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LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Estimates

THURSDAY, 21 AUGUST 1997

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SENATE**Thursday, 21 August 1997****LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE****Portfolios:** Attorney-General; Immigration and Multicultural Affairs**Members:** Senator Abetz (*Chair*), Senator McKiernan (*Deputy Chair*), Senators Bolkus, Coonan, Murray and O'Chee**Senators in attendance:** Senators Abetz (*Chair*), McKiernan (*Deputy Chair*)**The committee met at 9.03 a.m.****DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS**

Proposed expenditure, \$523,395,000 (Document A)

Proposed provision, \$2,658,000 (Document B)

In Attendance

Senator Vanstone, Minister representing the Minister for Immigration and Multicultural Affairs

Ms Helen Williams, Secretary

Mr Mark Sullivan, Deputy Secretary

Program 1—Migration Framework

Mr Ed Killesteyn, First Assistant Secretary, Overseas Client Services Division

Mr Abul Rizvi, Assistant Secretary, Migration and Temporary Entry Branch

Mr Des Storer, First Assistant Secretary, Parliamentary, Legal and Research Division

Program 2—Economic and Family Entry

Ms Jenny Bedlington, First Assistant Secretary, Australian Client Services Division

Mr Ed Killesteyn, First Assistant Secretary, Overseas Client Services Division

Program 3—Humanitarian and Refugee Resettlement

Mr Frank Johnston, Acting Assistant Secretary, Refugee and Humanitarian Branch

Mr David Page, Acting First Assistant Secretary, Multicultural Affairs and Citizenship Division

Program 4—Client Access and Services

Ms Jenny Bedlington, First Assistant Secretary, Australian Client Services Division

Mr Ed Killesteyn, First Assistant Secretary, Overseas Client Services Division

Program 5—Legal Framework

Mr Peter Hughes, Assistant Secretary, Visa Framework Branch

Mr Des Storer, First Assistant Secretary, Parliamentary, Legal and Research Division

Program 7—Multicultural Affairs and Citizenship

Mr David Page, Acting First Assistant Secretary, Multicultural Affairs and Citizenship Division

Program 8—Compliance and Enforcement

Ms Jenny Bedlington, First Assistant Secretary, Australian Client Services Division

Program 9—Corporate Management

Ms Mary-Anne Ellis, Acting Assistant Secretary, Ministerial and Communications Branch

Mr Vince McMahon, First Assistant Secretary, Corporate Strategy and Services Division

Mr Bernie Waters, Acting Assistant Secretary, Resource Management Branch

CHAIR—I declare open the second session of supplementary estimates hearings for the Senate Legal and Constitutional Legislation Committee. As agreed, we will commence with program 1 and proceed through the remaining nominated programs as per the running sheet. Most of you would be aware that there is no minister at the table, but we will try to proceed. If we do encounter areas of policy or areas where we require a ministerial response, we will just hold them over until the minister is available, which ought be in about 20-25 minutes.

Senator McKiernan, do you have any general questions for the minister, or do you want to ask them at the end? It may well be that they may be more relevant to the minister, I do not know. If you have specific questions on program 1, Migration framework, subprogram 1.3, Entry, perhaps you could ask those now.

[9.04 a.m.]

Program 1—Migration framework**Subprogram 1.3—Entry**

Senator McKIERNAN—Under program 1, I wish to place a question on notice, if I could. It is a detailed question and we would not have an expectation that it would be responded to now. Probably the easiest way of dealing with that is to place it on notice. It is to do with the visa grants in each category of the migration program for individual posts. We are asking for total numbers of permanent visas granted in each post and that they be shown as a percentage of the whole of the program for each year, 1996-97, 1995-96 and 1994-95.

CHAIR—We will put that on notice.

Senator McKIERNAN—There is another series of questions, relating to subprogram 1.3 in particular, which also balances up with subprogram 5.1. For the ease of organising the program today, it would be better if we could agree to deal with them all under subprogram 5.1.

CHAIR—If there are specialist people from the litigation and advice area of the department who could come to the table, we could deal with it now.

Senator McKIERNAN—The minister would need to be here.

CHAIR—We will defer that then.

Senator McKIERNAN—I am just letting you know what we intend to do. There is a will on this side to get things moving along as quickly as possible.

CHAIR—There is even a greater will here.

Senator McKIERNAN—I come back to questions under program 1, dealing with the matter of capping—in particular, the interdependent visa. We have been informed that an applicant already this financial year—remembering that we are only a few weeks into the 1997-98

financial year—made an application for an interdependent visa in the UK and has been informed that the allocations for the posts are already being filled.

Mr Rizvi—That would not be correct.

Senator McKIERNAN—How many interdependent visas are going to be issued during the current financial year?

Mr Rizvi—I can get those figures for you.

CHAIR—Will you take that on notice, or have you got the figures there?

Mr Rizvi—I have not got the precise number. I think it is in the order of 300. We will pull out the precise numbers. The 1997-98 planning level for the interdependency category is 200.

CHAIR—Is there a notional allocation for that visa class?

Mr Rizvi—There is no cap that has been set at this stage; that is only a planning level.

CHAIR—But is there a notional allocation to the various posts throughout the world?

Mr Rizvi—Each post advises us of how many visas they are likely to issue in that category in a specified period of time. The period of time we advise to the posts based on our estimate of when that cap is likely to be reached. Each post will have advised us of their notional allocation or their estimate of how many interdependency visas they are going to issue in that period. London would not have reached their number. No post has reached their total number at this stage.

Senator McKIERNAN—I do not want a precise number for London. With a planning level of 200, the number for London—or for any individual post anywhere in the world—would not be a large number?

Mr Rizvi—Given the total planning level is 200, no, there would not be.

Senator McKIERNAN—In the interdependency visa class area, were there any applications held over in the pipeline from last financial year?

Mr Rizvi—Yes, there were.

Senator McKIERNAN—Do you know what that number was for London?

Mr Rizvi—I have not got the data for London in the pipeline. I can give you the overall pipeline globally.

Senator McKIERNAN—It is not of much use because I am specifically asking about a UK post and the fact that we have been informed that there are no allocations left in that post at this time, and it is only a few weeks into the new financial year.

Mr Rizvi—That is not correct.

Ms Williams—Could we get some detailed information back to you, because Mr Rizvi has not got the details for you for the UK at this stage. We could come back to you very quickly.

Senator McKIERNAN—Okay. He has also suggested that he could provide us with the global figure in the pipeline. That may be of use, if it includes more specific information about the United Kingdom. I did not mention the word London, lovely place that it is.

Mr Rizvi—Were you after the total pipeline?

Senator McKIERNAN—Yes, please

Mr Rizvi—At the end of 1996-97 the total offshore pipeline was 109.

Senator McKIERNAN—The cap for this year is 200.

Mr Rizvi—Yes.

Senator McKIERNAN—I think that goes some way to proving the point, but I will await that further information and no doubt we will revisit it in November. I have some further questions relating to the parent visa allocation and how it has been filled so far—six weeks into the current financial year. We have a cap in this category of 1,000—down from last year's projected outcome of 6,000. What was the pipeline in the parent category last year?

Mr Rizvi—The pipeline at the end of June 1997 in the offshore parent category was 9,822.

Senator McKIERNAN—Have any parent visas been issued so far this year?

Mr Rizvi—Yes, there have been parent visas issued this year.

Senator McKIERNAN—Are you in a position to tell us how many have been issued so far and how many positions now remain?

Mr Rizvi—I can advise you that we expect the offshore parent cap to be reached towards the end of September or early October.

Senator McKIERNAN—Is there a possibility that the cap could be reviewed due to pressure of applications?

Mr Rizvi—The minister has the power to review the cap at any stage until the cap is reached. Once the cap is reached, the Migration Act does not allow the cap to be adjusted.

Senator McKIERNAN—So it would be fair to say that anybody considering making an application in this category need not bother in this current year?

Mr Rizvi—They—

Senator McKIERNAN—Before you attempt to answer that, would there be a priority given to those applications that are currently in the pipeline?

Mr Rizvi—The minister has issued processing priorities that relate to the parent category, and parent applications are being processed according to those priorities.

Senator McKIERNAN—Can you remind me what those priorities are—if those processes are brief?

Mr Rizvi—I have not got the specific directions here at the moment, but broadly they relate to the question of whether the sponsor is an Australian citizen or not and the extent to which the balance of the family of the parent is in Australia or not. If the majority of the parent's family is in Australia or if all the parent's children are in Australia, they have a higher priority. There is also a distinction made between working age parents and aged parents, and a lower priority has been given to working age parents than to aged parents.

Senator McKIERNAN—With a pipeline of the size that we have just been told it is, this obviously is a problem. Apart from the processing guidelines that you have talked about, has any further processing—modelling would perhaps be a better description—been done to see how this problem might be handled over a two-year or three-year period, ?

Mr Rizvi—We have not done any of that sort of modelling because it would be entirely dependent on what the government's decisions were on future years' programs.

Senator McKIERNAN—I have no more questions on this program, subject to further questions in program 5.1.

CHAIR—We now move to Program 2—Economic and family entry.

[9.14 a.m.]

Program 2—Economic and family entry

Senator McKIERNAN—I wish to place two questions on notice in this category. First, I would like details of the visa grants for student visas for each of the following financial years—1996-97, 1995-96 and 1994-95.

The second one is: is it possible to provide the number of visa holders who entered on a visitor visa and then later applied for permanent residence? We are seeking information on the type of permanent visa subclass they are seeking and which office they have applied through, and, if it is possible, for those that have been completed, to provide details of the average processing time by office.

Mr Sullivan—Are you interested in the visa class that they were in prior to applying for permanent residence or on entry to Australia?

Senator McKIERNAN—The permanent visa class they are applying for. The minister has recently announced an increase in the cap for working holiday makers. Can you provide any details of any pipeline that may have been in existence in the working holiday maker category? The cap last year was 50,000; it has now gone to 55,000, I understand.

Mr Rizvi—The offshore cap was 50,000 last year and that was reached around mid-June, maybe a little later. As a result, the people who would have been held over because of that cap would have been a relatively small number.

Senator McKIERNAN—Do you know how many visas have so far been issued for this current financial year?

Mr Rizvi—I do not have those numbers.

Senator McKIERNAN—I have got information from my recent travels that quite a substantial number have been issued. Are you in a position to confirm that that might be the case?

Mr Rizvi—It depends what you mean by quite a substantial number.

Senator McKIERNAN—More than one would expect for an average monthly allocation out of a cap of 50,000, as it was then when I was in different parts of the world.

Mr Rizvi—I think that would be understandable. Given that the cap was reached about mid-June, there would be half a month's worth which would have been held over.

Senator McKIERNAN—It is a managed program and it appears from last year's reaching the cap in mid-June, that is, 11½ months into the financial year, that it was a well managed program for last year. Is that type of management going to persist during this financial year?

Mr Rizvi—I am not sure what you mean by management.

