



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES  
COMMITTEE

**Reference: Chen Yonglin and Vivian Solon cases**

MONDAY, 25 JULY 2005

SYDNEY

BY AUTHORITY OF THE SENATE



## **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:  
**<http://parlinfoweb.aph.gov.au>**

## SENATE

### FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Monday, 25 July 2005

**Members:** Senator Hutchins (*Chair*), Senator Sandy Macdonald (*Deputy Chair*), Senators Hogg, Johnston, Mackay and Stott Despoja

**Substitute members:**

Senator Kirk for Senator Mackay

Senator Bartlett for Senator Stott Despoja

**Participating members:** Senators Abetz, Bartlett, Bishop, Boswell, Brandis, Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fifield, Forshaw, Kirk, Lightfoot, Ludwig, Lundy, Marshall, Mason, McGauran, Nettle, Payne, Robert Ray, Santoro, Watson and Webber

**Senators in attendance:** Senators Bartlett, Brown, Hogg, Hutchins, Johnston, Kirk, Ludwig and Nettle

**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**

<b>CHIN, Mr Jin, Chairman, Federation for a Democratic China .....</b>	<b>1</b>
<b>DANIELS, Ms Yole, Assistant Secretary, Compliance and Analysis Branch, Border Control and Compliance Division, Department of Immigration and Multicultural and Indigenous Affairs .....</b>	<b>49</b>
<b>DELLER, Mr John, President, Falun Dafa Association of New South Wales Inc. ....</b>	<b>12</b>
<b>FREEDMAN, Mr Harry, Legal Team for Ms Vivian Solon .....</b>	<b>23</b>
<b>HUGHES, Mr Peter Gerard, First Assistant Secretary, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs .....</b>	<b>49</b>
<b>ILLINGWORTH, Mr Robert Laurence Mark, Assistant Secretary, Onshore Protection Branch, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs .....</b>	<b>49</b>
<b>LIANG, Mr John, Vice Chairman, Federation for a Democratic China .....</b>	<b>1</b>
<b>LINDSAY, Ms Louise, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs .....</b>	<b>49</b>
<b>NEWHOUSE, Mr George, Legal Team for Ms Vivian Solon .....</b>	<b>23</b>
<b>O'CALLAGHAN, Mr James Gerard, State Director, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs .....</b>	<b>49</b>



**Committee met at 12.32 pm****CHIN, Mr Jin, Chairman, Federation for a Democratic China****LIANG, Mr John, Vice Chairman, Federation for a Democratic China**

**CHAIR (Senator Hutchins)**—Today the committee will conduct its first 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 9 August 2005.

Evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection from actions 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 given before the committee. I remind you 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 stage wish to give any part of your evidence in private you may ask to do so and the committee will consider your request.

I welcome representatives from the Federation for a Democratic China to the hearing. The committee has before it a written submission from the Federation for a Democratic China. Are there any alterations or additions you would like to make to the submission at this stage?

**Mr Chin**—No.

**CHAIR**—I invite you to make an opening statement, which will be followed by questions.

**Mr Chin**—I would like to make a formal statement. I will try to finish my statement within 10 minutes, then, by all means, you can raise any questions. Senators, thank you very much for inviting me and other Chinese pro-democracy activists here to make a statement in relation to the defection of former Chinese diplomat Mr Chen Yonglin. In my submission, dated a couple of weeks ago, I raised three different issues. As Mr Chen Yonglin has been granted permanent residency, I am going to make a statement focusing on only the following two issues. The first is Mr Chen's allegations of how the Chinese communist government infiltrates and manipulates the Australian-Chinese community and the ethnic Chinese media. The second is how effectively the Chinese communist government lures Western democratic countries with huge economic interests, and the effectiveness of the Australia-China human rights dialogue.

Around 40,000 Chinese nationals were granted permanent residency after the Keating government's decision in 1993 because of China's appalling human rights record. As memories of the Tiananmen massacre became dim and vague and China underwent fast economic growth in the eyes of Westerners, the Chinese communist government became all the more confident about expanding its influence beyond its border. The Chinese language newspapers became controlled and manipulated. Mushrooming Chinese associations forming in their new localities became the target of Chinese consulates and embassies, in an effort to win them over. My observation was confirmed by the defecting Chinese diplomat Mr Chen Yonglin. In his account there are around 200 associations in New South Wales alone formed by former Chinese nationals, of which around 80 per cent were pro the Chinese government. The leaders of these

associations are keen to keep a good relationship with the Chinese consulate or embassy and follow the instructions of the Chinese diplomats and officials.

Australian freedom and democracy are somehow abused or misused. Some of the former Chinese nationals who are now permanent residents or citizens receiving information through Chinese language media are at high risk of being brainwashed. The Chinese government obtained manipulation through injecting capital to hold dominance. Another typical example is the Chinese radio program *Good day Sydney*, which is broadcast every morning on Radio 2000. This is the tactic of the Chinese communist government: a live frog being comfortably cooked by gradually warming up the water.

Criticism of the appalling human rights record of another country is a moral principle of a democratic government, whereas the protection of freedom of speech and freedom of association for its citizens should be the obligation of the government. At the moment, the Australian government is facing this thorny issue. It is my point of view that governments should take action to stop the wrongdoing of the Chinese communist government's infiltration and manipulation of the ethnic Chinese community. It is also the sovereignty of the country that the government has an obligation to protect.

Former Chinese diplomat Chen Yonglin's defection to Australia uncovered the veil of communist China. China is not only a fast-growing economy but also a country where evil and danger need to be brought to light. Mr Chen's allegation is only the tip of the iceberg. Communist China would be the equivalent of Nazi Germany and the Iron Curtain of the Soviet Union. They are all evil to human beings. When communist China is finished and all inside stories are brought to light, will those who ever held candles to the devil be ashamed?

Let me cite another relevant incident to this matter. The so-called peaceful rise of communist China will pose a significant threat to the world. An autocratic China could make its state policies by a few oligarchs. The policies would be non-transparent and unaccountable. The other day a Chinese general boasted about destroying 200 cities in the US through its nuclear weapons capacity at the expense of all lives in a vast area of China—about 70 per cent of the population of China is east of Xi'an—if the US interferes with China's military recovery of Taiwan. In spite of there being no sign of imminent war, should it take place who should these heavily brainwashed former Chinese nationals—now Australian citizens—having lost their recognition of nation, take sides with? Are they with communist China or Australia? It reminds me of the World War II when all American-Japanese were enclosed in an exclusive area. History could be repeated if that is forgotten.

Secondly, the Keating government took the initiative of de-linking human rights issues with trade in the treatment of the Australia-China relationship, which was soon followed by many democratic countries around the world. Since China got access to the WTO, human rights issues no longer became the bargaining chips. China's human rights abuses receive no harsh criticism. Australia-China human rights dialogue is actually ineffective and fruitless in persuading the Chinese government to follow well accepted international standards. The ongoing Australia-China human rights dialogue is a show according to the former Chinese diplomat, Mr Chen Yonglin. Looking back at the past decade of multiround non-confrontational and constructive dialogues, has there been any progress? In my opinion, no. From my point of view, it is time for the Australian government to review the multiround Australia-China human rights dialogue.

It is true that the Chinese government is deceiving the international community. For the Chinese communist government, the survival of the regime and acceptance by the international community is above anything else. But the Australian government is not necessarily deceived. A senior official of the Department of Foreign Affairs and Trade said that nowadays Western governments are all very pragmatic and, for the sake of national interests, they do not care if they hug an angel or a devil.

The core element of substantial improvement or achievement of human rights in China is the overall change of the nature of the political system. In China, without real transition from an autocracy to democracy, a substantial improvement of the human rights condition is impossible. To achieve continuous progress of improvement of human rights in China, a new policy with a long term and historical insight is what I want to strongly recommend—that is, to push China to move from autocracy to democracy. This was also strongly urged by Labor MP Mr Michael Danby a few years ago in a parliamentary speech.

Let us recall what happened in 1996 when mainland China launched missiles over Taiwan in an attempt to interfere with Taiwan's presidential election. US President Bill Clinton sent two aircraft carriers to the Taiwan Strait. The US Secretary of State Warren Christopher said the US had interests in the region instead of saying it was to defend a democratic entity and keep the commitment of the US government designated in the Taiwan Relations Act. In my opinion the rightful military reaction of the US and the image of a democratic US was marred by his remarks.

To resist temptation is often difficult. An individual can be bought off; so can a government. There is a seemingly huge market in China. Negotiations for multi-billion dollar trade deals are underway—there are talks on selling Australian uranium to China—but we should also be cool headed and see the double-edged sword. Australia needs more trade with China the same as China needs Australia to be a steady supplier of energy resources. CNOOC, the state-run oil company, playing a canny game in the auction for California's Unocal is the best example to display communist China's strategic intention and its desperate needs.

I want to emphasise here that adherence to the value of democracy and the moral principle of a fully fledged democratic country will not necessarily damage economic and trade ties with China. I implore the Australian government to push forward Australia's value of democracy and freedom to help and induce China to get on the road towards democracy and consider it as important as economic benefits in dealing with communist China. This should not contradict the long-term national interests of Australia but make a good contribution to the security and stability of the Asia-Pacific region and the whole world. Thank you.

**Mr Liang**—Thank you. I am talking here today because our freedom is at stake. I hesitated before I decided to attend this hearing, as some of my friends reminded me: 'John, you have not been allowed to visit your family for 16 years. Are you prepared to not go to China for another 16 years?' It is a heart-breaking situation. It is a disappointing fact and a sad reality. I often have to choose between following my conscience and obeying the authoritarian Chinese government. I have to choose between being spied on, disturbed and marginalised by those pro the totalitarian government, or even imprisoned in China, or having my profile raised by the communist government. I regard myself as a true believer in Chinese democracy. I have been involved in the Chinese pro-democracy movement for 16 years. I still hesitated before I decided to attend this

hearing. You can imagine how much influence the Chinese authoritarian government has in Australia and how weak the Australian government is in protecting its citizens' freedom. In the end, my conscience prevailed—that is, I finally decided to be here and to place on record my serious concern about the Chinese government's incursions into freedom in Australia. I will give examples of five cases which detail this interference, but I will read out only two because of the time limit.

The first one I would like to read out happened in January this year. Mr Lu Zhansuo, a church board member who also holds the office of President of the Overseas Chinese Democracy Coalition Australia, was discussing with a priest a possible job as a pastor. The priest told him that the Chinese consul general had approached him many times, demanding that Mr Lu not be given a job. Later, as a result, Mr Lu was forced to change churches. The second case I would like to read out was raised by Mr Ian Turner of Dandenong, Victoria. When he and his wife went to an Australia Day celebration this year, he witnessed an unhappy incident. The Australia Day celebration party was organised by a Melbourne Chinese organisation that is quite influential in the local Chinese community. On the surface, it seems to promote diversity and tolerance and its members are Australian citizens of Chinese descent.

Mr Turner was there with his wife and Ms Xiaoqing Luo, a journalist for the *Epoch Times*. This newspaper is one of the few Chinese-language media publications that are truly independent. It ignores the constant pressure from the Chinese government to not report on issues that are deemed to be sensitive. In this instance, she was invited to the party by key members of the organisation. However, just before the event was about to start, the secretary of the organisation told Ms Luo to leave immediately, otherwise Ms Yueming Yang, the Deputy Consul-General of the Melbourne Chinese Consulate-General, would be very angry on seeing her there. Ms Yang gave the ultimatum that she would leave if Ms Luo were to stay for the party. The secretary of the Melbourne Chinese community organisation then escorted Ms Luo off the premises. We are as disgusted as Mr Turner as to why Deputy Consul-General Yang acted in such a shocking manner. Equally, we are appalled that Ms Yang, a member of the Chinese government, could wield her influence to such an extent as to annihilate freedom of speech and association, which are so much a part of democracy here in Australia.

These five cases exemplify the sorts of gross violation of human rights by the Chinese government in Australia against free speech, free action, right of association, assembly and freedom of belief. It is as if there are two governments: one is the government we pay taxes to, and the other is one which watches and controls us. In a more general sense, the FDC's activities have been constantly monitored by the Chinese government. In our attempt to strive for a freer and open China, our meeting times, discussion details and plans for events have been somehow made known to the Chinese government by their vast network of informants. When our members return to China, they are harassed by the government and followed by the secret police. One was harassed at his wedding and consequently he had to resign from our organisation. Ultimately, the Chinese government do not have any justification for their unceasing intrusion into the lives of Australian citizens in Australia. We strongly object and demand an end to the Chinese government's incursion into the freedoms of Australians.

Underscoring the Chinese government's ability to constantly threaten overseas dissidents and undermine their activities is a prevailing culture of appeasement. The reason the Chinese government is able to achieve this is the often conciliatory tone with which they are treated by

foreign governments. The Australian government has never formally stood up to demand an end to their activities. They have always tolerated small Chinese encroachments on our freedom. Due to this culture, people begin to accept that the Chinese government's political and economic muscle cannot be opposed effectively. However, the Australian government must not continue this unfortunate culture of appeasement; it is up to the Australian government to stand up and claim their national sovereignty before significant damage is done.

I realise that increased economic integration between China and Australia has increased interdependence, both economically and politically. This raises a question: will the Australian government use our own human rights record to set an example for China to improve theirs? Or will they let China's encroachment of human rights extend to Australians in Australia?

Another question concerns our society. What kind of society do we want to create? I understand that Australian society has always emphasised the rights of individuals. We support diversity and value individuals' different opinions. This contrasts with China, which emphasises collective rights in the name of the national interest.

Every year, I understand, Australia holds a human rights dialogue with China. Over recent years, this has become a joke and has no great substance. Australia hands over \$1 million every year—I understand that it will be \$1.8 million next year—ostensibly to help China improve in human rights. However, this money is taxpayers' money. Now, is this money used by China to improve their human rights, or to enforce their stringent one-party system? Is the Australian government advocating for China to be on the road to democracy or is it helping it to rein in dissidents?

My organisation would like to make a suggestion: instead of handing taxpayers money directly into the pocket of the Chinese government, perhaps the government should divert some of this money through another channel. We suggest that they use some of this money to support human rights lawyers in China, who try tirelessly to defend those displaced, abused and disadvantaged under China's authoritarian system.

The Australian government's indifference to Mr Chen's claims that there was a vast spy and informer network could lead to detrimental consequences. His claim that there are 1,000 spies in Australia could lead to an atmosphere of distrust and even antagonism towards the Chinese community. Unless Mr Howard takes action to investigate and takes steps to eradicate this, the existence of an extensive number of Chinese spies and informers could be used as a pretext for racial discrimination—that Chinese business people or students could not be trusted because of their potential to be spies. The final question I want to ask here is: is our value of freedom negotiable? Can we encourage the Chinese leaders to take the values of freedom as universal? This concludes my statement. Thank you very much.

**CHAIR**—Thank you, Mr Liang. There are seven senators here and we have about half an hour so I will start off. Mr Chin, in your statement you said there were about 200 Chinese organisations in New South Wales. Am I right that you alleged that 80 per cent of them are pro-Chinese government?

**Mr Chin**—This is what I quoted from Mr Chen's account. He said that around 200 Chinese community associations have been formed in the past years.

**CHAIR**—And the allegation is that they had been infiltrated by spies?

**Mr Chin**—They have not necessarily been infiltrated by spies. They are willing to follow the instructions of the Chinese diplomats or the Chinese government because they want to have a good relationship with the Chinese officials and they have been greatly brainwashed because the Chinese media have been manipulated or controlled by the Chinese agents.

**CHAIR**—The allegations that you have made today are following discussions I gather you have had with Mr Chen.

**Mr Chin**—Yes.

**CHAIR**—Have you spoken to any of Australia's security agencies in relation to the allegations that have been made?

**Mr Chin**—No, I have not been approached by any Australian security agency.

**CHAIR**—Not by ASIO?

**Mr Chin**—No.

**CHAIR**—The Federal Police?

**Mr Chin**—No.

**CHAIR**—The New South Wales Police?

**Mr Chin**—No.

**CHAIR**—Mr Liang, have you been approached?

**Mr Liang**—No.

**CHAIR**—In your submission, in the second last paragraph on page 2, you say:

Their indifference to Mr Chen's plight indicates a blunt disregard for human rights. It—

that is, the Australian federal government—

has placed Mr Chen's life in danger by informing the Chinese consulate of his defection just to avoid offending them.

Would you like to expand on that statement? How has the federal government placed Mr Chen's life in danger?

**Mr Chin**—I think it was mishandled by the government when Mr Chen lodged his application for political asylum. For the officials to tip the Chinese consulate was not the right way. I do not

know whether there is a regulation in the Australian immigration law that the applicant's details should be revealed to the home country from which he is defecting.

**CHAIR**—Why do you believe that they placed his life in danger by that action?

**Mr Chin**—If he is sent back to China, his life is in danger. Also, according to Mr Chen's allegations—

**CHAIR**—The foreign minister said that he asked Madam Fu whether his life was in danger and Madam Fu said that it would not be.

**Mr Chin**—I think that Madam Fu is telling lies to the public. This is the procedure for the Chinese officials—they always pretend to have a very nice face in public, but what they do behind the scenes is totally different. As I was born and bred in China, I know this kind of practice and I understand how to deal with these things—how to read the news in the newspapers in the opposite way.

**Senator BROWN**—I would like to thank both gentlemen. I understand that it has taken some courage to be here, particularly for you, Mr Liang. I appreciate that greatly. You made the right decision even though it may be at considerable cost to you. I am very concerned that for 16 years you have not been able to return to China. Is this because your visa applications have been rejected or because there is some danger to you should you go back?

**Mr Liang**—I understand that, according to some other key members who have applied for visas to China, they have been rejected. By the same token, I do not think that I could get a visa so I have not applied.

**Senator BROWN**—Mr Chin, the submission refers to a candidate for the Unity Party having been threatened back in 1999 by Chinese consulate officials. Can you tell the committee a little more about that?

**Mr Chin**—I think he will speak for himself in his in-camera statement afterwards. It is better to leave it to him to answer your question.

**Senator BROWN**—Chair, could you tell me when the in-camera session is coming up?

**CHAIR**—If the witnesses wish to go in camera, we can consider that at the end. The opportunity is there for that to occur.

**Senator BROWN**—Mr Liang, you spoke of Mr Ian Turner of Dandenong being at an event in which a Chinese consulate official left because the newspaper proprietor stayed—have I got that the right way around?

**Mr Liang**—No. The Deputy Consul-General, Ms Yang, said that, if the *Epoch Times* journalist Ms Xiaoqing Luo did not leave, she herself would leave. In the end, the journalist had to go. The Deputy Consul-General, Ms Yang, stayed.

**Senator BROWN**—So the condition of the Deputy Consul-General staying was that the journalist leave the function. The function was effectively held to ransom until that outcome. This was in Melbourne—

**Mr Liang**—This year on the Australia Day celebrations.

**Senator BROWN**—Do you know why the journalist made that decision to leave?

**Mr Liang**—I believe she was under extreme pressure because she did not want to spoil the party. As you say, the Deputy Consul-General held the party to ransom.

**Senator BROWN**—Tell me again: the party was an Australia Day party for the Australian Chinese community in Melbourne.

**Mr Liang**—It was organised by a Melbourne Chinese organisation to celebrate Australia Day.

**Senator BROWN**—Can you tell us who else might have been at that party.

**Mr Liang**—I think it is in this material that has been handed out already which was prepared by *Epoch Times*; there are details here. Also, Ian Turner made a statement to the editor of the newspaper. I am not sure whether he posted it to the media. There are details here, I think.

**Senator BROWN**—Has the first document you showed us been given to the committee?

**Mr Liang**—Yes.

**Senator BROWN**—Has Mr Turner's statement come to the committee? Do we have a copy of that?

**Mr Liang**—No, not yet. He just gave it to me today.

**Senator BROWN**—May we have a copy of it?

**Mr Liang**—Yes. Do you want it now? We can hand this copy to you if you want.

**Senator BROWN**—Thank you.

**Senator HOGG**—Before you proceed, we should identify the document for the sake of the record.

**CHAIR**—This is 'Interference with the *Epoch Times*'s normal business by the Chinese government's personnel and agents in Australia', compiled by the Epoch Times Australia Inc. Melbourne, Victoria, July 2005.

**Mr Liang**—This next one was written by Ian Turner.

**CHAIR**—Now we have a copy of a statement from Mr Ian J Turner of Dandenong, Victoria, dated 3 February 2005. Are these to be public documents or are they confidential?

**Mr Liang**—The *Epoch Times* one can be public, but I have not contacted Ian Turner about his one.

**CHAIR**—So that is not public until such time as you advise us otherwise, all right?

**Mr Liang**—Yes, okay.

**Senator BROWN**—You have described the Australian government's attitude as one of appeasement, but that is an assessment from where you stand. You have also said that the Australian government has never stood up to formally reject the intrusions of the Chinese government. Could you describe for us how it is for people in the Chinese Australian community who feel that they want to speak out about democracy or they want to make political comment about the government in Beijing, for example? You have indicated you were fearful about coming to this committee, but is there—this is a leading question, I know—a general fear in the Australian Chinese community, of many thousands of people, that they should not speak up about politics because they may come under pressure?

**Mr Liang**—I think so. Even though I have been involved in the pro Chinese democracy movement for so many years, I still have some fear deep inside my heart for general, ordinary people who have not been involved in these activities.

