



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

ESTIMATES

**(Supplementary Budget Estimates)**

TUESDAY, 21 OCTOBER 2008

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE STANDING COMMITTEE ON  
LEGAL AND CONSTITUTIONAL AFFAIRS  
Tuesday, 21 October 2008**

**Members:** Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), and Senators Farrell, Feeney, Fisher, Hanson-Young, Marshall and Trood

**Participating members:** Senators Abetz, Adams, Arbib, Bernardi, Birmingham, Bilyk, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Macdonald, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Barnett, Bilyk, Bishop, Crossin, Ellison, Farrell, Feeney, Fierravanti-Wells, Furner, Hanson-Young, Joyce, Marshall, Parry, Payne, Pratt and Trood

**Committee met at 9.03 am**

**IMMIGRATION AND CITIZENSHIP PORTFOLIO**

**In Attendance**

Senator Chris Evans, Minister for Immigration and Citizenship

**Department of Immigration and Citizenship**

**Executive**

Mr Andrew Metcalfe, Secretary  
Mr Bob Correll PSM, Deputy Secretary  
Ms Carmel McGregor, Deputy Secretary  
Mr Peter Hughes, Deputy Secretary

**Internal Products: – Enabling divisions that provide services and support to the delivery of all outputs**

Ms Marilyn Prothero, First Assistant Secretary, Financial Strategy and Services Division  
Ms Alison Larkins, First Assistant Secretary, People and Governance Division  
Ms Robyn Bicket, Chief Lawyer, Legal Division  
Mr Peter McKeon, First Assistant Secretary, Systems Division  
Mr James Fox, First Assistant Secretary, Client Services and Network Performance Division

Ms Deborah Lewis, Assistant Secretary, Service Delivery Network Performance Branch

Mr Nhan Vo-Van, Assistant Secretary, Ministerial and Executive Services Branch

**Outcome 1 – Contributing to Australia's Society and its Economic Advancement through the lawful and orderly entry and stay of people**

**Output 1.1 – Migration and Temporary Entry**

Mr Peter Vardos PSM, First Assistant Secretary, Migration and Visa Policy Division  
Ms Christine McPaul, Assistant Secretary, Education and Tourism Branch  
Mr Peter Speldewinde, Acting Assistant Secretary, Labour Market Branch

Mr Kruno Kukoc, Principal Adviser, Migration Strategies Branch

Mr Matt Kennedy, Assistant Secretary, Family and Health Policy Branch

**Output 1.2 – Refugee and Humanitarian Entry and Stay**

Ms Arja Keski-Nummi, First Assistant Secretary, Refugee, Humanitarian and International Division

Mr John Matthews, Assistant Secretary, Onshore Protection Branch

Ms Judith O’Neill, Assistant Secretary, Humanitarian Branch

Ms Malissa Dryden, Acting Assistant Secretary, International Cooperation Branch

**Output 1.3 – Border Security**

Mr Todd Frew, First Assistant Secretary, Border Security Division

Mr Robert Hoytink, Assistant Secretary, Border Intelligence Branch

**Output 1.4 – Compliance**

Ms Lyn O’Connell, First Assistant Secretary, Compliance and Case Resolution Division

Mr Peter Richards, Assistant Secretary, Compliance and Integrity Support Branch

Mr Robert Illingworth, Assistant Secretary, Compliance and Integrity Policy Branch

**Output 1.5 – Detention**

Mr Dermot Casey PSM, Acting First Assistant Secretary, Community and Detention Services Division

Ms Lucy Bitmead, Assistant Secretary, National Manager, Operations Branch

**Output 1.6 – Offshore Asylum Seeker Management**

Mr Dermot Casey PSM, Acting First Assistant Secretary, Community and Detention Services Division

**Output 1.7 – Systems for People**

Mr Anthony Parsons, First Assistant Secretary, Business Transformation Services Division

Mr Nico Padovan, Assistant Secretary, SFP Program Management Branch

**Outcome 2 – A Society Which Values Australian Citizenship, Appreciates Cultural Diversity and Enables Migrants to Participate Equitably**

**Output 2.1 – Settlement services**

Ms Kate Pope, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Mr Peter Templeton, Assistant Secretary, Settlement Branch

Mr Vincent Giuca, Assistant Secretary, Refugee Support Branch

**Output 2.2 – Translating and interpreting services**

Ms Kate Pope, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

**Output 2.3 – Australian Citizenship**

Ms Kate Pope, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Ms Renelle Forster, Assistant Secretary, Citizenship Branch

**Output 2.4 – Promoting the benefits of a united and diverse society**

Ms Kate Pope, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Mr Stewart Foster, Acting Assistant Secretary, Multicultural Affairs Branch

**Output 2.5 – Systems for People**

Mr Anthony Parsons, First Assistant Secretary, Business Transformation Services Division

Mr Nico Padovan, Assistant Secretary, SFP Program Management Branch

**Migration Review Tribunal and Refugee Review Tribunal**

Mr Denis O'Brien, Principal Member, Migration Review Tribunal and Refugee Review Tribunal

Mrs Mary Urquhart, Deputy Principal Member, Refugee Review Tribunal and Acting Senior Member, Migration Review Tribunal

Mr John Lynch, Registrar, Migration Review Tribunal and Refugee Review Tribunal

Mr Rhys Jones, Deputy Registrar, Migration Review Tribunal and Refugee Review Tribunal

**Migration Agents Registration Authority**

Mr Brian Jones, Chairman

Ms Maurene Horder, Chief Executive Officer

Mr Bernie Waters, Former Chief Executive Officer

**CHAIR (Senator Crossin)**—I declare open this public meeting of the Senate Standing Committee on Legal and Constitutional Affairs. The Senate has referred to the committee the particulars of proposed expenditure for 2008-09 and related documents for the Attorney-General's and Immigration and Citizenship portfolios. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee's proceedings today will begin with the agencies, and, first of all, the Migration Agents Registration Authority.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanation from the parliament, or its committees, unless the parliament has expressly provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to either superior officers or to the minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. Any claim that it would be contrary to

the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for a claim.

### **Migration Agents Registration Authority**

**CHAIR**—I welcome Senator the Hon. Chris Evans, the Minister for Immigration and Citizenship. Senator Evans, did you want to commence with an opening statement this morning?

**Senator Chris Evans**—No, thank you, Madam Chair.

**CHAIR**—I now welcome Mr Brian Jones, the Chairman of the Migration Agents Registration Authority. Do you need to make an opening statement before our proceedings this morning?

**Mr Jones**—Thank you. I would like to make a brief statement.

**CHAIR**—Thank you, Mr Jones. Proceed.

**Mr Jones**—The Migration Institute of Australia is the professional association for migration agents and operates the Migration Agents Registration Authority under a deed of agreement with the Commonwealth for the benefit of consumers. It has done so since the creation of the MARA in 1998. The profession has grown and matured considerably in the last decade. The number of registered migration agents has doubled in this period; there are now some 3,800 registered migration agents. Entry standards have increased. Possession of a legal practising certificate or a graduate certificate in Australian immigration law and practice is now required for the MARA to consider registration.

Professional knowledge must be maintained through a program of continuing professional development. All registered migration agents are required to act in accordance with a code of conduct and, if they are a member of the MIA, a code of ethics as well. The MARA has been effective in addressing consumer complaints against registered agents who breach the code of conduct. More, however, needs to be done and we do not shy away from this. The MARA has undertaken a substantial program of consumer education to alert consumers, especially vulnerable consumers, to their rights, to the existence of the MARA as a consumer protection body and to the importance of using a registered migration agent. This has included print and television advertising, some of which you may have seen, and liaison visits to ethnic communities, migrant resource centres and other groups.

**CHAIR**—Thank you, Mr Jones. We will go to questions.

**Senator BARNETT**—Thank you for your statement, Mr Jones, and for being here today. It is 10 years this year since the MARA was established, so congratulations on that. Can you advise the committee of the exact number of migration agents as of today.

**Mr Jones**—Not as of today.

**Ms Horder**—I will take that question, if that is okay. As at the end of last month, which is about the last count we did—and there possibly will have been a few more registrations since then—there were 3,793 agents registered, to be precise.

**Senator BARNETT**—Is that figure going up each year? Do you have a figure for the last three years?



**Ms Horder**—Yes, it is progressively moving upwards.

**Senator BARNETT**—Could you give us the figures for the last three years?

**Ms Horder**—Certainly that figure is comparable to a couple of months ago, but if we go back 12 months to the end of the last financial year we had 3,492.

**Senator BARNETT**—Do you have the year before that?

**Ms Horder**—In the previous year there were 3,163 registered migration agents.

**Senator BARNETT**—All right.

**Ms Horder**—There has been a steady increase over the past decade.

**Senator BARNETT**—In terms of the process for registering, you have to have a practising certificate, I understand. Can you advise what is required to obtain that practising certificate? What qualification is required? Can you outline that for the committee?

**Ms Horder**—I took on this role just a week ago. On some questions, if you will allow me to, I will refer to my predecessor, Bernie Waters.

**Senator BARNETT**—Of course. Ms Horder, congratulations on your new role. There are no problems at all if you consult. Please go ahead.

**Ms Horder**—I think I might refer to Bernie on that one.

**Mr Waters**—The legal practising certificate, generally speaking, requires an Australian law degree, although there are provisions for the recognition of overseas qualifications in some circumstances.

**Senator BARNETT**—Can you become an agent without having a legal practising certificate?

**Mr Waters**—You can become an agent without a legal practising certificate. To do that you must currently complete a graduate certificate in Australian migration law and practice, which is available through Australian universities.

**Senator BARNETT**—How long would that take full time?

**Mr Waters**—A graduate certificate course is the equivalent of six months study.

**Senator BARNETT**—There is quite a deal of concern in some parts of the community with respect to consumer protection and the importance of consumer protection. I will just touch on this code of conduct that I understand is mandatory. Can you confirm that?

**Mr Waters**—To be a registered migration agent one must abide by the code of conduct. Any breach would bring a registered migration agent within scope of sanction action under that code of conduct.

**Senator BARNETT**—By whom?

**Mr Waters**—By the MARA. The code of conduct is actually set out in the Migration Agents Regulations as schedule 2 to those regulations.

**Senator BARNETT**—So that is mandatory and they sign up to it when they become a migration agent.

**Mr Waters**—It is absolutely mandatory. There is no getting out of that one.

**Senator BARNETT**—What is the cost to be an agent and what is the annual fee?

**Mr Waters**—A migration agent's initial registration is, from memory, \$1,795 and \$1,495 for re-registration—that is, there is a little bit more involved in the initial registration than there is in subsequent re-registration arrangements.

**Senator BARNETT**—Is that an annual fee?

**Mr Waters**—The second fee, the \$1,495, is an annual fee.

**Senator BARNETT**—Does that include a professional indemnity?

**Mr Waters**—In addition, part of the registration requirements are that a registered migration agent hold professional indemnity insurance to a minimum level set out.

**Senator BARNETT**—So there are some safeguards there vis-a-vis the professional indemnity. In your opening statement, Mr Jones, you referred to the code of ethics as well, so we have a code of conduct and a code of ethics. Can you just explain the difference?

**Mr Jones**—The code of conduct is legislated for all registered migration agents. The code of ethics is voluntarily signed up to by members of the Migration Institute. Not all registered migration agents have seen the wisdom of joining the institute.

**Senator BARNETT**—What proportion have seen the wisdom of joining the institute?

**Mr Jones**—I believe a handful under 2,000, so a little more than 50 per cent.

**Senator BARNETT**—If you are a member of the Migration Institute, is it compulsory to sign up to the code of ethics?

**Mr Jones**—Yes. As a member you undertake to abide by the institute's code of ethics.

**Senator BARNETT**—So this is an additional layer of professionalism, ethics and conduct that the agents sign up to.

**Mr Jones**—Yes.

**Senator BARNETT**—Do you think it has merit? Does it make a difference?

**Mr Jones**—Like all codes of ethics it gives people a guide as to how they should behave and what they should aspire to. I think it certainly has merit.

**Senator BARNETT**—Can you just outline the complaints handling mechanism, please?

**Mr Jones**—Would you object to my deferring that?

**Senator BARNETT**—Not at all.

**Mr Waters**—The complaints process involves, generally speaking, a consumer or someone acting on behalf of a consumer. For example, the MARA receives quite a number of complaints from the department. It sees applications on behalf of visa applicants, tribunals, courts and a variety of other agencies and bodies. When a complaint is received, the MARA assesses the complaint to see whether, firstly, the individual complained about is a registered migration agent, because quite a significant number of the complaints that the MARA receives relate to people who are not registered agents, and those matters are referred to the department for investigation action.

**Senator BARNETT**—What happens to those people? Let us face it: that does occur. It is not uncommon where a substantial fee is paid and received for services rendered by people who are not registered migration agents.

**Mr Waters**—I would refer you to the department for the answer to that question because the MARA has no role in the investigation or prosecution of people in that regard.

**Mr Metcalfe**—I will just defer to the chair as to whether or not I should answer a question at this stage, because the department is not formally before the committee yet. I will check whether we should respond to that in the appropriate program area later on.

**Senator BARNETT**—It would be awfully helpful now if you were able to. Otherwise, we are going backwards and forwards in terms of how the department deals with these matters. Through you, Chair, is it possible?

**CHAIR**—Mr Metcalfe, are you able to answer that question or do you need other officers?

**Mr Metcalfe**—Not personally. I would have to call an officer to the table. I will just see whether that person might be available.

**Senator BARNETT**—Perhaps if they are coming we can pursue this. Can they come forward?

**CHAIR**—Mr Metcalfe, what output are we talking about here for the department?

**Senator Chris Evans**—Chair, if you would like to proceed, we will just see if we have the right person here at the moment.

**Senator BARNETT**—Let me know when you have and we will come back to it.

**CHAIR**—Mr Metcalfe, what outcome is it?

**Mr Metcalfe**—It is 1.1, Senator. I do have the correct officer here who can at least cover some of the issues.

**Senator BARNETT**—The question I asked was in terms of payments made and received by non-registered migration agents and complaints that have been subsequently made. I get feedback and other people are concerned about it. It is in the context of consumer protection. What is the process for dealing with these complaints and satisfying the concerns of the consumers?

**Mr Vardos**—When we receive a complaint that relates to an unregistered migration agent, we do refer it to our officers who deal with investigations. The individual or company is approached and given a warning that it is unlawful to provide migration advice when you are an unregistered migration agent. This is a holding response; I can get a lot more detail for you if I have a few moments.

**Senator BARNETT**—What law are they breaching?

**Mr Vardos**—The Migration Act. They cannot formally provide migration advice unless they are a registered migration agent and have gone through the process of obtaining the qualifications that they need to become a migration agent, which Mr Waters alluded to.

**Senator BARNETT**—If they have invoiced the client and received the payment for services rendered, does the consumer get their money back?

**Mr Vardos**—It really depends on the nature of the transaction. There may be no invoices. It may not be a formal arrangement. They are just shonks who are operating outside the structure of the registered migration agent system. They have a range of ways of operating. In most cases I would expect that they would try to do it in a subtle way because most of them, if not all, know that they are practising outside the registered migration framework.

**Senator BARNETT**—How many complaints have you received of that sort in the last 12 months?

**Mr Vardos**—I would have to take that on notice. I just do not have that with me at the moment.

**Senator BARNETT**—All right. Be assured it happens.

**Mr Vardos**—Yes, we know that.

**Senator BARNETT**—This is an area of concern.

**Mr Vardos**—We will be in a position to provide you with a lot more information later in the session.

**Senator BARNETT**—Thank you very much. I will go back to the agency. Mr Waters, how many complaints have you received in the last 12 months? Let me make it clear that we have received your 2006-07 annual report, but we have not received your 2007-08 annual report. So can you provide an update of how many complaints you have received in the last financial year.

**Mr Waters**—That report is currently with the printers. During 2007-08, the MARA received 310 formal complaints in relation to professional conduct. In addition, the MARA opened for itself a further 39 matters where examination of either a complaint that might have been closed or a re-registration arrangement had revealed a matter of possible concern.

**Senator BARNETT**—Can you outline the consequences of the complaints, how they were handled, the investigations and the disciplinary measures that were undertaken flowing from that? Have you got an analysis of that?

**Mr Waters**—Yes, I can provide an outline of that. Each complaint as it is received is assessed to determine whether the person is a registered agent and whether there has been or is prima facie a breach of the code of conduct. Some of the complaints the MARA receives are, in fact, in relation to ‘I didn’t get my visa’, which of course is not necessarily due to a breach of the code of conduct by the registered migration agent.

The MARA then puts the matter to the agent, calls for the file from the agent in relation to that client, does an assessment of that, refers back to the complainant to get their views on the agent’s response to the complaint and in the light of that determines whether or not further action is necessary. If further action is contemplated, the matter is then put to the agent that there appears to be a case for the agent to answer and they are then invited to provide any submissions before sanction action is then considered. Inevitably, in that situation—and that is the minority of the total number of complaints—a submission will be received from the agent.

**Senator BARNETT**—How many sanctions were dealt with in the last 12 months, or how many agents were sanctioned and how many were deregistered?

**Mr Waters**—During 2007-08, there were a total of 21 sanctions. These involved five cautions, 11 suspensions, one cancellation and four agents were barred from return to the professions.

**Senator BARNETT**—Sorry, 11 suspensions, four—

**Mr Waters**—Five cautions and 11 suspensions.

**Senator BARNETT**—How long was the suspension?

**Mr Waters**—A suspension would vary in length from three months to three years, from memory. It is possible to make a longer suspension, but I cannot recall one of longer than three years.

**Senator BARNETT**—Okay. Go on.

**Mr Waters**—There was one cancellation—that is, the agent's registration was cancelled and they were no longer permitted to practise. Four people were barred from practising—that is, former agents or the like who were barred from entering the profession.

**Senator BARNETT**—With respect to those four, why were they barred? What were the circumstances?

**Mr Waters**—I would need to take that on notice.

**Senator BARNETT**—If you could. That information, I assume, is in your annual report.

**Mr Waters**—There is information in the annual report, but the precise reasons for each of those barrings would probably not be in the annual report.

**Senator BARNETT**—Could you take on notice, please, the details regarding the 310 formal complaints, the 39 matters? I am interested in the time period in which the complaints were dealt with.

**Mr Waters**—Currently, the average time to finalise a complaint is approximately four months.

**Senator BARNETT**—Can you take it on notice to find out what the longest time is to deal with a complaint?

**Mr Waters**—I am more than happy to take that on notice but, broadly speaking, I am aware of only one complaint that took much beyond 12 months.

**Senator BARNETT**—Could you also take on notice the details of those 21 sanctions and provide further and better particulars to those—and the four that were deregistered and the reasons for those.

**Mr Waters**—All of those sanctions are in fact published on the MARA website, but we are more than happy to provide that on notice.

**Senator BARNETT**—Yes. Specifically with those four, thank you. Do you think that the consumer is being adequately protected under the current arrangements? Perhaps Mr Jones could best answer that question.

**Mr Jones**—I think we can always do better. I think we are doing well, but I believe we will continue to work to do better.

**Senator BARNETT**—The context of it is that we have got an increasing number—as you know from the government’s decision earlier this year—in our migration intake. So you might find that there will be an increased number of agents signing up and registering in the next 12 months and the years ahead. You might also find that there will be an increase in the number of complaints and that consumer protection will become even more of an issue. So it is important that we deal with this now and try to improve the systems so that we can get it right for the months and years ahead, because all members of parliament get feedback from time to time, and some of those people giving feedback are not happy pumpkins.

**Mr Jones**—Improving the profession and thereby improving the outcomes for consumers is our focus. Sanctions play a role in that. Education plays a role in that.

**Senator BARNETT**—I will not pursue this any further at this stage. I just wanted to—as we discussed last time, I think, at estimates—put you on notice that this is an area of concern. I am sure, Ms Horder, you will get across it in your new role as CEO in the weeks and months ahead.

**Mr Jones**—This is an area of great concern to the profession on an ongoing basis, but I take your question on notice.

**Senator TROOD**—Forgive me if this question has been asked. I just wanted to clarify whether or not the deed of agreement between the department and the institute—which is, I gather, due for renewal in March next year—will be renewed. Is that correct, Mr Metcalfe? Minister?

**Mr Metcalfe**—I will have to check on that.

**Senator TROOD**—I understand, Minister, that you have had a report from the reference group which will in some way determine whether this agreement is to be renewed. Can you tell us whether or not you have made a decision on the matter as yet?

**Senator Chris Evans**—I have received a report from a review committee set up by the previous government. It is a very comprehensive review on a range of issues in this area. I am currently considering it and have sought some further advice from the department. I expect to release the review shortly.

**Senator TROOD**—So you plan to release the review. But I gather that some decisions have to be made in light of the need to renew the agreement.

**Senator Chris Evans**—Yes. That is why I have not released the report, because, in a sense, without having the government response ready, it would beg a whole range of questions. That is why it is taking a bit longer for me to release the report. Ideally, with these things, you release them when you get them. But if that then requires quite a comprehensive response from the government you have got to do it at the same time. I expect that to be very shortly.

**Senator TROOD**—So that will be releasing the review and your decision in relation to the renewal of the agreement?

**Senator Chris Evans**—At least as a direction of the way forward and inviting some comment.

**Senator HANSON-YOUNG**—I have some questions around climate change refugees. I am not sure exactly which outcome to put them in, so I was going to ask them in general questions.

**CHAIR**—This is an agency.

**Senator HANSON-YOUNG**—Can I have some direction as to which output it would come under?

**Mr Metcalfe**—I will assist Senator Hanson-Young. When we get to the department, I think we have two agencies first—we have MARA and then the tribunals. Questions about ‘climate change refugees’ could either be asked in general questions at the beginning or in output 1, which relates to migration and refugees.

**Senator HANSON-YOUNG**—Thank you. I will put them in outcome 1, then.

**Senator FIERRAVANTI-WELLS**—Clearly the trend and increase in the number of migration agents is seen as fairly lucrative; otherwise, we would not have so many people wanting to go into that profession. In particular I note that you have said that you have a record number of students in the Graduate Certificate of Australian Migration Law and Practice. With your graduate program and the higher standards that, I take it, you are now imposing, are you going to find that the level of complaints that Senator Barnett was talking about will be reduced? Basically, notwithstanding the changes that you appear to have effected, do you still have a similar number of complaints—the same sort of trend of complaints, if I can put it that way?

**Ms Horder**—If we look at that over time, in fact that level is actually working in reverse. Again, I will invite Bernie Waters to comment on what that trend has been, because I think it is quite an interesting perspective, and I will also ask him to comment on what the retention rates are within the sector, because I found that very interesting.

**Senator FIERRAVANTI-WELLS**—I noticed that in some of the statistics that you provided you have a high intake; you were saying that currently you have 3,793. But I did notice in your annual report that you had about 371 that actually left the profession over that period. So you have a high intake but you also have a high departure rate.

**Mr Waters**—I am not too sure where to start with all of that. I would suggest that over the course of the last decade there has been a gradual rising in the number of complaints through to 2003-04. Since then there has been a slight trend downwards—that is, from a high of 564 formal complaints from consumers received down to the 310 level last year there has been a gradual reduction. There is no question that the introduction of higher entry standards and increased stringency of professional development courses are intended to lead to a reduction in the number of consumer complaints. Quite clearly, the idea of a better educated, more knowledgeable and more ethical group of agents should lead to a reduction in the number of complaints, and that is clearly the goal. In the profession as a whole there is a considerable churn factor, with each year perhaps 10 per cent or so of the existing profession leaving the profession to do other things.

There are a number of reasons for this, and it is very hard to pinpoint any one reason as being, if you like, the most powerful influence for that. Firstly, the age structure in the

profession is relatively old. The average age of a migration agent is some 44 years. If we are considering that many of the graduate certificate entrants to the profession are in their 20s or perhaps 30s, one can see that there is a considerable resignation or retirement element to people leaving the profession.

I guess the other point I would make is that, while your comment that it is a lucrative profession does have some truth, it is not the case for every single agent. There are many agents who, in my view, do not make a good living from the profession, and many of the graduate certificate students and new entrants to the profession may feel that the likelihood of earning a lucrative income is higher than it actually is, particularly in the start-up phase, as with any small business—and most registered migration agents are in small business. There is a high turnover rate, and I think they are sorts of factors that leads to the turnover that you have mentioned.