Senator McKIERNAN—If there is a cap of 50,000 in a program and that cap is reached in mid-June, 11½ months into the financial year, it seems to me that the persons or divisions responsible for that should get something of a tick. They have not gone over the cap; they have finished the 12-month period without necessarily reaching the cap. To me it says it is a reasonably well managed program, even though two weeks went amiss. I suppose annual leave could have been taken in that period of time, depending on what part of the world you are in. I am asking whether, even with an increased cap, we can look for the same balanced outcome, that the cap might be reached in June of next year rather than December of this year,

which might put pressure on the minister to further increase the cap in the working holiday maker area.

Mr Sullivan—The working holiday maker cap is managed on an annual basis. We have not got a power to manage it monthly. It was probably a good estimate of demand that saw the cap reached in mid-June this year. I think this year's cap reflects what we would hope is another good estimate of demand and that we would expect that the cap is not reached until again very late in the financial year, if at all.

Senator McKIERNAN—Were there any particular pressures, either from industry in Australia which utilises the services of working holiday makers, their labour power, or from the working holiday makers themselves in other parts of the world to increase the cap? What encouraged the minister to increase the cap this year?

Mr Sullivan—I think it was the fact that last year's cap was exceeded. In fact, some estimates had the cap being exceeded earlier than it was, and it tailed off a little bit towards the end. Certainly, a general concern from the tourism industry and from those industries which report reliance on working holiday makers is that they would like to see a cap which could see a sustainable program over the full 12 months. That is what saw the decision go to 55,000. It is important to both those industries that we do not see a halt to working holiday makers, as we did a couple of years ago, earlier in the program year. If it halted in February, March or April, they would see that as damaging.

Senator McKIERNAN—The program is managed annually. There is an ability for the minister to manage it on a half-yearly, three-monthly or even monthly basis. Would there not be an ability for the minister to increase the cap as the financial year progresses?

Mr Sullivan—I think technically there would be. If he could review that cap before the cap was reached, he could do that. We could go back—in terms of your first question—and say, 'Is the take-up in the first two months of this year, accounting for the fact that we had a half a month left over from last year, in line with the cap or not in line with the cap?' and get back to you. But I have a suspicion you will find probably 2½ months work in the first two months has been done.

[9.22 a.m.]

Program 3—Humanitarian and refugee resettlement

Subprogram 3.1—Off-shore refugee and humanitarian

Senator McKIERNAN—Has any consideration been given by the minister or the department to the further creation of a special assistance category for Cambodians seeking political asylum who may not qualify as refugees? Obviously what is happening in Cambodia is of concern, and the question is asked within that context.

Mr Johnston—To my knowledge there currently is no consideration of reintroduction of a special assistance category.

Senator McKIERNAN—Thank you for that. There has been some media speculation that inquiries were made at the Australian post in Phnom Penh for protection—I do not know whether it was a formal application or formal request for protection for refugee status—and that our embassy in Phnom Penh closed its doors. Can you provide the committee with any detail of that reported incident? It happened in the last three weeks, I think.

Mr Johnston—Senator, I cannot provide any details of specific instances, but I think that when people apply at posts they are talking about the question of political asylum, which is

a matter for the Minister for Foreign Affairs. But it is on the record that political asylum has only been granted on two or three occasions over the last 30 or 40 years.

Senator McKIERNAN—Thank you, Mr Johnston.

[9.24 a.m.]

Program 4—Client access and services

Subprogram 4.2—Off-shore service development, delivery and support

Senator McKIERNAN—I have a series of questions here, and I am asking them in the light of a bill on the *Notice Paper* which, as I understand it, has not yet been introduced into the House of Representatives, and it certainly has not been in the Senate. It is migration bill No. 5, which deals with the migration agents registration scheme. I do not want to seem to preempt any debate on the content of the bill. Nonetheless, it is important to ask a question at this forum about it. Is there a proposal in the bill that community organisations—those that provide migration advice to the community on a free basis—and individuals who provide that advice will have to register within the scheme when it is run by the Migration Institute of Australia and, in registering, they will have to pay the fees? They are exempt from paying fees under the current regime.

Ms Bedlington—Yes, the intention is that all people who provide migration advice—including those who provide advice through voluntary agencies—will need to be registered and, yes, they will have to pay a fee. The level of that fee is currently under discussion with the Migration Institute of Australia.

Senator McKIERNAN—Is there a rationale for charging a fee in this area, recognising that currently there is no fee and that proposals to charge fees to these types of organisations have been considered in the past and have been rejected in the past? What is the rationale for putting forward a proposal that fees be charged in this instance?

Ms Bedlington—The rationale is that it is not appropriate for other members of the migration advice industry to cross-subsidise people who are providing advice through voluntary agencies.

Senator McKIERNAN—It is not appropriate now? It actually is appropriate now, isn't it? Currently, professional migration agents pay fees to the government. The government redistributes those fees that are collected in the form of grants back to community organisations, does it not?

Ms Bedlington—Yes, but I think the differentiation needs to be made about a conscious decision of government to provide a grant to meet the costs and the agents in the private sector who are paying higher fees as a result.

Senator McKIERNAN—Have any calculations been done of what the fees will be for those private agencies? How much of the fees that community organisations—such as religious groups, student associations, citizens' advice bureaus and migration resource centres—will be paying in the future go to offsetting the fees now paid by private organisations?

Ms Bedlington—I think it is premature to answer that question in detail because the scale of the fees that will be payable under the new arrangements is still under discussion with the Migration Institute. Until such time as that is finalised, it is hard to answer the question with any surety.

Senator McKIERNAN—Is there an expectation that, because these organisations have to pay fees themselves, they in turn will be expected to charge fees of their clientele, many of whom obviously would not be in a position to pay fees?

Ms Bedlington—No, that direct link is not made.

Senator McKIERNAN—Where would the community organisations then get the funds to pay the fees that may be imposed?

Ms Bedlington—I think we can think about it more broadly than that. There are quite a number of agents who provide services to voluntary organisations which are already registered. Indeed, quite a number of them are not full-time employees of the voluntary agencies concerned and they are already registered and already pay the fees in other contexts. There would certainly need to be a recognition for those organisations which are directly funded by us that, if they chose to utilise that grant to offset some or all of the costs of registration for their employees, that would be acceptable.

Senator McKIERNAN—It might be acceptable, but they might just stop giving advice altogether, might they not? If they are not able to afford the fees and therefore not able to afford registration, they might just cease giving the advice, might they not? Is that not an option they would have to consider?

Ms Bedlington—It might have an impact on the general priorities for giving migration advice to that organisation, particularly organisations which have a broader mandate of assistance to the client group.

Senator McKIERNAN—That could have a significant impact for the department as well. Certainly if community organisations were not giving advice to the community in the form that they are now, it could put an even greater weight on members of parliament who do provide immigration advice.

Ms Bedlington—Are you suggesting that the members of parliament would take over the role of migration agents?

Senator McKIERNAN—If the community are not able to get free advice from community organisations they will seek to go somewhere else to get that free advice. One place where they can get free advice at the moment is from members of parliament, both state and federal.

Ms Bedlington—I think we need to remember that the way the various visa classes are set up in the department there is no requirement, nor indeed a need, for an individual applicant to utilise the services of a migration agent. In fact, if they require advice they are welcome to and able to utilise the various avenues that the department provides to provide information about how to go about applying. There are telephone inquiry services. There is the capacity for people to write to the department. There is the capacity for people to come to the counter of the department. While they are obviously free to utilise the services of a migration agent, whether paid for in the private sector or through voluntary agencies, there is no need for them to do so.

Senator McKIERNAN—I must say I am not comforted by your words. It is some time now since I have visited one of the department's offices, but I will do in the near future and see for myself what things are like at the shopfront, as it were. But I am aware in that context that a number of offices have been closed down. I am also aware that the department, generally speaking, has now only got offices in the main capital cities, and that there has been a rationalisation of services. There will be ongoing debate on this matter. I do hope that the minister is open to community representations on this matter. Certainly I suspect that once

the community become more aware of what is proposed there will be lots of community representation, particularly to the members of parliament, as the debate is forthcoming. Has the Migration Institute of Australia adopted an attitude on this? Are they responding to government or are they perhaps pushing the proposal?

Ms Bedlington—Which proposal is that?

Senator McKIERNAN—The proposal that community organisations, in order to register as migration agents, be levied fees for that registration.

Ms Bedlington—They are working with the government to develop an appropriate approach to statutory self-regulation and are discussing the level of fees with the department.

Senator McKIERNAN—Are community organisations involved in that dialogue?

Ms Bedlington—There has certainly been considerable discussion between community organisations and the department. My understanding is that some of them have also been speaking with the MIA.

Senator McKIERNAN—Thank you.

CHAIR—We will move on to subprogram 5.1.

[9.34 a.m.]

Program 5—Legal Framework

Subprogram 5.1—Litigation and advice

CHAIR—Of course, Senator McKiernan, you want to ask questions about subprogram 1.3 in relation to that.

Senator McKIERNAN—Yes. I suggest it is duplication across the portfolio.

CHAIR—At this stage I will take the opportunity of welcoming the minister.

Senator Vanstone—Thank you, Mr Chairman. I take the opportunity of apologising for not being able to be here at the commencement of your duties. I hope that you accept that the committee proceeding in the absence of a minister is an expression of my confidence in the committee for being a normal sane committee that can simply go about its procedures—

CHAIR—But undoubtedly mainly in its chairmanship.

Senator Vanstone—Yes, Mr Chairman—without misusing the opportunity of officials being here without a minister. That is important, because there are some people who get stuck into officials.

CHAIR—Not Senator McKiernan, though.

Senator Vanstone—No, exactly. If that were the case, I would have had a different attitude. I am sure Senator McKiernan knows that those sorts of people are across the political spectrum.

CHAIR—Now that we have all made feel-good comments about each other, let's keep the feel-goodness continuing.

Senator Vanstone—I'd like to tell you you had a nice tie on, Senator, but—

Senator McKIERNAN—My big cuddly friend? On the tie, I mean!

Senator Vanstone—I'm prepared to ignore that.

Senator McKIERNAN—The events surrounding Lorenzo Ervin: in the first instance, could somebody provide me with a chronology of what has happened on this, before I get on to more specific detail.

Senator Vanstone—Mr Sullivan might be the best person to articulately in a short space of time give you the chronology you are looking for.

Senator McKIERNAN—I don't want every chapter and verse, but there are important dates and events.

Mr Sullivan—There are important dates. In May 1997 representations were made to the minister suggesting that a gentleman called Lorenzo Kom'boa Ervin intended to visit Australia, pointing out that he was a person with a criminal record. We had received no date of birth or alias information about Mr Ervin at that time.

We looked for additional information regarding Ervin and referred the matter to our embassy in Washington, but no further detail was made available. We entered Lorenzo Kom'boa Ervin on MAL with a narrative to say that no visa could be granted without reference to the minister.

On 2 July 1997 Lorenzo Edward Ervin, born 30 March 1947, applied for the grant of an electronic travel authority. That electronic travel authority was granted on the basis that the threshold set for the movement alert listing was not triggered. That was because the middle name was different from the middle name on MAL and, when you do not have a date of birth on MAL, a difference in middle name causes a considerable discounting in the match. As a result of that, the match did not meet the threshold level where Ervin would have been referred.