**Senator BROWN**—Is that a fear that in some way or other you may come to be sorry for speaking out?

**Mr Liang**—I do not have such a deep fear but, as I say, I feel hesitant. For instance, some of our friends and community organisations probably try to marginalise me in the community. I probably cannot even go to China to visit my family for another, say, 10 or 16 years. If I decide to go, if I want to go, probably I have to keep my mouth shut. But, if I do not want to go, I can probably continue to speak out.

**Senator BROWN**—Do you know of anybody who has had their request for a visa to go to China rejected because they have spoken out?

**Mr Liang**—Yes. There is one case where one of our members applied for a visa at the consulate-general in Melbourne. He was put in a room for several hours. They asked him to admit wrongdoing or mistakes he has made before he was granted a visa. Eventually that member was granted a visa to visit China, but I am not sure whether he admitted or not. How can he get a visa? When he went back to China he was interviewed or interrogated by security officers in China.

**Senator BROWN**—While he was staying in China?

**Mr Liang**—Yes.

**Senator BROWN**—Did they approach him where he was? In what way did this happen? Do you know?

**Mr Liang**—I do not know the detail. If the committee is interested in that, maybe you could contact the person directly.

**Senator BROWN**—Yes. Maybe you could consider giving the committee the name of that person so that we may follow that up.

**Mr Liang**—Yes.

**Senator BROWN**—Do you think this is a rare occurrence?

**Mr Liang**—I do not think so. I think there are systematic procedures.

**Senator BROWN**—You described the human rights dialogue between the Australian and Chinese governments as being a joke and that the money might better be put into something else. But isn't it fair that Australia considers its trade with China and goes quietly on democracy and issues of political concern? Do you see why the Australian government might not want to confront the Chinese government on matters of political or other contention?

**Mr Liang**—I think it depends on the government's stand. A final question I ask is: is the value of freedom negotiable? Do we want to sacrifice it because of increased trade? Or do we want to encourage the Chinese leaders to take the value of freedom as universal?

**Senator BROWN**—I have just one other question. This is not in your submission, Mr Chin Jin, but I am very well aware of the history when President Hu came to Australia two years ago and you were invited into the gallery of the parliament. Could you tell the committee what happened on that day?

**Mr Chin**—I still clearly remember that day, which was 24 October 2003. I was invited by the then Greens MP, Michael Organ, as a guest to attend Mr Hu Jintao's address in Parliament House. As I was a pro-democracy activist, I was blamed by the Chinese foreign minister as being a terrorist. This was an insider story. Later on, I was informed by the official in the Australian foreign affairs department. It was a conversation between two ministers: 'Either allow this terrorist bloke, Chin Jin, to get into the public gallery and then Hu Jintao will cancel his speech in Parliament House or try to find another way to carry on his address in Parliament House.' I think that was the reason I was directed to the soundproof gallery. I noticed a lot of Chinese agents around me calling desperately through their mobile phones until I was seated there. About 10 minutes later, Hu Jintao appeared in the parliament.

**Senator BROWN**—There were Chinese agents in the parliament?

**Mr Chin**—Yes. I saw many of them. Obviously, they knew me and I noticed that these people felt relieved when I was seated in the soundproof gallery. I think you can all remember that Hu Jintao's address to the parliament was about 10 minutes later.

**Senator BROWN**—How did you know they were Chinese government agents?

**Mr Chin**—Because they had Chinese faces and they were just walking around me and I was later briefed by an official of the Australian foreign affairs department. I remember on that day, Senator Brown, that you were outraged that your guests were directed to another place, which was not supposed to happen.

**Senator BARTLETT**—In answer to a question that Senator Hutchins asked you, you said you have not been approached by the Federal Police or ASIO about any of these issues of harassment or intimidation. Have any of your members raised concerns or complaints yourselves with local authorities?

**Mr Chin**—I did not raise my concerns with the local authorities. I raised my issues with a government department. One thing I raised last year was that I was stopped from entering Hong Kong, when I was boarding in Frankfurt. I am an Australian citizen and I do not have to hold a visa to get into Hong Kong. That was checked before I left Australia with the Department of Foreign Affairs and Trade. I raised this concern with the government department. There was no action and no feedback. Can I suggest that we move on because we have another three people, who want to give evidence in camera, and their statements are much more sensitive. I think the time left for them is pretty short.

**Senator BARTLETT**—I might leave my questioning there.

**CHAIR**—If there are no questions, we might go to those witnesses. Could those witnesses please state the reasons why you wish to proceed in camera?

**Mr Chin**—These people are here because the information they want to release to the committee is pretty sensitive, and they have concerns about some other people who will be involved.

**CHAIR**—Thank you. Is it the wish of the committee that we proceed in camera?

**Senator BROWN**—It is.

**CHAIR**—There being no objection, we will now proceed in camera.

*Evidence was then taken in camera but later resumed in public—*

[2.12 pm]

**DELLER, Mr John, President, Falun Dafa Association of New South Wales Inc.**

**CHAIR**—Welcome. Evidence given to the committee is protected by privilege. This means witnesses are given broad protection from actions arising from what they say and the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. I remind you 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. However, should you at any stage wish to give any part of your evidence in private you might ask to do so and the committee will consider your request. We have your submission, which we have numbered No. 4. Are there any alterations or additions to your submission?

**Mr Deller**—I would like to make an amendment to the latter part of the submission.

**CHAIR**—Will you deal with that in your statement?

**Mr Deller**—I will come to that and submit it if appropriate.

**CHAIR**—That is fine. I now invite you to make a brief opening statement, which will be followed by questions from the committee.

**Mr Deller**—On behalf of the Falun Dafa Association of New South Wales, I thank the Senate committee for accepting our submission and for the opportunity to address the committee today. As set out in our submission, we offer brief comment on terms of reference (a) and (b) and our main focus is on term of reference (d). The common link for us is Chen Yonglin, the Falun Gong practitioners and DIMIA's apparent lack of understanding of the totalitarian nature of the Chinese communist regime and what that means for anyone seeking protection. In that regard, it may assist DIMIA's decision making in future if DFAT's country information on China included such documents as 'Nine Commentaries on the Communist Party' by the *Epoch Times* and the new book *Mao: The Unknown Story* by Chang and Halliday. Then, at least, the horror of what now exists in China under the current communist regime could hopefully be acknowledged.

In the case of former consular official Mr Chen and his efforts to seek asylum and protection, we trust that his personal testimony to this committee can reveal what really occurred with DIMIA and DFAT. Since publicly speaking up on 4 June this year, Mr Chen has continued to expose the Chinese communist regime's persecution of Falun Gong, including at a US congressional hearing last week.

In our response to term of reference (d), related matters, we have highlighted two key issues, which I will address briefly. The first is DIMIA's role where Falun Gong practitioners were interviewed by Chinese officials in Villawood Immigration Detention Centre. We have received no reply from the minister to our letter on this issue sent on 31 May. DIMIA's view seems to be that these people have failed at the first stage application as well as at the RRT review, so they are not real refugees; thus they were allowed to be interviewed by the Chinese officials. Whether

that approach complies with the technical legalities of our Migration Act we will leave for others to confirm. However, in terms of the real and lethal impact of that sort of decision making, with reference to officials from China's current communist regime, it is ignorant and dangerous in the extreme.

Mr Chen and Mr Hao Feng Jun, a former police officer whom you have probably heard of, have publicly exposed the functioning of China's 6-10 Office—the Gestapo-like office which oversees the eradication of Falun Gong practitioners. The 6-10 Office usurps all other jurisdictions in China, be they government, police, judicial or legal. It extends its tentacles everywhere, including into Australia. The Chinese officials authorised by DIMIA to interview the Chinese detainees in Villawood could be from the Public Security Bureau or they could be part of the 1,000 spies to whom Mr Chen referred. No matter where they are from, they will be controlled not by the surface nature of their job or even by their conscience but by their loyalty to and fear of the Communist Party. They may have also passed DIMIA's standard probity checks, but that does not mean anything in the context of how China's communist regime tracks those it has targeted to eliminate.

To treat the Chinese Communist Party as just another government is a fatal mistake—for those Falun Gong practitioners in Villawood who have been interviewed and, perhaps in the future, for all Australians. We can offer written statements, which I have here, from Falun Gong practitioners in Villawood who were interviewed by these Chinese officials if that is helpful for the committee. There are also media reports from another practitioner who was interviewed.

**Senator BROWN**—It would be helpful if we could have those statements.

**Mr Deller**—Certainly, I will put them together with the amendment to the submission. The second point, briefly, is to do with DIMIA's lack of recognition of the persecution facing Falun Gong practitioners in China, in particular why Falun Gong practitioners are persecuted; the 6-10 Offices throughout China; and an examination of the assumptions made by DIMIA in their protection visa assessments, which include that only Falun Gong leaders face persecution and that private practice of Falun Gong will not lead to persecution. These are common excuses given for not offering protection.

The final part of the submission dealt with the summary of issues for Falun Gong practitioners seeking refugee protection in Australia. I have amended the last part of that summary, part (b), which I would like to submit to the committee. That is all I would like to offer at the moment.

**CHAIR**—Please hand the amendment to the secretary so that we can distribute it.

**Mr Deller**—Yes.

**CHAIR**—Mr Deller, when did the people in Villawood get interviewed?

**Mr Deller**—It started on 16 April.

**CHAIR**—This year?

**Mr Deller**—I am reading from a statement from a practitioner in Villawood, but I believe April is not correct.

**CHAIR**—But it is this year we are talking about?

**Mr Deller**—It was May this year.

**CHAIR**—Did the Chinese officials introduce themselves? Did they make it known whether they were from the consulate or, from what you might expect, the NSB or this 6-10 Office?

**Mr Deller**—They were introduced as working for DIMIA.

**CHAIR**—They were introduced as working for DIMIA?

**Mr Deller**—Yes.

**Senator JOHNSTON**—By whom?

**Mr Deller**—By the Villawood staff, according to what we have received in the statements from practitioners who were interviewed.

**CHAIR**—And you say that they were not DIMIA staff at all; they were people who worked for the Chinese government?

**Mr Deller**—We understand that they may have been given authorisation by DIMIA to inspect passports and other documents with a view to deporting the people being interviewed.

**CHAIR**—Are you aware of how many people were interviewed?

**Mr Deller**—We are aware of four Falun Gong practitioners. We have heard of 45 others who were confined for 15 days, isolated without access to legal representation or the telephone.

**Senator JOHNSTON**—You have mentioned in your submission that various media have reported DIMIA's confirmation that officials from other countries routinely question their nationals. The evidence that you are going to give us discloses that the questioning of the—I think—49 Chinese nationals at Villawood was other than routine?

**Mr Deller**—On the surface it may be routine, if you are trying to deport them. Our point is that we are not experts on the legal matters of whether that is in accord with the migration law, but, given the knowledge of how the Chinese communist regime is operating against Falun Gong practitioners, any information you give them—and people are being interviewed about their families and where they come from in China. One practitioner was even asked if he knew who was the head of the Public Security Bureau where he comes from in China. So the practitioners fear, with good reason, divulging any details to those officials, because they are not secure that they are giving information, for example, to an Australian immigration official.

**Senator JOHNSTON**—That is rather more a matter peculiar to practitioners, in the light of your submission and the allegations of persecution. But what I am looking for is some direct

---

evidence that the Chinese officials that had entree to the detainees in Villawood were in fact in furtherance of persecution of practitioners—as we call them—as opposed to routinely carrying out inquiries as to the origins of people at Villawood. Tell me if the question is unclear. What I want to know is: what were they doing there? Were they seeking to persecute because of the things the practitioners did, in differentiation to the 45 others who were allegedly Chinese nationals, or are you saying, ‘Our practitioners naturally feel oppressed, frightened and scared to divulge these things, but we couldn’t really say whether the officials from the embassy were motivated by anything that was overt’? What is the situation?

**Mr Deller**—I think it is hard to ascertain that from my viewpoint but, based on the testimonies, the written records, that we have received, the practitioners were afraid. One lady is a former doctor, obviously an intelligent person. The questioning and the demeanour of the officials had her concerned, because they were not Australian immigration officials.

**Senator JOHNSTON**—Does the information you have indicate that they were disclosed to the officials as practitioners?

**Mr Deller**—They were asked if they practised Falun Gong.

**Senator JOHNSTON**—And they responded in the affirmative?

**Mr Deller**—I do not have all the details of all their answers. Some of them did not wish to give any information and did not complete the forms, because they saw the danger to themselves in doing so.

**Senator JOHNSTON**—Were those questions asked of all of the 45 people?

**Mr Deller**—I do not have information on that.

**Senator BROWN**—Can you think of any reason why immigration officials from any embassy in Australia should be questioning people being potentially deported from the country as to their religious adherence?

**Mr Deller**—No, I cannot. I would have thought that we would be particularly scrupulous about not divulging information which would put someone under threat, depending on how we consider the stage they are at in their protection application.

**Senator BROWN**—Yet the officials from the Chinese embassy specifically asked the people you are referring to at Villawood whether they were members of the Falun Gong or not? That was established?

**Mr Deller**—Yes, that is what we have heard.

**Senator BROWN**—Have you been able to establish from DIMIA why that line of questioning was allowed in this situation?

**Mr Deller**—As I said, we have written to the immigration minister and have received no reply. On 20 June I had a meeting with an adviser to the minister, Mr Van Maanen, but he could

not offer any answer to that. He said that the letter had gone to an appropriate section of DIMIA and that I should wait for a reply. So, no.

**Senator BROWN**—What is the current situation of the people at Villawood who were questioned?

**Mr Deller**—They are not isolated, as they were for 15 days; they are in the normal security situation at Villawood.

**Senator BROWN**—Do they know what their future is?

**Mr Deller**—No, they do not. Some of them are still attempting to file some sort of legal extension to pursue their applications, because they have failed at the first stage with DIMIA and failed at the RRT. They were slated for deportation and in that group because of those circumstances.

**Senator BROWN**—Regarding Mr Chen, was Falun Gong aware of his activities from the consulate before he defected?

**Mr Deller**—How do you mean ‘aware of his activities’?

**Senator BROWN**—That he existed—

**Mr Deller**—Yes.

**Senator BROWN**—and that he was keeping watch on Falun Gong?

**Mr Deller**—Indeed. He would publicly come out and remonstrate with us if we were having a lawful gathering or press conference in front of the consulate when it was in Elizabeth Street. He was involved in other activities, such as putting up anti-Falun Gong signs in Chinese and in English at the front of the embassy, spraying water on people, photographing people—

**Senator BROWN**—In front of the embassy, or the consulate?

**Mr Deller**—I beg your pardon, in front of the consulate. He was photographing and recording our practitioners who appealed there.

**Senator BROWN**—How did Falun Gong become aware that he had crossed to become a defector?

**Mr Deller**—Personally I only knew about it when I went to the 4 June rally for Tiananmen Square.

**Senator BROWN**—Which is where—

**Mr Deller**—Where he went public.

**Senator BROWN**—When he spoke out?

**Mr Deller**—Where he spoke out in public, yes.

**Senator BROWN**—There has been a newspaper report that he had been hosted, supported and funded by Falun Gong. What is your view as to that relationship or what is the relationship between Mr Chen and Falun Gong?

**Mr Deller**—I would say that the relationship is that he was doing his job—what he was employed to do—which was to gather information on Falun Gong practitioners, to disrupt and harass them and extend the campaign into Australia. He was doing that and through that he actually came to meet quite a few of us. We had exchanges and discussions in front of the consulate. Also he would look into what was going on—what sort of people the practitioners really were. Gradually I think he came to the understanding they were not what the Chinese propaganda said they were. Practitioners are good people trying to follow a traditional practice. That seems to be the genesis of his change and decision to act on his conscience rather than his directions from his communist employers.

**Senator BROWN**—Just on the wider question, could you give the committee a picture of how the Falun Gong practitioners—and I take Falun Gong to be a set of beliefs like maybe Catholics or Buddhists might adhere to—feel about the intervention of the Chinese government, which we have heard about and know about, in Australia? In what way is this a real entity? For example, in your knowledge, in what way does the Chinese government put pressure on Falun Gong here in Australia?

**Mr Deller**—I am sure that all the senators would have received press releases from the embassy advising them what a ‘dangerous’ group we are. At all levels that occurs. At the council level we have had many difficulties just maintaining the ability to book a hall to have a practice or meditation group because of the misinformation sent out by the embassy and consulates. I think it has been fairly widely reported that the harassment extends through all levels: attacks on property, cars, breaking into practitioners’ homes and photographing people in practice sites, so that the Chinese community are afraid to come and learn Falun Gong in the park, like you naturally do—you would go and learn Tai Chi, but they are afraid. So it is very pervasive.

**Senator BROWN**—How many adherents are there in Australia, do you know?

**Mr Deller**—It is hard to say. Even though we are the registered association which speaks up for practitioners, we do not keep a record. It is like going to learn Tai Chi in the park with three good principles to follow. We would estimate there could be between 3,000 and 5,000 across Australia.

**Senator BROWN**—In brief: people returning to China who are Falun Gong practitioners, have you got any real evidence that this is a problem for them?

**Mr Deller**—Yes. From Australia there has been, unbeknown to us, a practitioner sent back who is in a labour camp. If the committee is interested in that, I can find the details of it.

**Senator BROWN**—When you say ‘sent back’, sent back by whom?

**Mr Deller**—There has been at least one case where they have been deported from Australia.

**Senator BROWN**—I would be interested, and I am sure the committee would be as well, to get that information if you could supply it for us.

**Mr Deller**—It is hard to verify it, but we will certainly look into that.

**Senator BROWN**—As best you can.

**Mr Deller**—Yes.

**CHAIR**—Yes, that would be appreciated.

**Mr Deller**—There is the documented case of a practitioner in Germany who sought protection. He was refused. He was sent back and he is now in a labour camp. That is quite well documented. I can also send you the references to those documents if you wish.

**Senator BROWN**—Finally, I have seen state department reports which say that hundreds of Falun Gong practitioners have allegedly died in custody in China. What are your figures on that?

**Mr Deller**—The documented cases where practitioners have died following torture in prison or labour camps stands at 2,676. They are the ones that we can document. That includes details which satisfy Amnesty International—documents where the practitioner died, their contact details for the labour camp, their relatives—where, if you speak Chinese, you can ring up and verify all these things.

**Senator BARTLETT**—As you know, whilst these are related matters, this inquiry is somewhat narrow. I just want to make sure you are aware there is a broader inquiry by the Senate Legal and Constitutional Affairs Committee. Because of time constraints, I might not go as broad as I would otherwise here.

**Mr Deller**—I understand.

**Senator BARTLETT**—You might want to provide info to that other inquiry. Firstly, I want to ask about this information about people being interviewed by Chinese officials at Villawood. Are you able to indicate whether or not any of the practitioners, or at least the ones who contacted you, formally agreed to or requested any of those interviews? Or were they simply required to attend?

**Mr Deller**—They did not request those interviews. They were required to attend and were forcibly isolated for 15 days in the Manning Building in Villawood.

**Senator BARTLETT**—Thank you; I wanted to get that confirmed. In relation to the information you raise about outdated country information from DFAT about China's treatment of Falun Gong—which may have been correct five years ago but which, I would suggest, has intensified a lot since then—have you raised those concerns with DIMIA or DFAT to see if they would upgrade their information?

**Mr Deller**—Yes. When we have the opportunity, when we have an appointment with them, we raise those issues. We have submitted some additional information for clarification at certain points, such as sometimes a practitioner's application can fail simply because they have said the persecution began on 20 July 1999, whereas the official announcement came for the persecution on 22 July in the Chinese media. On DIMIA's records they have 22 July, so if a practitioner said 20 July, they are deemed to be not a real practitioner. So it is difficult to provide all of the information, but we are trying to update that information.

**Senator BARTLETT**—And have DIMIA or DFAT at least been willing to receive information?

**Mr Deller**—Yes, they are. And also at the RRT, we are more successful in providing information that is reviewed.

**Senator BARTLETT**—The updated bit of your submission you provided goes to the area I was going to ask you a question about, which is the number of practitioners. That is the main area that you have amended, isn't it—the number of practitioners?

**Mr Deller**—Yes. It is related to practitioners seeking protection in Australia.

**Senator BARTLETT**—I have a couple of questions from your original figures, which are not quite as precise—and I can understand why—as the updated version. It appears most of those that had been successful had been successful at the tribunal rather than at the—

**Mr Deller**—Most definitely.

**Senator BARTLETT**—Does that mean that the tribunal has taken into account more recent information than perhaps the primary decision maker?

**Mr Deller**—When we have the opportunity to assist a practitioner—when we know about them—we look at DIMIA's reasons for refusing them and then address them with alternative information. In a lot of the cases, the RRT accepts the alternative information, which is referred to in the original submission.

**Senator BARTLETT**—One issue I want to raise, which I am sure you would be aware would be a concern, and it is almost the reverse, is that the more genuinely concerns are taken on board about the treatment of Falun Gong practitioners in China the more potential there might be for Chinese people who are not valid practitioners to wave a flag and say that they want to claim protection. Does DIMIA consult you to get verification on whether people are genuine? I appreciate you cannot track it like a member of an organisation or whatever. Do you have any approach to the particular issue of people trying to pass themselves off as practitioners as a way of getting around the system?