**Senator FIERRAVANTI-WELLS**—Over my 20-year career with the Australian Government Solicitor and acting for the department on many occasions, I have seen my fair share of shonky migration agents, so I speak from personal experience. What is the average time of a migration agent in the industry? What are your figures showing? You have said that the average age is 44 years. Given there is such a high rate of churn, they must not stay in the industry too long.

**Mr Waters**—The average length of time in the profession is between three and four years. The situation is that we have the retention rate after 12 months recently being close to 80 per cent; after two years it has dropped to 63-and-a-bit per cent and then after three years to 53.6 per cent.

**Senator FIERRAVANTI-WELLS**—Of course, that then raises the issue that really they are barely there to gain expertise in what is really quite a complex area before they move on, and it then leads to the sort of questions that Senator Barnett was asking. When you look at the complaint trends and see, for example, in your annual report that at the top of the list of alleged breaches is competence and integrity, do you have a serious issue with incompetent migration agents that are not giving proper service?

**Mr Waters**—There is no question that the competence of migration agents is an area of considerable concern to the profession, and it is very much the focus of the continuing professional development activity which the profession is undertaking. There are some quite detailed courses provided to all in the profession. It is a requirement for all migration agents to undertake a minimum level of continuing professional development, and most in fact undertake more than the minimum.

**Senator FIERRAVANTI-WELLS**—Are there issues of English language skills? Is that a problem amongst some of the migration agents?

**Mr Waters**—I am sorry, I missed that question.

**Senator FIERRAVANTI-WELLS**—English language skills: in fact, their competence in English language—



**Mr Waters**—There have been quite a number of complaints about the English language competence of some migration agents. That is a matter that I might ask Mr Jones to comment on.

**Mr Jones**—There are complaints about the English language competence of registered agents on occasions. Those complaints are generally anecdotal, which does not mean that we dismiss them; we accept that there is a concern. The authority is introducing from next year an increased level of English language competence for new registrants at level 7 average on the IELTS, the International English Language Testing System, with a minimum of 6.5. We currently operate at level 6 for new entrants. We are looking at taking that to level 7. We are also investing applying an English language requirement of level 7 across the profession the following year.

**Senator FIERRAVANTI-WELLS**—How much of the level of complaints is really a question of managing perhaps at times unreal expectations that migration agents raise in people? Over time I have seen some very unscrupulous migration agents promise people so much and deliver so little. How many of the problems in this area are because of unreal expectations that migration agents raise vis-a-vis clients, particularly when those clients have very, very poor English?

**Mr Waters**—That is very difficult to in fact come to grips with. Quite clearly the question of unreal expectations is very real and is a significant factor in many of the complaints which the MARA receives. What is difficult is to determine exactly where those expectations arose from. It is a requirement under the code of conduct that all registered migration agents provide realistic assessments of a person's prospects of success with a visa application—that is, they tell it like it is, and most agents do so. That said, there have been instances where agents have raised expectations beyond what anyone would consider a reasonable level, but at the same time there are many instances where clients, because they have engaged a migration agent and paid them money, have an expectation of success just on the basis of that.

**Senator FIERRAVANTI-WELLS**—Can you explain what the general practice is? Is it usual for migration agents to just take money upfront? What is the latest trend? We do hear a lot about migration agents taking upfront fees and then not delivering. Mr Jones, I would like you to put that into more context.

**Mr Jones**—The practice varies from agent to agent as to when money is taken and what notice is given. There is a requirement—and it seems to me a very reasonable requirement—that an agent should give a client a statement of costs and a reasonable indication of what the fees associated with the application are likely to be, differentiating the associated costs. The code specifies the detail. Some agents will take a full cost statement, which is to be held in a client's account until it is invoiced for and then charged as the process goes forward. Other agents choose to take payments in amounts throughout the process. Some people render an invoice at the end. The practice is very varied and I do not have any numbers as to what people do there.

**Senator FIERRAVANTI-WELLS**—Given the negative perceptions, justified or otherwise, that are out there about agents—and, regrettably, the conduct of some agents has led to these perceptions—is it incumbent on you to perhaps take greater interest and scrutiny

in this area and look at some more formal framework or parameters for operation to ensure, particularly as you are dealing with an area where people's English skills are generally quite limited, better protection of their expectations and rights? Is that something that you have contemplated?

**Mr Jones**—We contemplate the better protection of clients constantly. The particular issue of how money is handled and when money is received and clients' expectations has not been a formal matter of consideration of recent time. We do have in place the process requiring that if a client's application has no prospect of success, they must be advised of that. Otherwise the agent is in breach of the code. We require that the client's instructions be acknowledged in writing and that a client be notified as to the likely costs and fees that the agent can identify as applying to the application.

**Senator BARNETT**—At the beginning?

**Mr Jones**—At the beginning. We also require that funds paid in advance of service be held in the client's account until those services are performed. Regarding alternative methods to better enhance that system without adding substantially to cost, one of the issues with this for us always is that when we put a requirement on an agent or on the profession we increase costs. Those costs ultimately become the cost of the client, so we need to be careful in doing these things. Any suggestion as to how we could better handle the finance and protect clients is always well received.

**Senator FIERRAVANTI-WELLS**—I guess my point is that, given the correlation between increased migration cases through the system, an increase in the number of migration agents can only lead to the assumption that there is likely to be much more activity in this area, and so prevention is better than cure—and that is really where I am coming from. If we do have an increase in activity, given various changes that have occurred recently, we do not want to be here next year dealing with the same issues, only with greater numbers. That is really the point that I am coming from. Clearly, you are seeing an increase in the trend in the number of migration agents. Clearly, out there, migration agents think that this is a growing industry, so therefore there are greater numbers of them. Clearly, they see this—and I am coming back to my initial point—as a lucrative profession, if I can put it that way, so you are getting greater numbers. People are obviously going into this industry because they believe that there is going to be some money in it for them.

**Mr Jones**—Some of us are there because we enjoy the work and think it is important.

**Senator FIERRAVANTI-WELLS**—I appreciate that, but a lot of these migration agents are clearly not paying their fees on an annual basis just for the heck of it. They are obviously doing it because they perceive that there is work in it.

**Mr Jones**—That is true; it is a profession.

**Senator FIERRAVANTI-WELLS**—So it is a profession and people are obviously going into it for that reason. Can I now take you along the line of prevention being better than dealing with problems at the end. I notice that you have mentioned your communication section in your last annual report. How many of the issues in this area are disseminated through ethnic media and ethnic radio programs as part of community information?

**Mr Jones**—I will refer that to Mr Waters, if I may. He ran the programs.

**Senator FIERRAVANTI-WELLS**—I am referring to facts about migration agents. If you are a new arrival, where do you find facts about migration agents?

**Mr Waters**—There are a range of sources. The MARA advertises in both the print and television media. We have run a series of SBS television advertisements recently. We are in very close contact with ethnic community groups, disseminating information about migration agents. We have a range of very easy to read material in a number of languages for consumers considering the use of a migration agent. In fact, it is a requirement under the code of conduct that, when being engaged, a migration agent provide a document prepared by the MARA called *Information on the regulation of the migration advice profession* which sets out a consumer's rights, what they can expect from a migration agent and what their migration agent is expected to do for them.

**Senator FIERRAVANTI-WELLS**—Is the print form in a number of different languages?

**Mr Waters**—That document is available in English and 12 or 13 other languages.

**Senator FIERRAVANTI-WELLS**—Do you run information spots on SBS radio—bearing in mind that radio is an important medium for people, particularly for new arrivals?

**Mr Waters**—No.

**Senator FIERRAVANTI-WELLS**—Have you contemplated doing that? SBS is a public broadcaster, after all.

**Ms Horder**—This is an area that I share a particular concern with you about. Certainly, it is our intention to take this campaign further. The direct answer to your question is, I am advised, that we have not used ethnic radio thus far specifically for that purpose. We have cranked up quite a good program in the last 12 months since the report that you have to hand. It is our intention that we will crank that up even further in terms of putting some real attention onto our communications with the constituency, with the clients, because that is a priority area which, I think, has come out in a couple of earlier discussions as being important. We intend to recruit someone very soon. The process is in hand to put some further effort into that.

**Senator FIERRAVANTI-WELLS**—In the days when SBS was actually doing what it was supposed to do and following its charter to the letter, it did provide some useful information on a community information basis. Certainly, as I was growing up, a lot of valuable information was given to people of non-English-speaking backgrounds on SBS—important information about a whole range of issues. It seems to me that your body could usefully look at ways that our public broadcaster could serve an important public constituency in this area and adhere to some of the terms of its charter a lot more than it does now. Perhaps on the next occasion we might hear a little bit more about whether you have progressed that one.

**Ms Horder**—I am a great advocate for using community radio, so we can also look at that.

**Senator FIERRAVANTI-WELLS**—There is community radio as well. There is a lot more community radio and SBS radio. Of course, there are also the other ethnic media. Apart from the print media, we now have pay TV and all sorts of other mediums that are out there. Thank you. I have no further questions.

**Senator BARNETT**—Could you perhaps take on notice the location of the agents. Obviously we have got a big nation. I come from the state of Tasmania. I presume the vast majority are in Sydney and Melbourne, but if you could identify the locations in an answer, that would be appreciated.

**Ms Horder**—I can advise you that as at today we have 20 agents in your state. There are greater numbers—as you would imagine from the total—in and along the east coast, but we have agents in all cities. Would you like to know it state by state?

**Senator BARNETT**—When you say ‘all cities’—all capital cities?

**Ms Horder**—All capital cities and some regional.

**Senator BARNETT**—Yes. But not ‘all cities’.

**Ms Horder**—In Tasmania there are 20.

**Senator BARNETT**—I am interested in the location—as in, not just the state. Could you break that down for Tasmania—that would be Launceston, Burnie and Devonport. For the others just give us a state and territory breakdown as to the location of the agents.

**Mr Waters**—We will take that on notice. I would not imagine that, for a group of 20 agents, it would be terribly difficult for us to work out exactly where they are within Tasmania. We do not currently provide any statistical breakdown on the location of agents at that level of detail, but it should not be hard to do that for a group of 20 agents.

**Senator TROOD**—Mr Waters, just in relation to your general remarks about concerns with regard to the professional practices of agents, does this generally apply to those that have a specific interest in education areas?

**Mr Waters**—Many of the people who provide advice to would-be students in Australia are, in fact, education agents and are not registered migration agents. There is a fine line between giving advice in relation to education and in relation to visas. It is certainly an area where we get quite a number of complaints as to whether people have crossed the line or not. Student visas is one of the areas which leads to complaints against registered migration agents and education agents alike.

**Senator TROOD**—Some of these complaints about education agents have come to my attention and it does seem to me to be an area which may need some closer regulation. Have you considered that possibility?

**Mr Waters**—The Migration Institute of Australia has a policy, which would suggest there needs to be more regulation in the area of education agents where they are engaging in visa advice.

**Senator TROOD**—I think that is an accurate assessment of the need in the marketplace but I am interested to know whether or not there is a plan on the part of the department—or perhaps, Minister, you need to answer this question—to actually regulate this matter rather more closely in this area and register education agents so that they can be held accountable for the advice they give. Is there any intention with regard to that issue?

**Senator Chris Evans**—This will probably come up later in the program but I have very severe concerns about the operation of some of the education agents, both in this country and

abroad. It is an issue that the department is focusing on because people are being offered packages that include education, work experience and visas and they are also being offered migration advice. I saw an ad the other day which reflected an education agent advertising that, as part of the package, they could provide a visa outcome for people. So it is a growing concern. We have limited legislative powers to deal with that and some of that obviously requires us to operate out of other portfolio departments.

I have had a discussion with the Deputy Prime Minister about these issues and the interaction between education agents' activities and migration issues because of the interface in the student area. I think you are right to highlight the concern. It is not really an issue for those at the table in the sense that it is outside their remit but it is a growing issue that the Deputy Prime Minister and I are focused on, and I think we will have to look at providing ourselves with greater powers to deal with what is an emerging problem. As you probably understand a large part of the problem is overseas when the marketing is done in the source country.

I met with the Chinese ambassador the other day and one of the issues I raised with him was regulation of these sorts of issues in the source countries and how they are managed. Effectively if someone gets induced and sold a package in their home country there is very little we can currently do about that. They arrive with expectations that cannot be delivered. As I say I think you are right to raise the issue. It is an area of concern and we are looking at what we can do better to deal with education agents offering or purporting to offer migration services which they are not eligible to provide.

**Senator TROOD**—I am grateful for that advice, Minister. May I just encourage you to look at this in a timely way because I think it is becoming an increasingly urgent problem and people are clearly being disadvantaged. Misrepresentation is taking place and even exploitation is taking place in relation to some of these issues.

**Senator Chris Evans**—I also discussed this issue the other day with a delegation from the Australian universities. We had a good discussion about it from their perspective as well. Obviously, they do not want anything that undermines the reputation of Australia's education services and opportunities. Anything that brings education services into disrepute has a flow-on effect to the reputation of our universities and other education providers, so they are also concerned about it. We talked about things that we could perhaps do together to tackle some of those issues.

**CHAIR**—As there are no more questions for this agency, I thank Mr Jones for your attendance today. We certainly appreciate your time.

[10.00 am]

### **Migration Review Tribunal**

### **Refugee Review Tribunal**

**CHAIR**—I welcome witnesses from the Migration Review Tribunal and the Refugee Review Tribunal. Do you have an opening statement you wish to give to the committee?

**Mr O'Brien**—I do have a brief opening statement on behalf of both tribunals. First of all, can I say how pleased we are to appear before you today. I thought it might be useful to

mention some of the key operational outcomes of the tribunals for the last financial year. First of all, looking at the case load of the tribunals, so far as the RRT is concerned I can report that, in 2007-08, 2,284 applications were lodged and we decided 2,318 cases, so our clearance rate for the RRT was positive. We had only 584 cases active at the end of the year.

**Senator BARNETT**—Was that at the end of the financial year?

**Mr O'Brien**—Yes, 2007-08. In the MRT there were more lodgements than decisions finalised; 6,325 applications lodged and 5,219 cases were finalised. We had 4,640 active cases at the end of the financial year. I am happy to say, however, that the statistics for the first quarter of this financial year are showing that some measures that we have put in place to address the MRT backlog appear to be bearing some fruit. Detention cases in 2007-08 comprised less than five per cent of the cases before the tribunals, with most applicants in Australia holding a bridging visa or other visa during the review.

For the MRT there was a further decline in bridging visa cases over the year, reflecting a reduction in the overall number of persons held in immigration detention. There were increases in the MRT in skilled, visitor and student cases. For the RRT, more than 55 per cent of the lodgements involved cases from three source countries: the People's Republic of China, India and Indonesia. Lodgements relating to the PRC were at 39 per cent, India at 9.4 per cent and Indonesia at 7.2 per cent of total applications. In 2007-08, 70 per cent of the RRT's reviews were completed in 90 days.

**Senator BARNETT**—What per cent, sorry?

**Mr O'Brien**—Seventy per cent for the year, Senator. We received no complaints of delays in the completion of reviews during that reporting period. For both tribunals the review provisions amendments came into force in June 2007. They amended the tribunals' statutory obligation to give applicants an opportunity to respond to adverse information and, in particular, they gave the tribunals an option to put adverse information orally at hearings instead of doing so in writing. Under the new procedure members are required to provide clear particulars of the adverse information and must advise applicants that they may request an adjournment of the hearing to enable them to have additional time to comment on the information or to respond to it.

I can report that over the past 2007-08 year requests for additional time were made in 19 per cent of MRT hearings and in 24 per cent of RRT hearings with more than 90 per cent of the requests granted. Written requests for information or to comment or respond to information were used in 40 per cent of MRT cases and in 26 per cent of RRT cases. I am not aware of any concerns from applicants regarding members' use of the new procedure. Nor, to date, have the courts found any error in members' use of the new provisions.

I might finish by just briefly mentioning the removal of the handing down provisions. The Migration Legislation Amendment Act (No. 1) 2008 has recently been enacted and, relevant to the tribunals, it removes the procedure for the handing down of decisions. Until now the tribunals have been required, in most cases, to invite the applicant and the department to the handing down of the decision. This process meant that most decisions were not given or sent to the applicant or the department until two weeks after the decision was signed by the member concerned. Under the amendments the effect will be that the date of the MRT or RRT

decision will be the date that the written statement of the decision is signed by the relevant member. The date of commencement of the new provisions is next Monday and we are in the process of notifying stakeholders of implementation arrangements concerning abolition of the handing down procedure.

Madam Chair, that is all I wanted to say by way of an opening. I am happy to answer any questions on the matters that I have raised in that opening or on any other matters that senators may wish to question us on.

**CHAIR**—Thank you, Mr O'Brien. Senator Barnett, you have some questions?

**Senator BARNETT**—Thank you, Chair, and thank you, Mr O'Brien, for your opening statement. We have your 2006-07 annual report but we have not received your 2007-08 annual report. How far away is that?

**Mr O'Brien**—It is fairly close, Senator. We have had a first draft back from the printer, so it is close.

**Senator BARNETT**—Perhaps some of the information may be included in that annual report but it would be useful if we could see that in advance of estimates, so just for future reference I bring that to your attention. I asked some questions last time we were here on a range of areas including the selection process for members, your caseload and the complaints handling mechanism. Could we just touch on those at the moment. In relation to the current membership, what is the total number both full-time and part-time?

**Mr O'Brien**—Currently, Senator, we have 91 members and, from recollection without giving you an exact figure, 85 per cent of those members are part-time.

**Senator BARNETT**—The minister responded last time and may recall we talked about the merit selection process, which is a new approach that was being undertaken by the government. Can you advise the committee of further and better particulars regarding the merit selection process for the appointment of members and provide a status report on how that is being implemented?

**Mr O'Brien**—Yes, I can say some things about it—and the minister might want to say some things too. First of all, the current senior member positions in the tribunal all expire as at 31 December this year, so we have embarked on an appointment round for new senior members to fill those positions from 1 January.

**Senator BARNETT**—How many positions are there?

**Mr O'Brien**—We had advertised for two positions in Melbourne and three in Sydney—so, five in all. That advertising and selection advisory process has been underway under the government's new procedures for appointments to statutory offices, and the selection advisory committee has now made its report to the minister. So really the next steps are up to the minister and his colleagues in the cabinet.

**Senator BARNETT**—Can I just stop you there. You have mentioned the new procedures for the selection of agency officers. Can you table that new procedure?

**Mr O'Brien**—That new procedure is basically the procedure that Senator Faulkner promulgated. It is administered, as I understand it, by the Australian Public Service Commission. So it is available elsewhere as a public document.

**Senator BARNETT**—Does it have a specific name? Perhaps the minister might be able to assist us?

**Senator Chris Evans**—I cannot assist you with a specific name. I know I should be able to, but I am sure we can get it. Basically, Mr O'Brien's advice is correct. The government, through Senator Faulkner, announced the new procedures and we have just adopted them. Mr Lynch, are you able to help us with the full title?

**Mr Lynch**—Yes, I am. There was a media release by Senator Faulkner on 5 February this year entitled 'New arrangements for merit and transparency in senior public service appointments'. Hyperlinked to that media release was a document—which I do not have the precise heading for—which deals with the policy guideline, and establishes the new policy implementing transparency and merit-based assessment in the selection of most Australian Public Service agency heads and other statutory officers working in, or in conjunction with, APS agencies.

**Senator BARNETT**—I have a transcript from the estimates hearing we had in this room on 28 May where Minister Evans refers to 'a merit selection process for all vacancies at the conclusion of appointments in the tribunal'. The minister goes on to say that there will be a merit selection process for all the positions. I think you said that you would make it available, or would advise us of what it was. But this was in May, while that announcement was in February. So is that what we are talking about—the February announcement by Senator Faulkner?

**Senator Chris Evans**—Yes, that February announcement was of the new procedures to be followed, and the department and the tribunal, in filling its senior member vacancies, has adopted those procedures.

**Senator BARNETT**—Can we have that tabled as soon as is convenient?

**Senator Chris Evans**—I do not have it with me but I will get you a copy.

**Mr Lynch**—If I could just add to that, there was a question on notice that we took from you at the last estimates proceedings. You asked for an outline of the new appointment process for the tribunals, and an answer was supplied in due course, basically stating, 'The new appointment process for the Migration Review Tribunal and the Refugee Review Tribunal reflects the new arrangements announced by Senator the Hon. John Faulkner, Special Minister of State, in a media release of 5 February 2008, regarding merit and transparency in senior public service and statutory appointments. Noteworthy elements of the new appointment process include: all positions will be widely advertised in major newspapers in capital cities, the relevant portfolio's secretary and the Public Service Commissioner will oversight the selection process, appointments will normally be for five years and existing officeholders will be given reasonable notice as to whether they will be reappointed. The new arrangements are to be effective immediately and fully implemented by 1 July 2008.'



**Mr Metcalfe**—I can probably assist on this issue as well. That is indeed the very process that is being undertaken. In relation to the senior member appointments that Mr O'Brien just referred to, consistent with the government's guidelines there has been advertising of the vacant positions in the national press. A large number of applications were received. A selection committee consisting of me as chair, the principal member, Mr O'Brien, a nominee from the Public Service Commissioner—in this case, the former Deputy Public Service Commissioner who has just retired—and an independent community member. We went through the usual processes of short-listing applications and then interviewing a number of people in both Sydney and Melbourne for the vacant positions. That process is now moving towards completion.

**Senator Chris Evans**—Correct me if I am wrong, Mr O'Brien, but we gave a temporary extension to a couple of senior members to bring them into line so that we had a full round of selection. I took the decision not to reappoint the existing senior members but to invite them to apply in that round. So no-one was reappointed without going through the full selection process. All the vacancies were dealt with in the same way in one round of selection. I understand the brief is on its way to me, but it has not yet been received.

**Senator BARNETT**—What I am trying to get down to is the nitty-gritty devil in the detail. That announcement by Mr Faulkner—and you have read the answer to the question that I asked back in May—talks about the merit and transparency in the appointment process. My question for the RRT and MRT is: do you have criteria that people are aware of when they nominate for or apply for a position? Are there some sorts of criteria? With respect, Mr Lynch, all the dot points you have read just say that the positions are going to be advertised. The Public Service Commissioner will oversee the selection process. Existing holders will be given reasonable notice as to whether they will be reappointed. There are no criteria there. There is no evidence of a merit selection process.

**Mr O'Brien**—Perhaps I could take that question. The selection criteria were devised in conjunction with the department. Applicants applied basing their applications on addressing those selection criteria.

**Senator BARNETT**—Can we have that tabled—the criteria you are referring to for both RRT and MRT?

**Mr O'Brien**—Certainly.

**Senator BARNETT**—That is what we want to get to the bottom of.

**Mr Lynch**—If I could just add to that: each applicant who contacted the department expressing interest in the positions was sent a full package of the criteria, the duty statements, remuneration and other terms and conditions. We put that on our website as well. The department made those documents available to anyone who showed interest.

**Senator BARNETT**—Very good.

**Mr O'Brien**—For the sake of completeness: I think we had about 80-odd applications received for those five positions.

**Mr Metcalfe**—Just so there is no confusion, can I say that the selection processes have actually been the responsibility of the department in that—as the government's guidelines

make clear—it is the obligation of the secretary of the department that the relevant statutory appointments fall within to undertake that process. Certainly, while we have been given great assistance by the tribunal, the management of the selection process—the placement of the advertisements in consultation with the principal member, the drawing up of the selection criteria, the provision of the information to applicants contact with applicants—has been undertaken by my department. So, probably more properly, I think we should take on notice your request for a copy of the selection criteria, and we will provide those to the committee.

**Senator BARNETT**—Thank you. I remember we had a bit of a banter across the table regarding the ‘advertising widely’ approach. The advertising was in the *Financial Review* and the *Australian*, and I think I recommended that it should be done a little bit more widely than that—being a Tasmanian senator, I am thinking of other states outside of the capital cities of Melbourne and Sydney.

**Mr O’Brien**—I think that happens, Senator.

**Senator BARNETT**—That is very good to hear.

**Senator Chris Evans**—The Hobart *Mercury* will be pleased to know you are looking after their advertising revenue, too.