On 3 July he booked in to fly to Australia. The airline, as required, entered his details. This time they entered his details as Edward Ervin Lorenzo, born 30 March 1947. When the airline entered that record it was refused as not holding an ETA. The airline then organised for a new application for an ETA in the name of Edward Ervin Lorenzo, or in his correct name, and he was then allowed to board the plane.

He arrived on 4 July 1997. He went through the primary line. His passenger card was completed in all respects, except for the fact that he did not answer the questions relating to health and character. That omission was not noted by the customs officer who processed Mr Ervin's entry and he entered the country. That is the chronology up to entry, Senator.

We became aware of the fact that he had entered the country. Our job was to locate where he was and to put a submission to the acting minister for her consideration as to whether or not Mr Ervin's visa should be cancelled. He was located in Queensland. A submission was prepared for the acting minister to consider and the acting minister determined that the visa should be cancelled and, what is more, that powers under 502 to exclude Mr Ervin should be used.

On cancellation of that visa Mr Ervin was taken into custody. That custody was in a prison in Brisbane. Mr Ervin, through his legal advisers, then appealed or sought the High Court's review of that decision. The High Court sat for a day. At the end of that day, the Commonwealth's view of its position was that it should withdraw from that action on the grounds that it was satisfied that, if the matter went to judgment in the High Court, that judgment would be against the Commonwealth on the basis that proper natural justice had not been provided to Mr Ervin in respect of the visa cancellation.

Mr Ervin was released from custody. A new submission on cancellation was put to the minister. After matters concerning that visa cancellation were put to Mr Ervin through his legal

advisers, Mr Ervin's visa was cancelled—the day after he had decided to depart Australia and return to the United States.

Senator McKIERNAN—Thank you, Mr Sullivan. There are a number of things that are disturbing out of the chronology you have just put on the record. First and foremost, the entry of an individual onto the MAL: was that done on the say-so of the advice that was provided to the minister in May of this year?

Mr Sullivan—It was not done on the say-so of the advice provided to the department. A representation was made to the minister on the possible entry of this person. That information was verified by the department as well as it could be verified and that was through the use, generally, of public records. It was also referred to our embassy in Washington who, using public information there, were attempting to verify the information. We certainly had sufficient information from what we worked with to indicate that Lorenzo Ervin did have a serious criminal record, which included hijacking and kidnapping. That was then sufficient to place him on the migrant alert listing.

An entry on the migrant alert listing is not a refusal of a visa, it is purely a referral system. It is not a decision that a visa will be refused, it is a referral that, on application of a visa, this person should be looked at.

Senator McKIERNAN—Did the advice or correspondence to the minister in May use the stage name, which was the middle name?

Mr Sullivan—Yes. It relayed to us that Mr Ervin's full name was Lorenzo Kom'boa Ervin.

Senator McKIERNAN—One would expect that the court records and the prison records—public records—in the United States would have been checked. I would have an expectation that Mr Ervin would have been convicted in his real name rather than his stage name.

Mr Sullivan—The checking in the United States did not go as far as getting a court transcript or going to the FBI.

Senator McKIERNAN—It would have had to check with some official records though, surely.

Mr Sullivan—Most of those publicly available records, as I understand, just used a single Christian name and a surname: Lorenzo Ervin. There was nothing to confirm the middle name was Kom'boa or to deny it.

Senator McKIERNAN—I have a concern on that, that an organisation in Australia could write to the minister and have an individual—any individual—put on a government alert list without a proper checking of at least official records. The allegations that are made about Mr Ervin are very serious allegations: hijacking and kidnapping. Indeed, there were convictions to that end. I would have an expectation that before a person was put on an alert list that there would at least have been confirmation of that.

Mr Sullivan—It is important that no organisation can put a person on an alert list, and no person is put on an alert list on the say-so of an organisation or a representation. Certainly the response to the representation to the minister saw the fact that we knew there was a Lorenzo Ervin and we knew he had a criminal record. The important thing then in terms of an alert listing is to put that alert on as best you know it as soon as you can.

If, while we trawl records to find an exact name, an accurate date of birth—preferably a passport number where we do a perfect MAL check—that takes such time as the person had applied and was not on MAL at all and came through, you would be open to probably larger criticism than saying that as soon as you established the fact that you had a serious criminal

record attached to the name Lorenzo Ervin you must put him on MAL. He was placed on MAL on that basis.

But the decision to place him on MAL was a decision taken between the minister, who, in terms of the representation, directed the department to pursue the matter and that no visa should be issued without reference back to him, and the department. That is a decision of the minister and the department to place the person on MAL. A person should not be placed on MAL on the say so of any other individual.

Senator McKIERNAN—Nonetheless, through that whole process, at the end of the day, the name that went on the MAL was the name that was provided to the minister by the letter that was directed to the minister.

Mr Sullivan—Yes, because it was proven to be the best information at the time. Some records that go on MAL do not even have the right name until we find it. But the important thing is to get someone on to MAL as quickly as you can, particularly where—and this one was quickly verified—the person we are talking about had an extremely serious criminal record.

Senator McKIERNAN—What agency would you check with in the United States? What agencies would you use to check these things with?

Mr Sullivan—You would normally expect that if we were seeking to check a criminal record in the United States we would go to the Federal Bureau of Investigation.

Senator McKIERNAN—In the instance that we are talking about, have we been to the Federal Bureau of Information? Is Mr Ervin convicted under his real name of Lorenzo Edward?

Mr Sullivan—Mr Ervin is convicted under his real name Lorenzo Edward Ervin.

Senator McKIERNAN—And it was under his real name Lorenzo Edward Ervin that he entered Australia?

Mr Sullivan—That is true.

Senator McKIERNAN—So the system has broken down in this instance?

Mr Sullivan—It certainly revealed that the algorithm behind the MAL system hit its tolerance level and, in this case, failed to refer Mr Ervin. The minister has acted to change that.

Ms Williams—I think it also shows that in retrospect we probably should have checked better in the US. I think that is what you were getting at. We should have probably gone to the FBI rather than use public sources as Mr Sullivan said.

Senator McKIERNAN—I think that goes without saying, with due respect, Ms Williams. The whole of the incident exposed a number of inadequacies in the system. I still have a concern about the fact that a name can be placed on at the say so of somebody else out there. Hypothetically, I could write to the minister and make a complaint about a fictitious individual and have that person placed on the system.

Mr Sullivan—No, you would not have it placed. If it were you, Senator, we might take it at face value that the person should be placed on the record. But normally if someone wrote with a vexatious statement about an individual hoping to enter Australia it would not go on. It is clear that, while we did not have the United States authority's formal record of convictions, we did establish, independent of the group making the representation, that Lorenzo Ervin had been convicted in the United States of kidnapping, of hijacking.

That level of crime is serious enough to say that, once you had established that independently, the entry of the record as you understand it to be had to go on to MAL straightaway—and it did. The failure was then in the follow up from the representation to get the full and detailed information, particularly on his name and date of birth. Had we been able to correct the middle name, the request for an electronic travel authority would have triggered MAL to a point where he would have been referred to the Australian embassy in Washington. But we do not—and I think it is important to restate this—put people on MAL on the say so of representations.

Senator McKIERNAN—I am comforted about that, to a point—the point being that the name that was eventually put on MAL was the name that was forwarded to the minister by the organisation here in Australia in May, two months before he arrived. I have a concern that the department and other law enforcement agencies in Australia were not alerted to the fact that this series of public meetings or public speeches were being given by an individual such as Mr Ervin. I would have hoped that other law enforcement agencies would have been able to pick that out. I do not want to go into the details of the names of those organisations now, but they would be watching what is happening. It would be for a body other than Australians Against Further Immigration to inform Immigration of a character such as Mr Ervin coming to Australia and getting on a public platform in this country.

I heard your recent explanation, Mr Sullivan. The very serious charges against Mr Ervin, the very serious convictions against Mr Ervin—hijacking and kidnapping: how many levels of alert are there on there now? Australia would not automatically put convicted criminals from other countries on a MAL list, would it?

Mr Sullivan—Unfortunately, MAL is never going to be big enough to put on an index of the world's criminals. MAL is used for criminals who are of interest to Australia.

Senator McKIERNAN—If there was an expectation that somebody of the calibre of Ervin was to come to Australia, he would not necessarily be engaging in a visa application. There could be people on MAL now who have not publicly or privately expressed an intention to come to Australia?

Mr Sullivan—There certainly could be. We are putting more and more people on MAL now—and have been for a while—who have not publicly expressed an intention to come to Australia, but whose criminality is so serious that they need to be on an Australian movement alert listing, particularly as that movement alert listing becomes our principal tool in screening individuals out of Australia.

Senator McKIERNAN—What systems could be built into MAL to prevent a distortion of the entries such as occurred? The actually leaving off of a letter of a name can also—

Mr Sullivan—We are doing a number of things. Firstly, the threshold. The minister has directed that that threshold be reduced—and that has occurred—so that the name matching algorithm does not have to reach the score that it had to reach when Ervin was cleared; it now has to reach a lower score. Secondly, for high profile persons, persons who have committed serious crimes, we are inputting several MAL entries covering possible variations and swapping of middle names, first given names, second given names and surnames. So, if I am now on MAL and my name is Mark Anthony Sullivan, I would be there as Anthony Sullivan, Mark Sullivan, Anthony Mark Sullivan and every combination that we could find.

Thirdly, we are investing in more updated system software which is particularly good at looking at names and being able to make matching decisions on those names on the basis of phonetics and, particularly in respect of difficult names from the subcontinent or Chinese

names, being able to better match those. So, we are attacking it at the software level, we are attacking it at the input level so that for each input we cover as many possibilities as we can, and we are attacking it at the threshold level in that the MAL tolerance has formally been reduced to ensure that more people who are close matches to names of interest are referred.

Senator McKIERNAN—Using yourself as an example, if there was a Mark Anthony Sullivan with one ‘l’ in the Sullivan, that could possibly still trigger the process?

Mr Sullivan—It would trigger it. The other thing we are doing is that, for any entering in MAL that has not got a date of birth, we are certainly now pursuing those dates of birth, because MAL works on a match between given names and surname, nationality, date of birth and, in the ideal, a document number. The more of those fields that you have completed, the easier the matching algorithm has to be able to say, ‘This person is likely to be a match for the person you are looking for.’

Senator McKIERNAN—What would the chances have been of Mr Ervin being granted a visa to enter Australia under a different process than the electronic visa?

Mr Sullivan—The same.

Senator McKIERNAN—He would still have had the possibility of entering?

Mr Sullivan—Yes, the way the algorithms on MAL are set up, had he applied in his name as it was on his passport—in most of the United States, we use passport readers—it would have picked up that name and it would have come up with the same result. That is, it did not trigger the tolerance level.

Senator McKIERNAN—You also told us in your explanation of the chronology that there was an area visa issued where the name was not in the correct form. I think the names were correct, but they were not in the correct order.