**Mr Deller**—Going back three to four years, we have been in touch with various DIMIA officials and offered our assistance to help them determine whether someone was a real Falun Gong practitioner or someone that we at least knew of. It was explained to us that because of privacy considerations they cannot contact us with every case and say, 'Do you know this person?' So that is a bit of a blockage in that aspect. So, particularly with the RRT, we try to

cooperate and advise them of any practitioner whom we know of, but we do not know of every practitioner who is seeking protection; that is the other aspect.

**Senator BARTLETT**—The general claims you make about the horrendous persecution of practitioners in China are obviously extremely serious and particularly relevant for Australian citizens who have families still in China. Is it your view that those claims are generally accepted by the Australian government as valid or do you still get the perception that they are seen as unsubstantiated?

**Mr Deller**—I have even heard that the Prime Minister accepts that the persecution exists in China, but to what level do we take that? There seems to be, from our interaction with DIMIA and other officials, the feeling that the persecution exists but it is sort of okay if you stay at home. The thinking seems to be: ‘Why do you have to go out in the streets and practise Falun Gong? Why do you have to go and appeal for your right to have a belief? Why don’t you just stay at home and then you will be all right?’ Even at that level, if you read through the submission you will see there is plenty of evidence which explains that the persecution is an attempt to eradicate the belief of every person in China who believes in Falun Gong. You cannot do that. I think that there is an acknowledgement on a superficial level that the persecution exists, but there is no real understanding of how bad it is.

**Senator HOGG**—Following on from Senator Bartlett’s point, it gets to the issue that you raised in your submission. You say:

In China, western media can not access the labor camps and brain washing centres where Falun Gong practitioners are murdered and tortured in the thousands.

Are you able to substantiate a list of those labour camps and locations?

**Mr Deller**—Yes.

**Senator HOGG**—And the numbers interned there?

**Mr Deller**—It is very hard to confirm numbers, because there are different reports. The US State Department would refer to a figure of 250,000 in their publications, whereas the Laogai Research Foundation, the founder of which is Harry Wu, who spent many years—I do not know how long—in a labour camp, says two million to three million people are in Laogai, or labour camps.

**Senator HOGG**—And some of those people are there for reasons other than Falun Gong?

**Mr Deller**—Most definitely.

**Senator HOGG**—So what leads you to the contention that in those centres there are Falun Gong practitioners murdered and tortured in the thousands? What is the substantiation of that?

**Mr Deller**—There is a constant flow out of China of information. Not everybody originally, in the beginning of the persecution, agreed with it because Falun Gong was very popular. In fact, 70 million to 100 million Chinese people, throughout all levels of the government, even in the

Politburo, had family who were practising Falun Gong. So out of China there is still a constant stream—even despite the information blockade on such sensitive issues—of information about what is happening. Falun Gong practitioners in America run a web site. There are other organisations which are verifying the persecution and recording the deaths. From all those sources we have a picture of where practitioners died, which labour camps—even the telephone numbers and names of the people who are responsible for the death of a particular practitioner. But you need to read or speak Chinese—

**Senator HOGG**—So you do not have that in an English form.

**Mr Deller**—Some is. I can certainly offer what we know of in English form. It does document the most serious cases. Even in Australia, there are probably half a dozen practitioners who have personal experience of surviving labour camps. In America and Canada, all up there are probably 20 to 50. So there is a lot of personal evidence, personal testimony, of what is going on in the labour camps.

**Senator HOGG**—My last question goes to DIMIA in the sense that you indicate in your submission that it has a very poor understanding of the severity and the nature of the persecution that Falun Gong practitioners face in China. Further on in your submission you again cast doubts about DIMIA's capacity to make valid assessments from your perspective. What draws you to that conclusion? Do you know how DIMIA go about making their assessments internally? Do you know how the Department of Foreign Affairs, for example, go about making their assessments of the circumstances that are confronted by Falun Gong practitioners within China?

**Mr Deller**—Basically we come to that assumption by looking at the empirical evidence. There is country information that DFAT provide to DIMIA. Even within that you can reference one part of a report from the US State Department which tells you one thing, and you can reference another section which tells you another thing. Out of that, when we do examine these alternative sources of information to supply to the RRT, we point out those things, and that is one area where we find that is an issue. Whether that is a judgment—that is okay, but we find that there is a lot of evidence which explains and clearly illustrates the level of the persecution which has not been acknowledged. Then we have the personal accounts and witness testimony that is available on web sites and in human rights watch reports. There is quite a lot of other documentation from third party sources which indicates that the two or three assumptions that are referenced in the submission are not really reasonable assumptions to make.

**Senator HOGG**—So if you can come to these conclusions, why can't DIMIA and why can't the Department of Foreign Affairs come to similar conclusions?

**Mr Deller**—I think that is a question that the committee will probably be able to answer.

**CHAIR**—Or ask.

**Senator HOGG**—That is right; I accept that. It just seems to me that if you are able to come to the conclusion—

**Mr Deller**—It is probably an incomplete number, but about 45 practitioners we know of have been given protection. There are only two who receive that protection at DIMIA at the first

stage, yet the RRT—made up of a whole bunch of independently minded people who make independent assessments—have concluded that 43 of those practitioners, who DIMIA failed, did have a deserving case for protection.

**Senator HOGG**—So you are saying that there is a weakness in our system.

**Mr Deller**—I understand that the RRT is supposed to catch any weakness. But even at that stage, if you read some of the points in the revised submission, the amendment, there are many reasons why practitioners fail even to give a good account of themselves at the RRT.

**CHAIR**—Thank you. Are these two documents here for the public record, or do you wish them to remain confidential?

**Mr Deller**—I would say, at this stage, confidential.

**CHAIR**—If you change your mind, let us know and we will convert them to the public record.

**Mr Deller**—I should get personal direction from the people involved.

**CHAIR**—Thank you very much, Mr Deller.

[2.46 pm]

**FREEDMAN, Mr Harry, Legal Team for Ms Vivian Solon**

**NEWHOUSE, Mr George, Legal Team for Ms Vivian Solon**

**CHAIR**—Welcome. The committee prefers all evidence to be given in public but should you at any stage wish to give any part of your evidence in private you may ask to do so and the committee will consider your request. I now invite you to make a brief opening statement. That will be followed by questions from the committee.

**Mr Freedman**—Thank you. We have been engaged by Vivian Solon to act on her behalf in relation to matters arising from what we consider to be her wrongful deportation from Australia on 20 July 2001. Since the time we were originally engaged we have had numerous conversations with Vivian and other members of her family. I travelled to Manila in the middle of May 2005 to meet with her and to have some discussions with the Australian Consul General in Manila, who works under DFAT.

Since my return from Manila, Mr Newhouse and I have been involved in negotiations with government representatives, primarily through the Australian Government Solicitor. In the course of those discussions we have had access to a number of files—approximately four or five lever-arch folders worth of documents—coming from various departments but not from DFAT. We have been told that we are likely to receive further documents, and we are looking forward to receiving those since they will assist us in concluding the negotiations we have with the AGS. The negotiations we are having with the AGS at the moment relate to making suitable arrangements for Vivian’s return to Australia and also involve setting a framework for having some negotiations with the AGS to put together a package of compensation for Vivian.

For the purpose of avoiding misunderstandings occurring in future, I think it is important that Vivian’s names be properly understood. She presently uses the name Vivian Solon. The name Solon is in fact her late father’s name. She has also used the name Alvarez, which is her late mother’s name. She married an Australian citizen in 1984, Mr Robert Young, and at times during the period from 1984 till now there have been references to her being known as Vivian Young as well. Another point to remember is that ‘Vivian’ is spelt V-i-v-i-a-n. It has become apparent from having gone through many of these documents that ‘Vivian’ has sometimes been spelt with an E or two Ns. I believe some confusion has risen because of her name.

Vivian was born in Cebu City in the Philippines on 30 October 1962. She is one of 17 siblings, all being the children of her father, who married twice. She completed high school, and in about 1983 or 1984 she met Australian citizen Mr Robert Young, who was a banking officer at the time and who continues to be a banking officer. They met in Angeles City in the Philippines and were married on 26 May 1984. Shortly before that time, Vivian made an application for entry for settlement to Australia, dated 16 May 1984, with the support and encouragement of Mr Young. After their marriage, they returned to Australia and she resided with Mr Young at his property in the Brisbane area. Vivian gave birth to her eldest child Daniel on 10 June 1988. After she

commenced residing in Australia she started a course at TAFE at South Brisbane and also had various jobs.

She separated from Mr Young a short time after Daniel's birth. She was initially his primary carer and, after some point in time, it was decided that it was in Daniel's best interests for him to return to live with his father, and he has continued to live with his father since that time. After the breakdown of her relationship with Mr Young she had a brief relationship with another Queensland gentleman and, in the mid-1990s, gave birth to her second child. The second child has been placed in foster care and it is my understanding that, as a result of that placement, we cannot refer to his actual name. Needless to say, as a result of her deportation, Vivian has not been in contact with either of her children for the four-year period from July 2001 until late April or early May 2005.

Vivian was seriously injured in March 2001. The circumstances relating to that injury are still slightly uncertain. What is not uncertain is that she suffered significant injuries as a result of the accident. She was declared to be a temporary quadriplegic and also suffered some brain damage and other injuries. Within a few days of being admitted to Lismore hospital on 31 March 2001, she needed to be transported by the hospital to Liverpool Hospital in Sydney to undergo spinal surgery. As far as we can gather, she stayed in Sydney for approximately two weeks and was then returned to the Lismore hospital and was convalescing and having some rehabilitation at St Vincent's rehabilitation centre, which we understand is attached to that hospital.

Up to that point in time, Vivian had had various contacts with government departments. She had been married and had been divorced. She had been known to Queensland Community Services, she had been receiving social security payments and she had also been known to the police. She was not a stranger to the Australian government or to the government authorities. In her entry application, which was lodged a short time before her marriage, she gave full details of her birth and the names of her parents. When she was admitted to Lismore Base Hospital her name was recorded as Vivian Alvarez. The hospital notes indicate that a friend of Vivian's who had brought her to the hospital had informed the hospital that she was married to an Australian, that she had a child and that she had a brother living in the Brisbane area.

The hospital notes also record that she had a good command of the English language, although she had poor memory. Vivian also informed the hospital that she had a husband and child in Brisbane. From documents that we have seen it appears that the hospital had a policy that, if a patient was admitted without an Australian Medicare card and appeared to be of foreign extraction, they should be checked by the medical admissions officer with the department of immigration. In our client's case, Vivian was admitted with serious injuries which were assessed as being either as a result of a motor vehicle accident or an assault, and it is a point of curiosity for us that the hospital preferred to refer her to the department of immigration rather than the local police. As far as we have been able to investigate—and we have not completed our investigations—the police were not advised of Vivian's admission until some years later.

**CHAIR**—Was this Lismore hospital?

**Mr Freedman**—When Vivian returned from Liverpool hospital after undergoing spinal surgery she had various interviews with representatives of DIMIA. During the course of those initial interviews she informed the DIMIA officials that she was married to an Australian citizen

and that she had a passport. Vivian was originally granted a passport when she became an Australian citizen, and in August 2000 she made an application for a renewal of her passport. At the time of giving those interviews after coming back from surgery she did not remember how she had arrived in Australia.

It appears to us that at the time those interviews took place she was not in a proper physical or mental condition to give full and accurate answers to the questions that she was being asked; however, she did make a point of confirming that she said she was an Australian citizen, she was married to an Australian and she had a child. Records that we have sourced from DIMIA suggest that she travelled to and from Australia four or five times from the time that she first arrived after having married Mr Young until the time of her deportation. She obtained citizenship in March 1986 under the name of Vivian Solon Young.

In emails passing between the various officers of DIMIA on 16 January 2003, an officer noted that Vivian was an Australian citizen and cited the certificate number, Vivian's date of birth and also the fact that Vivian had been known by a variety of surnames, including Solon Young, Young, Cook, Solon and Alvarez.

**CHAIR**—What date was this again?

**Mr Freedman**—This was in January 2003—after she had been deported but well before it became public knowledge that there were reasons to be concerned.

**Senator LUDWIG**—Is that part of correspondence a letter or email?

**Mr Freedman**—Email.

**Senator LUDWIG**—And who was it sent to?

**Mr Freedman**—It was sent between two DIMIA officers.

**Senator LUDWIG**—Are they known? I do not want you to mention their names for a number of reasons.

**Mr Freedman**—Yes, they are known. In this particular email it may be that one of the officers did not use their surname. We have the date of it.

**Senator LUDWIG**—Were they in a compliance section? Does it say what section they were from?

**Mr Freedman**—No, I do not know what section they are in.

**Senator LUDWIG**—Are you able to make that record available to the committee? If you can reasonably identify it, I can ask DIMIA for it.

**Mr Freedman**—We can identify it.

**Senator LUDWIG**—Thank you. That would be helpful. Sorry to interrupt.

**CHAIR**—Sorry, what date was that again?

**Mr Freedman**—It was 16 January 2003.

**CHAIR**—So at that date someone in DIMIA, I get the impression, has compiled the facts that Vivian Solon Alvarez Young is one person. Is that a reasonable conclusion?

**Mr Freedman**—That is certainly our conclusion.

**Senator LUDWIG**—They had a marriage certificate or a birth certificate. What other supporting documents did they mention?

**Mr Freedman**—They specifically mentioned in one email that she is an Australian citizen citing the citizenship number. I would have assumed that that would have led to a course of inquiry where a lot of this information would have been available.

**CHAIR**—Is it fair that we interrupt you or should we let you finish?

**Mr Freedman**—Whatever is convenient.

**Senator HOGG**—Can I just find out where those DIMIA officials were?

**Mr Freedman**—I do not know that answer. I assume they were probably in Canberra but I could be wrong.

**Mr Newhouse**—It could be in Brisbane. I think we need to source this and give details. I do not have it to hand.

**CHAIR**—How about you proceed? Your information is that at about 16 January 2003, Ms Young is identified as an Australian citizen within DIMIA.

**Mr Freedman**—Certainly, by that date.

**CHAIR**—So they have identified her as an Australian.

**Mr Freedman**—As an Australian citizen.

**CHAIR**—That is internal emails, is it?

**Mr Freedman**—Yes, it is. On 13 July 2001—and I am going back a little bit—the DIMIA officers start to prepare paperwork to transport Vivian from St Vincent's, where she was undergoing her rehabilitation and convalescence. She was then transported to the Southport office of DIMIA. They then make arrangements for a hotel to be booked, where she was to be placed under guard until the time for her deportation. DIMIA raises certain concerns as to her correct legal status, and an interview with a suspected unlawful noncitizen is arranged to occur on 13 July 2001. A record of interview is taken and recorded. In that interview, Vivian notes again her correct place of birth, her date of birth, the fact that she is an Australian citizen and that

she is divorced. Other questions that are recorded suggest that she is suffering from certain memory loss.

A few days prior to her deportation, in the presence of Filipino community workers, including social workers and nurses, Vivian had a series of fits in which it was described to us that her eyes are rolling back into her head and she loses the ability to stand. We believe that, as a consequence of that, notification was sent by those witnesses to representatives of the Filipino mission in Canberra and this led the deputy head of the Filipino mission to make contact on a number of occasions with representatives of DIMIA regarding her proposed deportation.

**Mr Newhouse**—It might have been DFAT.

**Mr Freedman**—It might have been DFAT, Mr Newhouse says. A DIMIA representative states in an email: ‘Vivian is due to be removed from Australia today. Hopefully, everything will go smoothly and you won’t get any media inquiries. However, if you do’—and this is what this report says—‘the department head of mission in Canberra, Mr Santiago, contacted me a number of times yesterday to inform us of this case, claiming it had the potential to affect the bilateral relationship.’ I am assuming they mean between the two countries. ‘His story was that Ms Alvarez was going to be removed from Australia and she was not fit for travel. He had told me she had been in an accident and she shouldn’t be removed in that condition. If she was to be removed it would not play well in the media in Manila, on top of the Gonzales case. He demanded that we did not remove her. In fact, the Philippine embassy would not be issuing travel documents.’ The author of this email responded: ‘I said that if he wanted to send information I would look at it and compliance was a matter for DIMIA and Mr Ruddock. Santiago never sent any information, but he did say that Vivian had married an Australian three years ago and it had not worked out.’ The author of the email then says: ‘I contacted DIMIA, who advised me that Mr Alvarez was illegal, and there is no reference on the movements register as to how she entered the country.’

**CHAIR**—That is an unnamed author, at this stage?

**Mr Freedman**—Yes.

**CHAIR**—And that is in or about July 2001?

**Mr Freedman**—This is within a day or so of her proposed deportation.

**Senator LUDWIG**—This is prior to her deportation?

**Mr Freedman**—Yes.

**Senator LUDWIG**—Is it a letter, email or fax?

**Mr Freedman**—It seems to be an email report.

**Senator LUDWIG**—From where to where? Does it indicate that?

**Mr Freedman**—No, it does not.

**Senator HOGG**—But a DIMIA official is the source of it?

**Mr Freedman**—Yes, that is what it seems.

**Mr Newhouse**—It seems to be a restricted document. I do not think it is DIMIA. I think it is DFAT. It says, ‘I contacted DIMIA Brisbane,’ which suggests that the author is from DFAT.

**CHAIR**—We might be able to ask both of them.

**Mr Newhouse**—This document is entitled ‘Restricted—

**Senator LUDWIG**—If you can give as a brief heading we can then ask DFAT and DIMIA.

**Mr Newhouse**—It has been faxed to DIMIA Manila on 19 May 2005. I do not know why it was faxed to DIMIA Manila on 19 May 2005. There is no header. It just says: ‘Subject restricted. Philippines immigration removal case Alvarez.’ It could be DIMIA. I am not sure.

**CHAIR**—Mr Freedman, would you like to continue?

**Mr Freedman**—She was deported on 20 July 2001 and she was in the company of a Queensland police officer. We are not aware as to what notifications may have passed between DIMIA and DFAT regarding her deportation. On our instructions, Vivian was brought to the attention of the Overseas Workers Welfare Association, or OWWA. She was brought there by a Qantas staff member together with this officer. There were no other Australian representatives there.

**CHAIR**—In your knowledge, is it usual for deportees to be accompanied by police officers?

**Mr Freedman**—Anecdotally, I understood it was not usual.

**Mr Newhouse**—We understand it is extremely unusual. The notes suggest that the only reason she was accompanied was her medical condition.

**Senator HOGG**—A Qantas staff officer accompanied the person. Is that normal practice?

**Mr Newhouse**—No, what happened, as I understand it, was a Queensland police officer accompanied her—

**Mr Freedman**—On the flight.

**Mr Newhouse**—and they were expecting to see representatives from the embassy and the Sisters of Charity at the airport. Nobody turned up because no arrangements had been made by DIMIA. When nobody turned up, a QANTAS cabin crew member suggested that they take Vivian to OWWA, which is a Filipino government authority which has been established to take care of returning members of the Filipino diaspora from overseas, but there were no arrangements made by the Australian government for Vivian on her return to Manila.

**Senator HOGG**—How did you find out that this QANTAS person took it on their own bat?

**Mr Freedman**—We have a report from OWWA confirming how Vivian was brought to their attention. We do not know the name of the QANTAS person.

**Senator HOGG**—I do not think that that is germane; I just wanted to know whether the QANTAS person was delegated to do it or, as it seems to me, they took it on their own bat to do it.

**Mr Freedman**—That is certainly our impression. The arrangements to bring Vivian to Manila seemed to be very ‘underprepared’.

**CHAIR**—Rushed?

**Senator LUDWIG**—Have you had the opportunity to ask the Sisters of Charity what their involvement was?

**Mr Freedman**—No, we are trying to get information at the moment.

**Mr Newhouse**—I have had some contact with a sister in Brisbane, and she says the government mentioned the fact that they wanted someone to look after Vivian in the Philippines but they never asked her to make appropriate arrangements.

**Senator LUDWIG**—It seems to me that that contradicts some earlier reports that the Sisters of Charity were there to meet Vivian Solon, as I understood them. You do not think that was the case?

**Mr Newhouse**—It might contradict reports, but the documents do not indicate that any formal arrangements were made. My conversations with witnesses indicate that they were never asked to arrange any reception for Vivian at the airport.

**Senator LUDWIG**—Alright. That is certainly a matter we can take up with DFAT and DIMIA.

**Senator HOGG**—Just following on from that, was there any request of the post in Manila?

**Mr Freedman**—Was there any request of what?

**Senator HOGG**—The post; the Australian embassy.

**Mr Freedman**—Not that we are aware of.

**Senator HOGG**—Whether it be foreign affairs or whether it be DIMIA.

**Mr Newhouse**—I will answer that. There was correspondence passing between the two departments and, in fact, there was an email from the embassy the next day, asking, ‘What happened to Ms Alvarez?’

**Senator HOGG**—What was the next day?

**Mr Freedman**—21 July 2001.

**Mr Newhouse**—They received a telephone call from Manila requesting answers to (a) is Ms Alvarez departing; (b) will she have an escort; and (c) what are the expectations of the embassy and are they supposed to be meeting her? And the response was ‘Oops, we’ve sent her already.’ I summarise.

**Senator HOGG**—You have summarised.

**Senator LUDWIG**—Do you know if there was then any follow up to establish where she had gone and who had then taken responsibility of her from either DIMIA, DFAT or the Manila embassy?