**Senator BARNETT**—I think the *Examiner* and the *Advocate* would be interested as well. Just to move onto the complaints mechanism and I know it is quite comprehensive as we discussed that last time but because I do not have your 2007-08 annual report I do not know what is in it.

**Mr O’Brien**—Yes.

**Senator BARNETT**—I would like it if you would take on notice—it may be in the annual report—in terms of the complaints that were and are upheld, could you identify the nature of the complaint and the consequences flowing from that?

**Mr O’Brien**—We may have to take that on notice, Senator. I can tell you that there were about 20 complaints received in relation to the MRT.

**Senator BARNETT**—That were upheld?

**Mr O’Brien**—No, this is total received. I think we will have to take the upheld bit on notice. We received about six or seven complaints in relation to the RRT for the financial year.

**Mr Lynch**—If I could just add to that as well, Senator, if I may. In response to a question you posed on notice at our last appearance you asked us, in relation to all complaints upheld in MRT and RRT, to provide the circumstances and nature of the complaints and the consequences. We have supplied a fairly comprehensive report.

**Senator BARNETT**—That is what I want an update on, thank you. In terms of the case load, we had a query last time regarding the definition of constituted and unconstituted. Your response was that the constituted had been allocated to a member for the conduct of a review. In terms of the figures that you provided in your opening statement is there a way of breaking down those figures into constituted and unconstituted cases?

**Mr O’Brien**—There is a way of breaking those down. I do not know whether the registrar might be able to give me a little bit of assistance.

**Mr Lynch**—I certainly would be able to, Mr O'Brien. Senator, up to 30 September in the MRT a total of 773 cases constituted members, which is 38 per cent of the total case load, and 2,908 cases were unconstituted, comprising 62 per cent of the case load. On the RRT we had 510 cases constituted, which comprised 85 per cent of the case load, and 93 cases were unconstituted, comprising 15 per cent of the case load.

**Senator BARNETT**—Does the high level of unconstituted concern you? How do you respond to that?

**Mr O'Brien**—Yes, it does. We have adopted various strategies to deal with it. The high level of unconstituted is in the MRT. I can inform you that on our most recent allocation rounds the oldest unconstituted cases are now, I think, thankfully into this year, that is the 2008 applications—although there still may be a few December 2007 applications. So at least we are in this calendar year as far as the oldest unconstituted case load is concerned. In terms of dealing with that unconstituted case load we have adopted various strategies. The first strategy was the oldest unconstituted case load, which was developing in Melbourne, and we invited a circuit of Sydney members to go down to Melbourne and deal—

**Senator BARNETT**—That would have been most onerous for them, wouldn't it? Heading to Melbourne?

**Mrs Urquhart**—There is a fight to get there.

**Senator Chris Evans**—They send them during the footy season.

**Mr O'Brien**—I am an ex-Victorian myself, Senator. That made some inroads into the backlog in Victoria. Secondly, we identified the oldest unconstituted case load by groups of cases and invited members to take batches of those cases over and above what they would normally be allocated. We had numbers of members volunteering to take batches, say, of partner cases or batches of student cases. Again, that seemed to be a successful strategy in helping us to reduce the backlog. Thirdly, we have invited members to indicate, based on their experience and expertise, the types of cases they would prefer to have constituted to them. So far as possible in recent times, we have been allocating cases according to those preferences. Of course, there is a history behind all of this. When the two tribunals were amalgamated administratively a few years ago and members were cross-appointed to the tribunals, members were expected to become proficient in the workload of both tribunals. That process has now matured somewhat, and we are now in a position, I think, where we can give members, if you like, greater latitude and say to them, 'Look, we will see what we can do to allocate cases to you according to your expertise and experience.'

**Senator BARNETT**—So you have identified it as a problem. You have measures in place to try to address the problem. That is really the summary of it. Can you advise me how many cases are currently awaiting consideration?

**Mr O'Brien**—I can advise that for the first three months of this year—that is, for the first quarter of this year—decisions made by the Migration Review Tribunal are up 35 per cent on where we were last year. We do seem to be—

**Senator BARNETT**—Can you give me a figure?

**Mr Lynch**—For the month of September we have dealt with 592 cases. The year-to-date figure is 1,607 decisions. In the same period last year we had dealt with 1,194 decisions. So there is a 35 per cent increase in performance on the part of the MRT.

**Senator BARNETT**—But how many are actually awaiting consideration?

**Mr Lynch**—The active cases that are constituted to members is the figure I gave earlier—1,773. In the compactus there are 2,908. So those 2,908 cases are awaiting allocation to a member.

**Senator BARNETT**—That is what I am trying to get down to, if you do not mind.

**Mr O'Brien**—Certainly.

**Senator BARNETT**—So you have 2,908 that are unallocated and awaiting constitution to a member?

**Mr O'Brien**—Yes.

**Senator BARNETT**—What happens to those 2,908 cases? They are in limbo, are they? What happens to them?

**Mr O'Brien**—Until they are constituted, they are sitting in the compactus. I should say that we have a priority system.

**Senator BARNETT**—How long do they sit there for?

**Mr O'Brien**—As I mentioned to you, our oldest unconstituted cases date back to the end of December 2007 or January 2008.

**Senator BARNETT**—What is the average length of time for an unconstituted case?

**Mr O'Brien**—I do not know the average. I am talking about the oldest there.

**Senator BARNETT**—Could you advise the average duration for those 2,908? I am happy for you to do that on notice.

**Mr O'Brien**—We could take that on notice.

**Senator BARNETT**—So these are just sitting, awaiting allocation?

**Mr O'Brien**—Yes. There is another aspect of this that you need to understand, Senator, and that is when cases are lodged they are given a priority by the tribunal. If there is an application from someone in detention, that is given the highest priority. Cases remitted from the courts are given the highest priority. Visa cancellation cases are given high priority, as are protection visa cases. Other cases, though, do not have that same priority.

**Senator BARNETT**—In terms of the 2,908, what sorts of cases are we talking about?

**Mr O'Brien**—We can give you more particulars on this, but I would hazard a guess to say that most of them would be partner cases and perhaps student visa application cases.

**Senator BARNETT**—I think we are out of time—

**CHAIR**—It is 10.30 am, Senator Barnett.

**Senator BARNETT**—I am just saying—please, Chair, give me one sentence—we are out of time and we will have to come back after the break. While you are in the break I am

interested for you to look at last year's figures for unconstituted cases, and the year before that. I want to have a look at the trend over the last two years—we have got the 2,908 for this year—so could you just bear that in mind.

**Proceedings suspended from 10.31 am to 10.46 am**

*(Audio not available from approximately 10.46 to 10.46.35)*

**Mr Lynch**—I can tell you that we did reach a stage with the MRT's cases on hand where we had a higher percentage of cases allocated to members than unallocated. That was a first. That happened about 18 months ago. We were very pleased with that because we had come from a position in 2002 where we had something like 8,000 cases in the MRT compactus. It was very pleasing indeed to be able to allocate more cases than remained un-allocated.

**Senator BARNETT**—All right. Thank you. If you want to note that in your answer to questions on notice it would be appreciated if we got that. We will not delay the committee any further if we do not have the details now.

**Senator FIERRAVANTI-WELLS**—I would like to start by asking a question in relation to the efficiency dividends. I notice from the budget statements that your budget is about \$40 million between the two tribunals. It looks like there could be some variation slightly, but basically it is around that \$40 million mark. Could you tell me clearly for 2008-09 where the efficiency dividends are and how that is going to affect your budget? Does that figure include the two per cent?

**Mr Lynch**—The total efficiency dividend is 3.25 per cent which, in this financial year, we estimate to be about \$700,000. For last financial year, as the increase in the efficiency dividend was introduced in about February, we paid a pro rata sum of about \$174,000.

**Senator FIERRAVANTI-WELLS**—This question might be better directed at the minister. In view of the Proust review and the prospect of you exercising less ministerial discretion, thereby resulting in more departmental decision making, are we then going to see, as a consequence, more appeals coming to the tribunals, and what effect will that have, given what we have already heard about your unconstituted caseload? With the prospect of more appeals coming to you, isn't that going to compound an already difficult situation?

**Senator Chris Evans**—No, because the ministerial intervention requests only come to me after they have failed at the tribunal. I do not have the power to intervene until they have been through the initial decision by the department and have sought review at the tribunals. If they have failed, I am used like a High Court as the last level of appeal, currently. So I do not think that any changes we make in relation to the Proust review will add to the workload. If it did, it would be sometime down the track, because that would be a question of legislative changes. I have been frustrated, in terms of returning to the Proust review, by my capacity to make a range of changes that I would like to—I do not know if we will come to that later—and many of them will require legislation. The parliament will get to consider those. But fundamentally I think that the issue you raise is not an issue because I do not get them until after they have been to the tribunal.

**Senator FIERRAVANTI-WELLS**—In other words, Mr O'Brien, the efficiency dividend can only affect the current unconstituted caseload. Following on from that, how is that going

to affect your situation in terms of dealing with that caseload? Where are your efficiency dividend cuts going to come?

**Mr O'Brien**—We have adopted certain measures to deal with the efficiency dividend. Again, I might ask the registrar if he would like to mention some of the things we have done.

**Mr Lynch**—The tribunal's joint management board decided earlier this year to reduce expenditure on a range of strategies in the tribunals to ensure that we were able to pay the efficiency dividend as well as increases in salary for both members and staff. We are currently negotiating a certified agreement with our staff. That is a three-year agreement that is coming to an end in November this year and that is likely to increase our cost in the region of four per cent. This offer is under negotiation at the moment. We have made a certain offer which is being discussed with the CPSU, and we will need to cater for that as well as the increase by the remuneration tribunal of members' salaries. So we factor all of this in with the efficiency dividend and we are trying to avoid an operating loss. We sustained one last financial year but we are looking to improve our performance this year with a better allocation of member resources and staff resources.

**Senator FIERRAVANTI-WELLS**—Recently we had the notification legislation that went through. Obviously that is going to be of great benefit to the tribunal in terms of its dealing particularly in relation to notification issues and bearing in mind some of the court decisions on technicalities. How much do you envisage that that is going to assist and will that perhaps result in some savings as well for you?

**Mr O'Brien**—It may result in some savings for us. The main beneficiary in relation to the changing of the law relating to notifications is the department rather than us. It does have some bearing upon us but not a huge bearing on us.

**Senator FIERRAVANTI-WELLS**—Certainly. Bearing in mind that we are dealing with your old annual report, I want to ask about certain trends. Mr O'Brien, you were here when I was asking the questions in relation to community information, and prevention is better than cure, if I can put it that way. Given the origins of a lot of the lodgements in those particular communities, headed of course by the Chinese, do the tribunals have any scope for dissemination of information in those communities in relation to the appeal process, and those sorts of things, to perhaps counter any misconceptions or perceptions that may be out there?

**Mr O'Brien**—The tribunal has certain information on its website about the tribunals operations and we engage quite heavily in a community liaison program where all of the various stakeholders have an opportunity to come and discuss matters of concern with them. Are there any particular things we can say about language issues? Mrs Urquhart, DPM at the RRT, might have something.

**Mrs Urquhart**—If I can just give you a little bit of background on the community liaison meetings that we conduct: they are designed to facilitate the distribution and exchange of information in relation to the tribunals' processes and case loads, and to provide information on both relevant legislative developments and procedural and corporate developments within the tribunals. They also provide an opportunity to place items for discussion on the meeting agenda which either have arisen specifically out of the business dealings with the tribunals or relate to the tribunals' operations in general. The meetings are held twice a year, both in

Sydney and in Melbourne, and we have video link-ups to other states. The part that is perhaps relevant to your question is the stakeholders who come along, and we do have some lists of all the people who are on those committees.

**Senator FIERRAVANTI-WELLS**—Perhaps you might table those, Mrs Urquhart, or take it on notice. I was actually getting to the point of asking you the same question that I asked before, in relation to the usage of a public broadcaster such as SBS. I think you heard my comments previously and I will not repeat them, but is there some scope to get information directly out? Over 25 years experience in the area of liaisons tells me that if bodies are not really representative you do not get down to the grassroots—which is really where the messages need to get to. Have you given some thought to what the tribunals could explore, in terms of direct messaging out there, in different languages on a public broadcaster such as SBS?

**Mr O'Brien**—We have not adopted those sorts of approaches. The basic approach we have followed to date is getting the message out through the Migration Institute of Australia and other bodies such as that. We have not engaged in a direct public information campaign, as far as I am aware, for any purpose.

**Mrs Urquhart**—We do hold an open day at the tribunals once a year—which has really been part of Refugee Week—where we invite people into the tribunal and have a number of people speak about what we do. We provide written information in a number of languages and we generally make both members and staff available to answer questions from the public. We tried to advertise the one in Melbourne this year quite broadly so as to draw more people in.

**Senator FIERRAVANTI-WELLS**—I take your point, but what we are really seeing here, ultimately, is an industry that is developing. There are different components to this industry and regrettably it is an industry which has unscrupulous people in it. Those people at the bottom end are the ones who go into this with some degree of misconception, and they are often people whose language capacity is very limited. All I am really wondering, as I said before in relation to information on a public broadcaster like SBS, is whether there is some scope—and perhaps you could take this on notice—to dampen some of those expectations. I am suggesting the putting of facts out there in an unadulterated, simple manner so that those people who may otherwise think about lodgement, or who may be thinking about what the repercussions are of overstaying or whatever, actually get an understanding firsthand. That is really where I am coming from.

**Mr O'Brien**—We will take note of that message. I should say, of course, that you need to appreciate what our role is.

**Senator FIERRAVANTI-WELLS**—I appreciate the limited scope of your role. I understand that; I am really just flagging this sort of issue.

**Mr Lynch**—Senator, if I can just make an additional comment. It is a very valid issue that you have raised and it is something that, over the years, we have considered in making more literature available in many more languages. Cost is always a factor in this, of course. What we do say is that we participate very strongly with the department in reaching representatives of the community—

**Senator FIERRAVANTI-WELLS**—Mr Lynch, I do not doubt that. All I am simply saying is that often—and I have found in my experience over many years—the radio is a very effective medium for getting messages across. Often, particularly with new arrivals, it is a readily available source of information. Over many years I have watched our public broadcasters, especially SBS, put information out there. This is the sort of valid information that could go out to help people and basically provide them with facts. I think the minister has probably got my message thus far.

**Mr Lynch**—Could I just make one other comment which is: we would not want to be putting facts out there to discourage anybody who might be looking to—

**Senator FIERRAVANTI-WELLS**—I appreciate that. I am just talking about being better informed.

**Mr Lynch**—have a decision of the department reviewed. It is a merit review and we are there as a statutory right for applicants to approach.

**Senator Chris Evans**—I would like to see the people on my left unemployed or seeking alternative employment. There will be a good compensation package; normal redundancy provisions will apply! What I want to do is promote the department in being proactive with people's files and claims. The previous government introduced a very worthy initiative of case management of people, which has proved a success, and I hope to build on. We found that if you engage with people early and discuss their problems and issues—commonly referred to as case management—and make sure they are aware of their rights early, you will have far fewer appeals and far less litigation. We are very keen to focus more on the department working with people early in problem solving and offering ways of solution.

I recently had a case where I had a refugee advocate group speak to me about a woman who had a refugee application and how terrible it was that it had not got through the system. She was working as a nurse in Kalgoorlie. I said, 'Have you just asked the Kalgoorlie Hospital to sponsor her? They would do it in a moment.' There was no reason for her to be in the refugee stream. She was a highly qualified nurse who had a job at the Kalgoorlie Hospital. So it was a classic case of the department trying to engage with her and saying, 'Have you thought about going down the 457 or the permanent route.' That is an unusual case but it is a sign that if you engage with the department much more actively, solutions can be found and assistance provided. Also the case management program, which we will talk about later and which the previous government initiated, have found that they have had a higher incident of voluntary returns after people have been advised of their rights and have had discussions in a non-confrontational way. We have actually had quite good success there.

**Senator FIERRAVANTI-WELLS**—Perhaps when we get to that, it would be worthwhile for the department—

**Senator Chris Evans**—I just wanted to focus on that end in terms of information.

**Senator FIERRAVANTI-WELLS**—I will definitely raise it again then. Can I just take you to some of the trends in terms of the set-aside rates, and this is at page 29 of your annual report from the primary decision in the department. Can you take me through some of these trends, for example, figures that are increasing? The trends are obviously increasing in terms



of Chinese, Sri Lankan, Pakistani, those sorts of areas. Can you give me some detail in relation to those trends and the reasons for those trends?

**Mr O'Brien**—The set-aside rates, if you are looking at the RRT, subject to some particular variations in relation to particular groups—

**Senator FIERRAVANTI-WELLS**—I have picked up the particular variations. The others have stayed fairly constant.

**Mr O'Brien**—Yes, they have stayed fairly constant. In the RRT we set aside about 18 per cent of primary decisions. In the MRT the percentage is higher—we set aside about 50 per cent—and there are some peculiar reasons why that is so. Our highest percentage of set aside cases in the MRT are partner cases. What we find with those spouse cases is that, by the time the case comes to us, there have been developments in the personal circumstances of the couple which make it clearer for us to recognise that there is a genuine spouse relationship. So different types of cases tend to alter the figures somewhat.

**Senator FIERRAVANTI-WELLS**—Can I take you to the judicial review figures. It looks like about 25 per cent of your cases are overturned on judicial review. Is this due to vexatious litigants rather than substantive legal issues? Are we talking about purely technical issues?

**Mr O'Brien**—No. Let me break it down a little. In the MRT about 4.5 per cent of our decisions are taken on judicial review, so it is a very low percentage. In recent times in the MRT, of those 4.5 per cent of cases that are taken on judicial review, 66 per cent of the applications are dismissed in one way or another. That means about 44 per cent are upheld. However, those figures for the MRT in recent times do reflect a bit of an aberration in that we had a whole collection of cases flowing from a decision called 'Dai', where the full Federal Court essentially held that the regulation under which student visas were being cancelled was essentially invalid. That of course had the effect that all the decisions we had made where we had affirmed the department's decision had to be conceded. So those Dai-affected cases have skewed our MRT figures somewhat. In the RRT, where of course the stakes for applicants are incredibly high, about 45 per cent of our decisions are the subject of applications for review, mainly these days to the Federal Magistrates Court. But, of those 45 per cent that go on judicial review, 88 per cent of those applications are dismissed in one way or another. So on judicial review there is a higher success rate in the RRT, although the figures do need to be seen in the context of what I have said—and, of course, the stakes are high there.

**Senator FIERRAVANTI-WELLS**—In your annual report you make the comment that the level of court scrutiny is very intense. Is it consistent? This question is perhaps coloured a bit by my past experience: do we have a situation whereby the tribunals have set out a body of law and their interpretation of it, and then along came the federal jurisdiction, perhaps at times socially proactive, which then decided to tweak or change or something like that, which as a consequence had a flow-on effect in terms of the department's interpretation and ultimately the tribunal's interpretation? That is a difficult question, but how much of that is—

**Senator Chris Evans**—Do you mean after 11 years of Howard government appointments to the bench?

**Senator FIERRAVANTI-WELLS**—My judgement is coloured by my preceding experience, Senator Evans. Mr O'Brien, I appreciate that my question might be difficult to answer, but you might want to comment.

**Mr O'Brien**—Most of the cases—there are exceptions—that are decided by the Federal Magistrates Court are really confined to their own facts. That is not necessarily always the case. We have had difficulty—and I have mentioned this publicly before—in grappling with the procedural code that is spelt out in the Migration Act, which effectively supplants common law procedural fairness. We have had a couple of occasions now where we were found to have been deficient in the way we gave effect to that code. Of course, once that happens, we then have a whole lot of consequential cases that fall over.

**Senator FIERRAVANTI-WELLS**—I have one last question, Mr O'Brien. How much of your work is complicated by the fact that, and what percentage of, those appearing before you were self-represented?

**Mr O'Brien**—In the MRT about 66 per cent of our applicants are represented by an agent. In the RRT it runs at about 45 per cent, I think, so not as high there. If there is good representation, myself and most of my members find that of great assistance in the sense that we can have the case focused on the issues that really are in dispute. It can certainly be a help to have good representation.

**Senator FIERRAVANTI-WELLS**—Obviously any reform of the issues—and you were present when we had MARA here—or reform or review of MARA's operations will, in turn, have the flow on effect of making your activities more efficient or helping to make the proceedings through the tribunals a lot more efficient.

**Mr O'Brien**—I think it is in the interests of everyone that migration agents operate at a high level. The same is true of us as it is of applicants in that regard. If applicants are well represented then it assists us.

**Senator FIERRAVANTI-WELLS**—Do you have input into MARA and their operations on a formal or informal basis?

**Mr O'Brien**—We do have discussions with them from time to time but more so with the institute, the MIA, itself. If, in a case before us, we think that an agent has breached the code of conduct in some way—and we do occasionally form that view—we refer those cases to MARA for investigation. They are not in large numbers but in the last 12 months we probably had six or seven referrals by us of agents to MARA for investigation of things that we thought may have amounted to a breach of the agents' code of conduct.

**Senator FIERRAVANTI-WELLS**—And how many had legal representation?

**Mr O'Brien**—I could not tell you how many of the agents before us are qualified lawyers.

**Senator FIERRAVANTI-WELLS**—No, what I mean is for those appearing before you, are they fully legally represented?

**Mr O'Brien**—Many of them are but I think, as the representatives of MARA indicated this morning, not all agents need to be legally qualified. Sometimes we are aware that the person who is appearing as the representative of the applicant is legally qualified but at other times we are not.

**Senator FIERRAVANTI-WELLS**—This area has its share of unscrupulous lawyers as well so I am sure that you come across those. Do you have input equal to the legal profession in terms of referral, whether formal or informal, to their bodies?

**Mr O'Brien**—I cannot recall a case since I have been employed as principal member where I have done that or that, in fact, the tribunals have done that.

**Senator Chris Evans**—If I may, I will add a comment as to what I think is an important consideration as part of your perspective on the operation of the tribunal. One of the things that have really struck me is that a number of clients fail to appear in support of their applications to the MRT or the RRT. My initial reaction was to say, 'If they can't be bothered turning up at the hearing, why should I then hear a ministerial intervention problem if they haven't accessed their rights further down the chain?'

**Senator FIERRAVANTI-WELLS**—I understand that.

**Senator Chris Evans**—One of the difficulties—as was pointed out to me, and the department is always telling me, unfortunately with good cause, why I can't do things that seem perfectly sensible to me—is that a lot of people are actually seeking ministerial intervention and are going through the motions in their application to the MRT or the RRT knowing that their case does not meet the requirements for a successful decision. But they know that they have to go through that process in order to access ministerial intervention. I am most concerned about that because (1) it makes a mockery of the system and (2) it ties up resources when what they are really trying to do is get to the next layer. I am certainly very keen to see what we can do about that because, as I have said, it creates work for the tribunal and it is a farce in the sense that sometimes they argue a case—and sometimes they do not—when it might be self-evident to everybody that they do not meet the requirements for a favourable decision. As to their mere purpose, their agent has advised them that their best chance is through ministerial intervention, maybe on compassionate grounds, and I am not saying they would not get a ministerial intervention; a number of them would and have got it under successive ministers. But it is the case that all those numbers flow into the MRT and the RRT decision making and tie up resources when it is pretty self-evident to anyone—

**Senator FIERRAVANTI-WELLS**—It is bulk rather than quality.

**Senator Chris Evans**—Yes. But it is self-evident they are not going to make the system—

**Senator FIERRAVANTI-WELLS**—How many do not appear? Sorry, Minister, but I did not quite catch that figure.

**Mr Lynch**—We do not have the actual figures here today but we could take that question on notice.

**Senator FIERRAVANTI-WELLS**—If you would take that on notice and give a breakdown I would be appreciative.

**Mr Lynch**—It has all varied a bit over the years. I have got some preliminary data which might assist an understanding. I am advised that 14 per cent of MRT cases involve applicants not showing up for a hearing to which they have been invited and they have indicated they will be attending and it is 22 per cent for RRT cases.

**Senator FIERRAVANTI-WELLS**—Yes, that is quite high. Thank you for that.

**Senator Chris Evans**—As I said, some of them will turn up knowing that they are highly unlikely to get a successful outcome; they are going through the motions.

**CHAIR**—There appear to be no further questions on the MRT and the RRT.

**Senator BARNETT**—Through you, Madam Chair, Mr Metcalfe was going to table a document and this may be an appropriate time to do it.