Mr Sullivan—The ETA was issued in the correct name. The ETA has a separate screen. That is, you apply for and are granted an electronic travel authority, then before you board the plane, the airline that you are boarding must do a second check of the system to confirm that you have in fact that authority. That requires the airline to put the person’s name and passport number on to the system.

When United Airlines placed Ervin’s name into the system, they incorrectly inputted his name—that is, they used Lorenzo as his surname. The system then correctly came back and said, ‘There is no ETA for this person.’ United Airlines, believing then that Ervin did not have a travel authority, were able to refer him to the booking side of their organisation, who were then able to input a request for an electronic travel authority. That request was successful and he was then boarded.

Senator McKIERNAN—He gets on the aircraft, fills in his little card on the aircraft and fronts up to the Customs officer at Sydney airport. Was it that airport?

Mr Sullivan—Yes.

Senator McKIERNAN—But it was not a completed card. How did that happen? I cannot even get past Customs without my card and my Customs declaration being completed.

Mr Sullivan—We are satisfied that it was on oversight on behalf of the Customs officer. We do not believe there was any intent there. Ervin did not complete the card. The Customs officer collected the card and entered him.

Senator McKIERNAN—I am not suggesting there might have been intent at all.

Mr Sullivan—No, but I just noted the fact that we are satisfied there was not.

Senator McKIERNAN—But there is a requirement that this card be completed and that it be signed and it is an important card, as events later proved. It is a very important document to the law enforcement agencies and the migration controllers in this country, yet the card was not completed. Was it signed?

Mr Sullivan—It was signed. The card was signed and dated. The only questions that were not completed were the questions in relation to character and health—questions 14 and 15 on the card.

Senator McKIERNAN—What measures are in place to ensure that this oversight that occurred on this occasion is not going to happen on any other occasion?

Mr Sullivan—On realisation of what happened, we wrote to Lionel Woodward, the chief executive of Australian Customs. We reinforce the need—and this is probably the highest priority in our training of Customs officers on the primary line—that they must, in respect of non-citizens, ensure that the character and health questions and the signature are present. In our monitoring since the Ervin matter, we are satisfied that that is the priority task undertaken by Customs officers.

CHAIR—Those two questions—health and record—would be amongst the most important areas for—

Mr Sullivan—For our operation they are the most critical area. For other uses, there are other parts of the card that are important but for entry purposes those are the two critical questions.

Senator McKIERNAN—How did the department become aware that Mr Ervin was in the country?

Mr Sullivan—I think it was through the media. I believe it was through the Melbourne media. I had a phone call—I am trying to recall the date; if it is important I can remember it—from the minister's senior adviser, saying that he had been contacted by the media, that Ervin was in the country and that he had a serious criminal background.

Senator McKIERNAN—Was it statements by the member for Oxley that alerted the media to the fact that Ervin was in the country?

Mr Sullivan—I do not believe so. I saw no statements by the member for Oxley regarding this matter until well after he had entered the country.

Senator McKIERNAN—From the records, do you know—and you might need to take this on notice—which media outlet was the first to publicly announce that this person was in Australia?

Mr Sullivan—My recollection is that it was the *Herald-Sun*.

Senator McKIERNAN—The Prime Minister was quickly into the fray on the issue and was very poorly briefed. Are you aware of that?

Mr Sullivan—I am not aware of the Prime Minister's briefing, but I think that the Prime Minister was aware and concerned that a person with a record such as Mr Ervin's had entered the country.

Senator McKIERNAN—In an interview with Mike Gibson on 2GB on 7 July, the Prime Minister said, and I am quoting from the transcript:

Well, I heard about that yesterday and I guess, like a lot of other Australians, was quite horrified. Apparently he misrepresented his past when he applied for a visa. He also used a different surname. I've taken steps this morning to have something done about the matter . . .

There is more but, for the purposes of the questions that I want to ask, there is no need to continue. The Prime Minister says there that Ervin misrepresented his past when he applied for a visa. Did Mr Ervin misrepresent his past when he applied?

Mr Sullivan—No.

Senator McKIERNAN—The Prime Minister also said in that interview that Mr Ervin used a different surname. Did Mr Ervin use a different surname?

Mr Sullivan—Mr Ervin did not use a different surname. Mr Ervin had a second name on his passport which was different from the one we had on our alert listing.

Senator McKIERNAN—I made the statement about the Prime Minister being poorly briefed. I think the record now shows that he was not adequately briefed for that media interview.

CHAIR—Can you misrepresent your position by omission?

Mr Sullivan—In respect of the misrepresentation of his past, Mr Ervin, in not answering yes to the question, ‘Have you been convicted of a serious criminal offence?’ did misrepresent his past when he entered Australia. So, certainly in the process of entering Australia, he has misrepresented his past.

Senator McKIERNAN—We are going to have to go back a bit, because I asked you that question a short while ago, and you said the answer was no.

Mr Sullivan—In respect of a visa application he was not required to make a representation as to his character.

Senator McKIERNAN—That was my question. Your answer to that was no. The Prime Minister said—on the public record—something different.

Mr Sullivan—The only time that Australia asked him to make a representation in respect of his character, he misrepresented his character. In respect of an electronic travel authority, he was not asked a question regarding his character, so he did not misrepresent his character. The time that he was asked a question about his character was on entry, and he did misrepresent his character.

CHAIR—Is that a good mechanism? Why don’t we ask it right up-front?

Mr Sullivan—The electronic travel authority is administered by travel agents. It is implemented in high volume, low risk markets. It is the thing Australia does where many like countries would go visa free and not even know who was coming to the country. It was seen as not an appropriate thing to ask travel agents to inquire of their clients’ character and health.

Senator Vanstone—It would not do much for their business, would it?

CHAIR—If everybody had to do it, your business would not suffer, but the Australian tourism market might suffer.

Senator Vanstone—I appreciate that point. I have some sympathy with your view.

CHAIR—I was only thinking out aloud. Given the opportunity, I thought I would raise the question. I am not sure I am married to any particular position on the matter, but I just wanted to explore that with you.

Senator McKIERNAN—Moving right along, we reach the time when the acting minister now intervenes. Senator Vanstone recommends deportation. What was the advice granted to you on that occasion, Minister, that such a course of action should be taken?

Senator Vanstone—I had advice with respect to a number of matters, but in the end the decision as to whether Mr Ervin was a person of unsatisfactory or bad character is a decision I had to make. There are other matters of advice that a minister in that position might rely on, but as to the actual decision, ‘Is this a person of bad character?’ that was my decision. The advice I was offered in that sense was to have information put before me in relation to Mr Ervin of both a positive and negative value, and advised that it was my decision.

Senator McKIERNAN—Did the positive that you mentioned there include the claim by Mr Ervin, and possibly his lawyers at this stage, that he had been granted executive clemency by the United States government?

Senator Vanstone—It included that and other matters.

Senator McKIERNAN—What checking was done by the Australian immigration officials on this claim of executive clemency?

Senator Vanstone—We are just checking that. That information apparently may have become available after the decision.

Mr Killesteyn—That information about his claims to executive clemency came out fairly early in the process, and it was certainly included in the advice to the minister.

Senator Vanstone—That was my recollection, but I wanted it checked out.

Mr Killesteyn—Subsequent to that, as soon as we were advised of the claim for executive clemency, we immediately instituted procedures to confirm whether he had indeed been granted executive clemency, both through our embassy in Washington and also through the American Embassy here in Canberra.

Senator McKIERNAN—What was the result of those inquiries?

Mr Killesteyn—We received official advice from the Pardons Attorney in the United States Department of Justice that Mr Ervin had not been granted executive clemency. Executive clemency is only granted by the President of the United States—no other organisation or individual can grant executive clemency—and the advice that we had was that, while Mr Ervin had requested executive clemency, that had not been granted.

Senator VANSTONE—Senator, I will get this checked, but my recollection is that the material that I had in front of me indicated that Mr Ervin had such a claim. As I recall—we will come back to this; someone is getting the document—it indicated that there was some doubt about that, that inquiries were being made and that initial inquiries had pointed towards that not being the case, but an absolute and final resolution of that would not be available until a bit later.

As I recall, the absolute and final resolution of it, coming from the relevant officer from the United States—it is some sort of certificate or letter, or whatever; clearly, as you described, in an official form—was not available until later in the week. But the indications from inquiries being made were that such clemency had not been provided.

So, in the context of when I made the decision, my recollection is that I had, if you like, two competing claims. One was by Mr Ervin—that such clemency had been provided, without any substantiating evidence thereof. One would not necessarily expect people to carry around with them whatever documentation one had if one did have clemency. I do not mean to say by adding that that one would *prima facie* disbelieve Mr Ervin. The other competing claim was that that claim, on inquiries thus far, appeared unlikely to be true. But it was a similar situation where it was not yet possible to provide absolute documentary verification of that. That was the information which, as I recall, was before me at the time.

Senator McKIERNAN—On what date did you make the decision to deport Mr Ervin?

Senator Vanstone—The Tuesday. I just need to get the actual date for you.

Senator McKIERNAN—Mr Sullivan has given me that in the chronology, but—

Senator Vanstone—Tuesday apparently was the 8th.

Senator McKIERNAN—Had Mr Ervin been incarcerated for two days at this time?

Senator Vanstone—No, Senator. That is not my understanding.

Mr Sullivan—Mr Ervin could not be incarcerated until such time as the cancellation decision was made. It was once the decision was made and conveyed to him that he was then placed in detention.

Senator McKIERNAN—The minister's decision to deport was also the decision to cancel the visa—there were two decisions?

Mr Sullivan—It was a decision to cancel the visa. Cancellation of the visa means removal from Australia. The second part of the decision was that the minister felt it in the national interest that he should be excluded from section 502 as well as section 501, which limited his opportunity to seek review of that decision. But, until the minister had made the decision, Mr Ervin was a free man.

Senator McKIERNAN—On the matter of clemency, now that we know what a United States executive clemency is, would it have influenced a decision to cancel a visa if such a certificate had been carried around by a person? I suspect he might in future carry it with him when he is travelling. I once worked with an individual who had a doctor's note to say that he was sane. He was quite proud to carry it around with him. He had every reason to carry it around with him, too.

Mr Sullivan—I think the thing on executive clemency and the advice from the United States government was that, if an executive clemency had been granted, it in no way is a pardon and it in no way quashes a conviction. So it leaves on the record the fact that the person was found guilty and was convicted of serious crime. That is if he got executive clemency. It is very clear that he did not have executive clemency.

The first indication of that was that one of his very early claims for executive clemency was that he was granted executive clemency by the Bush regime in a year when the Reagan regime was in power. That was the first suspicion that maybe this was not all as it should have been. That was followed through by formal notification from the Justice Department—that in fact no executive clemency had ever been granted to anyone of that name. But had he had it, it does not mean that the conviction was quashed or a pardon had been granted. It still meant that the very serious crimes were on the record and would have been the centrepiece of the submission to the minister on character.

Senator McKIERNAN—Did you, Minister, give a written note giving the reasons for cancellation?

Senator Vanstone—Not a separate written note.

Senator McKIERNAN—What do you mean by separate written note?