**Mr Freedman**—I am not aware of any.

**Senator LUDWIG**—Post the fact. I assume—

**Mr Newhouse**—There was, on 24 July, a person in Manila who looked up the records of Alvarez, and I do not know why. We have no correspondence as to why.

**Senator HOGG**—What do you mean when you say ‘a person’? A person at DFAT?

**Mr Newhouse**—There was an audit of officers who looked up names on the DIMIA system, and there is an indication—

**Senator HOGG**—This was done by an officer of the Australian government?

**Mr Newhouse**—Yes.

**CHAIR**—When was this?

**Mr Newhouse**—I believe it was on 24 July, which is four days after she arrived.

**CHAIR**—It was 24 July and someone was hacking away on the computer and discovered—

**Mr JOHNSON**—Palmer said it was 23 July.

**Mr Newhouse**—Palmer said that, but from my records—

**Mr Freedman**—The records we have say that between the week prior to her deportation and October, 161 accesses were made of Vivian’s record using different surnames and combinations of it.

**CHAIR**—Including ‘Young’?

**Mr Freedman**—Yes.

**Mr Newhouse**—Someone in Manila looked on 20 July 2001. The same person that was making inquiries looked at her records from Manila on the 20th.

**Senator KIRK**—Was that a DFAT person or someone else?

**Mr Newhouse**—I do not know what PMOC is, but that is the acronym for this person's role. I do not know what he is, but he is over in Manila. He may be from DIMIA.

**CHAIR**—DIMIA are next, so they will probably be able to assist us in that.

**Senator LUDWIG**—Just to clarify: post that correspondence from the embassy back to Australia, there is no following correspondence that has been forwarded to you or that you have requested which has indicated that the embassy has then sought to establish what happened with Ms Solon?

**Mr Newhouse**—In 2003?

**Senator LUDWIG**—No, in 2001. They at least knew at that point that she had been deported, that she had been sent to the Philippines.

**Mr Newhouse**—No, there is nothing else apart from that in 2001.

**Senator LUDWIG**—So there was no follow-up file to establish—

**Mr Freedman**—What had happened to the person we deported? No.

**Senator NETTLE**—In Palmer there is a reference to the DIMIA file being accessed twice on 23 July. It refers to the one that Mr Newhouse just mentioned—the 20th—and then Palmer also refers to the audit of DIMIA systems showing that it was accessed twice on the 23rd, three days after she was removed, and once on the 27th, but you do not know—

**Mr Freedman**—The summary that we have—and I am not sure by whom it was prepared, but I am assuming it would be DIMIA—suggests that what we refer to as Vivian's file was accessed twice on 19 July, twice on 20 July, once on 23 July and twice on 24 July using a combination of surnames: Vivian Solon, Young and Alvarez.

**Mr Newhouse**—I have a little bit more information, though. I can tell you that the movement searches indicate that her name was looked up on 23 July twice—that is probably what Mr Palmer is referring to—and 27 August and some time in 2002 as well: 5 December 2002.

**Mr Freedman**—There must be some confusion in some of these records.

**Senator NETTLE**—There does appear to be.

**Mr Freedman**—There was a little bit of activity around deportation time.

**Mr Newhouse**—I would like to add that I think this table was prepared for senior DIMIA executives and I think it is extremely misleading. It has searches on the names ‘Young’ and ‘Alvarez’, which is not the correct spelling of the name. What this audit does not show is how many times they looked for the name ‘Alvarez’, which is the correct spelling of her maiden name. So there may well be hundreds more logs of searches of her name, and they may actually link up more closely with ‘Solon’, so we do not know how many other searches were made of the correct spelling of her name.

**CHAIR**—Mr Newhouse, about this acronym ‘PMOC’: what was he or she doing?

**Mr Newhouse**—This was the person in Manila—I believe the DIMIA person in Manila.

**CHAIR**—So that is ‘Principal Migration Officer—Consulate’. And this is in 2001?

**Mr Newhouse**—Yes, that is the acronym that that person used.

**Mr Freedman**—In some of the documents we have prior to her deportation from DIMIA, her name is spelled ‘Alvarez’, so one would have thought they would have known the correct spelling.

**Mr Newhouse**—In fact, DFAT knew because, when they sent that restricted correspondence to Manila, they wrote ‘Alvarez’ and put in brackets ‘sic’—that is, the rider of using the incorrect name. So they knew they were using the incorrect spelling of ‘Alvarez’ as well.

**CHAIR**—Would you like to proceed. Sorry, we disrupted you.

**Mr Freedman**—So, following her deportation and some activity on her file, as was reported today, the department issued an invoice of approximately \$12,000 for the costs of her deportation. That was dated the same date as her departure. On 16 August 2001, a minute was raised by DIMIA recommending that the debt be written off, and that recommendation was fairly quickly adopted on 24 August 2001. We do not know for certain, but we consider that that was fairly quick action on the part of DIMIA, considering all the other things that have occurred. I have already mentioned the fact that, on the records that DIMIA or the Australian government have produced to us for the period between 13 July 2001 and 19 October 2004, Vivian’s records were accessed 161 times—at least; I probably miscounted.

**Senator HOGG**—Between what dates?

**Mr Freedman**—Between 13 July 2001 and 19 October 2004.

**Mr Newhouse**—As I said, that does not include ‘Alvarez’; that is just on ‘Alvarez’.

**Senator LUDWIG**—I guess you are dealing through the Government Solicitor’s office. Did you ask for an explanation as to why the records were accessed?

**Mr Freedman**—No, we have not asked yet.

**Senator LUDWIG**—If you deported someone and—giving the benefit of the doubt to the government—the person you thought you were deporting was an unlawful noncitizen, why would you keep accessing records when you had written the debt off in August? You assume that you would not follow up to see where they had gone after that.

**Mr Freedman**—It is certainly a question we look forward to asking, but, at the moment, our principal role is to negotiate arrangements for her return.

**Senator LUDWIG**—I accept that. I will certainly ask those questions, but I was curious as to whether you had.

**Mr Freedman**—I am hopeful that all of you will. But, at the same time, we do not see our position as being the same as yours—that is, we want to bring her back and we want her to be compensated in a way which will allow her to continue with her life and—

**Senator LUDWIG**—I did want to get onto that, because at the moment she is currently in Manila, isn't she?

**Mr Freedman**—She is still in Manila; that is correct.

**Senator LUDWIG**—I am curious as to why that is still so.

**Mr Freedman**—Can I address that towards the end?

**Senator LUDWIG**—Yes, thank you.

**Mr Freedman**—Vivian's former husband, Mr Robert Young, wrote to the minister for immigration in April this year. In an email to Minister Vanstone, he reported that his wife had been reported missing four years earlier to Queensland police. He carefully confirmed her citizenship, as well as the various names that he was aware that she used. Mr Young reported to Minister Vanstone that Queensland police had reported to him that they had closed their file, since his ex-wife left Australia in July 2001 after having been detained as an illegal immigrant. It is our belief that there must have been communications passing between DIMIA and DFAT by that time. On Mr Young's information, Queensland police were filed with a missing persons notification four years earlier. According to the police, at least at that late point, they were aware that she was an Australian citizen who had been wrongfully deported.

On 10 September 2003, Queensland police wrote to OWWA noting that Vivian had been reported missing and providing OWWA with complete details regarding her date, date of birth, various names, and flight numbers, and discreetly noting in that request for information that Vivian was removed from Australia by the department of immigration because it was believed at that time that she did not have a current visa to allow her to stay in the country. This information was passed on to DFAT at or about 15 September 2003. The records also seem to suggest that they had the OWWA file.

**Mr Newhouse**—In September 2003—which correctly identified the Sisters of Charity as the place where she was located.

**Senator BARTLETT**—When you say ‘they’, do you mean DFAT?

**Mr Newhouse**—DFAT Manila knew where she was on 15 September 2003.

**Mr Freedman**—They knew which country she was in.

**Mr Newhouse**—No, they knew she was with the nuns. They had read it.

**Senator HOGG**—So do we know who in DFAT knew in September 2003?

**Mr Newhouse**—We do not. DFAT has not produced any records for us.

**Mr Freedman**—And we do not know who knew specifically.

**Senator BARTLETT**—So you are saying DFAT knew because they got a copy of that Queensland police document that was sent to OWWA?

**Mr Newhouse**—No, they got the OWWA file from the Philippines government.

**CHAIR**—At the same time?

**Mr Newhouse**—I have a note in a chronology prepared by DIMIA. On 15 September 2003—

**Senator LUDWIG**—That is more than what we were told at estimates last. At estimates last we were only informed that there was email traffic highlighting the inquiry by the Queensland police—at least two emails.

**Mr Newhouse**—You might want to ask this question: why were the 15 September 2003 OWWA case facts from documents supplied to DFAT from the Philippines embassy not provided to DIMIA until May 2005?

**CHAIR**—Right. So on 15 September the department of foreign affairs had information that Vivian Young Solon Alvarez was missing. OWWA had told them where she was and they did not tell the department, DIMIA, until when?

**Mr Newhouse**—This suggests May 2005.

**Senator JOHNSTON**—OWWA had provided a case note to DFAT. Do we know what that said?

**Mr Newhouse**—We have got some documents of what was in that file and it does seem to be an indication that ‘on 22 July 2001 at 10.30 am subject was discharged from the OWWA halfway home to be escorted by repatriation officers’—I will not name them—‘to the Mother Theresa Daughter of Charities Hospice’.

**Senator JOHNSTON**—What was the name used in the report?

**Mr Newhouse**—Vivian Alvarez, spelt correctly.

**Senator HOGG**—And the date of that?

**Mr Newhouse**—It is not dated. It says, ‘Prepared Sunday 15 May,’ but I do not know what year.

**Mr Freedman**—We have tried to give a background as to what information we have been able to elicit based on documents that have been provided to us as well as interviewing certain witnesses. There are a number of matters which do concern us. After perhaps a month of negotiations with the AGS, the Australian Government Solicitor, for the purpose of being able to conduct some mediation discussions with the government we have been promised a full set of all relevant documents, and we still do not have them. And, glaringly, no DFAT documents have in fact been produced to us. We think it is important to note that on 16—

**Senator HOGG**—Have you asked DFAT for documents?

**Mr Freedman**—Yes. Originally we did ask DFAT for documents and then as a result of our negotiations and with a view to minimising points of contact and avoiding misunderstandings we have gone through the AGS—a senior solicitor at the Australian Government Solicitor.

**Senator LUDWIG**—Has AGS provided any explanation as to why DFAT documents that you have requested haven’t been provided?

**Mr Freedman**—No.

**Senator LUDWIG**—You have asked AGS I take it?

**Mr Freedman**—We have continued to press to have full production of all relevant documents for the purposes of coming to an accommodation for Vivian’s return and a final settlement.

**Senator JOHNSTON**—Is liability an issue?

**Mr Freedman**—That is a very good point. We have taken a position in our discussions with the AGS based on the Prime Minister’s apology and also as a result of opinions expressed by Mr Palmer in his initial report—and we know Mr Comrie is in the process of conducting his investigations. We say that if the matter is to be resolved, certainly from our client’s best interest point of view, all discussions should be based on the proposition that liability is not an issue.

**Senator JOHNSTON**—So at this point in time liability has not been formally confirmed as being admitted by the Commonwealth?

**Mr Freedman**—As clearly as that, that is correct. They have tippy-toed around it.

**Senator JOHNSTON**—I do not want to get into issues between solicitors, but is there some glaring issue that is a logical explanation for the delay?

**Mr Freedman**—Not logical from our point of view, but I think it is fair to say of the position that the AGS is taking, which is presumably based on instructions, that there is a lot of information they do not know. But there is a limit to how much information you need to know when you have an Australian citizen who has been deported.

**Senator JOHNSTON**—And essentially you wouldn't need to know a lot of the information we have canvassed here if liability was admitted?

**Mr Freedman**—That is quite correct. The only issues which would then concern us would be the very sad situation of a mother who, because of these acts, has been deprived of contact with her two children. But also very particularly, Vivian in those four years when she was living in a hospice, and with all the love and care that the nuns and the priests displayed to her, really did not get proper and complete medical rehabilitation and therapy. Since she has been rediscovered she has been having constant medical appointments and therapy. She is at the point now where, having not been able to walk properly, she does not have to use a wheelchair, we are told from the last reports.

**Senator JOHNSTON**—But there is a complication flowing from all that, as you quite rightly point out: is the Commonwealth to bear the sole responsibility for all of that? You have mentioned that there was an alleged accident—a traffic accident or some other assault—giving rise to what were obviously very serious injuries with substantial residual disabilities prevailing in this lady. Is the Commonwealth simply to put that to one side and resolve that with you?

**Mr Newhouse**—That is not an issue of liability—her wrongful deportation.

**Senator JOHNSTON**—No, but if the adequate treatment comes into the quantum so that you are arguing that because she was erroneously and unlawfully deported, is not the Commonwealth in a position to say, 'Hang on, we need to get to the bottom of these original injuries,' because there are liability issues flowing from them, are there not?

**Mr Freedman**—With respect, I would not think that is the case because at this point in time we are not talking about how the injuries were sustained; we are talking about the effect of non-treatment following deportation.

**Senator JOHNSTON**—If those injuries are compensable—for instance, if she were run over by a compulsorily third party insured driver—

**Mr Freedman**—That is a separate claim.

**Mr Newhouse**—That is not the issue of liability we are arguing; we are seeking an admission of liability for her wrongful deportation.

**Senator JOHNSTON**—Correct.

**Mr Newhouse**—And to that there is no defence.

**Senator JOHNSTON**—And the injuries flowing from it.

**Mr Newhouse**—But that is a matter of quantum which can be debated later.

**Senator JOHNSTON**—I am just saying to you that I think there are questions that might be very technical that need to be resolved given the antecedents of this victim.

**Senator LUDWIG**—But on that have AGS indicated to you that that is the reason for the delay? So what we are doing now is speculating. What we are asking for is whether AGS have provided any information as to the reason why they have been unable to provide any of the documents you requested. To date you have said no.

**Mr Freedman**—That is right. That is not a reason why they have not produced documents.

**Mr Newhouse**—Absolutely not. And in all our discussions they have never indicated that her pre-existing injuries were relevant at all. We have asked them straight whether there was any defence to deporting wrongfully an Australian woman. That is the liability that we are asking them to admit, and the Australian Government Solicitor said, ‘I can’t advise you of any at the moment; I am acting on instructions.’ So her pre-existing injuries have not come into it.

**Senator JOHNSTON**—And you say that is unreasonable?

**Mr Newhouse**—Well, you tell me what possible defence there could be.

**Senator JOHNSTON**—I am interested to know—

**Mr Newhouse**—I think that is entirely unreasonable.

**Senator JOHNSTON**—So it has been a month?

**Mr Newhouse**—Two months.

**Senator NETTLE**—If the Commonwealth had been concerned about her injuries in relation to the car accident, it does not seem—

**Senator JOHNSTON**—Or an assault.

**Senator NETTLE**—Yes, an assault or a car accident. There does not seem to be any indication that the Commonwealth was concerned about that before deporting her. There is certainly no evidence of that.

**Senator JOHNSTON**—That is true; I take no issue with that. You do not get any argument from me.

**CHAIR**—We will move on from that. Have you made your final points, Mr Freedman?

**Mr Freedman**—Could I summarise the points that we have concerns about based on the summary of those facts. About 16 July 2001 DFAT is contacted by the Philippines embassy in circumstances which I have already related, and that concerns the deputy head of the Philippines

mission expressing concerns about our client's health and the fact that it would significantly impact on bilateral relations between the two countries and that it was a matter that needed some consideration by the minister at the time, Mr Ruddock.

We do not have any information as to what information was passed up the chain in DFAT, notwithstanding very serious concerns. We believe that there were further communications between DFAT and DIMIA but they have not been produced to us as yet. Between July and December 2003 the Queensland police contact the embassy in Manila. We ask: what steps did DFAT then take to locate Vivian? They receive the OWWA case facts from documents supplied by the Philippines embassy, and those documents confirm that Vivian was delivered to the Sisters of Charity. What DFAT did with those documents we think is quite appropriate to be investigated further. We do not know why they did not locate her, because certainly by that time they knew that she was an Australian citizen.

In September '04, DIMIA requested Vivian's passport records from DFAT. DFAT did not provide them, because—I think the document suggests—the request was not in the correct format. There does not appear to have been any follow-up from either DFAT or DIMIA on this request. On 22 April 2005 that Australian ambassador in Manila was, to use their terminology, 'tasked' with coordinating action to find Vivian in Manila. We questioned what steps were taken and whether or not anyone happened to read the OWWA case notes, because it seems that Vivian was found because Father Michael Duffin, who was the head of the mission where Vivian was staying, happened to watch a *Lateline* program—thank goodness for *Lateline*.

**Senator JOHNSTON**—It was the Asia-Pacific service, I think.

**Mr Freedman**—At the moment, Vivian is in an apartment. She is being funded by the government, but we restricted in finalising arrangements to bring her home because we cannot get a commitment from the government to ensure that in the event that their overall settlement discussions do not conclude within six months she will still be properly provided for. The government has indicated they will provide accommodation. It is not so much a provision, but she can also go on social security. Other than that, any special treatment will conclude after six months. She has also asked that her brother accompany her to act as her carer.

**Senator JOHNSTON**—That is her brother in the Philippines?

**Mr Freedman**—Yes. We have sought agreement with the AGS that he be given the appropriate visa permits and have access to proper Medicare services and, if necessary, perhaps be able to work to supplement his income. Those are issues which remain unresolved. On 20 July '01, officers in DIMIA wrote that restricted minute. It refers to Mr Ruddock's role in the compliance. We question what involvement he had, if any at all. If another government was involved, surely Mr Ruddock should have been notified. If he was not he should have been, particularly since it had the potential to affect the relationship between the two governments. On 24 July, a DIMIA officer in Manila searched the movement records. What was that person's role at the embassy in Manila? What was the Australian embassy's involvement in Vivian's deportation in the days after her deportation? We are yet to get a satisfactory answer to that question. We would like to find out why DIMIA officers, if they were DIMIA officers, accessed her records on a number of days following her deportation. There is a reference in some of the

documents to a notation which says, 'Please place on local warning record.' We would like to know what that means.

We question what steps the embassy took after being advised in September '03. Why didn't DFAT make a formal diplomatic request for assistance to the Filipino government in these particular circumstances? What action did DFAT take to make inquiries with the Queensland police, who clearly were aware of Vivian after having an application for a missing person submitted? We question whether or not DFAT officials should have received Vivian when she returned. That is an outline of our position.

**CHAIR**—Thank you. You have certainly posed some questions that we cannot answer, but maybe others can. We have been fortunate to be able interrupt you during your presentation, so there may not be the same number of questions there may have been originally.

**Senator LUDWIG**—In relation to her current condition, you are negotiating with the AGS—I perceive from your comments that this is distinct from the issue of compensation or liability; this is about returning Vivian Solon to Australia. I take it she wants to return to Australia. There are now a number of sticking points, which you have listed, which make it difficult or impossible for her to return. Is that the point? Is that a summary of where we are at?

**Mr Freedman**—There are sticking points—that is correct. In these circumstances, bearing in mind what she has been through, bringing her back is not a position that we want to take. She is not in an employable situation. We do not believe she should return in circumstances where she will in the immediate future have to apply for housing commission accommodation and go on social security, particularly when we believe there are real and genuine reasons to believe that she should be entitled to a compensation package.

**Senator LUDWIG**—It seems, as I understand it, that it has only been extended for six months.

**Mr Newhouse**—Yes. We need to ensure that, at the end of six months, if negotiations are still ongoing or there is a legitimate dispute between the government and Vivian, she will be cared for. It is outcomes that we are looking for. The government has indicated that her brother can come out for six months. They have also indicated that they will provide a roof over her head for six months. After that, all benefits to her end. She will effectively be impecunious. It would be irresponsible of us to recommend—

**Senator JOHNSTON**—She may be entitled to other benefits.

**Mr Newhouse**—Can I finish my answer please. It would be irresponsible to bring her back and leave her in the hands of two school-age boys in Brisbane in the event that negotiations break down at the end of six months. I have no idea why the Australian government is not prepared to extend those benefits, including her brother coming out to Australia, in the event that it is necessary.

**Senator LUDWIG**—Have you asked AGS?

**Mr Newhouse**—Yes.

**Senator LUDWIG**—What was their response?

**Mr Freedman**—They have taken a position at this point in time where, on those particular points, they are not prepared to budge.

**Senator LUDWIG**—So it is not negotiable?

**Mr Freedman**—They say that.

**Senator LUDWIG**—And that is the point we are at at the present time?

**Mr Freedman**—We have asked them to reconsider it based on the accumulating evidence and in combination with a procedure for mediation negotiations for a compensation payment.

**Senator LUDWIG**—And the mediation has not been settled in terms of the format and type of mediation that will be proposed, the length of the mediation and who will be the mediator or whether there will be an appointed mediator?

**Mr Freedman**—Yes, that is correct.

**Senator LUDWIG**—So none of that has been organised. How long would a mediation normally take in these sorts of circumstances? I know these circumstances are unique in themselves.

**Mr Freedman**—At the moment it is a chicken and egg argument. We say that we want to be in a position to start the mediation once they have given us all of the documentation. Then we will have a better idea as to the state of knowledge and things that flow from that.

