and we have to get them out.’ I am not sure what goes on in DIMIA, but I think DIMIA is productivity driven, given that you have budgets, statistics and are up for estimates and all that sort of jazz that we go through here. What can you tell us about that and what can you show us was the culture at the time?

Mr Rizvi—I would have to take on notice the precise funding model that was in place in 2001 in respect of—

Senator JOHNSTON—I am not sure it is necessarily about funding, if you follow me.

Mr Rizvi—I hear what you are saying.

Senator JOHNSTON—There is the funding aspect, but there is also: ‘We work hard here, this is what we do and we want to do better this month than we did last month.’

Senator LUDWIG—I worked in an area where they introduced work tracking of the number of files that you completed. You strove to ensure that you got the average—let me tell you—or a bit above the average if you wanted. It was about completed files; they had not yet developed a sophisticated measure to work out that there were different ways you could complete files.

Senator JOHNSTON—Often it is one of the major sources of satisfaction in the workplace: to compete and to achieve.

Senator LUDWIG—It is tied with promotion and advancement, so those who completed more than the average—who got 25—shine. As you can appreciate, the question underlying that is: was the effort to complete the 25 files good work?

Mr Rizvi—Yes. That comes back to the point that, in any budgeting or performance-monitoring arrangement that you have in place, the physical workload output can only be one of the indicators that you use, and you have to use a balanced set.

Senator LUDWIG—But you will check what you used back in 2001.

Senator JOHNSTON—We would be interested to know what was there.

CHAIR—Sounds like a bounty system or something.

Senator LUDWIG—Some of the earlier material was, let me tell you. The document I have is a DFAT document, but you would be aware of it. It starts:

Apparently an Australian citizen, Vivian Alvarez Solon Cook Young, date of birth 30/10/1962, was removed as opposed to deported from Australia by DIMIA representatives.
Are you familiar with that document?

Ms Daniels—Yes.

Senator LUDWIG—I am not familiar with all the 2,600, but I have a handle on some of them. This one went on to say—leaving out the names:

But I wondered if you could check with your DIMIA reps to see if they can remember such a person working for them.

That was in the penultimate paragraph. It finished:

Many thanks for anything you can find out.

Was there ever a response? Did they check with DIMIA and come back? That was 9 September 2003.

Ms Daniels—We covered some of that before and I said I would want to make sure that I was correct. I do not recall records that we have from our people in Manila that they were consulted; that is not to say they were not, but we do not have records of that.

Senator LUDWIG—This document from DFAT’s Consular Branch said:

Following a second QLD Police Missing Persons Unit inquiry in late September 2004, DIMIA requested Ms Solon/Young’s passport dossier from DFAT with no explanation of the reason for the request. DIMIA was asked to provide authorisation for the request but did not follow up. DIMIA did not contact DFAT to find out whether she had an Australian passport when determining her citizenship status in July 2001.

It went on:

Neither Consular Branch nor our Embassy in Manila has any record of contact with anyone going by any combination of names she may have used.

Are you familiar with that? Have you spoken to DFAT about that and tried to tie off why they say that?

Ms Daniels—I do not remember that email. What date is that?

Senator LUDWIG—that is not an email; it is a background. You may not necessarily have all the DFAT documents either.

Ms Daniels—I do not recall that one.

Senator LUDWIG—I was trying to work out whether this document was in confidence. I will pull it out of the pack and give it to you.

Ms Daniels—This one I do not recall us having.
Senator LUDWIG—A bit of blame shifting seemed to be going on there. Are you aware or do you have any knowledge of what role DIMIA played in that? I am trying to corroborate what DFAT are saying and giving you an opportunity to respond.

Ms Daniels—Can you point to the paragraph?

Senator LUDWIG—It is paragraph 3.

Ms Daniels—That relates to a request from Queensland Missing Persons in September 2004, which I think we dealt with previously. That relates to a request again from, as I said, Missing Persons to us.

Senator LUDWIG—So that is corroborated. That is accurate in the sense that:

DIMIA was asked to provide authorisation ... but did not follow it up. DIMIA did not contact DFAT to find out whether she had an Australian passport ...

Ms Daniels—Let me try to explain the chronology. A request was put to us from Queensland Missing Persons. It was on the basis that Mr Young was making inquiries in respect of Ms Alvarez. The request came to DIMIA Canberra and was referred to DIMIA Queensland. DIMIA Queensland made a request of DFAT Brisbane for passport details and dossier details in relation to Ms Alvarez. The email exchange at that time notes that DFAT had the dossier ready but we did not seek it in the appropriate authorised format.

Senator LUDWIG—And you still have no explanation as to why that occurred, why you did not seek it?

Ms Daniels—Why we did not seek it in the appropriate authorised format?

Senator LUDWIG—Yes.