Senator Vanstone—I was provided with some advice. I would probably need to have this in front of me to confirm it for you, because this is only a recollection—I do not have the actual piece of paper in front of me. As I recall, they were one and the same document, or, if not, clipped together, which, broadly speaking, as I have described to you, had both a negative and positive value, vis-a-vis Mr Ervin, and indicated that there were a number of

decisions that I could make. As I recall, there was not a recommendation to make one decision or another. Although not much hangs on this, I am pretty sure it is right. Rather than the brief coming, as some do, with a recommendation to do one thing and other options for you it was the other sort of brief that comes which says that there are a number of decisions you could make and you choose one by circling it.

I think that is right because it follows the point that I made to you earlier that, in respect of advice as to some matters, a minister may rely on advice from the department. A decision in respect of character and exclusion is a decision for the minister. I do not suppose that precludes the department offering advice, but I simply wanted to highlight that, in this context, as I think it was presented as one of the latter sorts of briefs. But I will get that checked.

Mr Sullivan—That is right, Minister. What was conveyed to Mr Ervin was a copy of the decision record of the minister.

Senator McKIERNAN—Is it possible for the committee to have a copy of that? I was not going to ask, but if Mr Ervin has a copy—

Mr Sullivan—Of the decision record?

Senator McKIERNAN—Yes.

Mr Sullivan—That is because it was a matter between the minister and Mr Ervin, I believe.

CHAIR—Do you want to take it on notice to see whether it is appropriate to release it; give it some more thought?

Senator Vanstone—Senator, it has not occurred to me, because I have not come back to this matter since these times, whether that is something that needs to be cleared with Mr Ervin. I simply do not know. Can we take that on notice?

Senator McKIERNAN—Of course. I am not asking the question so much about Mr Ervin; it is more about the overall process in these instances.

Senator Vanstone—I think I can at least clarify this aspect for you. At the end of the brief—I notice that I thought it was August and had to scratch it out and make it July; I wish every year moved more quickly—on page 5 there is simply a heading ‘Minister’s decision’. Then there are four decisions. I can read you those because I do not think they pertain to anything that Mr Ervin might have any privacy concerns about. The first decision is: ‘Mr Ervin is not a good character: agreed/not agreed—and so it goes down with agreed/not agreed. That puts the view that I put to you with respect to making those decisions. They are decisions for the minister or acting minister and not decisions where the department recommended one course of action or another.

Senator McKIERNAN—And you had to sign that document?

Senator Vanstone—Yes.

Senator McKIERNAN—And that became the official cancellation. Who prepared that brief?

Mr Sullivan—The department.

Senator McKIERNAN—Who checked it?

Mr Sullivan—A number of people checked it. The document was signed in the end by Mr Killesteyn as acting deputy secretary. It would have come out of the character and health section. It would have gone through a branch head, and it would also have been the result of some consultation with other agencies, including Attorney-General’s.

Senator McKIERNAN—Did that brief contain—or did any attachments to the brief contain—any advice to the minister or acting minister that natural justice had to be provided to the person concerned before a decision was made or even after a decision had been made?

Mr Sullivan—No.

Senator McKIERNAN—Will the processes be altered in any way in the future, in the light of the experience?

Mr Sullivan—Certainly, we learnt in the light of the experience and, in terms of the second decision to cancel the visa, the issue of natural justice was one that was dealt with.

Senator McKIERNAN—In the light of—

Mr Sullivan—We are talking about two cancellation decisions. In the first one, we withdrew from the court, on the basis that we believed the natural justice element was flawed. The second decision was taken, and Mr Ervin was certainly granted natural justice in the taking of that decision.

Senator Vanstone—As you would realise, I have just had an opportunity to get the documents, et cetera, that were signed. I think I indicated to you that my recollection was that there was something in here about the claim of clemency when the decision was made. There is not something in here about that. That must have been a claim that was subsequently made by Mr Ervin. But I think all the answers, with respect, that Mr Sullivan gave you remain appropriate to what might have happened had it been in here, in that clemency is not a pardon. It leaves the offence and the conviction, and it would have been a part of a brief for a minister to take into account—in the pros and cons that were included. But, as it turns out, it was not—as I understand it—necessarily known to the department at that time and, therefore, it certainly was not in the brief.

Senator McKIERNAN—It reinforces the point about natural justice. If an executive clemency—or, indeed, a pardon—had existed, the individual ought to have been given an opportunity to clearly put its existence on the record for the minister's or decision maker's consideration

Senator Vanstone—I do not deny that.

Senator McKIERNAN—Thank you. Mr Sullivan, you indicated a short time ago that there was departmental advice and also advice from the Attorney-General's Department on the cancellation of the visa.

Mr Sullivan—Yes.

Senator McKIERNAN—Did that advice extend to the deportation of the individual following the cancellation of the—

Mr Sullivan—The removal

Senator McKIERNAN—The removal, I am sorry.

Mr Sullivan—Yes, it did.

Senator McKIERNAN—Is it possible to get copies of that advice—both the advice from Attorney-General's and what happened within the department itself?

Mr Sullivan—It was advice between a lawyer and a client, and we would take that on notice.

Senator McKIERNAN—Do you know whether the advice was in writing, or was it oral?

Mr Sullivan—Parts of the advice were in writing. We have a senior officer from the Attorney-General's Department who is general counsel to our department. An amount of that individual's advice is oral.

Senator McKIERNAN—Was there any distinction or difference between the advice from the Attorney-General's and that advice provided by DIMA?

Mr Sullivan—Immigration took the advice of the Attorney-General's Department into account in making its submission to the acting minister.

Senator McKIERNAN—Whose decision was it to brief Mr Gotterson, the QC who represented the department in the court?

Mr Sullivan—The department acts through the Attorney-General's Department in respect of its briefs before courts. He would have been briefed by the Attorney-General's Department.

Senator McKIERNAN—Has Mr Gotterson been used in the past for immigration cases?

Mr Sullivan—Yes, he has.

Senator McKIERNAN—Is he part of a panel of QCs or barristers that the department uses from time to time?

Mr Storer—No, he is not on our panel.

Senator McKIERNAN—There is a panel in existence, is there?

Mr Storer—There is a panel that we rely on for various outsourcing of legal practice advice and currently he is not one of the people on that panel.

Mr Sullivan—That is a panel of firms.

Mr Storer—It is a panel of firms but there is no panel of individuals.

Mr Sullivan—We rely on Attorney-General's to brief a relevant and experienced QC or barrister, depending on the significance of the case. Mr Gotterson is a very well respected and eminent QC in Brisbane. He is the president of the bar in Brisbane. He is the sort of person that we would have expected to see briefed for a matter that was in Brisbane before the High Court.

Senator McKIERNAN—I do not doubt that was your view at the time in the selection. Do you know what Mr Gotterson's experience in migration law is and what his experience in administrative law is? A similar type of question was directed to the Attorney-General's Department yesterday and we were told he was quite well versed in business law or commercial law.

Mr Sullivan—As I said, he is a recommendation of the Attorney-General's Department. We had knowledge of his experience with us in migration matters before the court in Brisbane.

Senator McKIERNAN—Who briefed Mr Gotterson for his appearance in the High Court?

Mr Sullivan—He would have been briefed by the Australian Government Solicitor's Office and by our general counsel, Mr Mowbray.

Senator McKIERNAN—Were any of either your staff, Minister, or the Minister for Immigration and Multicultural Affairs' staff involved in such briefings?

Mr Sullivan—No, not in briefing Mr Gotterson for his appearance before the court.

Senator McKIERNAN—Who would have the main role in determining the argument that was going to be advanced before the court? Would that be the Department of Immigration and Multicultural Affairs? The Attorney-General's Department? The minister's office?

Mr Sullivan—It would have been the QC arguing in a case. He would have been briefed by the Attorney-General's Department.

Senator McKIERNAN—In the light of the transcript of that particular hearing, will that practice continue into the future?

Mr Sullivan—I think we would continue. Attorney-General's briefs, as anyone does who employs a barrister to appear before them. The Attorney-General and the Australian Government Solicitor briefed Mr Gotterson before he appeared before the court.

Senator McKIERNAN—I have had the opportunity to read the transcript of the court and it would appear that on at least one occasion a central point of Mr Gotterson's argument to the court was actually changed in the course of the argument before the court itself.

Mr Sullivan—I could add nothing to what Mr Skehill said yesterday on that. I think he covered it very well.

CHAIR—But that is not unusual, is it?

Senator McKIERNAN—It might be worth while putting a little bit more of the transcript of the High Court on the record. I am not, in any way, attempting to denigrate Mr Skehill on his last appearance before a Senate estimates committee, which he carried out admirably. We did miss your presence here yesterday, Minister, because it was a very good day in terms of the information that was collected.

Senator Vanstone—I am sorry. I was in Canberra and stayed over to come to this estimates committee. Had I remembered that Mr Skehill was leaving and that it was his last estimates I undoubtedly would have popped in.

Senator McKIERNAN—He will be sorely missed, as we reminded him yesterday. Let me return to the High Court argument—it is an argument, is it not?—between Mr Gotterson and Chief Justice Brennan. I will not delay the committee very long, but I want to read a small excerpt from the transcript:

HIS HONOUR: Let me understand this correctly, Mr Gotterson. Are you making the submission that this Court has no jurisdiction either?

MR GOTTERSON: Yes, your Honour. It is intended that, in regard to those grounds, neither the Federal Court nor the High Court have jurisdiction.

HIS HONOUR: How would you square that with the provisions of the Constitution?

MR GOTTERSON: Your Honour, the provisions of the Constitution, of course, grant the High Court in its original jurisdiction the powers to grant the prerogative relief by way of prohibition, by way of mandamus, but that is not to say that there cannot by way of legislation be limiting of grounds on which the relief may be granted.

HIS HONOUR: Well, Mr Gotterson, if you wish to maintain that view, no doubt it can be submitted to a Full Bench to consider it. For my part, it is a proposition which I regard as completely inconsistent with the notion of judicial review for it would isolate the Executive from judicial control in respect of acts done which are unlawful, and that cannot be, surely, the intention that one would either attribute to the Constitution or to the Parliament.

After a few more exchanges, His Honour had this to say:

HIS HONOUR: What submission are you making about it, Mr Gotterson?

MR GOTTERSON: Your Honour, I would have to take some instructions directly on that point.

HIS HONOUR: Then I think you should do so. It is a matter of the gravest constitutional importance to think that the proposition would be advanced on behalf of the Minister that this Court does not have the jurisdiction to control unlawful acts committed by a Minister.

MR GOTTERSON: Your Honour, I have instructions not to pursue that argument.

And, on the invitation of the Chief Justice, Mr Gotterson withdrew the submission.

I am not saying anything in any way to denigrate Mr Skehill on what he said yesterday, but I did not have the advantage of having this transcript in front of me yesterday when Mr Skehill made his remarks.

Mr Sullivan—I think Mr Skehill's remarks remain the accurate ones—that is, that Mr Gotterson was not instructed to take the line he took. He was instructed to desist from that line, and he did. And the end submission of the Commonwealth's QC in the case was that of course the High Court has such jurisdiction.