**Senator LUDWIG**—And the AGS is not able to tell you when they will be able to provide DFAT documents?

**Mr Freedman**—No, they have not been, but we are told it will be in the next week or so.

**Senator LUDWIG**—So you understand that it could be in the next week or so?

**Mr Freedman**—Yes.

**Senator LUDWIG**—From that point in time you will then be able to enter into negotiations about the mediation itself?

**Mr Freedman**—Yes. We will be able to formulate a more accurate timeline. This is the position the government seems to be taking as far as this is concerned: they say to us, ‘You don’t need to worry about extending arrangements past six months because we are sure to have finalised everything by then.’ Whilst that may be possible, we have concerns that anything can happen within six months.

**Senator LUDWIG**—And as a solicitor representing a client, it would be difficult for you to take that on word.

**Mr Freedman**—Especially as a litigation solicitor.

**Mr Newhouse**—It would also be difficult to take it on word given that we are two months down the track and we still do not have all of the documents.

**Senator JOHNSTON**—When does the six months start?

**Mr Newhouse**—Presumably when she arrives back in Australia.

**Senator JOHNSTON**—So it has not even commenced yet? It has effectively been eight months so far. When were you first given the undertaking?

**Mr Freedman**—Which undertaking?

**Senator JOHNSTON**—The undertaking that she would have six months.

**Mr Freedman**—The discussions would probably have commenced about four to six weeks ago.

**Senator JOHNSTON**—That is a month. So it will effectively be seven months?

**Mr Freedman**—Yes.

**Senator JOHNSTON**—Is she not going to be entitled to some form of disability pension at the end of six months as an ordinary citizen would be?

**Mr Newhouse**—How do we know?

**Senator JOHNSTON**—Well, if a medical report is obtained—

**Mr Newhouse**—She has not been to see an Australian doctor.

**Senator JOHNSTON**—No, but she would when she comes back. Surely you would do that.

**Mr Newhouse**—You are asking us to make assumptions about her entitlement to pensions when she is not even in the country.

**Senator JOHNSTON**—She would be like every other Australian citizen—

**Mr Newhouse**—Centrelink sent officers over there and they are not in a position to tell us whether she is entitled—

**Senator JOHNSTON**—She is not going to be destitute after six months, is she? If she files the appropriate documents—

**Mr Newhouse**—Do you know how much the pension is that she is expected to live and support two children on?

**Senator JOHNSTON**—What is being offered to her now?

**Mr Newhouse**—Do you know how much the pension is that they are asking her to live on? She is a woman in a wheelchair who cannot move her hands and has two young children in Brisbane.

**Senator JOHNSTON**—How much?

**Mr Newhouse**—It would be about \$200 a week. That has to cover rent and all sorts of things. We do not even know if she is entitled to that, Senator.

**Senator JOHNSTON**—But you have said they are offering her accommodation for the first six months.

**Mr Newhouse**—Yes, for six months.

**Senator JOHNSTON**—What else are they offering her?

**Mr Freedman**—The pension—

**Mr Newhouse**—Whatever her entitlements are, which we do not know at the moment.

**Senator JOHNSTON**—And after six months she would be entitled to rent assistance, disability pension and whatever allowances every other citizen is entitled to.

**Mr Newhouse**—You say that, but we do not know that. How do we know that?

**Senator JOHNSTON**—You will find that out in six months, surely, when you will get a medical report and file it with Centrelink.

**Mr Newhouse**—But how can we bring her back when we do not know?

**Senator NETTLE**—We also do not know the state of the disability support pension in six months time. The welfare reforms—

**Senator JOHNSTON**—And you can't get a medical report in the Philippines—

**CHAIR**—That is also outside our inquiry about what the outcome is. We are investigating how it got to this stage. Are there any further questions of Mr Freedman or Mr Newhouse?

**Senator JOHNSTON**—I have some questions. Your instructions extend to what issue of liability—simply the wrongful deportation?

**Mr Freedman**—I am not sure I can answer that question under professional privilege.

**Senator JOHNSTON**—I accept that. So you are representing—

**Mr Freedman**—Can I say that our instructions are fairly broad.

**Senator JOHNSTON**—So at the very least you are representing her with respect to her application for compensation for wrongful deportation.

**Mr Freedman**—That would be correct.

**Senator JOHNSTON**—And you cannot, because of legal professional privilege, disclose what other areas you may be representing her for.

**Mr Freedman**—That is probably correct.

**Senator JOHNSTON**—Is it likely that anybody else, save for the firm involved and you as counsel, Mr Freedman, has instructions relating to this woman arising from any of the matters that we have heard about this afternoon?

**Mr Freedman**—It is a moving target.

**Senator JOHNSTON**—So there may be other solicitors involved.

**Mr Freedman**—Sorry, maybe I misunderstood your question.

**Senator JOHNSTON**—Is it likely that anybody else has instructions? I am interested to know who the Commonwealth should deal with on the broad range of liability issues that we have talked about.

**Mr Freedman**—That is a matter for the Commonwealth. But there is no other person—

**Senator JOHNSTON**—That you are aware of.

**Mr Freedman**—That we are aware of.

**Senator JOHNSTON**—May I ask whether personal instructions have been obtained by solicitors for Ms Solon? In other words, has she been visited personally? That is not a matter of legal professional privilege.

**Mr Freedman**—No, it is not; I am just trying to see how it falls within the scheme.

**Senator JOHNSTON**—I am interested to know the quality of the instructions. I do not want to know what the instructions are; I am interested to know the quality of the instructions.

**CHAIR**—I think we are starting to guild the lily here a bit. Senator Johnston, do you have any further questions in relation to the nature of our inquiry? I do not know that they are necessarily relevant. If you want to go in privately, we can discuss it.

**Senator JOHNSTON**—With great respect, when solicitors appearing on behalf of a claimant for what I would expect to be a substantial amount of compensation appear before a committee, I think the committee is entitled to ask whether the instructions of those solicitors, for a person who arguably has some mental and other physical disabilities, have been obtained personally.

**Mr Freedman**—The answer is yes. I do not see physical impairment as being relevant to the ability to give instructions. I can assure all of you that we speak to her very regularly.

**Senator JOHNSTON**—And you have spoken to her personally.

**Mr Freedman**—Every week.

**Senator JOHNSTON**—That is all I was asking.

**CHAIR**—We will move along.

**Senator LUDWIG**—It has not been determined yet that she is entitled to any compensation, as I think the senator has outlined. I suspect that is a matter for negotiation.

**CHAIR**—Do you have any questions Senator Ludwig?

**Senator LUDWIG**—I was wondering whether, if there were any issues that arose as a consequence of deliberations on these matters, or following up with DIMIA or DFAT, we would be able to contact you through the secretariat for follow up questions? It might be a bit of an impost, but there may be some matters that we require clarification of.

**Mr Freedman**—Certainly.

**Mr Newhouse**—I think the significance of the information that has been presented today is fourfold. Firstly, there are suggestions in Mr Palmer's report and in the media today of a cover-up in the days and weeks following Vivian's deportation, and that has to be investigated. Secondly, we now know that DFAT had OWWA's file from September 2003, which could have led to DFAT finding Vivian in 2003—and they were asked on numerous occasions to locate her.

Thirdly, this matter had the potential to damage bilateral relations between Australia and the Philippines and therefore the case either was or should have been referred to the Minister for Foreign Affairs. Fourthly, questions about the Solon matter extend further than the department of immigration. They go directly to Mr Ruddock's knowledge of the case. Questions must also be asked about the conduct of the Minister for Foreign Affairs and his department in relation to DFAT's involvement in this matter, and in particular to do with the restricted memo in which the Filipino government was making serious complaints and the fact that DFAT had vital information on Vivian's location in 2003.

**Senator NETTLE**—I want to ask a question in relation to compensation. I know you said you have not got onto talking about that because the other issues have not been resolved. Have you at any point been invited by the Australian Government Solicitor or anybody else to provide any advice on how best the federal government may be able to put in place a timetable or a process by which that compensation will occur? We are talking about Vivian Solon today, but there are

clearly indications in the media that there are compensation cases for a number of other detainees, like Cornelia Rau, Ian Hwang and a number of others. I am trying to determine whether the government is outlining any process by which they will approach those compensation claims and whether you have been invited to provide any guidance, support or suggestions about how that process should be carried out by the government, given you are in the stream of being part of such compensation.

**Mr Freedman**—The discussions really have been formatted on a sort of ‘time line’ basis as opposed to precedents. Does that answer the question?

**Senator NETTLE**—Yes. But you have not been asked by the government at any point to have any involvement in how that process—time line, precedent—may occur?

**Mr Freedman**—The process that we have been talking about with the government is a mediation/arbitration type of alternative dispute resolution, to avoid going through the courts, which takes years and costs hundreds of thousands of dollars. So we have had those discussions.

**Mr Newhouse**—And we have given a recommendation about some modifications to the process that will make it better for all parties. We have suggested it be not just a mediation but that the mediator become an arbitrator at the end and make a determination.

**Senator BROWN**—What is your information about where that restricted memo from the Philippines government went? To whom did it go and how far beyond that did it go, as far as you know?

**Mr Freedman**—We do not have that information.

**Mr Newhouse**—You would have to find that out.

**Senator BROWN**—I intend to do my best. I just wondered if you could save me doubling up.

**Mr Newhouse**—It is not clear from the document.

**Senator BROWN**—You do not know who the recipient of that document in the Australian government was?

**Mr Freedman**—Could I reserve an opportunity to respond to you?

**Senator BROWN**—Yes, you can.

**Mr Freedman**—We received these documents in the context of several discussions. I am concerned not to breach the confidentiality that might have been attracted to the production. There is a document there. It has first names on it only. It appears to be—it says ‘subject restricted’—a little bit secretive.

**Mr Newhouse**—Everything has been taken off. I do not know how they describe it, but we have only got first names.

**Senator LUDWIG**—I thought, Senator Brown, we could go back to DIMIA and DFAT to ask for the material that they have provided to the solicitors without qualifications.

**Senator BROWN**—We are thinking the same way.

**Senator LUDWIG**—It is probably the only way.

**Senator BARTLETT**—Mr Freedman and Mr Newhouse, this may have been asked while I was briefly out of the room, but are there any aspects of the initial Palmer report that you particularly have queries about on a factual basis, or are you comfortable with the facts that have been put forward in it?

**Mr Freedman**—Without deep analysis, we are fairly comfortable.

**Mr Newhouse**—I say that the facts as presented are DIMIA's facts. We know that the inquiry had not spoken to Vivian at that stage and had not had the benefit of some of the information that we had. We are not saying that it is necessarily factually incorrect, but it is only one side of the story. There is more to come.

**Senator LUDWIG**—It has not been, in a sense, tested. The witnesses have not been cross-examined or heard in public.

**Mr Newhouse**—Exactly. It is a private inquiry and, accordingly, no immunity is given. So people with sensitive and perhaps self-incriminating information may well not have given evidence or not have given full evidence.

**Mr Newhouse**—Let me give you a practical example. He does not refer to the fact that Vivian gave her correct name, Vivian Solon, to the two independent witnesses, the nurse and the social worker, in the days before she was deported. That is not mentioned there. That does not mean that the Comrie report will not pick that up. We are saying that there are a number of gaps in it. There is one thing Mr Palmer is clear on—he says on page 187 that Vivian was wrongfully deported. He has also picked up a number of events which he says deserve more investigation, and these relate to the people that looked at her name after she was deported. We are hoping that perhaps you can uncover a little bit more about that.

**Senator NETTLE**—In relation to your comment that these are DIMIA's facts that are presented, when I was reading out before the times at which they believe that Vivian's file was accessed, those times seemed different to those on the list that you had, provided by DIMIA. It seems to me that this may be DIMIA's presentation of some facts about when the file was accessed, whereas you have another document prepared by DIMIA which gives different facts to those in the Palmer report.

**Mr Newhouse**—I am not saying that Mr Palmer has not investigated the matter, nor am I criticising the report. I am simply saying there are salient facts that Mr Palmer has not yet picked up on. The documents and the chronologies presented by DIMIA are reflected in the Palmer report, but there are other witnesses that we have spoken to—nuns, Catholic workers, independent nurses and social workers—who have given added detail, and that is not there.

**Senator LUDWIG**—Are you aware of whether Mr Palmer had asked to speak to those people that you mentioned?

**Mr Newhouse**—I have been in touch with Mr Comrie and he is aware of all those witnesses now. I not sure whether he was aware before, but he certainly is now.

**Senator LUDWIG**—That is now, but I am talking about Mr Palmer when he wrote that report.

**Mr Newhouse**—I do not know.

**Senator LUDWIG**—You are not aware.

**Mr Newhouse**—Mr Palmer would not tell us.

**Senator LUDWIG**—I was wondering whether you had asked DFAT, DIMIA or the AGS.

**Mr Newhouse**—No, we have not.

**Senator KIRK**—Can I ask whether or not you were invited to make a submission to Mr Palmer's inquiry on behalf of Ms Alvarez?

**Mr Freedman**—I do not think so. It was only Mr Comrie.

**Senator NETTLE**—You did not make it into the index of the report.

**Mr Newhouse**—I know we did not. I am not sure; I would have to take that on notice. Very close to the time the report came out we were contacted by the inquiry.

**Senator KIRK**—What did they ask you when they contacted you? Did they invite you to make a submission?

**Mr Freedman**—I think we would have to check.

**Senator LUDWIG**—It would be helpful.

**Senator KIRK**—I would have thought that if you were asked it would be something that you would recall.

**Mr Newhouse**—As I recall, the only thing they asked for was a statement from Vivian. Nobody has ever asked us to put any submission together. It has only been a statement from her.

**Senator NETTLE**—Was that Palmer or Comrie? Which inquiry are we talking about? There is no indication in the appendix of the Palmer report of who was asked. Vivian Solon was asked, but it may well be that Vivian Solon has been invited to submit something to Comrie.

**Mr Freedman**—Let me answer you in the reverse—we are definitely in the process of providing answers to some questions that Mr Comrie has posed to us, and I do not recall Mr Palmer—

**Mr Newhouse**—We were contacted by Bill Severino.

**Mr Freedman**—That was on behalf of Comrie.

**Mr Newhouse**—There is your answer.

**Senator LUDWIG**—Who requested that you provide a statement in respect of Vivian Solon?

**Mr Freedman**—As far as Mr Comrie's inquiry is concerned, he has put was a series of questions and we are in the process of completing answers to those questions as part of his investigation.

**Senator LUDWIG**—Was Vivian Solon requested to provide a statement to the Palmer inquiry?

**Mr Freedman**—Not that we can recall. I do not want to mislead you at all, but I do not recall.

**Senator LUDWIG**—I understand that. I wonder if you could check your records.

**Mr Freedman**—Certainly.

**Senator LUDWIG**—Your firm of solicitors did not provide a statement in relation to Vivian Solon to the Palmer inquiry. Is that right?

**Mr Freedman**—Yes.

**CHAIR**—Thank you very much.

[4.00 pm]

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

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

**ILLINGWORTH, Mr Robert Laurence Mark, Assistant Secretary, Onshore Protection Branch, Refugee, Humanitarian and International Division, Department of Immigration and Multicultural and Indigenous Affairs**

**LINDSAY, Ms Louise, Business Manager, Onshore Protection, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs**

**O'CALLAGHAN, Mr James Gerard, State Director, New South Wales, Department of Immigration and Multicultural and Indigenous Affairs**

**CHAIR**—Welcome. The committee prefers all evidence to be given in public, but should you at any stage wish to give any part of your evidence in private, you may ask to do so and the committee will consider your request. I now invite you to make a brief opening statement which will then be followed by questions.

**Mr Hughes**—I wish to take this opportunity to confirm some factual matters for the record, particularly regarding the case of Mr Chen. Around the time that Mr Chen first made his case public, there was considerable media coverage of contact made with the Chinese consulate by the Sydney office of the department in connection with Mr Chen. As the department made clear in a press release on 8 June 2005, the circumstances of this contact were as follows. Mr Chen contacted the New South Wales office of DIMIA on 26 May wanting to speak to the previous state director. When told the person no longer worked for the department, he requested to speak to the current state director. He gave no indication of the subject he wished to discuss. As Mr Chen claimed to be a diplomatic official, a DIMIA officer advised him that she proposed to confirm this with the consulate. Mr Chen provided telephone numbers to do this and did not indicate a problem with his identity being confirmed in that manner.

A DIMIA officer accordingly telephoned the consulate, which confirmed that Mr Chen worked there. The DIMIA officer then ended the call without providing any other information. At the time of the conversation with the consulate, the department had no knowledge of the matter that Mr Chen wished to discuss. At no time during this call did the DIMIA officer disclose any information as to the whereabouts of Mr Chen or the reason for DIMIA's inquiry. I reiterate these details to confirm that Mr Chen was not an applicant for political asylum or a protection visa at the time the department spoke to the consulate, nor were his intentions in this area known to us. No information regarding Mr Chen was given to the consulate.

The key subsequent events can be summarised as follows: after his intention had become known, he was subsequently counselled by telephone by a DIMIA staff member on his visa options on 27 May and 30 May and by DIMIA officers and a DFAT officer in a face-to-face meeting on 31 May. Given that it had become clear that Mr Chen would not be granted an instrument of territorial asylum, Mr Chen chose to lodge a protection visa application and did so on 3 June. Mr Chen's application was processed in accordance with normal procedure but with some priority. He was interviewed on 16 June in relation to his application. Following some further checks, Mr Chen's representative was advised on 8 July that Mr Chen had been granted a permanent protection visa. We are happy to take questions.

**CHAIR**—Does anybody wish to respond regarding Ms Solon/Ms Alvarez/Mrs Young?

**Mr Hughes**—The former deputy secretary of the department, Mr Killesteyn, indicated in a letter to you, Chair, that given the current situation—the inquiry into Ms Solon's case being conducted under the auspices of the Ombudsman—we are really not in a position to make comments about that, apart from providing factual material that is available on the department's files. We would have to limit anything we say to responding to questions on that factual information.

**CHAIR**—In terms of Mrs Young we have been provided with information this afternoon, as you are aware, of copies of documents from DIMIA. Are those documents available to the committee?

**Mr Hughes**—I am not specifically aware of the documents that you are referring to, so could you identify them?

**CHAIR**—I would not be able to identify each one.

**Senator LUDWIG**—Can I help?

**CHAIR**—Yes.

**Senator LUDWIG**—We had the opportunity of hearing from solicitors representing Vivian Solon. They had what appeared to be a file of relevant documents they had requested from, and obviously been provided with by, DIMIA. Can we have the same material from DIMIA that the solicitors requested and were given? You would have a file log of what you have handed to the Australian Government Solicitor—who is representing you, I take it—together with the documents you have provided to the solicitors. Without going to half or none, can you provide all of those documents?

In addition, there are a number of other documents that we are seeking that you might have. Those documents may include logs. It seems that a search of your various databases was done which went to 'Alvarez'. We would like to know whether or not there were any searches done on your databases for 'Vivian Solon', 'Vivian Alvarez' or 'Vivien Alvarez', or 'Vivian Young'—whether the solicitors have the complete log, albeit with the wrong spelling of the name Alvarez, or if there are logs of searches under those other names as well.

**Mr Hughes**—That sounds like a very wide range of possibilities. I will have to take on notice whether or not we can provide that information. I do not know whether Ms Daniels has anything to add.

**CHAIR**—I will quote from the second paragraph of the letter Mr Killesteyn sent me: ‘As the minister has referred the circumstances surrounding Ms Alvarez’s removal from Australia to the Palmer inquiry, it would be inappropriate to make any comments, pending the report from this inquiry. Officers of the department will be available to assist your committee at the hearing with matters of fact based on the information contained in DIMIA files.’ How does that marry with what you have just said to me?

**Mr Hughes**—We are indeed happy to answer specific questions. I understood that Senator Ludwig was asking to have specific documents provided. It seemed to me to be quite a long list, so—

**Senator LUDWIG**—I hope it is, yes!

**Senator HOGG**—So do we.

**Senator LUDWIG**—There is a limit to the number of questions we can ask if we do not have some of the primary documents. You can understand that they will reveal some of the story which we can then question you on. That goes to the factual issues, and then you can either point us in another direction or answer the question.

**Mr Hughes**—What I am saying, Senator, is that in relation to the range of documents you have asked for, I would have to take that on notice.

**Senator LUDWIG**—How long will it take before you can inform us whether or not you can accede to the request; and, if you can, how long will it take you to provide those documents to the committee?

**Mr Hughes**—I might just ask Ms Daniels what has been provided so far and what might be involved in doing that.

**Ms Daniels**—Senator, you will recall that a number of documents were requested from us at the estimates hearings. That request was taken on notice and—

**Senator LUDWIG**—You answered all of those questions?

**Ms Daniels**—I do not think those questions have formally been answered; I might be wrong.

**Senator LUDWIG**—They are all overdue. I have not got any of them to date.

**Senator NETTLE**—The secretariat has none of the answers from your department.

**Senator LUDWIG**—That is why I am asking again, and I will continue to ask until you provide the documents.

**Ms Daniels**—Those responses are prepared, pending clearance, with the documents attached. That level of disclosure is being prepared for you. In terms of the documents that have been provided to the solicitors and that were referred to previously, I am actually not familiar with the range of documents that has been—

**Senator LUDWIG**—Neither are we.

**Ms Daniels**—No. But I would need to check on that and, as Mr Hughes said, take that on notice and get back to you. I do not think that will take very long.