**CHAIR**—Yes.

**Mr Metcalfe**—Madam Chair, earlier Senator Barnett asked about the duty statement and selection criteria for the senior member positions that we are currently going through the selection process for. I have those with me and I am happy to table them now.

**CHAIR**—Thanks, Mr Metcalfe.

**Senator BARNETT**—Thank you.

**CHAIR**—Mr O'Brien, that concludes our questioning of the MRT and the RRT. I thank the four of you at the table very much for your time at estimates this morning. Thank you for your appearance here. We will move on to general questions of the Department of Immigration and Citizenship and then we will go to output 1.1 and outcome 1.

[11.18 am]

#### **Department of Immigration and Citizenship**

**Senator HANSON-YOUNG**—I would like to ask a question about climate change refugees. I understand that this question could cross over into a number of different areas. I would like to know if there is any update that you could give to the committee on the work that the government is doing on the issue particularly in relation to the fact that it has been reported in the media that the Prime Minister of Tuvalu has discussed this with the government. Where are we up to with progressing the issue any further?

**Mr Hughes**—There continues to be a very active international debate about people displaced by climate change and how governments should respond. That is taking place in a number of forums through the United Nations High Commissioner for Refugees and the International Organisation for Migration, for example, but I think there are many other international institutions that have an interest in the matter and have an interest in the way that governments should respond to the new challenge.

I guess the general view of response to people displaced by climate change is that there is an interaction in some cases between people purely displaced by climate change without protection needs and in other cases people displaced who have protection needs and therefore might be covered by the UN convention on refugees or principles relating to internally displaced persons. But in future there could also be a cohort of people displaced who are not covered by any particular formal international instruments or understandings.

I think the general view that has emerged about climate change displacement is that, first and foremost, the activities of governments ought to be aimed at mitigation of the climate change factors that might displace people, adaptation within countries where that is possible—and internal relocation could be part of that adaptation process—and, lastly, as a last resort, if needed, international resettlement as a response.

As far as the Australian government's activities, we are participating very actively in the international debate. In relation to the Pacific where, as you mentioned, some of the recent focus has been, the Australian government has committed \$150 million over three years as part of Australia's international aid budget to address adaptation needs in the Pacific region. That is through the AusAID and climate change portfolio. As far as our portfolio's interest, we are obviously monitoring the issue internationally and with the Department of Climate Change and—as I think I mentioned at last estimates—through the Commonwealth state ministers process on immigration and multicultural affairs, we are working on a literature survey of world climate change issues—

**Senator HANSON-YOUNG**—That was going to be my next question.

**Mr Hughes**—to be presented to the next ministerial council meeting.

**Senator HANSON-YOUNG**—Which is at the end of the year?

**Mr Hughes**—I think it is November.

**Senator HANSON-YOUNG**—So that will be ready by then?

**Mr Hughes**—It certainly will.

**Senator HANSON-YOUNG**—Great. In relation to the specific reports about discussions between ministers and the Prime Minister of Tuvalu, there is nothing concrete that we have agreed to continue discussing or fleshing out? I understand we have pledged money for adaptation, but there is a call for relocation of people, even if it is on a temporary basis. Are you saying that we have not actually committed to any of that yet?

**Mr Hughes**—I think there are five countries in the Pacific that are sometimes mentioned as being at risk. Kiribati, Tuvalu and some parts of Micronesia are sometimes mentioned. The specific example I think you are referring to was Kiribati, where the Prime Minister of Kiribati expressed concern that, in 50 years, Kiribati might be uninhabitable. I think that was the time frame that he was referring to. I think also at the last Pacific Forum there was a declaration by Pacific countries that the preference of people in Pacific Island countries was, as the first and primary goal, to live in those countries and live in that region but, as has been said in the past, should the situation come to the need for international resettlement, Australia would play a part along with other countries in facilitating that, as we do in other circumstances.

**Senator HANSON-YOUNG**—Have we been having discussions around the way New Zealand is currently approaching that issue? New Zealand actually has a memorandum of understanding with a number of these countries.

**Mr Hughes**—I am not sure which memorandum you are referring to. I think the situation of people taken by New Zealand as part of recognised seasonal employers has sometimes been misrepresented as people displaced for climate change reasons. The New Zealand government have said to us that that is not the case and they are not actually accepting any people into New Zealand for reasons of climate change displacement. I think they are, however, working on some mitigation strategies with Pacific island countries. That is a little bit out of my area of expertise, so I do not know about the details of those. But they certainly

assure us that they are not accepting people into New Zealand for reasons of climate change displacement.

**Senator PRATT**—I note that the Ombudsman, Professor McMillan, has reported on 247 cases of wrongful detention. I would like to know about the Commonwealth's liability as a result of those cases, the extent to which those cases have been successfully resolved and the process for doing that. How many cases have thus far been successfully resolved and what is the estimated cost of the Commonwealth's liability?

**Mr Metcalfe**—I will make some general comments and then ask Ms Bicket, the department's chief lawyer, to answer on the detail of the questions. I am sure you are aware that in 2005, about 3½ years ago, the previous government referred to the Ombudsman a total of 247 cases in which it was suspected that people may have been held unlawfully by the department. Ms Bicket can provide details of the actual outcome of those matters and related compensation issues. There are of course other cases that may not have been referred to the Ombudsman which were the subject of compensation claims as well. Most notably, of course, Vivian Alvarez and Cornelia Rau were considered by reports prior to referral to the Ombudsman. There are a range of other matters which may not have been the subject of those referrals but which relate to immigration detention practices more generally. Having set the context, I will ask Ms Bicket to provide some detail.

**Ms Bicket**—We have been going through a process of looking at all of the 247 referred cases to assess whether there is a risk of potential legal liability for compensation. That preliminary assessment was completed on 31 July this year. Of the 247 cases, there are currently 191 cases in which we believe there is a risk of legal liability for compensation and 56 cases in which we believe there is no compensated risk involved. We have made offers of compensation in 40 matter thus far and settlements have been agreed in 17 matters. The compensation that has been paid in the 14 matters that have been settled is approximately \$1.2 million. Was there anything more specific you wanted to inquire about on the 247 cases?

**Senator PRATT**—I am not sure if the cases, say, of Mr T., as he was known, and Mr G. are included specifically. I know that Mr T. had 253 days of detention on three separate occasions. Do you have an estimate of the extent of liability in his case?

**Ms Bicket**—Mr T's case was settled in April this year, but the terms of the settlement are subject to confidentiality orders.

**Senator PRATT**—What about Mr G. from Timor? I note he was mentally ill but also detained, I think, for some 43 days.

**Ms Bicket**—I do not believe I have specific information on Mr G. at the moment, so I will have to take that on notice. I can say that at the end of this current financial year 2007-08 there were 30 matters where there were compensation claims that we resolved and 14 matters where there was a compensation payment made. Nine of those related to the 247 case load, but, as I said, I will need to take on notice specifically whether Mr G. was one of those cases. The total payout for compensation for 2007-08 was in the order of \$4.1 million. The most significant payout was of course the Cornelia Rau compensation payment, which accounted for \$2.6 million.

**Senator PRATT**—I would like to inquire about the compensatable matters in that in terms of the length of time and also about how things such as personal injury or post-traumatic stress disorder are being weighted within the compensation process.

**Ms Bicket**—Obviously, in matters like this with personal injury and also unlawful detention, it varies very much on the circumstances of the individual case. It depends on the length of time a person may have been detained, the reasons, whether or not there was any other compensatable injury that may have occurred. It is difficult—

**Senator PRATT**—Are those other compensatable injuries relevant to these matters? Are things like personal injuries coming up as part of the compensation claims?

**Ms Bicket**—In relation to the 247, the payments are, generally speaking, being made on the basis of unlawful detention. In some of those matters there would obviously be other claims that may be related to the treatment of the individual, but I obviously do not have information about each individual case.

**Senator PRATT**—I would like to ask further about children who have been detained. I know previously they have been lawfully detained but I want to inquire as to health and traumatic stress impacts on children and whether you foresee cases coming forward in relation to the impact of detention on children—aside from the 247 cases.

**Ms Bicket**—I am aware of at least one matter where there was a settlement where there were claims in relation to a child and the impacts upon the child. I think the matter was the subject of a confidential settlement, so obviously I cannot speculate about what the breakdown in the matter is. Questions more generally about detention are probably more appropriate under 1.4.

**Mr Metcalfe**—What I can say, Senator, is that we have obviously been very, very mindful of the issues that have arisen from those cases. We have briefed this committee on numerous occasions over the last 3½ years about the reform program within the department to ensure that we address issues in immigration and detention—and we can talk a great deal about that. The number of people in immigration and detention at the moment is the lowest for many, many years. We are very mindful of the impact that detention may have on people. So not only is there an issue in relation to dealing with matters that have arisen in the past—and they have not only been dealt with through status resolution and compensation matters—but we have been very mindful to try and ensure that those things do not arise again.

**Senator PRATT**—Is there an expectation that there might be further cases relating to the impact of detention on children?

**Mr Metcalfe**—I think that there is a possibility of that occurring. There were a large number of children in immigration detention until, of course, the significant policy change in 2005, after which no children have been held in immigration detention centres. While some children may have been legally in immigration detention, that overwhelmingly has been in the community, in apartments and far more standard accommodation. But certainly there are a very large pool of potential cases out there and we have yet to see whether they come forward in terms of claims.

**Senator PRATT**—I have one further line of questioning in relation to detention. I note that people detained on Nauru were found to be refugees but were nevertheless held in detention after that point, if I am correct in my understanding. I think there are some cases similar to that on other islands. What is the liability for those cases and what is the process for resolving them?

**Mr Metcalfe**—It is probably not appropriate for us to give a legal opinion to the committee. It is true that many of the people who were sent to the Nauru and Manus Island facilities as part of the previous government's Pacific strategy were found to be refugees—not all but most. Many of those people ultimately were settled in Australia. In terms of issues of legal liability, there are obviously some quite complex matters which go to the facts of whether damage was caused. There is also a legal issue in relation to the fact that those events happened outside Australia. It would not be proper for me to comment here as to how that might be managed, but it is an issue that is currently under consideration.

**Senator PRATT**—Thank you.

**Senator HANSON-YOUNG**—I have a question related to detention debt. I assume it fits more into the general section.

**Mr Metcalfe**—I think it would probably fit into 1.5.

**Senator HANSON-YOUNG**—All right.

**CHAIR**—Any more general questions?

**Senator ELLISON**—Thank you, Madam Chair. Firstly, in relation to recent reports which indicated that, due to the global financial downturn, there might be a reassessment by the government of the immigration intake, can I ask the minister if there has been any work done on the impact of the global financial situation on the prospect of immigration to Australia? I might add that when that comment was reportedly made by the Prime Minister, the idea that this should be looked at received support from the coalition. Has any work been done? Are there any thoughts from the government on reassessing this in view of the current international situation?

**Senator Chris Evans**—Yes. The PM, the Deputy PM and I have all made public comments to indicate that there is no doubt that the migration program is, importantly, linked to the state of the economy and the demand for labour. A large part of the program—I think about 70 per cent currently—is in the skilled migration area, bringing people in to fill labour and skills shortages in this country. The migration program, as you would be aware, is adjusted annually to reflect government forecasting of the labour and skills needs and the role that migration ought to play in meeting those skills needs. It is the case, and I think it will continue to be the case, that the long-term demographic trend for Australia means that we will continue to run large migration programs, probably for the next 30 or 40 years, because of the severe downturn in the numbers in the workforce without migration programs. I think from about 2010-11 onwards we will see a reduction in the numbers in the workforce without a migration program because the numbers retiring from the workforce will exceed the numbers entering the workforce.



This is not a temporary blip; it is long-term demographic trend. The previous government examined those issues as part of the *Intergenerational report*. It is well documented. I think the long-term trend for Australia is still very much—as it has been for many years now—to run a fairly strong skilled migration program. But the Prime Minister has made it clear, as I have, that the migration program needs to be sensitive to the economic needs and employments prospects of the country. So we will keep that under review. Obviously, the MYEFO statements and others will be key indicators as to prospects for the economy for the rest of the year. I would certainly envisage that the migration program for next year would be smaller than this year. No decision has been taken on that. As you would be aware, Senator Barnett, that is a decision taken by cabinet as part of the budget processes.

**Senator BARNETT**—How much smaller?

**Senator Chris Evans**—As I said, it is a decision taken by cabinet as part of the budget processes. So, by definition, I cannot answer that question. Given the general economic forecasts for the world economy you would think it would be lower, but we are currently assessing all that economic information and no decision has yet been taken in relation to any action on this year's program. Obviously, that is something we have kept under review. I have had a look at what mechanisms we might deploy if we want to take some action and that will be a decision the government may want to look at. But, as I say, MYEFO is a fairly critical midyear economic review that tells you—

**Senator BARNETT**—But you have made a decision to reduce the intake?

**Mr Metcalfe**—No, that is not true.

**Senator Chris Evans**—I have said it twice. I do not know how clear I can make it.

**Senator BARNETT**—You said it would be smaller.

**Senator Chris Evans**—The decision for next year's intake is a decision taken by cabinet in the preparation of next year's budget. No decision has been taken in relation to next year's intake and will not be taken until the normal budget processes.

**Senator BARNETT**—You referred just two minutes ago to it being smaller. What was that a reference to?

**Senator Chris Evans**—I said, 'My opinion is that I think it is likely that it will be smaller.' As I say—

**Senator BARNETT**—But you are the minister speaking on behalf of the government. We are in a Senate committee hearing.

**Senator Chris Evans**—And I gave you an opinion; I try to be helpful. But, in terms of a formal decision, it is a decision for cabinet. All I was trying to indicate to you is that, as under all previous governments and as with previous decision making on the migration program, there is clearly a strong link between skills and labour shortage and demand for labour in the economy. If there is a drop in demand for skills and labour in the economy you would expect that you would run a smaller migration program than when demand is high. As we all know, there has been a high demand for skills and labour in the economy. The previous government ran a large migration program. We have run a large migration program in our first budget. If the advice to us is that the demand for skills and labour in the economy was to come off,

clearly that would have a very significant impact on how we would review the migration program. It is just self-evident. Clearly, that is a question that will be considered by government. I think the MYEFO and other economic data will give us a better handle on that. I have been consulting industry recently myself on their expectations for labour demand. The Deputy Prime Minister is doing some work on those questions, on changes in unemployment forecasts and expectations of labour demand, and the government will review all of that and will make decisions accordingly. One of the things we do know, though, is that things have been moving fairly quickly and we will respond.

I do want to make a couple of points. First of all, a large part of the migration to Australia currently is made up of those under the 457 scheme. That has grown quite quickly in recent years. The reason I mention that is that it is a demand driven program. Employers sponsor people to come to this country. Temporary migration is a demand driven program, not set by the government. One would expect, if the demand for labour was reducing, then demand for workers under the 457 scheme would reduce as well. It is purely employer nominated and not government controlled other than the approval processes. It stands to reason that, if economic activity was to come off and demand from employers for temporary labour was to come off, then the numbers on the 457 scheme would come off. You would expect there to be a direct relationship. A really large proportion of the migration intake is currently the temporary migration program.

The other temporary migration program that has an impact are working holiday makers. Clearly the economic conditions in other countries will impact on people's capacity to travel. I think the tourism industry is talking about an expected downturn. I am sure working holiday makers will reflect that general trend. And, obviously, the other large group that makes up people coming into Australia are students. I am not sure what the impact on the student population will be but my understanding is that, if you have a worsening economic climate in the source countries, you would expect the numbers of students coming to this country to be lower. Maybe the depreciating dollar might be offsetting that a bit. All of these things reflect the fact that there would be, in addition to the permanent migration program, changes driven by demand that would be quite influential.

The other thing I would mention, which has been part of the policy I have been trying to drive in recent times, is to make the program more responsive to employer needs and to particular state needs. I have some policy in development, which will be announced shortly, which tends to try and ensure we better focus the program on bringing in the people we need. The former minister, Mr Andrews, made a step in this direction when he made some changes to the student arrangements last September to make sure that we were getting the job ready students; people who actually go into skilled employment. I intend building on that to get a stronger link between the employment outcome and the migration program. There are a range of measures that might help to drive that.

One of the things that I was going to mention is that we have different labour markets in Australia and until recently—and I put a big mark up to say that over the last few weeks or so things have changed quite dramatically and we are trying to assess that—if you look at the Western Australian and Queensland economies, they were clearly running at a higher rate of growth than some of the other economies. Senator Ellison, you would be well aware that the

demand for skills in WA was very high and the severe shortages had all the major industry groups screaming for labour. Whereas the situation in Sydney and Melbourne was not nearly as acute so we had different labour market needs and different skill needs. WA was screaming out for mechanical engineers and tradesmen. It was much the same in Queensland and was driven by the mining boom. The demand in Sydney or Melbourne would be quite different through the skills they needed.

I am trying to ensure we focus the program more to the state or regional labour markets and get a stronger link as well as encourage employer and state sponsorship. The simple answer is that I think there are a range of programs that will be impacted by demand, which represents a very large proportion of the total migration to this country both permanent and temporary. Also the government will keep under consideration the size of the permanent program and will look at the revised data about labour demand in making any decision.

**Senator ELLISON**—In relation to how you control it, bearing in mind that things could move relatively quickly in relation to the international situation, what mechanisms are available to the government to remedy an adjustment that might be needed? You mentioned temporary migration and around 20 per cent of 457 visas have obtained permanent residency. You have your migration program, which is a longer term program. The levers on that are perhaps not as able to bring an instant result as the temporary migration, but would it include curtailing temporary visas to send people back home? Are those the sort of mechanisms which are available to the government?

**Mr Metcalfe**—There is quite a wide range of mechanisms available, and these have been available over time. But, given that so much of the administration of the migration program is now enshrined in the act and the regulations, they have now been placed in that form. For example, in relation to the migration program, the permanent program, there are mechanisms available should a government seek to use them to give effect to policy decisions in relation to the points tested area to increase the pass mark for the points the person needs to obtain to qualify. There is the opportunity to pool applications, so that people may enter a pool and then be held failing to meet the pass mark with the potential for the application to be considered if the pass mark was adjusted downwards in due course.

There are also what we call capping and queuing mechanisms available in some areas as well. If you would like a detailed reference to the relevant provisions of the Migration Act, perhaps I will come back to you later today with that. It is possible—and indeed it has been used in the past—for certain categories to have a numerical limit placed upon them. Perhaps the best example of that currently in place—and which has been in place for some time—is in relation to noncontributory parents, where a certain numerical number of visas per year had been established. So it is possible to limit the number of visas per year and it is possible to develop a queue so that other applications then are lined up and come forward in turn.

So there are provisions available, and leave is available for those sorts of mechanisms. But, as the minister said, there are also demand driven factors as well. Parts of the migration program—the employment nomination scheme, for example, as well as parts of the temporary entry categories; most notably the 457 category—are directly responsive to the needs of business. If business decides that they do not want to sponsor someone, then of course that will not proceed.

**Senator ELLISON**—With the temporary visa, does it require the employer to turn around and say to the department, ‘I don’t need this worker any more and I don’t want to sponsor that person any more’?

**Mr Metcalfe**—If a person was here on a current 457 visa, for example, and the employer says, ‘I no longer have any work for this person,’ our usual expectation is that the employer would assist the person to leave Australia. If the person wishes to seek reemployment with another firm, they are given an opportunity to do that—and that does occur from time to time—but their presence in Australia does rely upon there being an active sponsorship from an employer.

**Senator ELLISON**—Can the department or the government take any proactive measures if it believes that things in the economy are not good and that there has to be action taken? Is there any mechanism available to the government to take action to send the person back to the country they came from?

**Senator Chris Evans**—The secretary may want to supplement this, but I have made it very clear that this government puts Australian jobs first and, when it comes to issues of employment, lay-off or stand down, that the preference ought to be to Australian employees. People on temporary work visas in this country are here temporarily and are here to fill skilled vacancies in the Australian economy that exist. If the skill vacancy does not exist, and there is not a shortage of Australians to fill those jobs, then we would expect that employers would not be seeking further 457 workers and would resolve the issues with their current workforce in the appropriate way.

We had an incident recently where it was suggested that, at a particular establishment in Queensland, Australian workers would be stood down before 457 workers were stood down. I made it very clear to the company and I made public comments to the effect that that was not acceptable, that the Australian workers should be given the opportunity for any available work, that 457 workers were there to supplement that work force and that the department has the capacity to limit the sponsorship and limit the approval of 457 visa holders in accordance with its assessment of the labour market, so there is not an unfettered right to sponsor 457 workers. So, in terms of new people coming in, we make an assessment as to whether those skills are needed or are being met in the Australian economy. In terms of those already in the country, as the secretary said, they are there under the sponsorship of the employer. The employer is required to assist them to return if they no longer require those workers. That is for them to take responsibility for.

Our clear policy would be that 457s are there to supplement Australian labour force requirements. Australian applicants will be placed first and that will be reflected in all our policy approaches. This will be more complicated than it first looks in the sense that we potentially have, for instance, layoffs in the automotive industry—people in Melbourne, perhaps with a certain skill base, are being laid off—but we might still have shortages of people, with a different skill base, in the mining industry in Western Australia. It is not necessarily like for like; it is much more complicated than that. Part of the challenge will be assessing what skills are still in demand and what are not, and what labour markets there are. As you know, Senator, one of the problems that we have had in Western Australia is that internal migration has always been very hard to achieve. We have had very little success in

getting people to move to Western Australia to follow work, even when we have had lots of work available and higher unemployment in the eastern states. It is not such a problem for Queensland. You and I know that Western Australia is the jewel in the crown of Australia, and I cannot understand the problem but successive state governments have been unable to have great success in that respect.

Anyway, I just wanted to point out that it is much more complex. Certain industries may have a drop-off in demand; others may not. That has yet to be clear. I will certainly be looking to consult very closely with various industry organisations to see what they think the prospects of the demand will be, as well as consult with the Treasury and seek other advice. But let me make it very clear, 457s are there to supplement shortages in the Australian labour market when there is no available Australian work force, and that will be very much in the forefront of our minds.

**Senator ELLISON**—I appreciate the policy but it is the question of implementation if the need arises. You mentioned that the department can limit the sponsorship. I understand that to mean any prospective sponsorship in relation to applications, but what about a situation where you may have an employer who is using 457s in preference to Australian skilled labour which is readily available. You can say, ‘Well, we won’t give that employer any more 457s’, but what action can the government take to move in and say, ‘Look, there’s evidence here that skilled Australian workers are being denied and you are using 457s, not as a supplement but as an alternative’? That is my first question. I appreciate the complexity about industrial sectors and how we measure that, and I will come to that in a moment, but for that first question, how do you deal with that situation?

**Senator Chris Evans**—My first remark is that your line of questioning is very similar to the advertisement placed by the CFMEU in our local paper recently, so I note that. But, in placing that advertisement, they actually quoted my response to the situation in Queensland where I made the priorities very clear. But you are right to indicate that we have a current group of people in this country who are sponsored. Employers, as I said, can obviously take action to discontinue their sponsorship if that is the economic decision, given that there is a downturn. But in terms of the department’s powers, Mr Hughes might be best placed to speak.

**Mr Metcalfe**—We might come back later, Senator, with some more detail. Just as a starting point, the decision was made many years ago to remove the requirement for labour market testing for 457s as an instrument of policy and to replace it with the requirement that there be a premium placed on the wages and salaries provided to 457 holders. As you would be aware, there are minimum salaries required for that particular area. So the entire intention of policy is that overseas workers will cost more than Australian workers and that the minimum salary level has been indexed over time to keep essentially ahead of Australian wages. The intention is that an employer would only access a foreign worker if there were no Australian worker, because a foreign workers is always going to cost more. Not only is there the minimum salary level; there are associated issues of air fares, recruitment and so on and so forth. So the standard operating position over many years since these reforms were brought in—I think in about 1996 or 1997—is that an Australian employer would be loath to employ someone from overseas because they are always going to cost more and therefore it would be contrary to common sense to refuse to employ an Australian and rather employ someone from

overseas. That is the standard principle, but I will see if we can provide more detail perhaps later today.

**ACTING CHAIRMAN (Senator Barnett)**—If I may interrupt Mr Metcalfe, I advise that Senator Payne has some other commitments to attend to so I will pass the questioning to Senator Payne.