Senator McKIERNAN—Is it fair to say that Mr Gotterson—pardon my legal ignorance in these things—went into the court with this argument formulated and during the course of proceedings did a massive somersault?

Mr Sullivan—As Mr Skehill said yesterday and I can confirm, he was not instructed to take that line.

Senator McKIERNAN—He was not?

Mr Sullivan—He was not instructed to take that line. He was instructed to desist from that line, and he did.

Senator McKIERNAN—He was not instructed to take that line before the hearing commenced?

Mr Sullivan—That is right.

Senator McKIERNAN—But Mr Gotterson, on his own volition, took the line that he chose to follow.

Mr Sullivan—He started along that line and, on instructions, desisted and withdrew.

CHAIR—It is not usual, is it, that you instruct counsel what legal arguments to use in a case? That is why you instruct counsel—so that you have somebody who can think of all the various legal arguments to put up. Then, if your client says, 'I do not want you to put up this particular legal argument', the barrister is duty-bound to withdraw it. From what I can gather, that is what happened on this occasion. It does not seem to be novel.

Senator Vanstone—I feel sure there would be occasions where the Commonwealth would have a particular view, and it would be apparent prior to the hearing that a particular view should or should not be put. But, equally, there would be occasions when the Commonwealth would be in the same position as any other litigant and put a matter in the hands of a barrister.

Senator McKIERNAN—I am not going to delay the committee, I am only asking a question for clarification—I do not want to get in and explore the whole process of the High Court, believe you me, so do not worry. I noted your comments, Chair, and they are what prompted my question. I do not know what you call this first page, but on the transcript of the hearing from the High Court it says, when it is identifying the individuals, 'Mr R.W. Gotterson QC'. He states:

If the Court please, I appear with my learned friend, **Mr P.D.T. Applegarth**, for the respondent Minister. (instructed by the Australian Government Solicitor)

What does that term mean, 'instructed by'?

CHAIR—Basically, what it means is that that firm of solicitors, namely, the Australian Government Solicitor, has requested those barristers to appear. That is what clothes them with authority to represent the minister.

Mr Sullivan—Instructed, in the terms of that face sheet, is a generic term saying they have been given the job by the AGS. That is the QC and his assistant; we had a silk and a barrister.

Senator Vanstone—I think what Mr Sullivan has told you is correct. That is a sort of generic term to indicate, ‘I have been given the job by these people; I appear on their behalf.’

CHAIR—It does not mean that every word he speaks has been authorised by the minister.

Senator Vanstone—In any litigant’s matter, someone would say, either in written form or verbally, ‘I appear on behalf of so and so and I have got instructions to conduct this matter.’ In any matter, as I was indicating before, the Commonwealth or another litigant might offer specific instructions as to what issues to run or not run, or a litigant may say, ‘I am putting this matter in your hands and this is the outcome.’

CHAIR—He may have thought it seemed like a good idea at the time, as some other Attorney once said.

Senator Vanstone—I have not spoken to the QC about this. I do not know. All I can tell you, Senator McKiernan, is that I was back in Adelaide on a Thursday or Friday afternoon and I was more surprised than you can imagine and could hardly swallow, as I recall it, a glass of milk when I heard Peter Rapp on *PM* announcing to Australia that I had so instructed the QC. Surprise would be an understated word.

Senator McKIERNAN—I have no doubt that if my learned colleague Senator Bolkus were here he might want to advance these arguments further. Not having legal training and a legal background, I am more than happy to accept what is on the record now. Perhaps we might return to it either in this committee or a different committee.

CHAIR—Don’t demean yourself, if I can use that term from yesterday—

Senator McKIERNAN—Let us not reopen that argument—it took an hour on that one yesterday. Thank you for the advice on the meaning of the word ‘instructions’. As a lay person it does appear, as Mr Rapp said on the radio, that there are instructions given to Mr Gotterson in this particular instance.

Mr Gotterson made the point in this hearing that he had not had time to be properly briefed on the argument. He mentioned somewhere—I have not got it identified because I read it in bed last night and I was not willing to get up in the cold and get my marker pen—

Senator Vanstone—Thank you for that insight, Senator.

Senator McKIERNAN—Well, it is lonely in Canberra. The hearing commenced at 3.39 p.m. on 10 July. He mentions in here that he had been briefed at something like 2.30 that afternoon. Is that the case?

Mr Sullivan—That is the case. This matter moved very fast. Mr Ervin being placed in detention on Tuesday and the fact that he was incarcerated meant that an application to the High Court was going to move very quickly. He accepted the brief.

Senator McKIERNAN—It moved very fast, but it did not move as fast as it moved the next day, did it?

Mr Sullivan—It did not move the next day.

Senator McKIERNAN—It actually did move the next day, and I have got detail of that transcript as well, which we could read into the record, but I have got a wish to finish as well. As I can read from the transcript of the next day’s hearing, when the Commonwealth was represented by Mr G. Griffith QC, who appeared with Mr Gotterson and Mr Applegarth, instructed by the Australian Government Solicitor, it lasted two minutes.

Mr Sullivan—That is right.

Senator McKIERNAN—And the Australian government, or the minister, had lost the argument and conceded that they had lost the argument. Is that correct?

Mr Sullivan—Had withdrawn.

Senator McKIERNAN—And lost the argument?

Mr Sullivan—No, withdrawn from the matter.

CHAIR—Was there a ruling made?

Mr Sullivan—Certainly, the cancellation was voided—it was withdrawn—which meant that Mr Ervin's visa stood. He was again a lawful non-citizen and was released.

Senator McKIERNAN—In lay person's terms we lost?

Mr Sullivan—Conceded, yes.

Senator McKIERNAN—We lost. We did not win.

Mr Sullivan—We did not win.

Senator McKIERNAN—Would you concede that?

Mr Sullivan—Yes.

Senator McKIERNAN—The consent order is that the respondent pay the prosecutor and the applicant's costs of and incidental to the proceedings, which were to be taxed. Have we got a sum total of what the cost of the hearings was?

Mr Sullivan—We will have to take that on notice. I do not think we have.

Senator McKIERNAN—In taking it on notice would you give us the Australian Government Solicitor's costs together with the instructing solicitors or whatever barristers we hired as well? Senator Vanstone, in your media release of 11 July you state that the government has not backed down on the matter. But in real terms, both legal and lay person's terms, the argument advanced by Mr Griffith, the Solicitor-General for the Commonwealth, clearly indicates that the government and you, as acting minister, had indeed backed down.

Senator Vanstone—If you regard in lay person's terms withdrawing as backing down on that matter, that relates to those legal proceedings. It does not relate to an option which was there to take further proceedings. The option was there to start the process again.

Senator McKIERNAN—The press statement went on to say:

The decision today—

that was the High Court decision—

has no bearing on the real issue of this matter, namely, whether or not Mr Ervin is a person of good character.

I am quoting your statement correctly?

Senator Vanstone—Yes, that is right. Sorry, I was agreeing with you because I thought you were going to go on.

Senator McKIERNAN—I wanted clarification that I was quoting you accurately. The real issue on the matter, though, is whether or not Mr Ervin could remain in Australia. The argument in the court was not over the fact of whether he was of good character or not good character, was it?

Senator Vanstone—For a number of people different issues will be perceived as being the real one. The term 'the real issue' highlights what a person making that point believes is a

very substantive issue. As I think has been made clear, if you accept my decision that Mr Ervin was not of good character, then it is a matter of concern that someone who was a convicted kidnapper and hijacker could, as a consequence of the matters that you have so articulately had elucidated for you in this committee, come into Australia.

Senator McKIERNAN—I am still not really sure what you mean by that.

CHAIR—Read the *Hansard* when it is printed and it might become clear.

Senator McKIERNAN—I am not even sure that is going to help a great deal either.

CHAIR—Right. Keep it for next estimates.

Senator McKIERNAN—I hope in the next estimates, when we are addressing the matter, that we will have processes in place to ensure that we do not end up in situations such as we ended up in on this occasion.

Mr Sullivan—I think that is the point that the minister is making: that the High Court was about whether the decision was flawed on the basis of natural justice. It was conceded that it was. The High Court was not about saying that Ervin was of good character, or that the minister did not have the right to cancel on the basis of bad character. I think in taking the issue forward and not going backwards, it was the fact that that issue would be pursued and was.

Senator McKIERNAN—I meant the real issue of the matter.

Mr Sullivan—The real issue of whether he should be here.

Senator McKIERNAN—Chief Justice Brennan, during the course of the hearing, described part of the argument as having the gravest constitutional importance. It was in that context that I asked you what the real issues of the matter were.

Senator Vanstone—Sorry, you might have meant it in that context but, as I recall your question, it was not phrased in that context. It was phrased in the context of taking me through a press release that you have in front of you and asking me what I meant by that. I have not perused the transcript of the matter and my remarks were certainly not made in any context related to the remarks of the Chief Justice.

Perhaps I could assist you by saying there are a number of very important issues associated with this matter and each of us, as parliamentarians, and I suppose members of the community, would describe one, two or three separate issues as being for them the important issue at the time. That might depend on the duties they had or the perspective they want to bring to the argument. I do not mean by that that there is no other important issue—it does not mean that.

Senator McKIERNAN—The bland reading of the statement at the time might lead somebody to believe that it was of lesser consequence than it was, and the emphasis that you now put on it.

Senator Vanstone—This press release was not put in the context, or in response to, the remarks of the Chief Justice. I concur with what Mr Sullivan said. Another way to phrase it would be that say ‘this matter’ really does depend on what aspect of the matter people are regarding as the essential ingredients.

CHAIR—Yes, whether you are concentrating on the constitutional argument as to whether the High Court is clothed with authority to even decide the case—

Senator Vanstone—That is right—or the immigration arguments, yes.

CHAIR—Or whether you are looking at the question of whether natural justice was followed, or whether you are looking at the question of whether the person concerned was a person of good character.

Senator Vanstone—Yes.

Senator McKIERNAN—Is it your view, Minister, that the parliament can, by way of legislation, limit the grounds on which the High Court can exercise its original jurisdiction?

Senator Vanstone—It would not be up to me to offer you a legal view and one of that level. I certainly would not offer one without reflection.

CHAIR—I think there is something in standing orders too, isn't there, about asking ministers for legal advice?

Senator Vanstone—Even if there were not, I certainly would not offer it without reflection.

Senator McKIERNAN—I am not so certain I was asking for legal advice. I am more asking for a view or possibly—

Senator Vanstone—Your natural inclination is to say, of course not. After 13 years in opposition, with regret I might say, one has a very clear understanding and strong commitment to the role of parliament. When you have been in opposition for 13 years, if you do not already have that commitment you certainly will at the end of 13 years in opposition.

Senator McKIERNAN—Minister, I assure you I will not be in opposition for 13 years, because the pre-selection battles—

Senator Vanstone—You are not intending to be there for that long. I appreciate that. I appreciate we have difficult intentions as to how long we want to keep you there.

Senator McKIERNAN—All the pre-selection battles, Minister, are behind me. I do not have to face those any more.