Ms Daniels—No, sorry.

Senator LUDWIG—There was a document S325A. Does that help?

Ms Daniels—It will, yes.

Senator LUDWIG—They look as though they were ‘for official use only’ Consular Branch talking points. On page 12 of that document it says: ‘Talking points—for public use strictly if asked’. Then it has ‘Background—not for public use’. There is only one point I want to check with you—and I can read it out:

On 28 September 2004 Queensland Police again contacted DIMIA to advise that Robert Young, Ms Alvarez Solon Young’s former husband, was making inquiries about her. DIMIA was asked for a contact within DIMIA to talk to Mr Young. DIMIA has not yet established what action was taken on that inquiry.

I would like to know whether that position has changed—whether you have inquired and can verify what, if anything, DIMIA did.
Ms Daniels—If what you have read out is—

Senator LUDWIG—Whether that remains the current state of play.

Ms Daniels—That is correct, yes.

Senator LUDWIG—Senator Johnston asked about the OWWA documents. Have you requested those?

Ms Daniels—From OWWA?

Senator LUDWIG—Yes.

Ms Daniels—No, we have not.

Senator LUDWIG—The task force was established, and on or about the 30th the files were referred to the Comrie inquiry. From that date onwards, have you carried out any internal investigations into these matters more broadly, either of an administrative nature or in looking at the files again, other than of the kind requested by Mr Comrie or by the Ombudsman?

Ms Daniels—Certainly there have not been any internal investigations that I am aware of. Given that Mr Comrie’s report will be available shortly, I would suggest that the answer remains: no, we have not done any.

Mr Rizvi—I think we would have continued to update the chronology. As we came across documents, we have incorporated those into the material that you have. What we have not done, as I said before, is go and actually interview the relevant staff.

Senator LUDWIG—Are you satisfied that the Ombudsman has been able to have access to everyone they requested to see?

Mr Storer—Mr Comrie, you mean?

Senator LUDWIG—Both, I guess. It is really a question to Mr Rizvi. Are you satisfied or is Mr Metcalfe satisfied that the Ombudsman and Mr Comrie have been able to access the information—the files and the people—that they could have within DIMIA?

Mr Rizvi—Certainly from my perspective I am not aware of any impediments or concerns that Mr Comrie raised with us. He may have raised them with Deborah, but has certainly not raised them with me.

Ms Tyler—in terms of records and files held by the organisation, very early on all original files were transferred to Mr Comrie’s possession. The department has only kept copies since that date, and the originals still are with Mr Comrie. So he has had access to all records that we have been able to identify in our systems.

Mr Storer—I think it is fair to say that he has also told the department that he has been very satisfied with the support he has received in accessing files and people.
Senator JOHNSTON—How do we know that we have discovered all the documents? Who has done the audit on that?

Ms Tyler—What we have provided to Mr Comrie is a list of all records that we have been able to identify in our systems such as TRIM, which is our record management system. We have been very open with him. At one stage we had trouble locating a file, and we pursued that file that we could not locate and provided it to him when we were able to find it. We have been very transparent in identifying all of the information we held, such as initiating providing him with the audit logs of who accessed the various data management systems. That was done very early on in the piece. So, as much as any officer can be satisfied that we have provided him with absolutely everything, we have certainly done that.

Mr Storer—And all-staff emails went around to make sure that anything possible could be sent in.

Senator LUDWIG—Did you keep a check of how much you sent and take a copy of it?

Mr Storer—Yes, we did, but I cannot give you the precise numbers at the moment.

Senator LUDWIG—Do we have that?

Mr Storer—You have most.

Senator LUDWIG—I may not ask for it yet.

Mr Rizvi—I think it would be fair to say that we have given you all the material, firstly, that we provided to the lawyers involved in the case. That was part of the FOI request; that was the 2,600. You then asked a further question at the last hearing: ‘What else can you provide to us?’ As a result of that, I think we have provided you with a further 70- or 80-odd folios. There were a number of folios we identified which we were unable to provide to you, and we provided an explanation in respect of those folios in the answer that we provided.

Senator LUDWIG—I am just checking again whether or not there was a whole raft that I might have missed.

Mr Storer—No, I do not believe so. That is the full lot. The explanation for the ones that we could not give you was that third parties were involved.

Senator LUDWIG—Yes, I can accept that.

Ms Tyler—Senator Ludwig, the file that we could not identify we found very early on in the piece. That was certainly considered as part of the FOI application material, so that would have come up in the information that was provided to you.

Senator LUDWIG—Mr Rizvi, why didn’t you provide those files when I asked for them when the Senate Select Committee on Ministerial Discretion in Migration Matters was doing its inquiry—given that you have been so forthcoming now?
Mr Rizvi—I am not quite clear on the question.