**Senator PAYNE**—Thank you, Mr Acting Chair. I have one question that I want to ask the minister. I refer to the discussion that we have been having this morning on levels, categories and so on. I do not hear a lot of factoring in of some of the housing issues that we face in Australia. I pursued this with Mr Hughes on the last occasion, but I am still not comfortable—'satisfied' would be the wrong word—with what I understand to be the level of engagement between the assessments that this department makes—and you make, Minister—and those made by other departments. For example, there are the aspects of the stimulatory package last week in relation to housing. What interaction is there between what your department and you do as the minister within that process? I see on the department's website a very unobtrusive reference to the fact that it is more relaxed and less expensive to live in the country than in a big city, which is apparently meant to encourage people to go to rural and regional Australia. That is not a bad thing; it is a good thing. But I do not have an appreciation of how you actually manage this in the very sophisticated policy analysis and process.

**Senator Chris Evans**—Thank you, Senator, and it is a good question. Before I give you the answer to that, I would point out one significant fact that is often lost in this debate, and I keep reminding people about it. Under the previous government, the nature of permanent migration to this country changed considerably. Over 40 per cent now is migration onshore—students and 457 workers. When we talk about permanent migration, people's perception is people queued up at Australia House to get on the plane—it used to be the boat—to come to Australia. So when we say this is the target for permanent migration for the year that is what is happening.

But what in fact is happening increasingly is that people who are already in the country are in the permanent migration program. So let us say 55 per cent—and I will get you the correct figure but it has been rising each year—are people who are coming new to this country and 42 per cent—or 45 per cent or whatever the figure is—are already living here. That is not the full answer to your question, but I make the point that the dynamic of it has actually changed.

If we look at the figures of the last few years, we have this debate about the total migration program. The total number of people who came in in 2007-08 under 'holidaymakers, students, 457s and permanents' was 717,000. When we have a debate about the permanent migration program we have got to put it into perspective. Take the huge growth in students, the huge growth in working holidaymakers and the huge growth in 457s. I have been trying to make the point to people that the permanent migration program is one small part of what is happening in terms of population flows into and out of Australia.

**Senator PAYNE**—Of course, but they still need to be accommodated.

**Senator Chris Evans**—They do. I am just making the point that, if you think by taking 10,000 off or putting 10,000 on the permanent migration program you are having a huge influence on it, you are not.

**Senator PAYNE**—No. And that was not the assessment.

**Senator Chris Evans**—I keep making that point because I think it is important, when we have the public debate, that people understand that. We are housing 278,000 students—last year—157,000 working holidaymakers and 110,000 457s. If we are talking about housing—and we can ask what sort of accommodation working holidaymakers live in et cetera—we are talking about 717,000 people who have come in. Of course, we also have the numbers of Australians who are going overseas, which is the other thing discounted.

In answer to your broader policy question: you are dead right—there is no planning; there is no framework. I asked the question on coming to government. As I had it explained to me, cabinet sits down each year and picks a number. It gets advice from the department et cetera, but there is no sophisticated modelling of the impacts on climate, housing or educational resources. There is no sophisticated analysis of the impact of the program and no longer term planning to it. It is an annual figure set each year by the cabinet.

What we are driving as a policy response to that is a longer term migration planning framework that does seriously engage with housing, climate, water, urban planning and the state governments so that, when we have a migration program, it is an informed program that has taken those issues into a broader framework. Until now that has not been done, but in the last budget I got the capacity to bring forward this year a broader framework for migration planning with a view to having a longer term assessment of and plan for the impacts of migration. That is something that has been missing in the public policy debate in this country. The result of that might be a full population policy but, certainly in terms of my immediate work, we are talking about a migration planning framework. We are looking to better engage with those issues and, in part, better engage with state governments, which are doing the urban planning. One of the issues with 457 workers is education. My own primary school now has 40 kids who do not speak English. It has a huge impact on the education system and puts pressure on the teachers. In my view, these impacts have not been properly considered.

As part of the migration program and the cabinet decision making for next year, we are looking to bring in a broader migration planning framework and we have started the engagement with the other departments about those issues. Having said that, of course, we suddenly have a global financial crisis. As with a lot of things, there might be a bit of readjustment to the way I thought things would pan. But the core point and your point about housing are right: we do need to have a look at the impacts—though, as I said, I noticed in the paper the other day that a real estate agent was saying the great thing at the moment is that migration is holding up the price of people's houses and that without it they would have gone through the floor.

**Senator PAYNE**—I think real estate agents are less popular than politicians, so perhaps we might not use them as a benchmark.

**Senator Chris Evans**—You are clearly out of touch if you think that, Senator. I think we are still 'top of the pops'.

**Mr Metcalfe**—Just to add to the minister's answer on the institutional arrangements: the department, in responding to the objective set by the government of establishing a longer term migration planning framework, sought to increase its own capabilities in this area earlier this

year, in reorganising the department and establishing a migration visa policy division. We are in the process of adding some additional capability to the department. We recently appointed a principal adviser on migration strategies, who will have a clear policy role in this area. We are very close to appointing a chief economist, which is a new position for the department and which, I think, recognises the very issues that you have raised about the need for better evidence and engagement on the economics of these issues and the related policy areas.

We have also sought to reinstitute a relatively modest research capability in the department. For a long time we have had research largely focused around the longitudinal survey of immigrants, but we have allocated a modest sum of resources and have created a very small group of people to provide a better research base across a range of departmental programs, and this is one area where we will be seeking to do some short term and longer term research.

**Senator PAYNE**—Without wishing to scare off any potential applicants, are those senior officers the sorts of people we might be able to speak to at estimates?

**Mr Metcalfe**—Yes. Indeed, the principal adviser is in the room today—Mr Kukoc—

**Senator PAYNE**—Is that the person who just ran screaming from the room?

**Senator Chris Evans**—He would love to talk to you about it.

**Mr Metcalfe**—I signed off yesterday, but have not yet announced, the appointment of a chief economist, and that is someone you will no doubt see in a few months time.

**Senator PAYNE**—Thank you.

**Senator ELLISON**—Following on from that, is it possible to ask questions of those officers today as to the policy work that is being done to assist the current situation and where the trends are going from here?

**Mr Metcalfe**—Perhaps when we get to output 1.1. The only comment I would make is that we are not able to talk about policy advice, but we will endeavour to assist with whatever questions you might have.

**Senator Chris Evans**—Also, just so you are clear, Senator Ellison, we have done some policy work on our capacity to alter the programs, et cetera, and that is advice to government that is coming forward. But it seems to me that the key issue is the labour market analysis, and that has been done inside DEEWR by work that the Deputy Prime Minister has commissioned. So we are reliant on them for the labour market analysis. That is the only point I am making: we do not do the labour market analysis.

**Senator ELLISON**—Flowing on from that, do you engage people like Access Economics to do any modelling for the department?

**Mr Metcalfe**—Yes, Senator.

**Senator ELLISON**—Is that in the form of current labour needs, trends and the economic situation and how it could impact on migration?

**Mr Metcalfe**—Yes, and particularly the contribution that migration may make to the economy. Those are the sorts of issues that we have had work done on.



**Senator Chris Evans**—If your question goes to whether we have commissioned them to do work on the labour market as a result of the recent financial crisis, the answer to that is no. DEEWR are doing the work on the impact on employment, but we have certainly used Access in the past. We did a major submission which was used in the framing of the last budget. That was on the economic benefit of migration—the various visa classes, et cetera, which I think we made available. I am pretty sure I released that publicly a few months ago. It is on the website. If you are specifically asking about a response to recent events, the answer is no.

**Senator ELLISON**—You mentioned bringing forward the planning, if you like, as opposed to each budget, as a decision made by government. Is there any work being commissioned with Access Economics or other non-government bodies in relation to that?

**Senator Chris Evans**—Certainly the major Access work which we did which informed the last budget process is a serious bit of work about the costs and benefits of migration and the various categories. In terms of the planning framework, we will rely a lot on that. It was an update of major work undertaken under the previous government, which is publicly available. It is really useful, meaty stuff which gives you a good feel for the cost benefit of the migration program by category. It is possible to get Access to update that. We have not taken a decision about that for this year's budget, but the fundamental work has been done and it is an update process in terms of the costs rather than the fundamental work. But that has not been done yet for next budget. I am not sure whether we will do it, because we have a pretty good feel for it.

**Senator FIERRAVANTI-WELLS**—Minister Evans, at the last set of estimates, in the Prime Minister and Cabinet portfolio, Senator Minchin asked some questions in relation to the revenue effects of immigration decisions. I think that that dovetails into the comments that you have just made. I suspect the response has now been overtaken. The response that we got was that the budget costings only included the first-round effects on expenses and revenue. I suspect that, in light of your comments, Minister, those estimates of costings would have to be reassessed. In other words, does it follow that the costs that were included in the last budget, particularly going to revenue from immigration and increased immigration, are now going to be offset by some of the changes that you have advised the committee of today? I want to put that answer into context now.

**Senator Chris Evans**—I do not know that I understand the question.

**Senator FIERRAVANTI-WELLS**—If I give you a copy of the answer to questions on notice that was tabled, perhaps if you have the opportunity—

**Senator Chris Evans**—By PM&C?

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—I will take that from you. That would be helpful. I will take on notice anything that I can answer and get back to you. But I want to make the point that the Access Economics work which is publicly available—which I think I released after the last estimates—has projections out to 15 or 20 years. So it does show the impact someone coming in this year will have on the budget through the next 20 years of their residency in the country. It is not just a one-year impact; they have costed for us the long-term effects. I will have a look at the answer given by PM&C.

**Senator ELLISON**—Just on that point, isn't the Access Economics work pretty much out of date, due to what has happened since May this year, with a dramatically changed economic climate in the world and no doubt in Australia as well? That study is in need of great updating, isn't it?

**Senator Chris Evans**—I do not think that is right. I think you might misunderstand the work. The work calculated the impact of someone coming in. It did not determine how many people came in. It calculated, for example, if you brought in 10 people under the Skilled Migration Program, they would pay this much tax and cost the health system this much. It shows the net impact. It does not go to a decision about the migration levels. It gives you a prediction on the impact on the budget of any decision you take in relation to numbers.

**Senator ELLISON**—But wouldn't unemployment levels make a difference to that assessment? If someone comes in and unemployment levels are high then the cost to the community is much higher. If unemployment is low then their financial contribution to the community is much higher. You would also take into account interest rate levels. You would take into account inflation levels. You would also take into account the other demands placed on the financial system with respect to obtaining credit. I imagine Access Economics would do that in their assessment, because anyone coming into Australia, no matter who, would at some stage be obtaining credit. It is a fact of life.

**Senator Chris Evans**—I do not think they went to that level of detail. Certainly employment is used in the model.

**Senator ELLISON**—That is an issue, because if you have more people seeking credit and you have a credit squeeze—at the moment we have both a stock market crash and a credit squeeze—then you are placing a further burden on the financial sector. What I am interested in is the change that is needed in assessment since May this year, after that study was done.

**Mr Metcalfe**—I am not an economist, so I will have this corrected if I make an incorrect comment. My understanding was that the work done by Access Economics was to look at not only the so-called first-round effect of migration but also the second-round effect on the Commonwealth budget. The first-round effect is the cost that migrants may place on the budget in terms of consuming services, whether that is Medicare access or other services. However, to represent a true figure, you need to take into account second-round effects such as the contribution made through the payment of taxation by migrants.

We know that, historically, migrants in the skilled categories have a lower unemployment rate than Australians, regardless of what the unemployment rate is. So, by definition, skilled migrants are contributing to the Australian economy in terms of being in paid employment at a greater level than Australian born people are. That position changes if you move to migrants who have come here in the non-skilled categories and the family categories. As we know, refugees have high levels of unemployment initially, but that ameliorates over years as they become fully integrated into the Australian economy.

The impact of migrants on what you would almost regard as a third round of measures, such as seeking access to credit, housing finance or whatever it might happen to be, are further issues that would be no doubt of interest. But the impression generally is that migrants do create employment when they come here because they consume—they do buy houses;

they do buy furniture—so they do actually add to economic activity. As I have said, I am not an economist, but certainly studies by highly reputable economic agencies, such as Access Economics, show that migration does have a net positive impact on the economy. And I would not suggest that that will necessarily change, even if the program changes

**Senator BARNETT**—All forms of migration?

**Mr Metcalfe**—As a complete group.

**Senator BARNETT**—As a group?

**Mr Metcalfe**—As a complete group.

**Senator BARNETT**—As a generalisation?

**Mr Metcalfe**—As a complete group. But, clearly, different categories within that will have differential impacts. On the one extreme there are the people coming in as employment nominees who move straight into employment, as opposed to people who may come through the general skilled category who may quickly move into employment and as opposed to people who we know are going to consume government services because the Australian government has made a decision that we will bring refugees into the country.

**Senator BARNETT**—The reason I ask is that I have asked that question before without getting an answer to the different categories.

**Mr Metcalfe**—I think it is self-evident, Senator, that some categories of people—business migrants, employment nominees—will very rapidly move into what you would regard as full economic production and there are other people who have language issues or who have come from very difficult backgrounds. Australia has a very proud record of resettling those people.

**Senator BARNETT**—Yes, I know, but is there a net economic benefit?

**Senator Chris Evans**—If you have a look at the Access Economics report, you will see that it takes you through category by category. So you get a good appreciation of the difference. There is no question that humanitarian refugees are a cost initially. They become more economic, if you like, as time goes on. Aged parents mostly do not move into the workforce. But all of that is in the Access Economics report and is broken down. I do not normally refer people to economic reports as being a good read, but it is a good read.

**Senator FIERRAVANTI-WELLS**—Or have your own economist.

**Senator Chris Evans**—That is why we are getting one.

**Senator ELLISON**—You mentioned unskilled migration. With 70 per cent of the program skilled, it would seem that the modelling from Access Economics is that a skilled migrant will obtain work a lot sooner. We realise humanitarian entrants and refugees and we put them in a different section because they require more intensive care. There is no issue there, but what about unskilled migration? In this current environment, the economic downturn would make it more unattractive for unskilled migration.

**Mr Metcalfe**—Without wanting to complicate things, we have to be careful about definitions. We of course have a skilled migration program, and around 70 per cent of the current migration program is in the skilled category. That consists of applicants who would be selected on the basis of their skills, together with family members—spouses and dependent

children. Quite often, skilled migrants have spouses who are skilled, but sometimes they have spouses who are not skilled. And their children, if they are dependent, by definition, would be coming in to study.

We also have the family categories of migration in relation to spouses, children for adoption, age dependent parents and so on. Again, many people coming through that category may be skilled and some may be unskilled. My nephew recently married a young lady from the United Kingdom and she has come to Australia as a migrant. She is a paediatrician. So, although she has come through the family category and is technically counted as an unskilled category, she is a highly qualified person in great demand in Australia. The general proposition is that migrants from the skilled categories have a positive fiscal impact but, even when you take into account all of the migration to Australia in the permanent categories, the net outcome of all of those programs is a substantial fiscal benefit.

**Senator ELLISON**—I want to go back to an earlier issue raised, which was the different industrial sectors that the minister mentioned in relation to some having a greater demand than others. How is that assessed? I realise that it is, perhaps, done each year for the cabinet decision on the migration program but in this environment, which is a very different environment to what we have had for the last 10 or 11 years, which was constant growth—and now we are facing possible stagnation or even something different—how we do that now, bearing in mind there is a sense of some urgency, if you like, in relation to the situation? How do we assess the needs of those industrial sectors now?

**Mr Metcalfe**—We obviously are in close touch with other relevant agencies particularly the Department of Education, Employment and Workplace Relations and the Treasury. The minister has already indicated that he has asked for an examination of what the various mechanisms and tools might be and has indicated that, of course, the government would, in the normal course of events, consider the composition of next year's program as part of the budget process. If there was a need for more urgent action for whatever reason, then that is capable of being taken, if required.

**Senator Chris Evans**—Senator, as I indicated, the current program suffers from a lack of focus—

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—and that has been true for a number of years. Whether it is in a growth period or in a period of less certain growth, I think we need better focus. I will be making some announcements about changes in priorities in that regard shortly. That has been not overtaken but put in a slightly different context if our forecasts are dramatically changed in terms of growth. Fundamentally I have engaged with the states about trying to get a better relationship between them and the Commonwealth when it comes to states' needs because, as I say, we have very different labour markets. Places like my own state is short of policemen. I do not know if they are short of policemen in Tasmania or Victoria. We have had people sucked up into the mining jobs and we have had a lot of state government services short of community workers as well. They are not the sort of occupations one would normally think we would be looking for. I know the WA government, and I am sure the new government, have been anxious to get police officers. They have been doing a lot of recruitment in Britain.

Their labour market needs might be quite different. At the moment we are just throwing it all into a bunch and saying that these are what we need without very good targeting.

We have also had a huge growth in the number of onshore students coming into the system, who may not necessarily be well targeted to our skills needs and may well not have as good employment outcomes. The former minister, Mr Andrews, made some changes that took effect in September last year, which were designed to try and address that problem. I am looking to build and further refine those changes. I say to the department that we have become the job network agency for Australia in a sense. At certain times it has been very much just about general migration, building the population and bringing in new migrants into Australia in the post war. Increasingly we have gone more towards a more targeted skills demand based program. I think we need to focus that more and also be aware of the sorts of issues that were raised earlier about housing.

As you know New South Wales, for instance, share of the migration has dropped from the low 40s to the low 30s as a proportion of the total going to New South Wales as a result of some debate there. So there are changes: Queensland and WA have been growing; South Australia is desperate to grow; and Tasmania is desperate to grow as a share. I am just reflecting that I think we need to have a more focused program be it at a time of strong growth or at a time of, as you say, stagnation.

**Senator FIERRAVANTI-WELLS**—And this will be adopted for the next budget?

**Senator Chris Evans**—Very much so. I was about to announce some changes in the short term, and I will probably proceed with those but, as we have all recognised today, the context has changed quite quickly. If you were to ask me whether I think we need a better target in good times and in bad, I think the answer is yes to both. I still think the targeting is a good thing, but clearly the environment is changing.

**Mr Metcalfe**—As the minister touched on earlier, an additional consideration for policymakers and, indeed for parliamentarians, is the longer term dynamic within the population. In only two to three years time, more people are expected to start leaving the workforce than entering the workforce, unless there is a dramatic increase in the retirement age. So there are long-term demographic issues that have been recognised in Treasury's intergenerational reports. It was for a good reason that the former Treasurer talked about having one for mum, one for dad and one for the nation, because of the longer term demographic challenges that we have had.

Although there are short-term issues associated with economic circumstances—indeed, medium-term consequences—it will be important for policymakers to bear in mind the long-term demographic issues facing Australia. I include in that the sorts of measures the minister has referred to—not only our population size and distribution but also the share within the particular states, internal migration issues, the proportion of Australians leaving Australia and expatriates returning, and longer term issues such as climate change. So it is a very complex mix of issues.

**Senator Chris Evans**—Not to mention the Kiwis—

**Mr Metcalfe**—Not to mention the Kiwis—

**Senator Chris Evans**—who are very sensitive to changing economic conditions.

**CHAIR**—Can I say a few things as chair. We were due to break for lunch at 12.30. That was based on the arrangements we had made to meet the legal and constitutional committee from the German parliament. In fact, they have been delayed and will not be here until one o'clock. So with agreement with Senator Barnett, we are going to keep going until a quarter to one, and then we will break for lunch for an hour. We are still on general questions.

**Senator ELLISON**—You mentioned 278,000 students. I have a question in a similar vein to what I asked about the 457s, and we could perhaps bring in the holiday workers. If there is a downturn, can those figures be adjusted fairly readily, or is it going to take some time for them to wash out due to the economic circumstances? For instance, if we went into a depression—we do not want that, of course, but we have to be mindful of the current situation—what sorts of things can we do there?

**Senator Chris Evans**—If we lost the students we might go into a depression. They are the second or third biggest industry after coal and iron ore as an economic industry—

**Senator ELLISON**—And I acknowledge that—

**Senator Chris Evans**—so if we lost the students it would be a huge economic blow to the country.

**Senator ELLISON**—Just as other people bring in money and spend it as well.

**Senator FIERRAVANTI-WELLS**—There are whole regional areas that depend on overseas students.

**Senator Chris Evans**—That is right. Like everything, it is not as simple as it first looks.

**Senator ELLISON**—Nonetheless, this is a factor in the circumstances. If we were in a depression, would you have those same levels of students and holiday workers?

**Mr Metcalfe**—Taking students firstly, students are primarily here to study in Australia and, as the minister said, that has become a very big earner of foreign exchange. Were there to be a global depression or a severe economic downturn in Australia, then whether or not students would continue to come in the same numbers, whether their parents would be able to afford it, is an issue in itself. Students ordinarily have the ability to engage in up to 20 hours employment in Australia. That is a policy setting that could be adjusted. It is within the gift of the government to alter the work rights that are applicable to students.

Another impact that students have, as the minister indicated, is that a large number of students now find a pathway through to permanent migration. That is also an instrument of policy that could be changed. It was only opened up as a pathway some years ago. Indeed, if you go back many years, there were prohibitions on students seeking permanent residence in Australia and a requirement that they return home for at least two years. That was based on a sort of Colombo plan concept, whereby people should return home to work in their own economy. All of those issues are now the subject of regulated entitlements and are potentially capable of change.

In relation to working holiday makers, as the minister said earlier, there may well be changes in demand. People may be less interested in travelling. The policy intention of

working holidays is that people have a holiday and supplement their income by working—usually no more than three months in any one job, but there are some concessions for particular industries where there is a real demand for young people. Again, those policy settings can be changed. It is possible to cap that program, to limit the number of people coming in under that program, and to affect the visa grants.

My recollection is that the previous Labor government undertook some of that. I will check this and correct the record if I am wrong. My sense is that in the recession of the early nineties, given unemployment levels, there were limitations placed upon the number of working holiday makers able to come into Australia. Some of our working holiday programs are based on reciprocity with other countries, and so that would be an impact. Obviously you would want to continue to ensure that young Australians had opportunities to work and travel overseas as well.

**Senator Chris Evans**—I would just add, Senator, that, in relation to the question of work rights for students, I understand that one of the reasons that we are competitive in the international student market is because of our offer of work rights and a number of other countries have moved to the Australian standard in order to try to compete with our capacity to attract students. So, again, a knee-jerk response might be to restrict the number of hours students can work—thereby reducing the labour force—if there is perhaps a retraction going on in the economy, but one has to think through the issues because a reduction in work hours allowable to students would, I suspect, severely reduce the number of students coming into the country. I just raise that there is another effect of these sorts of decisions, and one of the reasons that Australia is so competitive in the international student market is the capacity for people to work and support themselves while they study.

**Senator ELLISON**—You mentioned the Access Economics report. If there is any further work done by Access on this matter, could that be made available to the committee?

**Senator Chris Evans**—To be honest, if it were done in the lead-up to the budget, there would be a consideration for cabinet, so I doubt it would be released at that time. I think, Senator Ellison, when you look at it, you will understand that an update would be useful but the fundamental understanding of the report will be reflected. And, as I say, it builds on research done under the previous government two or three years earlier.

**Senator FIERRAVANTI-WELLS**—Minister, can I take you back to some of the questioning that happened earlier in relation to the tribunal and, in effect, the usage of the student visa and some of the negativity that is associated with that? I think you were particularly making reference to discussions that you had had with the Chinese ambassador. In the context of the commentary that you are now giving us, could you confirm my understanding that you are going to look at that area, particularly in terms of what appear to be quite sophisticated activities? Obviously they are within the ambit of the law but they are fairly sophisticated—I do not want to use the word racket—activities.

**Senator Chris Evans**—Not necessarily within the law, Senator.

**Senator FIERRAVANTI-WELLS**—Yes. Well, in that case, not necessarily within the law in some cases. Are we seeing student visas misused in effect as a pathway to immigration that has positive and negative overtones? As part of that review or examination that you indicated

earlier, are you going to be looking at this in terms of both its pros and cons, in the context of the commentary you are now giving us?