CHAIR—Can I tick you off for 1.3?

Senator McKIERNAN—No, I am not sure that I have finished with Ervin yet. To make two concluding points: Mr Lorenzo Edward Ervin left the country of his own volition?

Mr Sullivan—That is right.

Senator McKIERNAN—Is his name still on the alert list? If you cannot answer that question, say you cannot answer it.

Mr Sullivan—It is, and his visa is cancelled. He has no authority to enter Australia.

Senator McKIERNAN—It was a one-off visa that he—

Mr Sullivan—No, the minister moved to cancel his visa.

Senator McKIERNAN—Was the original visa that he was issued with, on which he entered Australia, a one-off for one visit only?

Mr Sullivan—No, it was a multiple entry visa, which was cancelled, and that cancellation has not been appealed, on the basis of bad character.

Senator McKIERNAN—It has been reported that two former Black Panthers—different people—who are now congressmen in the United States will be visiting Australia before the Olympic Games. In the light of what has happened with, and the handling of, the Ervin case and the minister's announcement about the tightening of the character provisions, what can we expect from government in the handling of visitor visa applications by these two individuals?

Mr Sullivan—Senator, the decision on a visa application is a decision made on the merits of the individual. Every visa application to come to Australia will be considered on the merits. The only other relevant point is that Mr Ervin's visa was not cancelled on the basis of some former membership of the Black Panthers movement; it was cancelled on the basis of convictions for the crimes of kidnapping and hijacking, which in anyone's view are at the most serious level of criminality.

Senator McKIERNAN—Staying with this issue but on a slightly different angle: Minister Ruddock was overseas at the time, and for that reason Minister Vanstone was acting minister. Who recalled Mr Ruddock to Australia and when did this occur?

Ms Williams—Senator, I obviously was with the minister at the time he was overseas. I am not aware of all the discussions that went on. All I can say is that the minister said to me that obviously this case brought up a lot of systemic issues that he thought needed to be dealt with. My memory is that we knew when we were still in Croatia that he should go back but that the trip should last as long as Yugoslavia, which really completed the first half of the trip. So he knew a few days before he actually returned that he was due to come back.

Senator McKIERNAN—What was the date of his return?

Ms Williams—It was Thursday the 17th.

Senator McKIERNAN—How many countries which the minister proposed to visit were cancelled?

Ms Williams—He did not go to Turkey, Greece and Macedonia.

Senator McKIERNAN—It is probably a good job it was all three of them, rather than one and not the other two. Have those countries expressed disappointment about the cancellation of the minister's visit, and are there any plans now in place for the minister to fulfil the obligations to visit that were made on this occasion?

Senator Vanstone—While the officers are informing each other as to what they know about the answer you want, I may be of some assistance to the line that you want to pursue. I am happy to indicate to you that, following the High Court's decision, I made it clear to a number of people that, if the Ervin matter was to be looked at again, I intuitively knew and was satisfied it would not be appropriate for me to look at it again. That is based on the obvious argument that, if I were to relook at the matter, Mr Ervin may have some claim that I came not fresh to the matter but with a bias. Therefore, I think everyone would agree it would not be appropriate for me to relook at the matter.

Senator McKIERNAN—Thank you for that additional information.

Ms Williams—Senator, if I could go to your other question, sorry about that, yes disappointment was expressed—although disappointment with understanding. In fact, the minister has expressed his desire to go back to those countries when time permits.

Senator McKIERNAN—Were there any additional costs imposed upon the Commonwealth by virtue of the fact that he had to cut the visit short on this occasion?

Ms Williams—I think, in fact, there would probably be savings because he did not travel to those countries.

Senator McKIERNAN—Another high profile applicant to come to Australia, who is also a member of parliament, was one Gerry Adams MP. There has been a legal action in regard to Mr Adams's application to visit Australia. I understand that, in lay person's terms, the minister lost that action as well. Am I correct in that understanding?

Mr Sullivan—I think in lay person's terms you would say it is still in the preliminaries. No view is held by the Commonwealth that the action was lost, but the matter is obviously still before the courts. It was a preliminary directions hearing and certain directions were made by the judge. That matter is still ongoing, so I am not sure that we should get too far into it.

Senator McKIERNAN—I accept your latter piece of advice, but for clarification, am I correct in saying that the court has asked that the minister be asked to show cause why Mr Adams is a person that is not of good character?

Mr Sullivan—It was a preliminary hearing and there are directions from that preliminary hearing in respect of providing reasons as to the decision.

Senator McKIERNAN—When was that direction given, if that is the correct—

Mr Sullivan—It was given on 2 July.

Senator McKIERNAN—It is now 21 August.

Mr Sullivan—It covered relation to access of documents. What has been required is for the minister to provide a list of relevant documents—not the documents; it is a list of documents—that were relied upon to take the decision.

Senator McKIERNAN—I heard what you say that the—

Mr Sullivan—The issue of access to those documents is something which is still to be argued within the court.

Senator McKIERNAN—I heard what you say, that the matter is on foot within the courts, and I do not seek to press the matter any further at this point.

Mr Sullivan—Thank you, Senator.

CHAIR—Is there any more on subprogram 1.3 or 5.1?

Senator McKIERNAN—Might I just get a clarification on those costs that I asked for in relation to Mr Ervin's case. I asked on notice for the costs of the case. I would include in that the cost to the Department of Immigration and Multicultural Affairs as well as to Attorney-General's—all costs associated with the case.

Mr Sullivan—It will be difficult in some instances to separately identify costs to the department in the case, but where there are specific costs to the department, yes.

CHAIR—Does that complete 1.3 and 5.1?

Senator McKIERNAN—Yes, Mr Chairman.

[10.58 a.m.]

Program 7—Multicultural affairs and citizenship

Subprogram 7.1—Multicultural affairs

Senator McKIERNAN—It has now been 18 months since the announcement of the \$10 million anti-racism campaign, which was later cut back. Where is that up to now?

Ms Williams—Tenders have been called. I will ask Mr Page to go into the details.

Mr Page—You will probably have seen the minister's news release of 8 August which indicated that we are in a tender process inviting submissions from consultants to do market research on which the substance of the anti-racism campaign will be based.

Senator McKIERNAN—I keep having to remind the department that, now that we are in opposition, we do not get copies of the minister's press statements any more. Even the Chair had to find out yesterday in the area of another department that the opposition does not get access to all of these types of information. Thank you for that information.

CHAIR—Now you know what we had to put up with for 13 years.

Senator McKIERNAN—Tenders have been called. When did they close?

Mr Page—They closed on 13 August. We are now in the process of assessing eight proposals that arose from the 13 invitations to submit proposals.

Senator McKIERNAN—Has any market research been commissioned by the minister?

Mr Page—That is what I am describing—the process for undertaking market research. We are in the process of selecting a consultant to conduct that research right now.

CHAIR—Deputy Chair, you are doing superbly well.

Senator McKIERNAN—As I am doing so well, could I seek the indulgence—

CHAIR—You've sucked me in now.

Senator McKIERNAN—One can only ask. A series of questions have been asked in all estimates committees to all government departments. Unfortunately, the questions on notice about the staffing levels and so forth—

CHAIR—Efficiency dividend.

Senator McKIERNAN—That too. The question was given to Senator Bolkus, who is not here today. It was not passed to me. It has now just been passed to me. If it was passed to me earlier, I would have done it at the beginning of the program, but it was not. Could I ask that it be taken on notice?

CHAIR—If that is your only request, Senator McKiernan, we are delighted to agree to it.

Subprogram 7.3—Community affairs and settlement

Senator McKIERNAN—I refer to the migrant resource centres. Is there a review of MRCs on the way?

Mr Page—Yes, there is. We are going around the country discussing an issues paper with various interested groups this month.

Senator McKIERNAN—When was this review announced, bearing in mind what I told you in the last area that we do not get copies of all of the minister's press releases?

Mr Page—I am not sure that there has been a news release on the subject. A discussion paper or an issues paper to which I referred was released to MRCs and other community organisations recently. I am sorry, but I do not have the exact date of that.

Senator McKIERNAN—Who is conducting the discussions surrounding the discussion paper?

Mr Page—Departmental officers are receiving community responses to the issues paper and will report their conclusions to the minister in the next few weeks.

CHAIR—Does that paper outline all of these matters? Would you be at liberty to provide one of those papers to Senator McKiernan through the committee?

Mr Page—Certainly, we will give you a copy of the discussion paper, which is, in the sense I am suggesting, a public document. It is out there for people to comment on.

Senator McKIERNAN—How long has that discussion document been distributed?

Mr Page—I would have to take that on notice as well.

Senator McKIERNAN—One would assume—that is an assumption; I don't want you to either confirm or deny it—that MRCs around the country would have been given copies of the discussion paper. There are other organisations mentioned within the discussion document

and various suggestions and proposals for future operations of MRCs. I instance Red Cross, Rotary and organisations like that. Have they been given copies of the discussion document?

Mr Page—As I say, I do not have the detail of exactly to which organisations the document has been distributed, but it has been distributed very widely. As you would be aware, various other agencies operate out of MRCs. There are other agencies that deliver services comparable with those which MRCs deliver. Therefore, part of the questioning in the issues paper is what role and what power MRCs should be positioned with within the broader service delivery framework that affects migrant settlement prospects. I would have to provide a distribution list with a copy of the discussion paper, which I can do.

Senator McKIERNAN—I would appreciate that, if it is at all possible. You have enunciated some admirable objectives there. It is unfortunate that this is happening in such a secretive manner that there may not have been a press statement about it. The MRCs have been reviewed on a number of occasions in the past. I know I have been involved in previous reviews of them. Why, on this occasion, is the matter so secretive—I use that term, but it may not be the most appropriate.

Mr Page—I would not regard it as secretive. I think it is seeking to involve all interested parties—in the sense of service deliverers and client groups of MRCs. But, in the first instance the discussions are with MRCs themselves and their close cohorts.

CHAIR—Once we get the list of those to whom it has been circulated, we will get an understanding, will we not?

Senator McKIERNAN—But will the review be completed by the time we get the list? Is there a completion date on the review?

Mr Page—As I said, officers will be reporting to the minister within the next few weeks, with the intention of influencing the kind of service agreements that will be made with MRCs in future. So the minister needs to be considering the outcome before October—that is the time frame.

Senator McKIERNAN—I think it is very unfortunate that this course of action is being conducted at the moment in this manner. To the best of my knowledge, there has been no public announcement, as such, about it.

As an individual member of parliament I have a large interest in what happens within the migrant settlement services and the workings of the migrant resource centres. I had quite a deal of involvement in the establishment of the Northern Suburbs Migrant Resource Centre in Western Australia. It was subject to quite a deal of controversy—including party political controversy—because the government of the day was somewhat criticised for its actions in opening up the new centre and closing down or seeking to defund a different MRC.

Despite continued involvement with that Northern Suburbs MRC in Perth—which is held up as an example of an innovative approach to program delivery in the discussion document that has been distributed—I have not had any advice that this review was being undertaken. I suspect there are quite a few others who were involved at that level in the establishment of the Northern Suburbs MRC in Perth who would be able to make a real contribution to the future of MRCs around Australia.