**Senator LUDWIG**—All right. You do not see any difficulty with providing those documents? They are DIMIA held documents, I take it.

**Ms Daniels**—If they are on DIMIA files then presumably we would respond to you as we responded after the estimates hearings.

**Senator LUDWIG**—There has been nothing to date.

**Ms Daniels**—To date.

**Senator LUDWIG**—When were the responses to those questions finalised?

**Ms Daniels**—I said that they were being finalised, pending clearance, so I am not sure whether they have actually gone through the final clearance process.

**Senator LUDWIG**—What is that process?

**Ms Daniels**—Going through our executives.

**Senator LUDWIG**—Where are they in that train? Are they on the minister's table, the undersecretary's table?

**Ms Daniels**—I do not know where they are in that cycle.

**Senator LUDWIG**—I wonder if you could find that out for us too and then let us know at what stage the officers finished preparing them and how long they have been awaiting clearance.

**Ms Daniels**—Sure.

**Senator LUDWIG**—It is unusual, I have to say, for DIMIA to pass the return date without providing information that has been requested. Normally you have been very responsive and provided information in a timely way.

**Mr Hughes**—We try to, Senator, but we will follow up as you asked.

**Senator LUDWIG**—Thank you. I do understand your resources have been stretched with inquiries.

**CHAIR**—So you have a list of things we have asked about?

**Senator LUDWIG**—I think we are clear as to what I have asked for. There is also an additional matter. I do not have the benefit of the transcript to be able to describe it to you, but it seems that it is information or a document that has come from the Manila embassy, either from DIMIA or from DFAT. So it may be a DIMIA request or it may be a DFAT request that I have to pursue. I would probably need the transcript to be able to identify it fairly to the DIMIA officials, but we can follow that up and put a question on notice through the secretariat. It relates to May 2005.

**CHAIR**—In essence, you do not have any response to what you heard Mr Newhouse and Mr Freedman saying earlier?

**Mr Hughes**—I was not listening to it.

**CHAIR**—A number of your officers were. I could see them in the back. In fact, what Mr Killesteyn said to me was that after the Palmer inquiry you would be available to assist.

**Mr Hughes**—We are, for the kind of questions that were asked and answered at Senate estimates: particular questions about factual information on the files—

**CHAIR**—So if we factually asked you about Mrs Solon and whether or not there was a DIMIA officer in July 2003 who made some contact with a DFAT person—if I gave you a specific question now—would you be able to answer it?

**Mr Hughes**—Ms Daniels would be best placed to do that.

**Ms Daniels**—I will certainly try.

**CHAIR**—So we could go through some of these issues now if we wanted to. Senator Ludwig, I do not know if indeed we do require the paperwork.

**Senator LUDWIG**—We can proceed with a number of questions.

**Senator BROWN**—We also have the matter of Mr Chen. There are two matters, and we ought to decide to do them in one order or the other.

**CHAIR**—We have not started on Mr Chen, Senator Brown. That is what they wanted to start on.

**Senator BROWN**—I would like an indication from the chair as to what the process is going to be.

**CHAIR**—Would colleagues prefer to start on Mrs Solon, or do we need the information available from DIMIA?

**Senator BARTLETT**—I suppose the only query I would have is about whether, if we are only going to be able to go part way and we need a bunch of documents, it would be better to do

all that in one go, once we have the full suite of documents and we know what it is based on. But I would rather ask about Chen, so I am biased.

**CHAIR**—Is that the view of colleagues?

**Senator LUDWIG**—If we started with Chen, I would be happy for you to proceed with Chen.

**CHAIR**—Let us proceed with Chen.

**Senator NETTLE**—Before we go on, I would like to put on notice that we would like another document. I am not sure if it was part of the ones that Senator Ludwig requested. It is a copy of the OWWA file, which was provided to DFAT. I am not sure whether that was in the documents provided to us. If it is not, could we also get that document.

**Ms Daniels**—I do not recall that one being part of the request that came to us last time but we can take that now.

**Senator HOGG**—Also, whilst we are on that, they mentioned an email between two DIMIA offices on 16 January 2003. Rather than us having to drag these things out—I am sure you do not want to go down that path—it might be prudent to have a good read of the *Hansard* of the evidence that has been presented to us. I think you will be able to then pre-empt what some of our requests will be. I think that would be helpful. I am just looking at my notes here. That is one thing that leapt out at me.

**Ms Daniels**—It might be helpful if I mention that certainly with regard to 16 January 2003 there is nothing that I recall in our file records for that date. There are exchanges in July, on 14 or 16 July. I am not sure whether that ‘January’ is intended to be ‘July’.

**Senator HOGG**—I just copied the note down as the evidence was given. I have 16 January. There seems to also be evidence of a later DIMIA email. That was on 16 January 2003. On 13 July 2004 they mentioned evidence. I presume it could well have been the 14 July 2001 that they referred to in other DIMIA emails. We want to actually get the correspondence or the traffic that took place between the DIMIA offices and/or DIMIA and/or DFAT. It might be any of those combinations.

**CHAIR**—We will go on to Mr Chen. Mr Hughes, you said that Mr Chen spoke to someone on 26 May. Is that correct—that he rang to talk to the previous director before Mr O’Callaghan?

**Mr Hughes**—He asked for the previous state director.

**CHAIR**—What is his name?

**Mr Hughes**—Nick Nicholls was the previous state director. When told that he did not work there any more he said he wanted to actually speak to whoever was there—the current state director.

**CHAIR**—What happened after that?

**Mr Hughes**—I might ask Mr O’Callaghan to fill in further information on that.

**Senator BROWN**—Did he ask for the previous state director or did he ask by name for the person he thought was the state director?

**Mr O’Callaghan**—As I understand it, he asked by name for the previous state director.

**Senator HOGG**—Did he ring directly to the number that he thought the previous state director was on or did he ring through the switch?

**Mr O’Callaghan**—He made a series of phone calls that morning. The first call was through to our contact centres—that is, our general inquiries. Then he made a series of calls to the executive assistants of the state director and the deputy state director.

**Senator HOGG**—So direct to their personal numbers?

**Mr O’Callaghan**—Through to the executive lines in the immigration department in New South Wales.

**CHAIR**—I was asking about the phone call and if it was put through to you or he was told Mr Nicholls was no longer the state director.

**Mr O’Callaghan**—The calls never came to me personally. They were handled by executive assistants. I was in another part of the building in a meeting at the time. Mr Chen was seeking to speak to the state director. As Mr Hughes said, at one point the executive assistants sought to confirm he was who he said he was. He provided some telephone numbers for us to confirm that with the Chinese consulate.

**CHAIR**—So you never actually spoke to Mr Chen in this period on 26 May. Is that correct?

**Mr O’Callaghan**—That is correct, or at any other time.

**CHAIR**—So you have never spoken to him?

**Mr O’Callaghan**—Correct.

**CHAIR**—Not even since?

**Mr O’Callaghan**—Correct.

**CHAIR**—Who did he speak to? He spoke to your executive assistant, did he?

**Mr O’Callaghan**—Correct.

**CHAIR**—Who was that?

**Mr O’Callaghan**—A junior officer.

**CHAIR**—It was not one of the officers?

**Mr O’Callaghan**—A very junior officer—these are people performing executive assistant functions.

**CHAIR**—He made his request to her to speak to you?

**Mr O’Callaghan**—Correct.

**CHAIR**—I gather that she said you were not available?

**Mr O’Callaghan**—Correct.

**CHAIR**—What did he say to her then?

**Mr O’Callaghan**—He did not offer to wait. At one point the executive assistant offered to go and find me in another part of the building. He made three or four phone calls that morning and did not hang around waiting for the result of that. In fact, the final transaction he had with the Immigration office that morning was in the foyer area, where he left two envelopes with the security guards and then left the building. There was a series of phone calls he made, probably over a 20-minute period, mid-morning on Thursday, 26 May. Overwhelmingly, the calls were made to the executive assistants.

**CHAIR**—Did he indicate to them what he wanted to speak to the state director about?

**Mr O’Callaghan**—No.

**CHAIR**—Then there are phone calls on 27 May? There were three or four phone calls on 26 May.

**Mr O’Callaghan**—Correct.

**CHAIR**—Then he came to the office on that day?

**Mr O’Callaghan**—He was in the office on the morning of Thursday, 26 May—down in the public foyer area, near the security guards.

**CHAIR**—So, in addition to trying to ring upstairs, he was down in the foyer of the building?

**Mr O’Callaghan**—That is right. He came in and spoke to two of the security guards in the front foyer of the immigration department in the city.

**CHAIR**—And that is when he wanted to speak to the state director again?

**Mr O’Callaghan**—Correct.

**CHAIR**—I assume it is not easy to get up to that floor. Is that correct?

**Mr O’Callaghan**—There are security areas in the building. There is no automatic access for the public to the secure areas where staff are accommodated.

**Senator BROWN**—So he could not get beyond that point at that stage?

**Mr O’Callaghan**—At that stage he was seeking to meet with the state director. All the transactions—the discussions—occurred with him physically in the foyer, near the security guards.

**Senator BROWN**—And there was no way he could get beyond that point to have discussions with you?

**Mr O’Callaghan**—If he had an appointment or if some arrangement had been made, of course he could have got beyond that point.

**Senator BROWN**—But he did not?

**Mr O’Callaghan**—He did not have any of those things, no.

**Senator BROWN**—So he could not get past that point?

**Mr O’Callaghan**—He did not go past that point.

**Senator BROWN**—He could not get past that point?

**Mr O’Callaghan**—He did not go past that point.

**Senator BROWN**—Could he have got past that point? Could he have just pressed the lift button?

**Mr O’Callaghan**—He could not have got to any of the secure areas of the department. He could only go to public areas in the department—effectively, the lift foyers.

**Senator BROWN**—So he could not get beyond the foyer?

**Mr O’Callaghan**—He could have physically gone beyond the foyer if he had gone and pressed the button on the lift, but that would have meant he would have been able to exit at a number of public exit points in the building on different floors. But they are public points, not secure areas where staff are. There is a series of other areas in the building. We are on five or six floors in there, and there are a number of other public areas where clients come to meet for interviews and so on.

**CHAIR**—I assume that the three or four phone calls were made on mobile phones down in the foyer to try to get upstairs to see the state director—

**Mr O’Callaghan**—Correct. That is what we understand.

**CHAIR**—whom he had thought was Mr Nicholls. He still could not get past the security guards—understandably—and he leaves two envelopes. Is that correct?

**Mr O’Callaghan**—That is correct.

**CHAIR**—Who are they addressed to?

**Mr O’Callaghan**—I did not see the envelopes, but I saw the contents of the envelopes.

**CHAIR**—What did the contents say?

**Mr O’Callaghan**—The contents were two identical letters addressed to two people. One was addressed to Nick Nicholls—with that name crossed out, and my name written in handwriting. The other name, in the addressee block at the top, was Robert Illingworth.

**CHAIR**—What is your position again, Mr Illingworth?

**Mr Illingworth**—I am the Assistant Secretary of the Onshore Protection Branch in the Refugee, Humanitarian and International Division.

**CHAIR**—Had you had dealings with Mr Chen before?

**Mr Illingworth**—No.

**CHAIR**—You had never met him then?

**Mr Illingworth**—No.

**CHAIR**—On that morning, what happened after that with the two identical letters? What was in the letters?

**Mr O’Callaghan**—The letters were taken by the security guards to our mail opening area, which is on level 3. They went from the ground floor up to level 3. We have a secure mail handling area, where the letters were opened. The letters were then brought to the state director’s office. I returned to the office at the time the letters were delivered.

**Senator BROWN**—The state director’s office is your office?

**Mr O’Callaghan**—That is correct.

**CHAIR**—To restate this, from what you are telling us, all Mr Chen was told when he made the three or four phone calls was essentially that Mr Nicholls was not the director anymore, that you were and that you were not available.

**Mr O’Callaghan**—Correct.

**CHAIR**—Nothing else was said by the executive assistant or, if there was not, she or he did not put Mr Chen on to anybody more senior to discuss the matter with?

**Mr O’Callaghan**—Not from the point of referral to the executive assistant. The initial call came in to our general inquiry line in our contact centre. That was referred through to the executive assistant and on to another area—one of the deputy state directors who deals with consular matters. She was interstate, so that was when the call was sent back to the executive assistant. So Mr Chen only ever spoke to the security guards at the front counter and the executive assistants.

**CHAIR**—So he left you a letter and Mr Illingworth a letter?

**Mr O’Callaghan**—Two identical letters.

**CHAIR**—And the contents of the letters were?

**Mr O’Callaghan**—I think Mr Chen has displayed them in the media, but they were Mr Chen’s request for political asylum, to use his language. I do not have the letter in front of me but that is as I recall what it said.

**CHAIR**—After that, did your office then contact Mr Chen?

**Mr O’Callaghan**—Our office sought to contact Mr Chen. Mr Chen’s mobile was turned off.

**CHAIR**—When were you lucky enough to get hold of him?

**Mr O’Callaghan**—I contacted one of the senior officers in the New South Wales office and made contact with Mr Chen on the afternoon of Thursday, 26 May.

**CHAIR**—And they were senior officers?

**Mr O’Callaghan**—That was a senior officer, yes.

**CHAIR**—And that was the Friday afternoon?

**Mr O’Callaghan**—No, that was the Thursday afternoon, the same day he was in the office.

**CHAIR**—So there were four phone calls in the morning—I gather it was the morning?

**Mr O’Callaghan**—Correct.

**CHAIR**—The envelopes were left, they were opened and that was when someone contacted him.

**Mr O’Callaghan**—Someone sought to contact him in the latter part of the morning—unsuccessfully, because his phone was switched off. Then they successfully made contact with him mid afternoon on Thursday the 26th.

**Senator BROWN**—Who was that someone?

**Mr O’Callaghan**—That was the Manager of our Onshore Protection Branch.

**Senator BROWN**—Which is who?

**Mr O’Callaghan**—Who is Louise Lindsay.

**CHAIR**—What transpired then?

**Mr O’Callaghan**—There was a discussion with Mr Chen on the afternoon of Thursday the 26th. As part of that discussion there was an offer to set up a face-to-face meeting with Mr Chen for the following day, Friday the 27th. I understand the arrangements were made for that meeting. That meeting did not proceed because Mr Chen rang the contact officer at about lunchtime on the Friday, which was within a couple of hours of when the meeting was to occur, and said that he was not prepared to come to the meeting.

**Senator BROWN**—When Mr Chen made his call, then came to the foyer and he had the two letters which were sent up and came to your office—I want to clear this up—an executive officer was there but you say this was a junior person. Usually ‘executive officer’ indicates seniority.

**Mr O’Callaghan**—I think the phrase I used was ‘executive assistant’, so these are junior officers. The common parlance in the past has been ‘secretary’.

**Senator BROWN**—Did she go off during one of those phone calls to find you?

**Mr O’Callaghan**—No. I was on another floor. She was seeking to contact me by phone.

**Senator BROWN**—At what time did you become aware of Mr Chen’s approach?

**Mr O’Callaghan**—During midmorning, somewhere between 10.30 and 11 on Thursday the 26th.

**Senator BROWN**—What time did he first make his approach?

**Mr O’Callaghan**—Around about 10.30.

**Senator BROWN**—So somewhere between 10.30 and 11—within half an hour—you knew that he had made that approach.

**Mr O’Callaghan**—Correct. I had a message that someone was seeking to talk to me.

**Senator BROWN**—About what?

**Mr O’Callaghan**—I had no information about that, because our officers had no information and Mr Chen provided no information.

**Senator BROWN**—Not even his name?

**Mr O'Callaghan**—I cannot recall. I can take that on notice if you are keen to know that. Certainly it indicated that he claimed to be an official of the Chinese consulate.

**Senator BROWN**—So you knew, while Mr Chen was still in the foyer, that an official of the Chinese consulate was attempting to speak to you?

**Mr O'Callaghan**—I knew someone claiming to be an official of the Chinese consulate was seeking to contact me.

**Senator BROWN**—What was your response to that?

**Mr O'Callaghan**—I was interrupted, as I was in a meeting. That message was passed through to me. My response to that to the executive assistant on the floor where I was in the meeting was that I would respond when I got back to my office.

**Senator BROWN**—So the approach was important enough from the executive assistant's point of view to interrupt the meeting to say that there was a Chinese consulate official wanting to speak to you, but you did not take that any further—you did not ask further questions about that?

**Mr O'Callaghan**—No-one was suggesting that the person was a Chinese consulate official. It was suggested that someone claiming to be an official of the Chinese consulate was seeking to speak to me. Many people seek to speak to the state director of the immigration department. We have somewhere between 1,000 and 1,500 people come into that office alone each day. We have 80,000 calls come into the contact centre in that office each month. We have many calls come through to the executives' numbers on a daily basis, where people are seeking to speak to the state director or the deputy state directors. As you know, Immigration is an agency dealing with people. There are a lot of people in New South Wales and beyond who seek to speak to me.

**Senator BROWN**—Do your executive assistants interrupt a meeting to seek you out each time somebody seeks to speak to you?

**Mr O'Callaghan**—On occasions, yes.

**Senator BROWN**—When had it last occurred?

**Mr O'Callaghan**—I cannot recall. As I recall, it last occurred on the occasion when Mr Chen was seeking to speak to me.

**Senator BROWN**—But before that.

**Mr O'Callaghan**—I cannot recall.

**Senator BROWN**—You did not ask any further questions about the bona fides that this alleged person from the Chinese consulate—

**Mr O’Callaghan**—I did not. I expected to be back in the office within the next 30 to 40 minutes, and there was no reason for me to think that it could not wait until then.

**Senator BROWN**—Did you ask that Mr Chen wait?

**Mr O’Callaghan**—No. I had no communication with Mr Chen or anyone to that effect.

**Senator BROWN**—Did you ask your executive assistant that she or he—who was the executive assistant?

**Mr O’Callaghan**—It was a she—and, no, I did not ask that question.

**Senator BROWN**—Why not?

**Mr O’Callaghan**—I did not think it was necessary.

**Senator BROWN**—You did not?

**Mr O’Callaghan**—No.

**Senator BROWN**—Why not?

**Mr O’Callaghan**—I have just tried to describe a bit of context. Somewhere between 1,000 and 1,500 people come into that office every day. Numerous phone calls come in to the senior executive on a daily basis, which are people seeking to speak to me or one or other of the deputy state directors. It is not uncommon for people to say, ‘I’d like to speak to the deputy state director or the state director.’ It is a very common occurrence. It happens on a daily basis.

**Senator BROWN**—But you have just said that you do not remember the previous occasion on which you had been interrupted in a meeting by a request of this nature. It was not like those other requests.

**Mr O’Callaghan**—That is correct, but the reality is that many people seek to speak to the state director.

**Senator BROWN**—Was the letter in your office when you got back to it?

**Mr O’Callaghan**—No.

**Senator BROWN**—When did you see the letter?

**Mr O’Callaghan**—Within 10 minutes of arriving in my office.

**Senator BROWN**—What time was that?

**Mr O’Callaghan**—As I recall, I returned to the office about 11.20. I think the letter materialised about 11.30 or so.

**Senator BROWN**—So it was about 11.20 that you got back to your office?

**Mr O’Callaghan**—That is right.

**Senator BROWN**—What was your reaction when you got the letter?

**Mr O’Callaghan**—Surprise.

**Senator BROWN**—Yes, but what did you do in response to it?

**Mr O’Callaghan**—I called the business manager of the onshore protection area to my office.

**Senator BROWN**—Which is who?

**Mr O’Callaghan**—Louise Lindsay. And I immediately put a phone call through to Canberra.

**Senator BROWN**—To whom?

**Mr O’Callaghan**—I was seeking to speak to any of the senior executive officers in the refugee, humanitarian and international branch. All of those officers were before a Senate estimates committee hearing that morning and were unavailable. I spoke to a director in that division probably within 10 minutes of first seeking to speak to a series of other SES officers.

**Senator BROWN**—Who was the director?

**Mr O’Callaghan**—I recall the name of the director; I cannot recall her title. She was Kathleen Dunham.

**Senator BROWN**—Before I ask you about that, in the meantime, so far as you knew, Mr Chen was still on the premises.

**Mr O’Callaghan**—No. I recall that I was advised—I just cannot remember when I was advised—that Mr Chen had left the premises. As it turned out, Mr Chen left the envelopes and left the building at the same time.

**Senator BROWN**—When were you told that he had left the premises?

**Mr O’Callaghan**—I would have to check my records, Senator. I cannot recall.

**Senator BROWN**—Was it before you called Canberra?

**Mr O’Callaghan**—Yes, it was before I called Canberra.

**Senator BROWN**—At what time did you make an effort to have Mr Chen come back?

**Mr O’Callaghan**—In fact I asked the business manager of the onshore protection area to seek to contact Mr Chen.

**Senator BROWN**—This is again—

**Mr O’Callaghan**—This is Louise Lindsay.

**Senator BROWN**—Louise Lindsay.

**Mr O’Callaghan**—And as I said before, Louise Lindsay confirmed that she was unable to get through to Mr Chen’s mobile.

**Senator BROWN**—What time was this?

**Mr O’Callaghan**—This was around 11.30—perhaps just before 11.30.

**Senator BROWN**—According to the evidence in the public domain from Mr Chen, he had an ID card and a passport to identify himself when he made the approach to your office. At what time was the call made to the consulate, and by whom from your office, to seek to confirm that he was who he said he was?