Senator LUDWIG—Mr Storer knows.

Mr Storer—You asked Mr Rizvi, though.

Senator LUDWIG—I asked for a range of documents from the department in relation to the Select Committee on Ministerial Discretion in Migration Matters, and they were not released. What has changed?

Mr Rizvi—I cannot explain that.

Senator LUDWIG—Mr Palmer did not think much had changed in terms of your culture, I must say, but something has changed, in that you then decided to—and I thank you for that, because it has made the work of the committee in some respects harder, but more helpful.

Mr Rizvi—I cannot answer that question. I do not know the specific circumstances of the cases you are referring to in respect of the previous inquiry and what answers we gave. In this particular instance, I do know that, firstly, Mr Farmer made it very clear that we would cooperate absolutely fully with the Ombudsman and, subsequently, with the start of this inquiry, Mr Metcalfe has made it absolutely clear that we will cooperate absolutely fully with this inquiry to the maximum extent that we possibly can, and that is what we have sought to do.

Senator LUDWIG—Thank you for that. Perhaps that might have been the penultimate question. I saw a newspaper article—and there are the usual caveats about newspaper articles—which indicated that adverse action was going to be taken against the Brisbane office of DIMIA. That did concern me, because of course the findings have not been made public and the report has not been handed down. Where does that lie? When I say ‘adverse action’, my recollection was that it seemed to suggest that people might be dismissed.

Mr Rizvi—I am not clear on precisely what you are referring to. Certainly our processes in respect of the report will involve, firstly, the opportunity that Mr Comrie is providing to those persons adversely named to provide a response. The individuals concerned are receiving legal advice in compiling their responses. Mr Comrie will then take those responses into account. After having taken those responses into account, he will then produce a report.

Senator LUDWIG—So there has been no pre-emptory action? No-one has been set up for dismissal, given ‘don’t come Monday’ slips or shifted sideways out of a particular role, other than what we currently know, which is on the public record?

Mr Rizvi—Apart from what has happened in terms of the executive level?

Senator LUDWIG—Yes.

Mr Rizvi—No, nothing of that kind has taken place.

Senator LUDWIG—Thank you, that is very comforting.
CHAIR—You do not want to make any more statements to invite more questions, do you?

Ms Daniels—I want to correct a couple of statements that we made or answers to questions that you asked. You asked if there was a bridging visa application on 12 July 2001. There is such an application on file.

CHAIR—Do we have that?

Ms Daniels—It would be in your papers, yes. I said that we had no record of the very important notice or the equivalent given to Ms Alvarez when she was detained in the hotel environment. My colleague has brought to my attention that, in the interview that was conducted on the 13th, there is a question that says, ‘Have you read or did an interpreter read to you the notice to people in immigration detention?’ and the answer is, ‘Yes.’

CHAIR—This is that document entitled ‘Record of interview’?

Ms Daniels—Yes.

CHAIR—And whereabouts is that question?

Ms Daniels—that is on question 2. It is under the question that says, ‘Do you want the help of an interpreter during this interview?’ to which the answer is, ‘No.’

CHAIR—I also note that she does not sign any of these documents, does she?

Ms Daniels—Yes.

CHAIR—Does she?

Ms Daniels—No.

CHAIR—It appears in here that she has not signed any of it.

Ms Daniels—that is correct.

CHAIR—There is an ‘Unable to sign’.

Ms Daniels—it is limited mobility. There is a record of limited hand mobility.

Senator LUDWIG—but you do not know that for a fact, because you have not asked the officer.

Ms Daniels—we have not asked the officers? No.

Senator LUDWIG—So you are only guessing.

CHAIR—She could not put a cross or anything like that?
Ms Daniels—I do not know.

CHAIR—We do not know?

Ms Daniels—We do not know.

CHAIR—All we know is what this officer has filled out here?

Ms Daniels—Yes. Mr Williams had a correction as well.

Mr Williams—Senator Johnston, you were asking about the Qantas form—the security assessment thing—and you noted that there is a question there about whether there is a history of physical abuse. The purpose of this form is to inform the airline about risks to their passengers and their aircraft whilst in transit. I think it is badly worded, but, as I understand it, it is directed at whether or not the passenger has a history of having physically abused or has a violent criminal history in the past. It is not whether the person themselves has been subject to that.

Senator JOHNSTON—Yes. I thought it was ambiguous—

Mr Williams—I think it is.

Senator JOHNSTON—and may have been construed either way.

Mr Williams—This has been revised, I think, since then.

CHAIR—As there are no further questions, is there anything else you would like to say?

Mr Williams—Thank you.

CHAIR—Thank you for coming along and for being patient with us. As you no doubt know from appearing here many times, the timing is not often in our control.

Committee adjourned at 7.55 pm