Mr Page—Perhaps I should qualify the scope of the review a bit. As I said a few minutes ago, it is intended to influence the future service agreements under which MRCs are funded. So it is really about the scope of activity within a particular MRC. Therefore, the first line of stakeholder is the current MRC and its board of management and staff. I have no doubt

that they have been advised of the issues paper. It is not, as you may have thought from my comments about other service deliverers, a very broad-ranging review across the nature of settlement services.

Senator McKIERNAN—This is not the time or place to go through the discussion document in detail. But I put it to you, Mr Page, that the discussion document—which I have a copy of, which you have alluded to and a copy of which you will provide to the committee—is perhaps much more serious than you have just enunciated to the committee. I will give an instance, but I am not going to go through it in detail. On 34, under the heading ‘Elected and appointed members’, it says, ‘The option would provide the opportunity to inject a broader community focus into the management of MRCs.’ That has grave connotations for the operation of any MRC—be they an innovative one, such as the northern suburbs, or one that may not be performing quite so well in a different part of Australia.

It goes on to talk about St Vincent de Paul. Obviously St Vincent de Paul ought to have some input, together with the Smith Family, Rotary, the RSL, the Lions clubs, the Chamber of Commerce and Business, employer groups, local representatives of Commonwealth, state and local government. All of those groups mentioned may be able to constructively and productively put forward ideas of how MRCs ought to be able to be managed, be that on the regionalisation basis of the management or the incorporation of more than one MRC in terms of a management structure. But it has been done in a manner that is not as open as previous reviews of MRCs have been, to the best of my knowledge.

Mr Page—It is a different process from the previous reviews; yes, Senator.

Senator McKIERNAN—It is certainly different in the sense that there is no public announcement of it. I do have objections to that. I raise that here, and no doubt we will come back and revisit it. Perhaps you might be able to give me some explanation of the language that is used in the discussion paper. We have words and phrases such as ‘infrastructure magnet’, ‘deficit model of multiculturalism’ and ‘the rubric productive diversity’. I wonder whether this discussion paper really has been constructed and put together by somebody who has a deep and incisive knowledge of MRCs. I apology in advance if you were the person who constructed this document, Mr Page.

Mr Page—I can answer objectively; I was not. I think some of those phrases are taken from policy explanations, various positions that are relevant to the future role of MRCs and their effective management. I think, as you have indicated, you have a long association with the program yourself. You would realise that they are still fundamentally run on the model that the Galbally report proposed in 1978. So some of those phrases indicate the relevance of the question, ‘How should MRCs be positioned in the 1990s against a quite different service infrastructure which includes concepts like productivity diversity?’ I am sorry; I have forgotten the other quotes you made.

Senator McKIERNAN—I do not think now is the time to pursue each of them in detail. No-one notes at the end, not so much as when one is reading through the document, the term ‘NESB’, non-English speaking background. That is a very common term in use in the area of ethnic affairs and multicultural affairs in Australia. It certainly is in day-to-day use in MRCs right around Australia. It is not mentioned in this document at all. Is there a message in the fact that the term ‘NESB’, non-English speaking background, is not mentioned?

Mr Page—I do not think so, other than the paper would deal with the nature of clientele that MRCs or indeed other settlement services are expected to target. As you may be aware from other contexts, there have been questions about the utility of the term ‘NESB’ as a

description of need. In fact, the Commonwealth, state and territory ministers council has commissioned some review of that term and is questioning whether there is some better specific indication of the type of need that settlement programs are intended to reach rather than a broad description that may imply disadvantage when it applies to some of the most valued members of society who are making major contributions and do not need government assistance for their efforts.

Senator McKIERNAN—The government ministers meeting that you mentioned has not yet reported on that, has it?

Mr Page—No, indeed; and there are several comparable searches. For example, I think the Bureau of Statistics is looking at some sort of indicator that could be used in census, but there are several contexts in which there are questions about the utility of NESB as an indicator of need.

Senator McKIERNAN—So at this stage officially NESB is still the official description, is it not? It is still under discussion. We have not yet formally officially adopted the term ‘culturally and linguistically diverse’—and I hope we never do.

Mr Page—No, indeed; and I would not even accept that NESB is an official description. It is extremely widely used and would be embedded in many official documents, but I do not think you could regard it as having been formally adopted by officials or governments. It is a description. We are looking for an alternative measure of need to which services are directed.

Senator McKIERNAN—In conclusion on this point, I am not one of the people who think that once things are in place they are irremovable forever and they should not ever be subject to review. Despite the high status in which I hold the Northern Suburbs MRC in Perth and the fact that I am so close to it—I believe that; others might disagree—I do not think that should not be reviewed but I do think that, if a review undertaken of MRCs around Australia and the system of MRCs is done from a very narrow base, the government will lose out. I would encourage through my comments here this morning the minister and the department to widen the review and widen the review process because there are, I would suggest, a great number of other organisations and individuals who would be able to make positive contributions to the process. With those kind words, Chair, we will move right along.

CHAIR—So we can tick off 7.3.

[11.18 a.m.]

Program 8—Compliance and enforcement

Subprogram 8.2—Detention

Senator McKIERNAN—The Law Society of Australia, under the signature of Mr Peter Levy, wrote to you, Ms Williams, on 14 July 1997 raising the matter of the level of bonds required to secure the release of detainees. I will just quote part of the letter. It is reported that bonds of up to \$10,000 are being requested, which in some cases is clearly beyond the means of the detainees, of the applicants. Can you offer any comment in response to that actual broad claim within the letter of such bonds being asked for? Has it become a practice that the department asks for bonds which are out of the reach of the applicants who seek release from detention?

Ms Williams—I am not aware of the actual letter. I obviously have not received it, but I could get Ms Bedlington to talk on the issue of bonds.

Mr Sullivan—If I may, in terms of coming up with an amount of a bond, the capacity of a person to pay that bond is not that relevant. So we do not seek to put bonds beyond the

capacity of people; nor do we look at someone and say, ‘You have a lot of money. We will charge you a lot of bond.’ The level of the bond is determined by an assessment of the likelihood of a person making himself available for process in a place other than detention. Obviously, if you believe that it is highly likely that a person will abscond, you do not offer any bond. They are detained. If you believe that there is a reasonable likelihood but that a high bond gives that person an option whereby they can be released with the assistance of friends, relatives or banks, it is there for them to take.

The \$10,000 bond is probably at the extreme level of bonds in the organisation. I would offer to make available to you some figures on the average size of bonds. Certainly not part of the decision of the bond level is capacity to pay, and there certainly is never an intention to say, ‘Let us set a bond which is outside this person’s capacity because we want to detain them anyway.’ If you want to do that, you refuse a bond. You detain the person if you believe they will abscond.

Senator McKIERNAN—I will take up your offer if that is appropriate. I think it would be helpful. But I think you would have to agree that a \$10,000 bond, in some instances, can be very prohibitive. It can be impossible for some individuals but meaningless to others. There are different salary ranges applicable to people who are assembled here in this room. For some people it would be extremely difficult to perhaps raise a \$1,000 bond and for others it would be no problems at all.

Mr Sullivan—It is about the chance of them absconding. We can spend \$10,000 very quickly if we had to find someone. We have some guidelines on the setting of bonds, and I will get you a copy of those. You will find from those guidelines that it is not like an American bail system whereby you seem to say, ‘I will set \$2 million for you and \$5,000 for you.’ There are levels within guidelines.

Senator McKIERNAN—Thank you for that. I am not sure what other details are contained in Mr Levy’s letter, but if you can supply that information it would be of use. The final matter I want to address under this category is that I notice that there has been another set of people returned to China from detention in Port Hedland. Do they include any of the long-term detainees? At the last round of estimates committees you provided, on notice, the committee with details of all the individuals who had been held in detention for a period in excess of three years and gave numbers in regard to that. Has that latest removal removed from detention and from Australia those people who were in long-term detention at Port Hedland?

Mr Sullivan—All Chinese nationals who were free of litigation were removed. So it removed all of the longstanding people that we could remove. There are still some longstanding people in detention. But of Chinese nationals, they were all people who were still engaged in litigation or review.

Senator McKIERNAN—I am talking now of just the people in long-term detention. Were any of them in administrative review?

Mr Sullivan—Yes.

Senator McKIERNAN—On instructions from a court?

Mr Sullivan—There could be a remittal of a matter from a court back to the department or it could have been some people who still had not made claims for protection. On one boat there was still a group of people who had not made claims for protection but whom we were unable to remove. Once the removal prospect arose, protection claims were made.

Senator McKIERNAN—How many people are in detention at Port Hedland at the moment?

Mr Sullivan—About 210.

Senator McKIERNAN—As many as that?

Mr Sullivan—The most recent boat from China had 139 persons on board. There are 198 in Port Hedland.

Senator McKIERNAN—That boat arrived off the Queensland coast, did it?

Mr Sullivan—In Torres Strait.

CHAIR—What is the average length of stay?

Mr Sullivan—That is a difficult question. In recent times, the average length of stay of a group of persons not seeking protection obligations is two weeks.

CHAIR—No, of the 198 that currently—

Mr Sullivan—It would not be very long because, as I say, 139 of them arrived only a month or so ago.

CHAIR—How much does the department spend on legal proceedings in defending the various applications?

Mr Sullivan—Our litigation expenditure this year will probably be between \$7 million and \$8 million. The greatest piece of litigation would be in defence of refugee decisions. But I would say most of those these days are from people in the community rather than people held at Port Hedland.

CHAIR—And most of the people making the claims are usually funded by legal aid? Is that correct?

Mr Sullivan—Legal aid fund some people who appeal decisions of the department. It is not always the case that they are legal aid funded.

CHAIR—There is a lot of community money being spent on these issues when one wonders whether, if we have money for legal matters, they could be better spent on Australian citizens obtaining justice. But I suppose that is another argument. Senator McKiernan, how are we going?

Senator McKIERNAN—There seems to be a lull in proceedings.

CHAIR—Last time we had lulls in the proceedings it was to put a lot of questions on notice. So I will not interrupt.

Senator McKIERNAN—See what a bit of training does. If you spend a bit of time with people you can train them properly and they can be—

Senator Vanstone—I know there is a time pressure, so I do not want to delay you long. But since you made the remark, ‘See what a bit of training does,’ the very excellent old *New Yorker* cartoon with some either psychologists or psychology students looking down into one of those mazes with some mice and the mice are saying, ‘I’ve got these guys well trained. Every time I push the button they give me food’ is an excellent cartoon. I could not help but share it with you.

Senator McKIERNAN—Can I offer to read the *Hansard* and try to read into that something that may have not been there while you were enunciating it. At this point, I have no further questions. I have made arrangements to provide *Hansard* with a copy of the transcript from the High Court from which I read a part into the record. I have nothing further at this time.

CHAIR—So there are no further questions at all? In that case, to representatives of the Immigration and Multicultural Affairs portfolio, thank you very much. Thank you, Minister.

Committee adjourned at 11.28 a.m.