**Senator Chris Evans**—As I indicated earlier, I have concerns. My job, in part, is to ensure the integrity of the migration system. I have concerns that that integrity is being undermined by some of the practices in the student area, by people supported not only by migration agents but also by education agents—people outside our control. There is significant exploitation of people within that area. I think we have to put it into perspective. We run a very successful overseas education program. We get thousands and thousands of students who come to this country and have a great experience, pay good money for their education and return successfully. I do not want to highlight China, because actually their return rates are good and they are a model country for students.

**Senator FIERRAVANTI-WELLS**—I raised it in the context of the comments that were made.

**Senator Chris Evans**—I just want to make that point. I did not want to make it look as if I were using them as an example. They have a high percentage of people in higher education and their compliance rates, return rates, are very high. But there has been exploitation of prospective students and there has been an attempt to link education to granting a visa. There has been a lot of debate about this in the past. There is no doubt that there has been a tendency for people to try and follow courses that allow them to qualify for migration.

**Senator FIERRAVANTI-WELLS**—Precisely. They will come in to do computer science at a university and then end up doing a cook's course as a pathway to them becoming a permanent resident.

**Senator Chris Evans**—Some of the things I am focusing on now are to try to do what the previous minister tried to do as well—that is, to try to make sure that we maintain the integrity of the migration system and maintain the integrity of the education system and prevent that exploitation, because stories of exploitation undermine both our migration system and our education system. So it is an issue that we are dealing with.

**Senator HANSON-YOUNG**—I have some questions on the 457 visas. Could you give the committee an update as to where the review is at—when it is expected to be finished and the expected outcomes of that?

**Mr Metcalfe**—Chair, could I just say that that is a question that really goes directly to output 1.1. I am not sure if we are moving out of general questions into the outputs.

**CHAIR**—It could be another hour after lunch before we get to 1.1. We probably will not get to 1.1 until at least 2.30 pm.

**Senator BARNETT**—Chair, I have a one-minute follow-up question to what was raised a few moments ago. In terms of the proposed new policy development unit, you indicated that there were three new positions, including the chief economist. Could you advise the committee, either now or on notice, of the names of those positions, the levels of those positions and when they are expected to commence.

**Mr Metcalfe**—I can cover that in 15 seconds, Senator. The Principal Adviser, Migration Strategies, is a band 2, senior executive service officer within the Migration and Visa Policy



Division. The Chief Economist is band 2, senior executive service officer within the same division. The Policy, Innovation and Research Unit consists of a small number of staff—probably up to 10.

**Senator BARNETT**—Is that a new unit?

**Mr Metcalfe**—That is a new unit. It will be headed by a senior executive service officer at the band 2 level—division head level. That person is yet to be announced. The unit also comprises an assistant secretary, a band 1 SES officer, and a number of other staff in the executive and APS levels.

**Senator BARNETT**—Is the chief economist and principal adviser part of the Policy, Innovation and Research Unit?

**Mr Metcalfe**—No, they are separate areas. The Migration and Visa Policy Division, headed by Mr Vardos, whom I am sure we will see under 1.1, as the first assistant secretary, will have those two new positions—migration strategies and chief economist. A separate unit, the Policy, Innovation and Research Unit, will report directly to me.

**Senator BARNETT**—Thank you.

#### **Proceedings suspended from 12.46 pm to 1.46 pm**

**Mr Metcalfe**—Coming back on a question asked earlier by Senator Pratt about compensation claims, she referred specifically to Mr G. I can advise that that particular compensation claim has not yet been settled. An offer has been made, but discussions are still underway in relation to that settlement.

**Senator ELLISON**—What legislation is being drafted, and what is anticipated?

**Ms Bicket**—In terms of principal legislation that is currently being drafted, I believe the only current matter that we have on is in relation to time limits in judicial review, which we had previously removed from another bill because they were not ready to go forward. We are looking at perhaps reintroducing those proposed amendments in the near future.

**Senator ELLISON**—Is there any other legislation anticipated? That is what is being drafted; is there any anticipated?

**Ms Bicket**—Not specifically at this stage. It is obviously a matter for government as to what they want to bring forward in relation to future sittings, but those decisions have not been made at this point.

**Senator FIERRAVANTI-WELLS**—Minister Evans, in light of the comments you made earlier about the changes in demand for workers et cetera, there could, in particular, be some reductions in relation to the need for skilled migrants. Are you inferring that there could potentially be some amendments to the worker protection legislation that has come into the Senate and is now going to be under inquiry—for example, perhaps some go-home type clause? I understood from the general discussion we had before that there could be circumstances where there may no longer be a need for workers who previously came in under a 457 visa to stay. I appreciate that the legislation goes from setting undertakings to obligations. You may not have thought about this, but does that legislation now, in view of your comments, require some sort of, to put it crudely, go-home clause?

**Senator Chris Evans**—No. It certainly is not envisaged, and I do not think it would fit within that bill anyway. As we discussed earlier, the key aspect is that it is sponsored by employers, and they need to make the economic decision about the use of that labour. But as I have repeated, and will continue to repeat and advise all employers, we expect them to offer jobs to Australians first. This is a measure to provide overseas labour when they cannot fill those jobs locally. Any changes we need to make will be more by regulation. The worker protection bill is about putting the proper framework in place and is a continuation of some legislation the previous government had drafted but not introduced.

**Senator ELLISON**—On a different topic, I asked a question which was taken on notice—question on notice No. 5—at the budget estimates hearing on 28 May this year. The answer talked about the impact of the additional two per cent efficiency dividend on the department and it said that ‘the reduction by output over the forward estimates, as provisionally calculated at the time, is reported in the attached table’. Further, it said that ‘the impact on the 2008-09 budget in forward years will vary slightly as the budget is reallocated and reconfigured to meet emerging priorities and operational requirements’. Has there been any reconfiguration since then?

**Mr Metcalfe**—Yes, there has.

**Senator ELLISON**—And what form has that taken?

**Mr Metcalfe**—The department was restructured in a series of moves commencing on around 14 July this year. The changes primarily affected the national office, but not solely. We took the opportunity to rationalise a number of branches and to look for a number of savings in relation to staff numbers. We similarly have been seeking to reduce the number of contractors and consultants that we employ as well. The changes to the state and territory office network largely related to some work that had been done in the national office being devolved to the state and territory office network but also the progressive implementation of amalgamating various workloads and the processing of particular visa categories in particular offices. That is part of a longer term trend of developing areas of specialisation and expertise in relation to visa processing matters.

**Senator ELLISON**—Concerning staff reductions, I asked another question at the last estimates—question on notice No. 11—in relation to a discussion on the financial health check and the efficiency dividend. The response was that it was anticipated there would be a net reduction of around 250 positions. Has that reduction materialised? Have staffing numbers changed or remained the same?

**Mr Metcalfe**—That remains broadly correct. The savings were achieved within the national office. We obtained those through some voluntary redundancies, and we will continue to work towards that overall reduction in numbers across this financial year.

**Senator ELLISON**—What is the reduction in staff numbers that has taken place?

**Ms McGregor**—In respect of the first part of your question, 136 voluntary redundancies have been taken up. The second part is a little bit more fluid in that there are people who have gone via voluntary redundancy, but equally we had a series of non-ongoing staff. So we are still working towards that broad reduction and we anticipate we will be there during the financial year. What I mean about being fluid is that you have people coming on and going off

at the same time. But we do not need to invoke the management initiated redundancies, for instance. We think we will get there through attrition and non-ongoing reduction.

**Senator ELLISON**—And you will do that by the end of the financial year?

**Ms McGregor**—Yes.

**Mr Metcalfe**—Essentially we have set what we describe as phased budgets for each of the operating divisions and state and territory offices across the department. So the emphasis is on them working through the year. There may be different patterns of expenditure, depending upon the seasonal or other issues in those offices, but they have a bottom line to meet at the end of the financial year. The staff savings and the budget savings associated with that are part of that. As I have said, it is part of a broader dynamic in that we, perhaps counterintuitively, have been seeking to boost staff numbers in some areas. For example, in our systems area we have been seeking to replace contractors, who tend to come at a premium, with employees because we can offer employees a longer term but they cost less than a contractor does. So it is not just a simple issue of reducing staff. It has been about how we manage budgets across the financial year. It certainly has involved us reducing quite considerably the number of employees in Canberra.

**Senator ELLISON**—In relation to the reductions, you say they were mainly in the national office.

**Mr Metcalfe**—That is correct.

**Senator ELLISON**—Were there any in the regional offices?

**Ms McGregor**—There were a couple. In fact, of that 136, there were two in the regions, but our emphasis through the financial health check review that the secretary referred to was to move some service delivery functions out of the national office into the service delivery network. It was not intended that there be reductions in the service delivery network.

**Senator ELLISON**—I mentioned last time the reduction in overseas offices. Has there been any further reduction in overseas offices?

**Mr Metcalfe**—No. We have implemented that budget decision, so that reduction, by around 10 per cent, has been put in into effect.

**Senator ELLISON**—And the number of officers remains the same? There is no change?

**Mr Metcalfe**—That is correct.

**Senator Chris Evans**—I will add that it will be hard for you to track because we have over 7,000 employees.

**Mr Metcalfe**—If you include locally based employees and overseas based employees, it is 8,000.

**Senator Chris Evans**—And contractors. As you know, regarding the 457 visa centres of excellence we have actually transferred work to other centres. We want to be upfront about the redundancies but, equally, if you tried to track them you would struggle because there is a lot else going on in terms of reorganisation and movement. Have there been people moved out of those centres where the 457s are no longer done?

**Ms McGregor**—That was all part of a balancing act. As we recreated the 457 visa centres of excellence we were actually consolidating other case loads, so those that relinquished the 457 work have taken up other case loads. It was quite a scientific process to balance it so that we did not lose staff.

**Mr Metcalfe**—A good example there is Brisbane, which no longer processes 457 visas. Visas for Queensland are now processed through the Sydney office. But at around the same time we created a capability in Brisbane to consider skilled migration applications, which previously had only been dealt with in the Adelaide office. Staff in Brisbane are now working on permanent visa applications, and they may well have previously been working on temporary visa applications. It is all about getting case loads consolidated and achieving efficiencies through that. If you ask us questions later about 457 visas and processing times we will be able to demonstrate some very welcome progress in that area. It is also about developing expertise and specialisation in particular case loads. It is possible to move work to where it suits us, rather than simply all our offices offering all services in all categories. We have moved well beyond that particular paradigm.

**Senator ELLISON**—Regarding the 136 voluntary redundancies, can you give us an idea of the classification of the officers who took those redundancies? What sort of work were they doing?

**Ms McGregor**—I would have to take that on notice. We would have that breakdown.

**Senator ELLISON**—Was it across the board?

**Mr Metcalfe**—It was offered within national office. It was made available to all staff to seek consideration. A number of staff sought that consideration and we agreed to it. If they came from a particular area and that area needed skills, then there was the potential for those jobs to be supplemented through other ways. It was a device to achieve the necessary level of separations from across national office.

**Senator ELLISON**—If you can take that on notice, I would be grateful.

**Mr Metcalfe**—What we can take on notice, Senator, is probably the classifications of the officers. It would be more difficult, I think, to go into what work they did, apart from a general description—for example, that it would primarily have been sort of clerical and administrative work.

**Senator ELLISON**—A general description would be good if you can.

**Mr Metcalfe**—We will do what we can.

**Senator Chris Evans**—There is a new organisational chart, and that might actually give you a better idea of the changes, Senator.

**Senator ELLISON**—That would be helpful as well. In that, will you have your new policy unit for looking at changes in the market?

**Mr Metcalfe**—One of the decisions that we took was to abolish a division that was previously called the Strategic Policy Division. What I did was recreate a small unit called the Policy Innovation Unit. They are different areas but we were able to do that through abolition of some functions and through investing in some areas. As a result of the changes that were

made, it was not simply a measure of cutting areas; it was also about looking at where we needed to redirect or increase capability. We have certainly done that in the migration and visa policy area. That has a significant policy workload at the moment. We have strengthened our client service network management division, because it is responsible for a large aspect of the delivery of all of our programs in the states and territories and overseas. There are also a range of other changes taken at the same time.

**Senator FIERRAVANTI-WELLS**—Can you just give me a bit more detail and drill down into the \$67 million that has been taken out of areas such as border security and immigration processing? Can you give me details in relation to that?

**Mr Metcalfe**—That is an interesting figure, Senator. I have seen it in the media, and I do not know where that \$67 million figure comes from. I have guessed, but it is hard—

**Senator FIERRAVANTI-WELLS**—What is your guess, then?

**Mr Metcalfe**—My guess—

**Senator Chris Evans**—It is not for us to interpret your press releases, Senator.

**Senator FIERRAVANTI-WELLS**—It was not my press release, Minister. I am just asking the secretary for his interpretation.

**Senator Chris Evans**—But I will not have the secretary guessing what your press releases mean. If you have claims to make about cuts—

**Senator FIERRAVANTI-WELLS**—Perhaps I will rephrase my question.

**Senator Chris Evans**—you ought to identify what you think are the cuts and then we can respond. But, quite frankly, we are at a loss to explain what you are talking about.

**Senator FIERRAVANTI-WELLS**—Perhaps I can ask the secretary: could you itemise it precisely? So that we are not guessing, why don't you just itemise line for line where you are actually taking out and where you are putting back in, so that we can see where the net \$67 million is—or whatever other figure you assert? If you say that the \$67 million is not correct, what is the actual figure?

**Mr Metcalfe**—The easiest way to answer that is to refer you to the portfolio budget statement, which sets out the budget arrangements for the year. I will ask our chief financial officer to talk about things in a little more detail. There were savings made in the portfolio this year. Perhaps the most substantial were savings associated with the closure of the offshore processing centres on Nauru and Manus Island and there of course were savings associated with the additional efficiency dividend. Our finances then become quite complex in that there were decisions also taken in the budget context for areas of new policy and the department underwent a financial health check. The Department of Finance and Deregulation undertook the health check, led by former secretary of the Department of Veterans Affairs, Neil Johnston, and systematically reviewed our finances and, in some areas, sought savings and in other areas sought supplementation. I was aware of the \$67 million figure that has been used, and I am unable to link it directly to a particular measure.

**Senator FIERRAVANTI-WELLS**—Do you say that there is a net gain or a net loss?

**Mr Metcalfe**—I will get Ms Prothero to take you through it in a bit more detail.

**Senator FIERRAVANTI-WELLS**—I have the papers in front of me, so can you take me to the—

**Ms Prothero**—In looking at what is available, my belief in relation to the figure that was quoted is that the impact of the closure on Nauru and Manus Island—this is reported in Budget Paper No. 2—is offset by the increased costs for removing the temporary protection visas. Those two figures deliver the \$67.5 million figure that was quoted. I believe that that is—

**Senator FIERRAVANTI-WELLS**—Will you take me to the budget paper?

**Ms Prothero**—It was Budget Paper No. 2, page 67.

**Senator FIERRAVANTI-WELLS**—We do not have it here, so if you read it into the record I will go read it.

**Ms Prothero**—It further referenced page 356. That is the closure of the offshore processing centres on Nauru and Manus province, and it was offset by the line a couple down from that: 260, the temporary protection visa abolition. I believe it was those two items offset that delivered the \$67.5 million. That was from looking at the content of what was in the press release. It is a little bit difficult because any combination of these numbers could be added together to give you something close to that figure, depending on whether you were looking at the budget paper or at the portfolio budget statements.

**Senator FIERRAVANTI-WELLS**—You say that when that is absorbed into the department there is no net cut?

**Ms Prothero**—No, I did not say there was no net cut.

**Senator FIERRAVANTI-WELLS**—Can you then take me through that?

**Ms Prothero**—I am saying that I believe the \$67.5 million came from the combination of those two. In relation to the department's resources overall, as the secretary noted, there is an awful lot of up and down which is detailed through the portfolio budget statements. It was further exacerbated by the movement of some departmental expenses associated with the reclassification of contracts for immigration detention centres from departmental expenditure into administered expenditure. When you look at our outputs line by line it is quite difficult to understand the movements, because that makes the interpretation a little bit more difficult.

I am looking for the right spot in the yellow book of our portfolio budget statements. There is an overall resourcing table. It is on page 16 of the portfolio budget statements. When you add the resources overall, you have—

**Senator FIERRAVANTI-WELLS**—Total resourcing A, B, C and D?

**Ms Prothero**—Yes. All of those together come to \$1.802 billion. The total estimate available to the department for 2008-09 is \$1.919 billion. The shaded column beside that on page 17 shows \$1.802 billion, so overall there has been a net increase of resources to the department on a flat look, but the interpretation of that really needs to be done in the context of the various measures.

**Senator FIERRAVANTI-WELLS**—Line by line.

**Ms Prothero**—Line by line, up and down, yes.

**Mr Metcalfe**—I could not see anywhere a reduction of \$67 million in relation to border protection issues. Indeed, there were some measures in the budget that added to border protection measures—increasing the humanitarian program and increasing the displaced persons and refugees fund that had been established by the previous government. As you are probably aware, for some years the department has been funded, and continues to be funded, for a range of areas of cooperation with not only Indonesia but also countries elsewhere in the region, with the significant objective of strengthening our borders. There have been no reductions; indeed, there have been some increases. There have been no staff reductions in that area. There has been some very good work done in the past, and that work continues to occur.

**Senator FIERRAVANTI-WELLS**—Thank you.

**Senator BARNETT**—Can you confirm your staff numbers as of today?

**Ms McGregor**—The latest figure we have, a head count as of 30 September, is 7,071.

**Senator BARNETT**—How does that compare with the May budget estimates? Is that a net difference?

**Ms McGregor**—The budget papers show the ASL, which is a lesser figure.

**Senator BARNETT**—So it has gone down?

**Ms McGregor**—It has gone down because there have been these reductions. But we will not be comparing like with like because the budget papers give the average staffing level and what I have just read out is the head count. We could get you an ASL figure but it takes a while for it to be drawn out of the various reporting systems.

**Mr Metcalfe**—What I can tell you, and if we can add to this on notice we will, is that we certainly have made savings on staff in national office. We have sought to quarantine our state and territory service delivery network. There has been a 10 per cent reduction, as part of the budget decisions, on Australia based staff overseas. But there have also been some measures which have led to increases in staff, such as the strategic objective to reduce the number of contractors employed, particularly in our IT areas, and replace them with employees.

**Senator BARNETT**—My coalition colleagues and I have been asking for a little bit more detail on that—even if you take it on notice. We are interested to know which contractors you have and which programs they were working on have concluded. We know there has been a reduction in staff since the May budget estimates. We are interested to know where those reductions have been made. I know you have answered questions from Senator Ellison on that particular point, but the information you have given is not comprehensive. You must have done some analysis about which you can advise the committee.

**Mr Metcalfe**—We are happy to provide that on notice. I do apologise. There are many moving parts, so it is difficult to describe. But we will take it on notice and give you an answer.

**Senator Chris Evans**—Senator Barnett, I understand the difficulty in getting around the complexity, but there has been a change of priorities and a reorganisation of work. We are quite upfront about the staff cuts and voluntary redundancies. If you look at A and B, you will not make much progress without a really complex analysis—but you can be assured that the

information we are giving you about the job losses is right. The jobs have gone, and we are upfront about that. I thought Ms Prothero was going to get to the accrual accounting line, which they always used. That would usually finish me off in terms of questions. I would throw my hands up and say, 'Okay, we're not getting anywhere here.' It is true that it is complex, so a straight comparison is hard. But we will do our best to get you some more information.

**Senator ELLISON**—One thing I asked about last time was litigation costs. What can you tell us about litigation costs so far?

**Senator Chris Evans**—I know that I am the most litigated person in the country!

**Senator FIERRAVANTI-WELLS**—Yes, Senator Evans. I have been in court when your name has been taken in vain!

**Senator Chris Evans**—My wife has been pressing me to put our home in her name!

**Mr Metcalfe**—I think the tax commissioner might be ahead of you!

**Senator FIERRAVANTI-WELLS**—I am not so sure about that. As you walk through the Federal Court, the immigration minister is always maligned.

**Mr Metcalfe**—There actually have been some very pleasing developments in this area—and Ms Bicket will respond to Senator Ellison's question. We have been quite successful in reducing the number of cases to which the minister or the department is a party very significantly. I recall that when I was appointed secretary over three years ago there was something like over 4,000 cases before the various courts and the tribunal. That figure now is around 1,000. That represents some concerted work by our department, by the Attorney-General's Department and by the courts themselves in speeding up consideration of cases and dealing with them more efficiently. So there is some very good work that has been done in that area. The actual number of applications remains significant but they are being dealt with very efficiently. Ms Bicket will be able to respond in detail to Senator Ellison's question.

**Ms Bicket**—Senator Ellison, were they specifically litigation costs that you were interested in?

**Senator ELLISON**—Yes.

**Ms Bicket**—For the financial year 2007-08 the direct expenditure on litigation matters was \$24.5 million. For this financial year as at 30 September it was \$5.7 million.

**Senator FIERRAVANTI-WELLS**—Just out of interest, do you have a panel of lawyers and you share that work across the panel rather than giving it just to the AGS?

**Ms Bicket**—That is correct.

**Senator FIERRAVANTI-WELLS**—Mind you, the AGS did a very good job in these matters.

**Mr Metcalfe**—And it still does.

**Senator FIERRAVANTI-WELLS**—Sorry, declaration of interest there!

**Senator Chris Evans**—And Ms Bicket calmly and politely tells me that she gives the same answers to me as she has given to previous ministers when I ask, 'How the hell are we



doing this much litigation and how the hell can we get out of it?’ She slowly explains to me that these things are largely forced upon us. But I, as the new minister, was flabbergasted by the amount of litigation and cost of it, but I am assured that all my predecessors had exactly the same reaction.

**Senator FIERRAVANTI-WELLS**—Which gets to the point that we were discussing earlier, Minister, about the explanation. Often—and I have practised in this area—a lot of the litigants are out there because they have been told certain things by unscrupulous migration agents and by equally unscrupulous lawyers who operate in this area and who take advantage for all sorts of reasons. Often the litigants end up in this circumstance, and it is very difficult. That is why I was going on about understanding and about getting the message out at that grassroots level. If we can prevent them going to court, Minister, it just makes it a lot easier. It is a saving all around at all levels of your department.

**Senator Chris Evans**—I agree with you completely. I am glad to meet someone who is tougher on this stuff than me. I share the sentiment, and I know Ms Bicket has been working closely with the courts, has also been looking at alternative means of progressing a lot of this stuff and has raised with me alternative resolution options, which we are sort of exploring. But the other thing that is worth saying is that we have an increasing compensation load. Without making a political point, we are facing a lot of compensation claims relating to unlawful detention or prolonged detention. It is an increasing case load, and that will add to our litigation costs in coming years given the way it is all shaping up.

**Senator FIERRAVANTI-WELLS**—So that 24 is just the litigation rather than the actual compensation?

**Ms Bicket**—That is correct.

**Senator ELLISON**—It is a valid point, one that has been talked about: people stringing out the system and it taking years. Without going into advice to government, is there anything you can tell us about progress in this area? I think the High Court and the Federal Court have said that there is a very high ratio of cases which are struck out. Let us face it: they totally lack merit. In this area I think it is one of the highest rates in the civil jurisdiction for where there is a total lack of merit. That would be your experience no doubt.

**Mr Metcalfe**—Yes, it is. But I suppose it is not entirely the case. There are some cases that of course do have merit. I think one of the difficult issues in this area for policy makers and parliamentarians has been how you come up with a coherent, well-managed system that does provide real justice to people but does not become a process in itself, which simply means that people who wish to prolong their stay in Australia can use the process to achieve that particular aim. We are very familiar with work done by previous governments in this area, through the establishment of external merits review, which was seen as providing merits justice for people wishing to have their cases reconsidered. There is the fact that under the Constitution it is impossible to remove the potential for judicial review. Section 75(v) provides for—

**Senator FIERRAVANTI-WELLS**—The original jurisdiction.

**Mr Metcalfe**—the original jurisdiction of the High Court, the various legislative schemes that have been put in place, the particular scheme in the Migration Act, the use of a so-called

privative clause over the years. What I think is becoming apparent is that the most efficient way of handling this issue is to try and ensure that real justice is provided as early as possible in the proceedings. The minister mentioned earlier various pilots that we are trialling to ensure that status resolution and real answers are provided to people rather than simply, as Senator Fierravanti-Wells says, people just being giving advice to continue endlessly. It is true that, of defended matters that go to the courts, the minister is successful in around 95 per cent of those cases.