**Mr O’Callaghan**—The call was made midmorning. It was made by one of the executive assistants.

**Senator BROWN**—Which one?

**Mr O’Callaghan**—These are junior officers, Senator. Is it necessary to give their names? I will be guided by the senators, but these are quite junior officers.

**Senator JOHNSTON**—I would not have thought it was necessary, Chair. They are very junior officers. We are not interested in their names, are we?

**CHAIR**—I do not think we need to. I thought ‘executive assistant’ was a higher title.

**Mr O’Callaghan**—There are two executive assistants, and they are quite junior officers. I am not trying to be evasive.

**CHAIR**—Just to clear up the point, I thought ‘executive assistant’ was a senior title. That is why I thought Ms Lindsay was the person then.

**Senator BROWN**—Is this a male or a female we are talking about here?

**Mr O’Callaghan**—Both executive assistants are female.

**Senator BROWN**—Did you ask her to make that call?

**Mr O’Callaghan**—Which call, Senator?

**Senator BROWN**—The call to the consulate.

**Mr O’Callaghan**—No. I had no knowledge of that call.

**Senator BROWN**—Had that been made by the time you got back to your office?

**Mr O’Callaghan**—Yes.

**Senator BROWN**—When did you ask about Mr Chen’s ability to identify himself?

**Mr O’Callaghan**—I recall coming back to the office and saying, ‘There is someone from the Chinese consulate seeking to talk to me. Where is the number?’ and so on. I had returned, I had undertaken to follow up, and at that stage I was advised that one of the executive assistants had made contact with the Chinese consulate. That was done on the basis that Mr Chen was advised by the executive assistant that we wanted to confirm his identity as part of the process of determining whether he should be having an appointment with the state director. Mr Chen was asked to provide some telephone numbers. He provided two telephone numbers at the Chinese consulate. At no time did Mr Chen indicate any difficulty about following up his identity with the Chinese consulate. It was clear but—

**CHAIR**—This is what you were told.

**Mr O’Callaghan**—This is what I was told by my executive assistants.

**Senator BROWN**—You say ‘we’ wanted to confirm his identity.

**Mr O’Callaghan**—I am talking collectively on behalf of the department.

**Senator BROWN**—But you did not.

**Mr O’Callaghan**—I did not; no.

**Senator BROWN**—What was your reaction when you heard that your junior executive assistant had called the Chinese consulate under those circumstances? You had read the letter at this stage.

**Mr O’Callaghan**—The letter made clear what Mr Chen’s interests were. Until then there had been no information about what Mr Chen’s interest in calling on the immigration office was.

**Senator BROWN**—Yes, although there was a sense of urgency, which was enough to get your executive assistant to call you out of the meeting.

**Mr O’Callaghan**—That is right. Mr Chen had said that he wanted to speak urgently to the state director.

**Senator BROWN**—You took from that that it was an important matter that he was wanting to discuss.

**Mr O’Callaghan**—I took from that that there was someone wanting to speak to me quickly. I could not make any judgment about what it was or what the scale of importance was. As I said, many people seek to speak to the state director on a daily basis.

**Senator BROWN**—What was your reaction when you heard that your executive assistant had called the Chinese consulate?

**Mr O’Callaghan**—I cannot recall the reaction to that.

**Senator BROWN**—Tell me now what you think about that.

**Mr O’Callaghan**—I think Mr Chen provided some numbers and consented to someone contacting the Chinese consulate—

**Senator BROWN**—Did you ask if he had authorised it?

**Mr O’Callaghan**—The executive assistant explained the circumstances to me after the event.

**Senator BROWN**—Did you ask if he had authorised it?

**Mr O’Callaghan**—I asked what were the circumstances of the contact with the Chinese consulate, and I was advised—and I did double-check this on more than one occasion—that Mr Chen provided two numbers and consented to his identity being checked at the Chinese consulate.

**Senator BROWN**—When were you advised that?

**Mr O’Callaghan**—After I came back to the office.

**Senator BROWN**—How long after you came back to the office?

**Mr O’Callaghan**—A very short time after I came back to the office.

**Senator BROWN**—So again, you were not fazed by the fact that the Chinese consulate had been phoned by your executive assistant.

**Mr O’Callaghan**—It became clear to me when the contents of the envelopes were passed to me that this was a very serious matter: someone seeking political asylum. I could not recall someone coming to an immigration office, in my 20-plus years in immigration, seeking political asylum.

**Senator BROWN**—And it did not strike you as a matter of concern that the Chinese consulate had been questioned by somebody from your office about Mr Chen’s identity—under those extraordinary circumstances?

**Mr O’Callaghan**—I sought an explanation of the contact with the Chinese consulate, and I do not think there is anything more I can add. I have given you that answer two or three times.

**CHAIR**—Just to clear that up: the events are that the phone calls are coming in and your executive makes a phone call to the Chinese consulate to check—with the phone numbers given to him or her by Mr Chen—

**Mr O’Callaghan**—Yes.

**CHAIR**—When had your office received the letter from downstairs from Mr Chen?

**Mr O’Callaghan**—As Mr Chen was leaving the building.

**CHAIR**—When was the phone call made to the Chinese consulate?

**Mr O’Callaghan**—During the time Mr Chen was in the building.

**CHAIR**—So the letters had not been opened.

**Mr O’Callaghan**—Correct. The letters had not even been given. No-one in the immigration office knew what Mr Chen was doing in the building.

**Senator BARTLETT**—Just a bit further on that: I am presuming, for you to verify that the statements you have made about what Mr Chen said to this person, that you have taken a statement from them? I appreciate they are a junior officer and you are not wanting to put the spotlight on them, but you have taken a written statement of record from them?

**Mr O’Callaghan**—It will not surprise you that immediately after I came back, within a very short time, this letter was presented to me. I was struck by the seriousness of the situation and immediately asked the two executive assistants to prepare an account of the morning’s event.

**Senator BARTLETT**—In a question from Senator Brown you indicated your initial reaction as being one of surprise. Going to your statement that you have had no experience in your 20-odd years of someone presenting for defection, was this an unprecedented situation for DIMIA officials in that sense?

**Mr O’Callaghan**—As I said, I cannot recall any occasion when someone has come to a DIMIA office anywhere in the world seeking political asylum. That does not mean, of course, that we do not have people seeking to lodge refugee applications, onshore refugee applications, protection visa applications and so on—thousands of those applications are lodged every year.

**Senator BARTLETT**—Defection is probably an outdated term these days; is the legal term ‘territorial asylum’? The word ‘defection’ does not seem to have any particular status.

**Mr Hughes**—Not in immigration law. As you know, the concept of political asylum has been somewhat embedded in the Migration Act through the territorial asylum visa.

**Senator BARTLETT**—Has there been a territorial asylum visa issued in the last 15 years?

**Mr Hughes**—Not since its official creation in the Migration Act that I am aware of.

**Senator BARTLETT**—Which year was that? Was it 1989?

**Mr Hughes**—It would have been put in since 1989, because 1989 was when the acts and regulations took their current structure. I cannot say that it was there in 1989, but it would have been since that time.

**Senator BROWN**—Mr O’Callaghan, what was the meeting you were at when you were interrupted and told about Mr Chen being in the foyer?

**Mr O’Callaghan**—I was at a meeting about the operation of our onshore protection program, including our further protection visa program. These are programs that deal with subject matter that this committee is familiar with: applicants, particularly Iraqis, seeking further protection visas and permanent visas, plus the operation of our general community onshore protection program.

**Senator BROWN**—How many others were at that meeting?

**Mr O’Callaghan**—My recollection is that it was Louise Lindsay and I, and on occasions there were others, at that meeting.

**Senator BROWN**—So you were really having a conversation with Ms Lindsay?

**Mr O’Callaghan**—Yes, and there was at least one of her other senior officers in that meeting for a considerable period.

**Senator BROWN**—When you were interrupted by the executive assistant?

**Mr O’Callaghan**—Correct.

**Senator BROWN**—So you were talking with two other people at that stage.

**Mr O’Callaghan**—Correct.

**Senator BROWN**—You said that you asked the two executive assistants to immediately write down an account of what had happened in the morning.

**Mr O’Callaghan**—Correct.

**Senator BROWN**—Can you furnish the committee with a copy of those accounts.

**Mr O’Callaghan**—I will take that on notice and see what we can do.

**Senator BROWN**—Mr Chen in the foyer had an ID card and a passport—the ID card of course being from his embassy. Do you think that was not sufficient to identify him as being who he said he was?

**Mr O’Callaghan**—I understand that he presented an ID card to the security guards in the front foyer. There was no suggestion that he presented a passport.

**Senator BROWN**—But if you are questioning the identity—who asked him what documents he had to identify himself with?

**Mr O’Callaghan**—The situation was that he was in the foyer adjacent to the security guards on the ground floor. The executive assistants are in the executive area on level 5. The executive assistant in one of the phone discussions heard laughing in the background and, at that point, was not sure where Mr Chen was, to the point where she asked for assistance from Mr Chen in confirming his identity with his employer, and that is when he gave the phone numbers.

**Senator BROWN**—Laughter from whom? Who was laughing?

**Mr O’Callaghan**—The public. There were hundreds of people in the foyer area. So there was background noise—that is what she was hearing.

**Senator BROWN**—Was the question asked: do you have a passport?

**Mr O’Callaghan**—I don’t know. Certainly Mr Chen provided a copy or displayed a copy of his ID card.

**Senator BROWN**—Wouldn’t it be a reasonable thing, if you wanted to identify a foreign person in your department, to ask for a passport? Isn’t that the usual thing?

**Mr O’Callaghan**—We ask people for passports regularly when they are doing an immigration transaction. Mr Chen wasn’t doing an immigration transaction; there was no indication of what business he had in the department and what he was interested in doing.

**Senator BROWN**—Whatever it was, it was serious enough for somebody in your office to seek to ring the Chinese consulate to establish his identity. Don’t you believe that he should have been asked to produce identity in the form of documents—obviously, the usual document being a passport?

**Mr O’Callaghan**—Senator, there was the issue of establishing identity which he was quite cooperative in assisting with. As I said before, he provided telephone numbers, contact was made with the Chinese consulate and so on.

**Senator BROWN**—Mr Chen says he asked the people in your office not to call, saying he had an unusual request and it was a serious matter.

**Mr O’Callaghan**—That is inconsistent with the advice my officers have given me.

**Senator BROWN**—It certainly is. But can you not understand, taking an objective viewpoint here, that if you were in Mr Chen’s shoes you would not want the consulate to be called?

**Mr O'Callaghan**—All I can say is what I have been factually advised, and that is that Mr Chen provided phone numbers for the consulate to be contacted, and gave no indication that he had any difficulty with his identity being checked at the consulate.

**Senator BROWN**—Let me explore that statement. He provided phone numbers for the consulate to be contacted. Firstly, I would have thought your office would have those numbers readily at hand.

**Mr O'Callaghan**—The executive assistant did not have them readily at hand at that point.

**Senator BROWN**—I presume also that it may well be that he assumed he was being tested to see if he actually knew about the Chinese consulate, which he had come from.

**Mr O'Callaghan**—What he was clearly being asked for was to assist with his identification.

**Senator BROWN**—Yes; exactly. So if he knew the numbers of the consulate it was a fair indication that he was indeed an official from the consulate.

**Mr O'Callaghan**—I believe that there is a large number of people in the New South Wales population who could find the numbers of the consulate, if they are available publicly. I do not know. I have never tested it.

**Senator BROWN**—I agree with you. But there would be very few people indeed who could reel it off as a means of either identifying themselves or showing that they worked at the consulate. Wouldn't that be so?

**Mr O'Callaghan**—That is speculative. I cannot make an informed comment on it.

**Senator BROWN**—No more speculative than assuming that he gave those numbers so that the consulate could be contacted.

**Mr O'Callaghan**—He was asked to provide some assistance in confirming his identity. He offered two numbers. Those numbers were the numbers of the Chinese consulate. He indicated no difficulty about his identity being checked with the consulate.

**Senator BROWN**—I put it to you—because he says on the public record that he asked for the consulate not to be called and that the telephone numbers were a matter of identifying himself.

**Mr O'Callaghan**—Senator, all I can suggest is that is a matter you pursue with Mr Chen.

**Senator BROWN**—We certainly will but we are in a situation here where you are giving directly contradictory evidence or an assumption of motivation from Mr Chen. I am saying that Mr Chen had a passport with him. That would have been routinely the way in which foreign people are identified when they present themselves at your office.

**Mr O'Callaghan**—I repeat what I have said before. The advice I had from the security guards is that he produced an ID card. There was no suggestion he produced a passport. In any event, when asked by the executive assistance for assistance in confirming his identity with his

employer, he provided phone numbers. Those phone numbers were for the Chinese consulate, and he indicated there was no difficulty in making contact to test his identity.

**Senator BROWN**—We are told he received a phone call back from the consulate, presumably from Ms Lindsay at your request. He recognised the number on his phone as being from the consulate and did not respond. This surely shows a man who is very alarmed indeed. Having approached you to give information and to present letters to get a response, he then got a call back from you and does not respond. The other event that has occurred here is that your office has contacted the consulate. Can you give any other explanation as to why he did not respond?

**Mr O’Callaghan**—I may have lost track of the chronology there. He gave some numbers to contact the consulate. There was contact with the consulate. Louise Lindsay was not involved until later on in trying to contact Mr Chen. She was initiating contact with Mr Chen.

**Senator BROWN**—At what time was that?

**Mr O’Callaghan**—That was about 11.30.

**Senator BROWN**—That was 10 minutes after you got back to your office.

**Mr O’Callaghan**—Just after I got back to my office, that is right. It was within five to 10 minutes of me getting back to my office.

**Senator BROWN**—Mr O’Callaghan, I put it to you that there was a gross misjudgement by you in not responding to your junior officer’s approach. There was a Chinese consulate official on the premises who wanted to speak to you urgently and you did not take charge of events from there; you were having a talk with other people within your office. You ought to have responded to that and not left that to a junior officer to sort out.

**Mr O’Callaghan**—I cannot accept that construct.

**Senator BROWN**—Why not?

**Mr O’Callaghan**—With respect, I respect your perspective, but I cannot accept the construct you are putting on it.

**Senator BROWN**—I am not going to leave it there. You have said that this was an extraordinary situation and that you had not experienced it before.

**Mr O’Callaghan**—I have said that, on receiving the letters—and I did not open the envelopes—I could not recall in my 20-plus years in the immigration department a situation in which a diplomatic official had sought political asylum at an immigration office.

**Senator BROWN**—But you also do not recall the previous time when your assistant has approached you in a meeting, albeit with other people within your office, to stress that there was somebody in the foyer, out of the hundreds, thousands of people who come through that foyer, who was being brought to your attention. In other words, she understood that this was highly

unusual, that it was important and that it was urgent, but you did not respond as if it were any of those things.

**Mr O’Callaghan**—My construct on the series of events you are describing is that my executive assistant took a series of calls. Clearly, someone was persistent in making calls and, at that point, she had a message sent to me two floors below to indicate that someone was seeking to speak to me.

**Senator BROWN**—I again say that this was highly unusual. She spotted that; she noted the urgency and the importance, but you did not.

**CHAIR**—I must say that I find it extraordinary that someone so junior has the ability to ring a foreign consulate and ask for someone who is making a request downstairs to see whether they work for them or not whilst they have two envelopes downstairs. I find it quite extraordinary that someone potentially so junior has the ability to do that. I ask that we move on from that area, because we do not have that executive assistant here to question her about what happened then.

**Senator BROWN**—Because I am dealing with this first day, I want to ask Mr O’Callaghan again about his contacting the officer in Canberra. What happened as a result of that contact?

**Mr O’Callaghan**—As I understand it, that officer sought to contact some of our senior officers at Parliament House, who were there for Senate estimates. The officer also spoke to some other senior officers in the immigration department in Canberra and contact was made with DFAT.

**Senator BROWN**—At what time was contact made with DFAT?

**Mr O’Callaghan**—I would have to have someone else answer that.

**Mr Hughes**—It might be useful if I ask Mr Illingworth to talk about that aspect of things as he and we were in Canberra at the time, as Mr O’Callaghan has remarked, at Senate estimates when this information came through. I think Mr Illingworth would be in a position to talk about the next steps. Obviously a request for political asylum in Australia means interest in getting an instrument for the grant of political asylum in connection with a territorial asylum visa, so that is initially a matter for the Department of Foreign Affairs and Trade.

**Mr Illingworth**—The letter was faxed from the New South Wales office to the director of protection delivery section in my branch. She, as Mr Hughes indicated, made a number of calls within the department and calls to contact myself and others at the Senate estimates hearings. That contact was made. In the meantime she had been arranging to pass the message on. There was some communication by mobile phone between myself and Ms Dunham. The upshot was that we received the letter around noon, DFAT was called, they were briefed on the content of the letter and the issue of territorial asylum visas orally over the phone and the letter was faxed to DFAT at 1.06 pm.

**Senator BROWN**—Thank you. What was the response in your office?

**Mr Illingworth**—That was our response. Our initial response was to see this as a request for political asylum and to ensure that it was delivered to the appropriate portfolio and to the best people we could find within that portfolio to action it appropriately and quickly. We also at the practical level liaised through the afternoon with the New South Wales office on the activity there to attempt to contact Mr Chen to speak further with him about his wishes.

**Senator BROWN**—Within an hour and a half of Mr Chen appearing at the office in Sydney, Canberra had recognised that this was in fact a request for political asylum—at least at your office level?

**Mr Illingworth**—We had recognised it as that and acted accordingly, as indeed had the New South Wales office when they saw the letter, as I understand, in drawing it immediately to our attention. There was a recognition when we saw the letter as to what it was.

**Senator BROWN**—Did DFAT get back you?

**Mr Illingworth**—I did not speak to DFAT, on my recollection, during the afternoon because we were tied up in more important, pressing business, but there was communication during the afternoon between officers of the division in Canberra and DFAT. But there was no response in terms of the outcome of the request put in the letter.

**Senator BROWN**—Were you aware that Mr Chen had been contacted after that? When were you aware that he had been contacted?

**Mr Illingworth**—I was aware very shortly after the contact took place. We were in close communication between central office and the New South Wales office over the efforts to contact him by mobile phone.

**Senator BROWN**—Which were at first unsuccessful?

**Mr Illingworth**—Yes.

**Senator BROWN**—When were they successful, do you know?

**Mr Illingworth**—That is something that I think my colleagues in New South Wales would be best placed to answer. I understand it was midafternoon.

**Mr O’Callaghan**—Midafternoon on Thursday, the 26th, the same day he came into the office.

**Senator BROWN**—Three o’clock or four o’clock?

**Mr O’Callaghan**—Midafternoon, around three o’clock.

**Mr Hughes**—We can provide that.

**Senator BROWN**—Would you please. I want to follow up on the chair’s question. Are executive assistants in your office authorised to call consular or embassy officers about matters like this?

**Mr O’Callaghan**—As you have said yourself, these were unusual circumstances. In this case Mr Chen provided numbers to the executive assistant and indicated no difficulty about that contact being made and that is why the contact was made. I think what that indicates is a responsiveness on behalf of this junior officer to Mr Chen’s request to escalate his situation to see a senior officer. She was doing her job to test the appropriateness of him being able to see a senior officer.

**Senator BROWN**—Remember that he, on the public record, says he asked the consulate not to be called.

**Mr O’Callaghan**—All I can tell you is what happened in the immigration office, Senator.

**Senator BARTLETT**—Can I go to that. It is a fairly contentious part and relevant in a public policy sense as well. When I asked a question before you said that you pretty much straight away asked your executive assistants to write down their recollection of what happened. Have they since had to go back and do a more formal statement or you have just gone off that original—

**Mr O’Callaghan**—Senator, they did this within a very short time—within a couple of hours of the morning’s events.

**Senator BARTLETT**—And you have basically just gone off that in providing the advice, the statements that have been given?

**Mr O’Callaghan**—That is right, Senator.

**Senator BARTLETT**—One of the key things in putting the different hypotheses out is whether your assistant said, ‘Can you give me numbers of the consul to check?’ or whether they said, ‘Can you assist me with identifying you?’ This is on the phone. Does it go to that level of detail?

**Mr O’Callaghan**—I do not know the specifics. All I do know is that Mr Chen, when asked to provide some numbers, provided some numbers.

**Senator BARTLETT**—So he was asked to provide numbers?

**Mr O’Callaghan**—Yes.

**Senator BARTLETT**—I know we have asked to get the statement, so if we can get that—

**Senator BROWN**—Before we move on, I ask Mr Illingworth or Mr Hughes when you first became aware that the request for asylum had been rejected.

**Mr Illingworth**—My recollection was that it was in the morning of the Friday, the following day.

**CHAIR**—That was the 27th, was it?

**Mr Illingworth**—That is right.

**Senator BROWN**—Do you know what time that was?

**Mr Illingworth**—It would have been midmorning, about 11 o'clock, 10.30. It was in the course of a meeting.

**Senator BROWN**—So by that time, presumably, it would be clear to you that the Minister for Foreign Affairs had made that decision?

**Mr Illingworth**—I did not hear anything from the Minister for Foreign Affairs.

**Senator BROWN**—But you were hearing from his department?

**Mr Illingworth**—I heard from officers of his department.

**Senator JOHNSTON**—Mr O'Callaghan, have you any idea, given your understanding on 26 May, how long the telephone discussion between the executive assistant and the PRC consulate lasted?