**Senator FIERRAVANTI-WELLS**—Yes. Always profitable.

**Senator Chris Evans**—I wish I had that strike rate in the rest of my life.

**Senator FIERRAVANTI-WELLS**—Yes. I had a double whammy: I acted for both the minister and the tax commissioner. When you go into court for both of those you always end up having a good success rate.

**Mr Metcalfe**—Then of course there is the other aspect of the process, which is something that the committee has talked about before, which is the invoking of the non-compellable powers of the minister to intervene following a merits review. All of those issues have been the subject of a great deal of work by both the previous government and this government. But what I am pleased to see is that we have been very successful in reducing the on-hand litigation and that the actual practical measures being handled mean that not only is justice being given but it is swift justice. That is probably the real answer in this area.

**Senator FIERRAVANTI-WELLS**—What is the pool of unpaid costs now? It was always a perennial issue.

**Ms Bickett**—I do not actually have that figure with me.

**Senator FIERRAVANTI-WELLS**—I would be interested to see it. Could you just have a look at the trends of that. That is also another issue: the costs that remain to the Commonwealth when eventually people do leave after having gone to the High Court three or four times et cetera. That is another cost, the futile litigation, that remains to be borne by taxpayers. I think we are on the same page on that.

**Senator Chris Evans**—I thought Ms Bickert might want to respond to your question, Senator Ellison, about the resolution issues. It might be helpful.

**Senator ELLISON**—Yes.

**Ms Bickett**—As the secretary pointed out, we have been quite successful of late in driving down our on-hand case load. We are down to around a thousand cases on hand, which is a position we have not been in since somewhere around 2002. So that is a very welcome trend. The consequence of that is that the times which people are before the court will reduce as we get to be more active about that total case load. I think the courts are to be congratulated for the sorts of management practices that they have been putting in place to try and manage the case load more effectively: striking out matters, having bulk sitting periods and things.

**Senator FIERRAVANTI-WELLS**—Hopefully, word will get around and then they will realise that, even if you do put on a court case and incur expense to do so, it is not going to buy you too much time.

**Ms Bickett**—Hopefully.

**Senator BARNETT**—Can I touch on a few areas I mentioned before. The first is the annual report. I have your 2006-07 annual report, but I have not seen the 2007-08 one. I am wondering about its status.

**Mr Metcalfe**—As of today it should be at the printers. I cleared the final draft over the weekend. We are well on track to table it prior to 31 October.

**Senator BARNETT**—For future reference, it is awfully useful at these estimates committee hearings. I wanted to flag that with you for future reference.

**Mr Metcalfe**—Yes. I actually queried the final tabling date of 31 October and thought, ‘Well, that is a bit odd—why are we having estimates before the tabling date?’ If the tabling date had been last week, we would have worked to that timetable. I take your point, Senator. I am sure you will find it very interesting reading.

**Senator BARNETT**—I have got the 2006-07 report in front of me.

**CHAIR**—Before you do, Senator Barnett, I am advised that the usual practice is that it is at the additional estimates in February that in-depth consideration of the annual reports has taken place in the past and usually occurs.

**Mr Metcalfe**—Thank you, Chair. I am sure that you will find it fascinating reading when you see it in the next couple of weeks.

**CHAIR**—Never fear: some of us read it cover to cover.

**Senator Chris Evans**—Christmas holiday reading—excellent!

**Senator BARNETT**—We have had a number of agencies, yesterday and today, table their annual report and we have referred to it, so some of the questions that we ask are probably answered in the annual report. So, in that sense, you understand the position we are in. That is the point I am making. We have touched on the staffing issues. I just wanted to ask you about the government advertising program and the departmental advertising programs undertaken since the May budget estimates. Can you outline to the committee what programs there are currently underway?

**Mr Metcalfe**—I will check, Senator, but to my knowledge there is no advertising underway in the portfolio at this stage apart from the routine advertisements of job vacancies. I will confirm the answer is no, Senator. I will correct that on notice if I am incorrect. Certainly, there are no major campaigns underway.

**Senator BARNETT**—Could you advise the committee either now or on notice, since May budget estimates, the latest spend in terms of advertising?

**Mr Metcalfe**—I will take that on notice, Senator.

**Senator BARNETT**—Thank you.

**Mr Metcalfe**—I will assume that that is advertising whether it is campaign advertising or advertising such as job advertisements.

**Senator BARNETT**—Yes. I think you have previously broken it down to the different programs that you undertake.

**Mr Metcalfe**—Yes. I will take that on notice.

**Senator Chris Evans**—I think you will find it is only the latter, Senator. We will just double-check. The citizenship area had a bit of ongoing work but, certainly, I as minister have not initiated any new campaigns.

**Senator BARNETT**—Likewise, I have previously asked about media monitoring and the cost of media monitoring. I would like the latest figures, particularly since the May budget estimates.

**Mr Metcalfe**—I have a couple of different tables here before me. I think probably the best figures are in relation to the charges per month. Starting at May, the advice I have here is that the cost to the department of media monitoring in the month of May was \$9,615.37, in June it was \$8,501.17, in July it was \$7,687.92 and in August it was \$8,567.23. Those figures represent the provision of media monitor clips to the department on matters of interest, transcripts that may be ordered, the distribution of media releases through AAP and our subscription to the AAP newswire service.

**Senator BARNETT**—All right. Was there any other monitoring or anything else?

**Mr Metcalfe**—I have figures for the minister and the parliamentary secretary as well.

**Senator BARNETT**—Yes, that was my supplementary question.

**Mr Metcalfe**—The minister's office's spend for May 2008 was \$4,218.41, for June it was \$6,355.74, for July it was \$7,162.22 and for August it was \$12,456.12.

**Senator BARNETT**—What is the reason for the spike?

**Mr Metcalfe**—I will have to check as to what occurred in the month of August which may have led to a greater activity level there.

**Senator Chris Evans**—I saw these figures this morning and I am not sure that there is a spike in activity. Part of the problem is that the month you get the bill is not the month you necessarily incurred the cost.

**Senator BARNETT**—So there may be two bills in August.

**Senator Chris Evans**—When I was looking at it I just thought that it was another example of apples and pears and I could not make any sense of it. It was not just mine, but also the department's.

**Mr Metcalfe**—I will check on notice and come back. My advice is that there may have been a bill from an earlier month that was presented only at that time, and so it should not be seen as a trend or a change in activity. For the parliamentary secretary, Mr Ferguson, the spend in May was \$7,178.70 and in June it was \$509.80.

**Senator Chris Evans**—That is the point I was making: \$7,000 one month and \$500 the next. That just does not reflect his activity; I think it reflects the billing.

**Mr Metcalfe**—In July it was \$1,477.20 and in August it was \$1,951.

**Senator BARNETT**—Perhaps on notice you could give us the 12 months prior to that.

**Mr Metcalfe**—So you would like us to give you all of 2007-08?

**Senator BARNETT**—Yes, 2007-08.

**Mr Metcalfe**—We could do that.

**Senator BARNETT**—That is appreciated. In terms of ministerial overseas travel since the May budget estimates—

**Mr Metcalfe**—The minister has undertaken a visit to Indonesia, Malaysia, Thailand and Singapore.

**Senator BARNETT**—What about the parliamentary secretary?

**Mr Metcalfe**—The parliamentary secretary did not travel overseas in July, August, September or October. I do recall that he made a visit to Kuala Lumpur, but that may have been earlier in the year.

**Senator Chris Evans**—He represented us at an interface type of conference for a couple of days. I am not sure when that was though.

**Senator BARNETT**—I am happy for you to take it on notice, but could we ascertain the total cost of (1) the travel, (2) accommodation and (3) any other expenses?

**Mr Metcalfe**—We will take that on notice.

**Senator BARNETT**—Thank you. And I am interested to know how many ministerial staff and or family attended with the minister and or parliamentary secretary.

**Mr Metcalfe**—I will take that on notice but I can tell you now that the minister was accompanied by one staff member. He was not accompanied by his spouse, and I accompanied him.

**Senator BARNETT**—Very good.

**Senator Chris Evans**—I felt much more secure having Mr Metcalfe with me.

**Mr Metcalfe**—Thank you, Minister.

**Senator BARNETT**—So you were the one staff member, were you?

**Mr Metcalfe**—No. There was a member of his private office.

**Senator BARNETT**—Likewise for the staff member, could you itemise the travel cost, accommodation and any other expenses, and the total cost for all those involved in that travel?

**Mr Metcalfe**—I will take that on notice.

**Senator BARNETT**—Thanks for that. The other question I had related to reviews. Have there been any further reviews commenced or underway, again since the May budget estimates, that are being undertaken by the department?

**Mr Metcalfe**—We do many reviews on many things. Could you possibly define a little more what you are asking?

**Senator BARNETT**—Are there any consultancies?

**Mr Metcalfe**—There would be quite a few. I would need to take that on notice.

**Senator BARNETT**—All right. In terms of consultancies, could you take that on notice? But in terms of a review, from time to time you have discussions with the minister and are

instructed to review strategic plans and undertake reviews of operations in certain areas, certain parts of the department.

**Mr Metcalfe**—We do that as a regular thing. There is a constant process of review and evaluation of programs underway. It would be quite a large task to actually provide details because that is part of our normal policy work.

**Senator Chris Evans**—If you are after how I initiate anything involving external review, apart from normal departmental functions, like the Proust report or something, I do not think that we have, but we will certainly take that bit on notice.

**Senator BARNETT**—That is the question. Thank you.

**Senator Chris Evans**—I do not think so, but I will take that on notice for you.

**Senator BARNETT**—So, outside the ordinary course of business—

**Mr Metcalfe**—Involving external, expert bodies.

**Senator Chris Evans**—We still have the 457 review going on, for which I have an external working party, and there is Barbara Deegan's work, but I am not sure that there has been anything since the budget. We will take that on notice.

**Mr Metcalfe**—We can check that.

**Senator BARNETT**—Thank you.

**Senator ELLISON**—On the reconfiguration of the department mentioned earlier, I visited the UK earlier this year and saw that they have a special case management system which deals with, for example, a war criminal or a very delicate issue of deportation—all manner of suspected terrorists. They had really quite a good setup. In the reconfiguration, is anything like that being done in the department to deal with special cases?

**Mr Metcalfe**—Not so much as part of the reconfiguration, but we have had those units and we continue to have those units. For example, we have a war crimes screening capability. We have staff whose job it is to work very closely with the security agencies on sensitive matters—delicate cases from that point of view. From my recollection, there was no new initiative as part of the restructure. One thing that we did do though was create a case resolution, case management capability within the compliance and case resolution division. The focus there is to very much look at complex immigration status cases and seek to have a timely resolution to guard against what we have seen in the past and what are described as administrative drifts—a case that may present issues that might be pertinent to different parts of the department, possibly a protection visa or refugee claims, litigation, family relationships or character issues. Quite often in seeking to bring those cases to a conclusion, months or years can go by. There is a very strong determination—and this is something the minister has emphasised with me on several occasions—about the need for the department to take a holistic approach in relation to those cases and to seek to examine all aspects of the case and bring it to a resolution. It may be that the person should stay in Australia; it may be that the person should no longer stay in Australia, and that we should then seek to assist their departure. So that is one area. It is not quite to the point as to what you described but it is one feature of the reorganisation.

**Senator ELLISON**—It is relevant. I have another question on something I picked up. There was work being done on counter-radicalisation and debate-radicalisation. Is that best dealt with during general questions?

**Mr Metcalfe**—I would suggest that that is probably outcome 2, when we come to 2.4, Promoting the benefits of a united and diverse society. There has been some work done in that area.

**Senator Chris Evans**—I just want to comment on that question about complex case resolutions and make the point—which I try and make publicly and which is not well understood—that a large number of the long-term detention cases, as a result of those problems—the failure to resolve cases—have not been what people traditionally regard as refugee cases. They have been complex cases with a whole raft of issues that, for want of a resolution, have ended up in long-term detention. I am sure that previous ministers had the same frustrations, but unless you effectively case manage, the default position was to stay in detention. Some had serious identity issues. There is a reason why they are long-term cases—they are damn hard.

**Senator FIERRAVANTI-WELLS**—I know. When you look at it from the other side and you actually see the reasons why, then you understand. You are right; it is often identity. I had a case once where it took five years to prove the identity of the person before that person was finally deported, and that happens often. If you get a complication—I think that is what you were saying Mr Metcalfe—then you get three or four issues. You get identity issues and all sorts of other things together, then a case that takes potentially six months will end up taking two, three or four years.

**Senator Chris Evans**—My focus has been to make sure that the department actively case manages those. It is not that there is a tendency for them to fall between the cracks but that one section does its bit of the job and then the case is referred on afterwards because there is another issue or it goes off to the MRT and comes back. As I said, as a result we have had people in long-term detention for the want, in my view, of active case management—not always. These are difficult cases, but we do really want to put the onus on the management of that person's case to get early resolution, because it is a cost to the taxpayer and it just drifts on and on, tying up the courts, the appeal mechanisms, adding to detention costs and using departmental time. It has seen a large number of people in long-term detention for want of a resolution.

**Senator FIERRAVANTI-WELLS**—How much of that also is due to the change in your database system in terms of management of your information? In the past you would often get three or four different files pertaining to a particular person. Now, if I understand correctly, with your new information management system through the department it is all done in the same sort of way that the tax office have their narratives.

**Mr Metcalfe**—That is certainly our plan. We are progressively introducing that system through our Systems for People initiative, which was a significant part of the previous government's response to—

**Senator FIERRAVANTI-WELLS**—I will come to that afterwards. I think that has something to do with it.

**Mr Metcalfe**—It is about having one view of the client, knowing that this is the client and that you do not have multiple records.

**Senator FIERRAVANTI-WELLS**—In chronological order.

**Mr Metcalfe**—Yes. As we saw with Vivian Alvarez, I think the department knew her in 12 different identities. How you marry those records together and have the single view then allows you to deal with the whole case rather than just bits of it or—in the worst case—not know something that you should know.

**Senator FIERRAVANTI-WELLS**—In chronological order, because that was often the problem.

**Mr Metcalfe**—Sometimes I hark back with affection to the days of paper files and folio numbers on top, because it was a simpler life.

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, I am getting positively nostalgic here.

**CHAIR**—You are showing your age now, I think.

**Senator Chris Evans**—Except that how many people come into the country per year?

**Mr Metcalfe**—I know it is a bit difficult practically, but it was a simple system.

**Senator FIERRAVANTI-WELLS**—Folios were very useful, Minister.

**Mr Metcalfe**—Those old card registers we used to have.

**Senator BARNETT**—A question I asked at the May estimates related to the regulation 10 delegations. You kindly responded on notice to that. It was question No. 14. I am interested to know two things. Firstly, is the funding for the Parliament of the World's Religions 2009 still on track? It appears, based on this document that you have provided on notice, that it is \$2 million—\$1.3 million in 2007-08 and \$700,000 in 2009-10. Is that still on track?

**Mr Metcalfe**—I think the answer is yes, but the officers who are aware of that are not here at the moment. I think that that would come up again under 2.4. If we could respond to you then that would be good.

**Senator BARNETT**—That would be appreciated. Secondly, since budget estimates, can you advise if there have been any further regulation 10 delegations?

**Mr Metcalfe**—I will take that on notice.

**Senator BARNETT**—So you do not know? They are obviously important decisions. They do not come to mind?

**Mr Metcalfe**—Let me see whether that knowledge is in the room. I will come back to you as soon as I can on that this afternoon.

**Senator BARNETT**—I am happy for you to come back on that.

**Senator FIERRAVANTI-WELLS**—I have one last question on regulation 10 decisions. Can the regulation 10 delegations be broken up electorate by electorate?

**Mr Metcalfe**—I do not know if it can be done by electorate, but it can probably be done by postcode. I will ask Ms Prothero to see how much she can assist you.



**Ms Prothero**—If I may say so, it probably does not make a lot of sense in that context. Regulation 10 delegation decisions are in relation to expenditure which goes beyond the forward estimates. So generally it is for leases and things like that. It is leases or major contracts.

**Senator FIERRAVANTI-WELLS**—Grants and stuff like that can be.

**Ms Prothero**—They can be, but it is very rare that they are around for that sort of period.

**Senator FIERRAVANTI-WELLS**—Okay. Thank you.

**Senator BARNETT**—When you do come back at 2.4, could you just look at the Migrant Resource Centre in Northern Tasmania, which received \$167,000 on 27 May 2008, and provide further and better particulars to that.

**Senator Chris Evans**—Are you concerned we have overfunded it, Senator Barnett?

**Senator BARNETT**—I just want to make sure it is exactly correct.

**Senator ELLISON**—Could you look at WA as well. It has received less than 10 per cent of the total grants.

**Senator FIERRAVANTI-WELLS**—Oh, here we go!

**Mr Metcalfe**—I am just getting a bit confused here.

**Senator ELLISON**—I am being parochial.

**Mr Metcalfe**—Senator Barnett, in relation to the Launceston MRC, was that a question specifically about regulation 10?

**Senator BARNETT**—That was one of the organisations funded under the Settlement Grants Program for 2008-09.

**Mr Metcalfe**—We will be happy to talk about that when we get to 2.1.

**Senator FIERRAVANTI-WELLS**—We will not get bogged down with those in New South Wales, Mr Metcalfe.

**Senator Chris Evans**—I am sure all those grants will be on the website.

**Mr Metcalfe**—Senator Ellison, I am sure that Western Australia is being treated properly.

**Senator ELLISON**—Ten per cent properly?

**Mr Metcalfe**—Not too much and not too little.

**Senator ELLISON**—I think it is 11 per cent now.

[2.45 pm]

**CHAIR**—As we have finished with general questions, we will move to output 1.1.

**Mr Metcalfe**—Chair, I am not sure if Ms McGregor will be coming back to the table, but I should just note that Ms McGregor is leaving the department. She has been appointed as the Deputy Public Service Commissioner, which I am delighted to hear, but I will very much miss her.

**CHAIR**—That is fantastic.

**Mr Metcalfe**—She may be back this afternoon, but in case she is not I should just record my gratitude for her efforts.

**CHAIR**—She is running to the door, actually, so I do not think she has any intention of coming back!

**Mr Metcalfe**—I record my gratitude for her efforts over the last three years. She has been a great help to us in our reform program.

**CHAIR**—Thank you very much for advising us of that move. I am glad to hear that she is not leaving the Public Service altogether but is going on to greater things. Congratulations.

**Senator Chris Evans**—Madam Chair, can I just reinforce those remarks. I have told Ms McGregor that I am not talking to her at the moment. She will be a great loss to the department. I have very much appreciated the work she has done. I congratulate her on her appointment. Her departure and promotion to the new job reflects well on the department. It has come through quite a difficult phase. There is now a much more positive view of the department and its officers abroad. While in one sense I hate losing good people, it is also a sign that their work at the immigration department is starting to reflect well on them and the department. So there is an upside, although we will very much miss her.

**CHAIR**—No playing favourites with the people in immigration, though, when you get to your new job—although you probably cannot help it.

**Senator ELLISON**—Madam Chair, the coalition associates itself with your remarks and those of the minister and the secretary. We thank Ms McGregor for good service to the department and the community—and ongoing service.

**Mr Metcalfe**—Chair, there is one other senior officer leaving as well, but I will mention her name when we have finished with her, if that is okay.

**CHAIR**—When you have finished with her!

**Mr Metcalfe**—We will see how she goes this afternoon. That is another promotion.

**CHAIR**—We will need to give her an early mark if that is the case. We have moved on to output 1.1. Senator Ellison, would you like to go first.

**Senator ELLISON**—Thank you. A question I asked, question on notice No. 11, was about labour agreements. The answer mentioned all the different parties that we have to labour agreements. There is a very good answer for this, I suppose, but why is it that we have different parties? In one case there is an on-hire company with a labour agreement with only DIAC and DEEWR as parties, for instance. Could you explain to me why we have those different parties?

**Mr Vardos**—It has been established for some time that the only pathway for some industries—for example, the meat industry and the on-hire labour industry—for access to 457 visa holders is through a labour agreement, not a standard business sponsorship, which is where the bulk of the 457s come from. That relates to the negotiation, for example, of any concessions that the industry may want. What comes to mind, for example, with the meat industry is English language capability. So, rather than negotiate individual concessions with perhaps 10, 15 or 20 possible 457 visa holders, the approach has been taken with the meat

industry, for example, to negotiate a standardised approach to the issue of English language, where the employer might be seeking a concession. But, then, on the other side of the equation, the Commonwealth will insist on, for example, interpreters on the production line or English lessons on the worksite—that sort of thing—as a compensatory measure. Those issues are embedded in a labour agreement rather than negotiated individually with possibly 10—or if not hundreds—of 457 visa holders. If you want more specifics than that, Senator—

**Senator ELLISON**—To give you some more clarity there: how is it determined who the parties are? For instance, DEEWR is a party to some but not others. That is really the nub of my question. I am just wondering why you would not have DEEWR a party to everyone.

**Mr Vardos**—I would need to check that. My understanding is that DEEWR and DIAC are joint parties to every labour agreement.

**Senator ELLISON**—I must have misread that one paragraph. That clarifies it.

**Mr Vardos**—I have just had that confirmed by my staff. The two departments are cosignatories to every labour agreement.

**Senator Chris Evans**—And it is the bane of our lives, but I will not go into that in a public forum.

**Senator ELLISON**—I can just imagine. How does a state government come to be involved in a labour agreement and not others?

**Mr Vardos**—I am fluffing around here trying to find my brief, and I know it is in this folder. My recollection is that in one or possibly two jurisdictions the state government has inserted itself as a signatory to the labour agreement. I think Queensland with the meat industry, but I would have to check that.

**Senator ELLISON**—But the state government does that in a proactive way; it is not as if—

**Senator Chris Evans**—I think in the meat industry the previous minister engaged with the state government because of the issues there and they became a central party to what was a fix of a long running problem. So they are not automatically party to it. I have no personal knowledge of that. Mr Andrews and the Queensland government engaged in the issues and they became party to that one. But, as a matter of process, they are not generally parties to the agreements.

**Mr Vardos**—I can confirm that the Queensland and Western Australian governments are signatories to the meat industry labour agreements within their respective jurisdictions. The state government involvement actually goes to the issue of what is in the best interests of the community in terms of bringing in overseas labour for those industries in those jurisdictions. The state governments bring a particular local perspective to the discussion.

**Senator ELLISON**—Still on labour agreements, the answer to question on notice No. 12 from the February estimates stated that, in 2006-07, 7.4 per cent of 457 visas were held by persons working under labour agreements. Can you give us the figures now for 2007-08?

**Mr Vardos**—I do have some statistical analysis here, but it might take me just a little while to find.

**Senator ELLISON**—Give it to us on notice if you need to.

**Mr Vardos**—It would be easier to take it on notice.

**Senator ELLISON**—Can you give us an idea of whether or not it has increased?

**Mr Vardos**—I would have to take that on notice.

**Senator Chris Evans**—I think it would have but not hugely. But we will take it on notice.

**Senator ELLISON**—I recall that last estimates I think it was said that it was the government's policy to look to using labour agreements more where applicable.

**Senator Chris Evans**—We have had increased interest from the labour hire sector. After some initial concern about the changes that had been made, they have started to seek labour agreements in reasonable numbers. There is some controversy over changes by the previous government. When I first came in, there was a huge fight about the restrictions put on labour hire companies, but since then we have seen quite a flow of those. There are a number of quite big employers, including some big mining ventures in our own state, who are keen to move into some of these areas, in part because of the capacity to provide some certainty about their recruitment around quite large construction projects. So there is a bit going on in that area.

**Senator ELLISON**—Again, you can take this on notice if need be. Can you give us the current number of labour agreements being managed by the department? As at 31 December 2007 it was 43, and I just wondered what the current number was and how many there are in the pipeline.

**Mr Vardos**—I do have some statistics on that. By the way, I did find the data that I was referring to, but labour agreements is not listed in my multitude of tables. I am sorry about that. As to current labour agreements by industry, there are 16 with the meat industry, 24 on-hire with mining and a further 25 or more non-template agreements. Including the template agreements, there are a total of 71 current labour agreements. So a total of 71, of which 16 are meat, 24 on-hire and four mining.