**Mr O'Callaghan**—I do not know precisely, but it was a very brief discussion, as I understand it.

**Senator JOHNSTON**—And I take it your understanding, having been availed of the importance of the situation subsequently, with the benefit of hindsight and wanting to know what happened, is that it was a simple virtual one-line contact: 'Do you have a Mr Chen working for you?' Answer: 'Yes.' 'Thank you very much.'

**Mr O'Callaghan**—It was along the lines of that sort of discussion, as I understand it.

**CHAIR**—That is the statement you have from the executive assistant.

**Mr O'Callaghan**—That is correct.

**Senator JOHNSTON**—Now, at the time that telephone call was made there was no formal application or even an informal, oral indication of a requirement for political asylum at any level?

**Mr O'Callaghan**—I can say in absolute terms that at that point there was no indication of what business Mr Chen had with the immigration department, let alone anything to do with protection, security or welfare. None of that was known to the immigration department.

**Senator JOHNSTON**—So the identification information effectively flowed one way—that is, from the PRC consulate to the DIMIA office in New South Wales: 'Yes, we have a Mr Chen working for us.'

**Mr O'Callaghan**—Correct.

**Senator BROWN**—Were any questions asked by the consulate?

**Mr O’Callaghan**—Not to my knowledge, but we could take that on notice. Certainly, no information was divulged to the Chinese consulate.

**Senator BROWN**—Has your executive assistant detailed that conversation in her written account of the event?

**Mr O’Callaghan**—There has been an account of that discussion, yes.

**Senator BROWN**—Can you tell us what is in the account of that discussion?

**Mr O’Callaghan**—The executive assistant asked if Mr Chen worked there; it was confirmed that he did work there.

**Senator BROWN**—By whom?

**Mr O’Callaghan**—By a consular official in the Chinese consulate.

**Senator BROWN**—Do you know which one?

**Mr O’Callaghan**—I cannot recall at the moment. I think we do have the name of the particular official.

**Senator BROWN**—Could you find that out and provide it? I am assuming we will get the account from the executive assistant, because that has been requested, but could we also have the name of that consular official, if it is available?

**Mr O’Callaghan**—Yes.

**Senator BARTLETT**—So information was faxed to DFAT on the Thursday and you became aware the next day that basically that claim for territorial asylum had been rejected. That is what you said just before, wasn’t it? Is that right?

**Mr Illingworth**—I do not know if the language was as clear as ‘reject’, but it was a very strong indication that the request would not be successful.

**Senator BARTLETT**—Okay. Going to the subclass 800 visa for territorial asylum—that has never been issued to anybody; is that what you were saying?

**Mr Hughes**—I do not believe so.

**Senator BARTLETT**—Is there a procedures advice manual for claims, explaining what to do in those circumstances?

**Mr Hughes**—There is. It is important to understand—and I think this is on the public record already—that under the Migration Act you cannot make an application for a territorial asylum visa until you have an instrument of grant of asylum issued by the Minister for Foreign Affairs.

So there is a precondition for any application under the Migration Act. If there is no instrument issued then you cannot get to the stage of making an application.

**Senator BARTLETT**—Is it like the return pending visa, where you cannot apply unless you are invited?

**Mr Hughes**—I think it is a different concept, really.

**Senator BARTLETT**—So there has to be a formal instrument gazetted by—is it any minister or only the Minister for Foreign Affairs?

**Mr Hughes**—I will just check the details for you—it is ‘a minister’, and it is generally accepted that that Minister for Foreign Affairs would be the minister exercising that power.

**Senator LUDWIG**—Does DIMIA have an MSI for dealing with claims for territorial asylum, as to what the officer should then do?

**Mr Hughes**—I believe there is.

**Senator LUDWIG**—Can you make that available to the committee?

**Mr Hughes**—Yes.

**Senator LUDWIG**—What does it say?

**Mr Hughes**—It is a while since I have checked it, but I am pretty sure that it says the matter should be referred to the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—Was that done in the first instance?

**Mr Hughes**—Yes. As Mr Illingworth has already said, it was sent to them within a very short space of time.

**Senator LUDWIG**—That was the letter?

**Mr Hughes**—The letter? Indeed.

**Senator LUDWIG**—Not the initial phone inquiry or any other contact up to that point?

**Mr Hughes**—The issue of political asylum was enlivened when Mr O’Callaghan had before him a letter asking for it. That letter was very quickly transmitted to the central office of DIMIA and then quickly to the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—Where did DIMIA send it to? Did they send it to the minister’s office, to the under secretary?

**Mr Hughes**—No, it was sent to the department.

**Senator LUDWIG**—Was the chief of staff of Mr Downer’s office made aware of it?

**Mr Illingworth**—I do not know precisely what internal handling—

**Senator LUDWIG**—I am asking who DIMIA sent it to.

**Mr Illingworth**—We sent it to an officer in the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—What officer is that? I am not asking for his particular name, but what level was he at?

**Mr Illingworth**—I would need to take that on notice.

**Senator LUDWIG**—All right. Was it the usual contact for DIMIA with DFAT or did someone phone and say, ‘Who should we send this to?’

**Mr Illingworth**—Yes, phone communication was undertaken by officers of the department.

**Senator LUDWIG**—Perhaps you could give us an outline of exactly what happened—as to how you then transmitted it, what phone calls were made, whether there was any email traffic, who DIMIA actually phoned and contacted, and whether DIMIA had contacted the minister’s office as well and advised them of what happened?

**Mr Hughes**—Which minister?

**Senator LUDWIG**—It would be Downer and then subsequently—

**Mr Hughes**—We would not normally deal with the—

**Senator LUDWIG**—I know that, but just to rule it out. You can come back and quite rightly tell me no.

**Mr Hughes**—I think I would say no now.

**Senator LUDWIG**—I would like you to check first.

**Mr Hughes**—Okay.

**Senator LUDWIG**—I would also like to know whether there was any correspondence to Senator Vanstone from DIMIA up in relation to this matter—any advice, including an email—or to her office, that is, including the chief of staff, and whether there was any return request from Minister Vanstone’s office to DIMIA to find out more about what had happened. We will collect both forward traffic and backward traffic.

**Senator BARTLETT**—Once you had received word back the next morning that there was not likely to be any action from the Foreign Affairs side of things—and I take it that this subclass

800 is pretty much their business and is nothing that DIMIA has an ongoing role with—did you basically then just refer it back to New South Wales to continue to try to contact Mr Chen?

**Mr Hughes**—If we look at this a bit more broadly we understand that in these circumstances when a person makes a request for political asylum ultimately they want to stay in Australia. The statement that, I guess, is being made is being made in a particular way. But they are seeking to remain in Australia, so obviously we are prepared in those circumstances, should political asylum not be on offer, for the matter to default to a request for a protection visa or to stay in Australia on migration grounds or some other option. Again, when a request for political asylum is made, it is possible that the person making it is not fully aware of the implications of such a thing so the other possibilities that might be available to a person seeking to stay in these circumstances were considered. We do not regard that because a request for political asylum fails there would not be any other issues or options that we would have to offer to the person in the absence of that person being able to obtain the granting of an instrument of political asylum.

**Senator BARTLETT**—At that stage, did the carriage, if you like, of seeing what other options might be possible for Mr Chen go back to the state office?

**Mr Hughes**—No, that is something that we had to consider.

**Senator BARTLETT**—What was the mechanism for when you say ‘we had to consider’? Was that something you were doing in Canberra?

**Mr Hughes**—That was something that was being done in Canberra, yes, to ensure that, when Mr Chen was contacted and given advice, he understood the full range of possibilities that were available to him.

**Senator BARTLETT**—What was the process of giving consideration? Did you want to have a meeting with the immigration minister?

**Mr Illingworth**—There was some work done in the department, in conjunction with our New South Wales state office, to develop talking points to use in conversations with him to try to tease out for him the options that might be available to him. That was the basis for the state office contact with him. That was essentially the conduit through which communication could pass. The officer in New South Wales, at a senior level, had the phone number of the person, and that was our mechanism for communication with him.

**Senator BARTLETT**—It was fairly clear to you, even from the contents of the letter, that even if territorial asylum was not an option protection issues could come into play?

**Mr Illingworth**—That is right.

**Senator BARTLETT**—The process then was that Ms Lindsay would be the contact person who would have the communication with Mr Chen?

**Mr Illingworth**—That is right.

**Senator BROWN**—Would it not have been helpful if Ms Lindsay had appeared today so that we could directly ask her about her contact with Mr Chen? Was there consideration given to bringing Ms Lindsay along today to speak with the Senate committee?

**Mr Hughes**—She is available today. You have only got to ask.

**Senator BROWN**—I am very pleased to hear it.

**Mr Hughes**—So consideration was given positively to the matter that you just raised.

**Senator BROWN**—Before we consider that further, what other departments were contacted besides DFAT?

**Mr Illingworth**—There were a number of other departments that were aware of progress, but—

**Senator BROWN**—Which were those?

**Mr Illingworth**—By this stage we are talking Friday, Department of the Prime Minister and Cabinet—

**Senator BROWN**—When were they first contacted?

**Mr Illingworth**—I do not know when they were first contacted, because I did not do that contact; but I believe they knew on the morning of the 27th.

**Senator BROWN**—Which is the?

**Mr Illingworth**—The meeting I mentioned.

**Senator BROWN**—The Friday?

**Mr Illingworth**—The Friday morning.

**CHAIR**—So you told PM&C.

**Mr Illingworth**—No.

**CHAIR**—Not you personally.

**Senator BROWN**—They may have been contacted on the day of the 26th.

**Mr Illingworth**—They may have. I do not recall DIMIA, to my knowledge, making contact with PM&C. I believe other departments, perhaps Foreign Affairs and Trade, did that.

**Senator BROWN**—What about ASIO or the Federal Police?

**Mr Illingworth**—Yes. Again, DIMIA was not taking the lead in contacting these other agencies, but I believe they were aware of the case—at least ASIO—on the morning of the Friday, because they were attendees at a meeting.

**Senator BROWN**—Which other departments were there?

**Mr Illingworth**—I do not recall the full complement of attendees. It was not a meeting that we convened; it was a meeting we attended. At PM&C I recall DFAT and I believe ASIO, but I am not sure about the AFP.

**Senator BARTLETT**—Who convened the meeting?

**Mr Illingworth**—Foreign Affairs and Trade.

**Senator BARTLETT**—So they convened that saying, ‘We are not going ahead with this and we have got to sit down and sort out where we go from here’, in effect.

**Mr Illingworth**—The first part of the meeting was to provide feedback on the issue of territorial asylum and then to discuss where things would go from there.

**Senator BROWN**—Was there a general recognition at the meeting that this was an important issue—an unusual one—which could involve some diplomatic strain with the People’s Republic of China and it needed to be taken seriously at a high level?

**Mr Illingworth**—I think there was recognition that it was an issue that involved a number of portfolios. It was a complex issue that involved both territorial asylum issues, which are not common, and protection issues.

**Mr Hughes**—Again, in terms of a person who is seeking political asylum, a stated purpose of political asylum, it is whether it defaults to protection, whether it is a desire to just stay in Australia or whether some other immigration option is also something that the person needs to know about. So from our perspective it is what happens if territorial asylum is not available for a person who has made particular claims and how they can best be advised of what is available to them.

**Senator BROWN**—With respect to the meeting at DFAT which involved PM&C, ASIO and potentially AFP and other entities, was it usual or unusual for such a meeting to take place to discuss an applicant for stay here in Australia?

**Mr Hughes**—It is unusual for an applicant for stay to approach it through the question of political asylum, so I think the request for political asylum from an embassy or a consulate member is the unusual feature.

**Senator BROWN**—When can you last recall a meeting of that size representation taking place on such a matter?

**Mr Hughes**—I was not actually at the meeting. Many meetings have taken place to discuss issues that cut across sectors. The important reason for having such a meeting is that there was a

request for political asylum, which is the province of the foreign affairs portfolio. But, as I said, if that were not to proceed then from our perspective the issue of a protection visa or other visa possibilities would have to be considered. Therefore, as it straddles two portfolios, there was a need to have some discussion.

**Senator BROWN**—Can you recall ever before being involved with a meeting—or your department or you, Mr Illingworth—over a request for political asylum?

**Mr Illingworth**—I do not recall any earlier requests for political asylum but, as Mr Hughes said, that is the unique factor here. However, meetings happen all the time between agencies and in terms of the fact that there was a meeting and the broad range of composition in itself was unexceptional. Those sort of things happen quite regularly.

**Senator BROWN**—Can you tell me when the minister was acquainted with Mr Chen's request?

**Mr Hughes**—That is a question I would have to direct to the minister because I am not sure precisely who told her at what time; therefore only she knows.

**Senator BROWN**—Do you know when her office was informed?

**Mr Hughes**—Again, because several people had this news and spoke to the office, I believe they were aware on the 26th during Senate estimates. I would have to check that and, again, ask them because they might have been advised by various means and therefore I do not know when they first knew.

**Senator BROWN**—Would you check that?

**Mr Hughes**—Yes.

**CHAIR**—In the meantime, the executive assistant rang up to check whether Mr Chen worked for the Chinese consulate. Did either you or your executive assistant get any further inquiries from the Chinese consulate?

**Mr O'Callaghan**—The office had two follow-up calls from the Chinese consulate.

**CHAIR**—On that date?

**Mr O'Callaghan**—There were none on Thursday, the 26th. We initiated the call to the Chinese consulate on the 26th.

**CHAIR**—That was your executive assistant?

**Mr O'Callaghan**—That was the executive assistant. The Chinese consulate initiated two calls to the immigration office in New South Wales on Friday, the 22nd.

**CHAIR**—The 27th?

**Mr O’Callaghan**—The 27th. Thank you, Senator. There was one in the morning to the executive assistant. It turns out that the person that she had rung the previous day rang back. She provided no information in that call.

**CHAIR**—It is unusual having regard to the authority that she was able to operate with before.

**Mr O’Callaghan**—It is not unusual, because the circumstances we described in enormous detail half an hour ago were quite different from the circumstances on the Friday. The second call came through from the Chinese consulate in the early evening of Friday, the 27th from a separate person in the Chinese consulate to the manager of our detention and removals function in New South Wales. This is someone who has regular contact through that link.

**Senator BROWN**—Who was that?

**Mr O’Callaghan**—That was June Lee, who is a senior officer in New South Wales Immigration.

**CHAIR**—From what you are saying, I understand Ms Lee knew the person at the Chinese consulate. Is that right?

**Mr O’Callaghan**—That is correct. The Chinese consulate initiated a call to Ms Lee asking some questions about Mr Chen. Ms Lee rang me. We consulted with Canberra and I passed a message back to Ms Lee which she passed on to this inquirer, saying that if there was any information they wanted about the consulate official, they should speak to the Department of Foreign Affairs and Trade. That was the end of that call.

**CHAIR**—Have you organised any other contact with the Chinese consulate since on this matter?

**Mr O’Callaghan**—There has been no other contact.

**Senator BROWN**—Who was the person at the Chinese consulate who made that call?

**Mr O’Callaghan**—I do not know but it was a regular contact.

**Senator BROWN**—Can you find out for us?

**Mr O’Callaghan**—I will see if I can find out, yes.

**Senator BROWN**—Thank you. I would like to ask Ms Lindsay a couple of questions. I want to ask about your conversation with Mr Chen on the afternoon of the 27th, the day he contacted the office.

**Ms Lindsay**—That was on the 26th.

**Senator BROWN**—On the 26th. Yes, you are right. Can you tell us about that conversation?

**Ms Lindsay**—I attempted to contact him at about 11.30 am or 25 past 11 as I had been requested to by the state director. His mobile was turned off. I got the message about the phone being out of range or switched off. I rang back later that afternoon, just after 3 pm. I spoke to him and invited him to come in to our office for a chat about his visa options. We had been conversing with Canberra, who in turn had clearly been conversing with DFAT as they have explained. Following the claim for territorial asylum, we wanted to inform Mr Chen of the kinds of options that would be open to him if he did indeed want to remain in Australia.

**Senator BROWN**—What did he say?

**Ms Lindsay**—He said, ‘Yes.’ We organised for him to come in to our Parramatta office. I organised for one of the other business managers, who has a lot more information on and knowledge of various visa classes than I do, to be there to speak with him.

**Senator BROWN**—How did he sound?

**Ms Lindsay**—It was some time ago. He certainly was keen to speak to somebody and at that stage he was quite prepared to come in to the Parramatta office.

**Senator BROWN**—Going back a step to the meeting on the morning of 26 May, at which the executive assistant interrupted to speak to Mr O’Callaghan, do you recall that interruption?

**Ms Lindsay**—My personal assistant or EO—whatever you want to call them—came in with a yellow post-it note, which she handed to Mr O’Callaghan.

**Senator BROWN**—A yellow sticker?

**Ms Lindsay**—One of those yellow post-it notes that had a message on it.

**Senator BROWN**—What was the message?

**Senator JOHNSTON**—Did you see it?

**Ms Lindsay**—I think he showed it to me.

**CHAIR**—Probably ‘Big trouble in little China,’ or something like that?

**Ms Lindsay**—I do not know now what I read and what I recall. We have spoken about it. There was someone wanting to see Mr O’Callaghan.

**Senator BROWN**—First of all, with respect to your personal assistant’s approach, presumably, she thought the matter was important?

**Ms Lindsay**—I have told my personal assistant to knock on the door and come in at any time. So I was not surprised that she interrupted the meeting.

**Senator BROWN**—Did you talk about the matter with either her or Mr O’Callaghan?

**Ms Lindsay**—Not until afterwards when I received the call from him with a request from his office to ring Mr Chen and then I went straight upstairs.

**Senator BROWN**—When did you become aware of how important the matter was?

**Ms Lindsay**—When I was upstairs in his office.

**Senator BROWN**—When was that?

**Ms Lindsay**—Half past 11 or so—actually, it would have been a bit after that—when the letters had been opened and presented to Mr O’Callaghan, and I was shown a copy of them.

**Senator BROWN**—How long did your meeting with Mr O’Callaghan take?

**Ms Lindsay**—I do not recall. It would have been well over an hour. There certainly were other managers of mine coming and going, because we were talking about a variety of our responsibilities.

**Senator BROWN**—Mr Chen changed the date of the meeting?

**Ms Lindsay**—He did not change the day of the meeting. He rang back the next day. I was at another meeting that morning and he spoke to one of my managers. I rang him back as soon as I got back to the office and he said he was unhappy about coming in to the office.

**Senator BROWN**—Going back, your personal assistant rang the Chinese consulate?

**Ms Lindsay**—No, it was not my personal assistant who rang the Chinese consulate.

**Senator BROWN**—It was somebody else?

**Ms Lindsay**—It was one of the executive assistants in the state director’s office.

**Senator BROWN**—Let us get some definition here. The executive assistant who came with the note was your personal assistant?

**Ms Lindsay**—I think it was my assistant, from memory.

**Mr O’Callaghan**—I will help to clarify this. Senior officers in the immigration department each have an executive assistant. There are two executive assistants, on the fifth floor, supporting me and one of the deputy state directors. Louise Lindsay sits on the third floor. She also has an executive assistant outside her office. The sequence of events was that one of my executive assistants rang Louise Lindsay’s executive assistant, two floors below, and asked whether a message could be passed on. I think that is how it happened. Perhaps they even delivered it—I do not know—but I was provided with a little slip by Louise Lindsay’s executive assistant, indicating that someone at the Chinese consulate wanted to speak to me.

**Senator BROWN**—There is a chain of events here with two executive assistants involved in giving you the message?

**Mr O’Callaghan**—That is correct. One on level 5 contacting one on level 3—where I was sitting with Louise Lindsay and some of my colleagues—asking for a message to be passed in to Louise Lindsay’s office.

**Senator BROWN**—Going back to Mr Chen, why did he request a change of venue, Ms Lindsay?

**Ms Lindsay**—He said that he wanted to withdraw from the meeting that we had proposed at Parramatta and that he would prefer to have a meeting at a safe place. He did not think that the DIMIA office would be a safe place.

**Senator BROWN**—Why not? Did he say?

**Ms Lindsay**—He basically indicated that he thought that they would be watching him. He did not say who ‘they’ were.

**Senator BROWN**—But we know who they were.

**Ms Lindsay**—We can surmise who they were.

**Senator BROWN**—Did he say why he thought they would be watching at Parramatta?

**Ms Lindsay**—No, he did not.

**Senator BROWN**—Did he express any concern to you at any time about the consulate being aware that he was—

**Ms Lindsay**—Not at that stage. I had a number of conversations with him.

**Senator BROWN**—When did he express that concern?

**Ms Lindsay**—I would have to go back to my notes and have a look.

**Senator BROWN**—Could you find that out for us and let us know?

**Ms Lindsay**—Yes.

**Senator LUDWIG**—Did you prepare a file note about the conversations that Mr Chen had with DIMIA when he first made contact? Did you question him about that issue?

**Ms Lindsay**—I did not question Mr Chen about that issue. I have certainly made some notes about conversations I had with him.

**Senator LUDWIG**—Are they available to the committee?

**Ms Lindsay**—I am sure we could make them available.

**CHAIR**—We have more questions, but there will be another time.

**Committee adjourned at 5.41 pm**