**Senator ELLISON**—Are any of those involving construction?

**Mr Vardos**—I can read down the list for you.

**Senator ELLISON**—Take it on notice if you need to.

**Senator Chris Evans**—I think one of the mining involves construction related activities. There are commercial in confidence parts of this, but certainly one that I am aware of involved the construction activity of development of new mining capability.

**Senator ELLISON**—There was a requirement for consultation made for labour agreements. Has that been put in place yet?

**Mr Vardos**—Yes, that has been in place for some time. The applicant for a labour agreement is required to consult with the principal stakeholders, the major stakeholders, in their industry. That could be unions, professional bodies or whoever is a principal stakeholder in that industry. Those attempts at engagement are included in the documentation submitted to us when the application for a labour agreement is considered by DEEWR and ourselves.

**Senator ELLISON**—When that is submitted, the person who is putting it in says, ‘Yes, I’ve consulted with all these stakeholders,’ and then you go off and make sure that that has been done. Is that right?

**Mr Vardos**—We accept it at face value, usually because there is evidence attached—a letter exchange, records of conversation or email exchanges—that indicate the extent of the consultation between the applicant for a labour agreement and the stakeholders. The point I should make, though, is that the views of stakeholders do not give them the right to veto. They may express negative or positive support, but the views need to be known when they submit their applications.

**Senator Chris Evans**—Senator Ellison, we were talking earlier about labour market testing in Australian jobs. One of the considerations is any feedback that says, ‘Hang on, there are no shortages of people in this industry in this state; we actually have people who would accept the jobs.’ One of the things you are looking for to make the assessment is that there is a need, so part of that feedback is quite useful in that regard. I was concerned about the lack of transparency around these agreements. I am still keen to provide a bit more transparency about them and to make them much more user friendly. Business does complain that there is a very slow process. That is partly because of the role of both DEEWR and us. That does make it pretty cumbersome.

We are talking about trying to get a one-stop shop, particularly for big resource projects. So they will be able to come to the federal government and say, ‘We want to have 1,000 people employed but we need 100 people from overseas in these classifications because we cannot fill them locally,’ get an agreement and then they can get on with certainty about their employment needs being met. At the moment, they do provide criticism that it takes them too long to get through the system, and we are trying to be more responsive to that. The other aspect of it, as I said, is that increased transparency is important because there is community concern about overseas labour coming in. A greater understanding of why and who is coming will, I think, build confidence.

**Senator ELLISON**—I will keep, as best I can, these labour agreements separate from individual 457s. You mentioned the testing that needs to be done. Was there a change some years ago in market testing for 457s? When you have a labour agreement, you have a testing requirement—that is, they are market tested to see that there is the demand there. Is that right?

**Mr Vardos**—Sorry, Senator, I was distracted by a note that—

**Senator ELLISON**—No problems at all. In relation to labour agreements, the minister mentioned market testing that has to be undertaken in relation to the industry sector—if it is that—and the need for that skilled person or persons. I understand that it is still a requirement that there be some testing provided.

**Mr Vardos**—As a party to the labour agreements, DEEWR assess the skills shortages in the local labour market for all requested positions. They are the labour market experts at the Commonwealth level; hence a critical party to the—

**Senator ELLISON**—And the applicants do not have to do that themselves?

**Mr Vardos**—It is DEEWR that makes that judgement.

**Senator Chris Evans**—DEEWR provides the advice to us and—

**Mr Vardos**—Can I correct some earlier advice I gave to you?

**Senator ELLISON**—Yes.

**Mr Vardos**—It appears that we do have two old labour agreements still in effect which do not have DEEWR as a party to the agreement. They are old-style agreements under the Invest Australia Supported Skills Program. I was not aware of that. They are a legacy agreement.

**Senator ELLISON**—In relation to individual 457s—just to contrast the labour agreements—is there any market testing done there?

**Mr Vardos**—I stand to be corrected, but I understand that, as part of our international trade obligations through the WTO GATT, market testing was ceased some years ago.

**Senator ELLISON**—I thought the year 2000 was about when we changed it, but I heard the minister say ‘testing’ in relation to labour agreements. I understand that DEEWR does that for the labour agreements.

**Senator Chris Evans**—I think it would be wrong to characterise it as market testing. I do not think they specifically go out and market test but they certainly provide the Commonwealth advice and consideration of those employment issues. For instance, if their record said that there was no shortage of motor mechanics and you wanted to bring in 15 motor mechanics, they would push back to the proposer and say, ‘Our understanding of the industry is such that there are no shortages.’ That is the sort of advice. We would have to ask DEEWR how they do that, unless an officer here understands. So I want to make that correction. I am not saying that they necessarily go out and advertise or whatever. Do you know what the process is, Mr Vardos?

**Mr Vardos**—I would have to take the detail on notice and consult with my colleagues with DEEWR.

**Senator ELLISON**—If you could; thanks. You mentioned the WTO requirement. No doubt they saw it as a barrier to the trade of goods and services—well, services here. Is there any testing done in relation to 457s? If an employer says, ‘I want to bring in some people,’ do they have to provide some evidence of the demand for those skills in that area and that they cannot find those skills anywhere else?

**Mr Metcalfe**—Is this in relation to individual sponsorship?

**Senator ELLISON**—Yes.

**Mr Metcalfe**—The answer now is no. The instrument of policy rather than labour market testing is the minimum salary level, which has been set at a sufficiently high level that it is intended to provide a straight economic decision for the employer that it is more expensive to employ someone from overseas than to employ an Australian and therefore Australians would be employed first. Therefore, there is no need to in fact undertake market testing.

I will check this and correct it on notice if need be. I am searching back in the dim recesses of my mind, but my recollection is that the decision to replace market testing with minimum salary levels was probably introduced in the late nineties. My recollection—but this is hazy and I will correct this if I am wrong—is that there had been a review of temporary residence

undertaken by Neville Roach, a prominent Australian business who was then the head of Fujitsu and was also, I think, on the SBS board. That review was commissioned by Minister Bolkus in 1995 but I think was reported after the change of government in 1996. The reform of temporary residence procedures, including this area, may have been linked to that particular review. We can check back on our records and provide you with more detail.

The old system of market testing essentially required that employers demonstrate they had advertised and checked with the Commonwealth Employment Service and that sort of thing. One of the concerns was that jobs were being created in such a way that they were not capable of being filled from within Australia. They may have had particular language requirements or, for example, specialisations such as being able to cook a particular cuisine. That essentially meant it was just a process that people went through. It did not really add value to ensuring that Australians were employed. There is quite a history to this particular issue, as you would appreciate, but if I can clarify or add to my answer I will do that on notice.

**Senator ELLISON**—On average, how long does it take to get a labour agreement together? Has it got shorter over time or has it got longer? We have had a lot of comment about the time it takes for 457s, individuals, but what about the labour agreements? How do we go with them? Are you able to say?

**Mr Vardos**—It takes quite a while. There is a lot of room for improvement. In fact, as part of the review process that is underway at the moment, we are looking at how to speed up the process.

**Senator Chris Evans**—The answer, Senator Ellison, is that it takes far too long.

**Senator ELLISON**—Western Australia has a couple of labour agreements on the boil. I think they are classed as labour agreements, but correct me if I am wrong. These include the Western Australian Hotels Association agreement on Balinese workers.

**Senator Chris Evans**—That was a proposition they put up, but it is not about 457 workers. It is slightly different. It is a training related scheme. I have met with them about that. Their national body has another proposition which they have floated with me as well. But they are not strictly labour agreements. I suggested to them that that may be a good way of wrapping up such a proposition. But, strictly speaking, that proposition was largely based on a training argument. It was about bringing people down here and then taking them back to hospitality jobs in Bali. I was happy to look at it but I also indicated to them that they would have to provide strong reassurance about the training of Australians as part of the overall proposition.

**Senator ELLISON**—So that proposal is still being considered?

**Senator Chris Evans**—It has not been ruled out. I told them I was happy to consider it. But it was not a straightforward labour agreement in the sense of bringing in trained 457s to meet skill needs. It was partly about an interchange and training for Balinese workers. What I asked them to address was whether the same opportunities were being provided to Australian workers within these establishments. There is the local employment issue—and the public, the government and the opposition would want reassurance that Australian kids were not missing out on jobs as a result.

**Senator ELLISON**—It had some merit, but it was subject to all those requirements.

**Senator Chris Evans**—Yes.

**Senator ELLISON**—The other one was the East Timorese proposal by the state government of Western Australia. Where has that got to?

**Senator Chris Evans**—There was a state government proposition by Minister MacTiernan. She did something in her own department—a couple of training type things—but more generally she was putting up a proposition about some sort of access to Australia's labour market for the East Timorese. The East Timorese Prime Minister raised that with our Prime Minister when he was down here a couple of months ago. There was publicity about it. The Prime Minister agreed to further discussions with them about it but indicated that the government's priority was to look at the Pacific island pilot. We had agreed to that proceeding as a trial, but we undertook to have further discussions. I will see if there is anything else in my notes about that, but I think it was left on the basis that there would be further talks between the two governments. As you know, there is a great deal of pressure for access to our labour markets from our neighbouring countries, including Indonesia, East Timor and the Pacific island countries. The East Timorese have a case to put in terms of their own development and opportunities for their young people. As we all understand, there is a great deal of sympathy and support for East Timor among the Australian public. So the Prime Minister did not close the door to it, but nothing has been put in place.

**Senator ELLISON**—The shires in the Kimberley contacted me and indicated they were pretty supportive of this. Did they make contact with the government?

**Senator Chris Evans**—Yes, as with most of these propositions about getting access to labour in regional areas—particularly for seasonal labour—there is strong support from a whole number of regional authorities and councils et cetera. I have certainly had the same approaches from the Kimberley—looking particularly at seasonal work—so there is certainly a case that can be mounted for that. As I say, proximity to East Timor is also advantageous there. One of the problems with any sort of temporary seasonal work scheme is the cost of air fares and those sorts of things. The advantage of East Timor in the north—be it Darwin or the Kimberley—is that the airfare component is smaller because they are closer. I know the Northern Territory government was also pushing hard to try and get access to some East Timorese labour. They have certainly made representations to me.

**Senator HANSON-YOUNG**—I apologise if you have already answered this question before I came in. Where are we up to with the review of the 457 visas—considering that we have a bill, before this committee, that is looking at worker protection? Where are we up to with the review of the visas, and how are the outcomes of that going to be used, perhaps, in the regulations of this bill?

**Mr Vardos**—There are a couple of—and it is almost a redundant phrase—parallel processes under way. There is an interdepartmental committee which consists of our department, the Department of Education, Employment and Workplace Relations, the Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, and the Department of Finance and Deregulation. It is looking at a range of issues to do with the 457 framework. That IDC guides an external panel, recently appointed by the minister. That panel consists of, I think, four state governments, union organisations and industry



bodies. The IDC refers issues to the panel for their consideration so that the minister can have the benefit of the diversity of views of those that sit on that panel. The outcome of the contemplations of both the IDC process and the external panel will come together, probably in the next month or so, in a report to the minister, and that will then feed into—depending on whether the minister wants to take the recommendations—consequential action. But it is all coming to a head at the end of this year.

**Senator Chris Evans**—Just to add to that, I met with the consultative group last week, and Barbara Deegan, who is reviewing the industrial relations aspects, was there, and they are working very closely together. But I did undertake to run past them draft regulations under the bill, if the bill is carried. So we had that industry, union and state government feedback on the development of the regulations which will then inform the decision making. Obviously that is contingent on the bill being passed.

**Senator HANSON-YOUNG**—When do you think we will see a draft of those regulations?

**Senator Chris Evans**—We are working on it being the end of the year.

**Senator HANSON-YOUNG**—Seeing as the bill is currently before the committee, it would be good to be able to, through that process, understand what the context of those regulations is going to be, because clearly we cannot amend them; we can simply disallow them if they are not going to be fulfilling the needs that we think they should be.

**Senator Chris Evans**—I understand that. It is in the nature of the migration law that the regulations have been done, rather than in the acts. But I am looking at trying to pull it all together with the Deegan report—on issues such as English language et cetera—and also the consultative committee's report. Perhaps the officer who has just come to the table might be able to give you a better time frame.

**Senator FIERRAVANTI-WELLS**—Our understanding is that it is at the end of 2009.

**Senator Chris Evans**—There is the IDC's consideration for the budget process in 2009 but the work of the consultative committee and Commissioner Deegan is coming to a close.

**Mr Kukoc**—The sponsorship obligations will not be defined under the act—the bill that is currently being considered. These obligations will be defined in the regulations under the bill. The consultative panel will be looking at the range of sponsorship obligations that the consultative panel and the IDC may propose to the government. There was a discussion paper circulated a few months ago seeking feedback and the views of various stakeholders on the possible sponsorship obligations that might be imposed on future sponsors of 457 workers. All of that will lead into the discussion at the IDC. On that basis the consultative panel will look at the very early draft regulations probably in late November or early December. That will inform the final draft regulations and the regulations that will be implemented early next year.

**Senator HANSON-YOUNG**—Is that paper publicly available?

**Mr Kukoc**—The discussion paper?

**Senator HANSON-YOUNG**—Yes.

**Mr Kukoc**—Yes.

**Senator HANSON-YOUNG**—Can we have that tabled to the committee?

**Mr Kukoc**—I cannot see any problems why we cannot table it.

**Senator Chris Evans**—Which paper?

**Mr Kukoc**—The discussion paper on sponsorship obligations that was circulated.

**Senator Chris Evans**—Yes, that has been out. We sent it to all employers and other interest groups.

**Senator HANSON-YOUNG**—I just think it would be good to feed into this process if we are going to be looking at the bill. I understand the regulations. My concern is about the guts of what changes are going to take place, with the concerns that are already floating around in the different stakeholder groups about 457 visas being taken up in the regulations. I understand that is the way migration law works. Seeing as the bill is before this committee anyway, it would be good if over the next few weeks we could start having a think about that.

**Senator Chris Evans**—Can I just say, Senator, that I understand your viewpoint and I sympathise. I also stress that all of this has been done in public. Ms Deegan's discussion paper has been put out and I informed the consultative groups, so we had the benefit of trade union, employer and state government advice. I met with them the other day and they have taken a really positive view to their work. They have, I think, reached broad agreement on some things and are still discussing others but they have engaged really seriously, and I think they understand each other's perspective. We are very pleased with how that is going.

Ms Deegan has been all around Australia talking to various people and engaging with them and taking all that feedback. So it is a very public process with a great deal of buy-in from all the players and a great deal of engagement. But we are at the point where we have to try to bring it all together into a coherent public policy framework. The reason I am focused on this is that I think the 457 system grew quickly and it was designed largely for professionals. It did not need the same public policy safeguards around it when it was purely for doctors and engineers coming in on a reasonable salary and who spoke English et cetera. What we have seen is a growth in the numbers, a move down the skill level to more of a tradesmen level—still predominantly professionals but the concern has been at the trades type level, and particularly with people without English speaking skills where there have been concerns of exploitation and whatever.

**Senator HANSON-YOUNG**—I think it is great that you are taking it on and from my perspective I want to make sure we can be as productive as possible in moving it forward. What I do not want to have to do is start discussing the idea of disallowance because certain areas have not been picked up. I am just flagging that I want to be engaged in the process. Moving on, has the department or the minister's office looked at the UN convention on the protection of migrant workers through either the 457 visa process or the guest worker program?

**Mr Hughes**—The UN convention on migrant workers is one that successive Australian governments have declined to become a signatory to because of, I think, perceived deficiencies in it. Also, of the conventions related to human rights, it is probably the least

signed, because a lot of migrant receiving countries feel that they are not happy with provisions in it. So it really has not been a guiding principle for this work. It has really been looking at the Australian domestic system and the best way, within the Australian domestic system, to protect the situation of temporary workers coming to Australia.

**Senator HANSON-YOUNG**—Surely there are aspects in it, though, that could be picked up. I understand that there is concern over the entire convention, because there would be current conflicts with the Migration Act, for example. But surely it sets out a framework which, if we are trying to implement regulations and public policy to protect migrant workers, this is an international standard.

**Mr Hughes**—It is an international standard for a relatively small number of countries. That is the point I was trying to make. It has not been truly accepted as an international standard. It has got very limited acceptance, if you compare it with similar conventions that look at human rights issues. But I think you are right that some of the things that are being done here would seek to achieve the same outcomes. It tries to do it in a different way and I think most migrant receiving countries have had the difficulty that it did not do it in a way that they felt was applicable to their circumstances. I think that, historically, Australian governments have felt that as well. But, in terms of underlying concepts of trying to make sure that workers are not exploited, the work that has been done here would certainly overlap with the sentiments that the drafters of that convention had in mind.

**Senator HANSON-YOUNG**—So we have not moved any more towards perhaps signing the convention. That is all right. Could you elaborate a little more on the time frames in terms of the guest worker program? I know there are these different processes happening. The current bill before this committee is not directly linked at the moment to the guest worker program, and I understand that with the way it is written at the moment there is space to link it if we wanted to in the future, but is the department's view that it would be quite separate?

**Senator Chris Evans**—The first thing to say is that there is no guest worker program and no proposed guest worker program. There is the Pacific Islander worker pilot scheme—

**Senator HANSON-YOUNG**—Yes, sorry. That is what I am referring to. Thank you for clarifying.

**Senator Chris Evans**—I do not want to sound pedantic, but I think it is important because there are connotations and issues associated with guest workers which are quite different.

**Mr Vardos**—The first point to make is that DEEWR is the lead agency. We are obviously a key partner in the process. There are consultations that have recently occurred with the countries in question. A delegation of bureaucrats from the various departments participated in that. And there are consultations underway at the moment with state government bodies, the regional areas where it is proposed to implement the initiative. The actual start date is not yet precisely defined. We cannot do that until the consultation processes have been completed.

**Senator HANSON-YOUNG**—Is there any idea?

**Mr Vardos**—Once you make a prediction you are held to it, but probably early next year we would start off with a small number. But until all the pieces are in place it would not be appropriate to start bringing people in. The key issues are around the community consultation

aspect. And it is not just consultation with the growers, the local authorities and the state government; it is also with the host communities. We are very conscious, based on the New Zealand program, of the need to have a community support structure in place—which brings in another division within our portfolio. That is the framework.

**Senator HANSON-YOUNG**—Where are those community consultations happening currently?

**Mr Kukoc**—At the moment a number of locations are being looked at, labour market surveys are being done and community consultation is being carried out. In Victoria that is in Swan Hill, in New South Wales it is in Griffith and in Queensland I believe it is in Stanthorpe.

**Senator Chris Evans**—Can I just stress something about this—which I try to do on all occasions—which is that we are absolutely committed to making sure that this is not a scheme that exploits people. Therefore, the government has invested heavily in putting the architecture around this. It is complex. It is not just a matter of putting a few people on a plane and dropping them into the town. We are saying that there should be proper selection, proper briefing and understanding, award conditions, proper housing, community support and access to church services, so it is a big task. We want to make sure we do it well. There will be problems, obviously, as in any trial. That is why we are having a trial. We have learnt a lot from the New Zealand experience. They have had difficulties with a couple of employers who have not done the right thing. DEEWR are going to have to provide quite a lot of industrial regulation and oversight.

**Senator HANSON-YOUNG**—It seems like a lot of work between now and early 2009.

**Senator Chris Evans**—I think that is right.. We want to be careful, because DEEWR are the lead agency. They are talking about having a very small group, to sort of learn as they go, but certainly there is a lot of architecture around that. We want to be very clear with employers that this is not a cheap labour scheme. They have a series of obligations they have to honour, so there is a lot of work going into making sure that all that is in place. Quite frankly, if that is not all in place then it will not work and we will not get the results out of it that we were hoping to—which is to meet the labour shortages in Australia but also to provide opportunities for Pacific islanders and for remittances back to their communities.

**Senator HANSON-YOUNG**—Seeing as this is a joint pilot between your department and the Department of Education, Employment and Workplace Relations, have you got a clear division of responsibility?

**Mr Kukoc**—There is a steering committee that is chaired and led by DEEWR. There are a number of agencies on that steering committee, including Immigration, Foreign Affairs, Prime Minister and Cabinet, Agriculture—all agencies with stakes in this pilot. DEEWR is the lead agency, so DEEWR has the lead implementation task. DIAC, our department, is part of that implementation process and has a responsibility for the immigration related procedures, including health screening, character screening and visa application processing.

**Senator HANSON-YOUNG**—Is there any way we could have something given to the committee that clearly identifies what the roles and responsibilities are of the departments?

**Mr Kukoc**—We can take that on notice.

**Senator HANSON-YOUNG**—That would be great. Thank you.

**CHAIR**—I remind senators that the committee is having a photograph taken at 4.30 pm, simply to update records and books and publications of the Senate.

**Senator Chris Evans**—So people know who to blame.

**CHAIR**—Or know what is going on—that is what we would like to think.

**Proceedings suspended from 3.29 pm to 3.45 pm**

**Senator FIERRAVANTI-WELLS**—Which federal and state departments are involved in the pilot seasonal worker program?

**Mr Metcalfe**—I think we have already taken a question on notice from Senator Hanson-Young to describe the roles of the relevant departments, but we are very happy to respond to that.

**Senator FIERRAVANTI-WELLS**—I am asking about the state departments as well, because they clearly have a role.

**Mr Vardos**—I can tell you the federal agencies but I am not sure that we have the full list of state government agencies. We will have to take the state component of that on notice. The federal agencies include the Department of Immigration and Citizenship, the Department of Education, Employment and Workplace Relations, the Department of Foreign Affairs and Trade, the Department of Agriculture, Fisheries and Forestry and AusAID.

**Senator FIERRAVANTI-WELLS**—Could you explain the role of each of those in this process.

**Mr Vardos**—It would have to be at a general because I have not been privy to senior level government decisions about these matters. Because this involved a labour market issue, DEEWR has been involved in trying to address localised skill shortages in the unskilled labour force. The Department of Foreign Affairs and Trade and AusAID have been involved, in combination, because of relations with the South Pacific. Strong elements of this initiative relate to aid, regional stability, economic assistance through remittances and the training of workers as they come to Australia. The Department of Agriculture, Fisheries and Forestry has certainly been involved because, in the first instance, the horticulture industry will be the beneficiary of the pilot program. In the broad, that is why this group of agencies have been involved. And of course the Department of Immigration and Citizenship has been involved, because we are the agency that provides the entry permits for people to come into Australia. We have the community engagement responsibility through outcome 2 activities. That is a brief summary.

**Senator FIERRAVANTI-WELLS**—Following on from that, what is the total whole-of-government cost of this initiative across the forward estimates?

**Mr Vardos**—I will have to take that on notice. I do not think we have that figure.

**Mr Kukoc**—I believe the total cost impact will be presented in the Mid-Year Economic and Fiscal Outlook, MYEFO, which is coming out in November.

**Senator FIERRAVANTI-WELLS**—I assume that that will list and give the details of the costs for each government department and the contribution they are making towards this program?

**Mr Kukoc**—I believe so.

**Senator FIERRAVANTI-WELLS**—Does the World Bank have any involvement in this? You mentioned AusAID.

**Mr Kukoc**—As far as I know, the World Bank was not directly involved in this pilot and is not currently involved. The World Bank produced a lot of research and analysis over the last two to three years. A major report by the World Bank is the one named *At home and away: expanding job opportunities for Pacific Islanders through labor mobility*, which was written by a senior economist, Dr Manjula Luthria of the World Bank. That report gives a lot of analysis of the developmental impact on Pacific Island countries and developing countries from remittances from such schemes in the world.

**Mr Vardos**—But the World Bank is not a party to this arrangement.

**Senator FIERRAVANTI-WELLS**—What type of visa will these workers enter Australia on?

**Mr Vardos**—We will use an existing structure, the 416 visa.

**Senator FIERRAVANTI-WELLS**—Obviously the New Zealanders have had a similar scheme. Had you looked at the New Zealand scheme—the benefits, the difficulties that have been encountered in New Zealand—when you put this scheme together here?

**Mr Metcalfe**—Yes, we did.

**Senator FIERRAVANTI-WELLS**—What were your conclusions?

**Mr Metcalfe**—I led a delegation of senior officials to New Zealand in early May, where we were guests of the New Zealand Department of Labour, who administered the scheme in New Zealand, because we were keen to have firsthand access to officials as well as participants in their recognised seasonal employment scheme. The New Zealand government was very generous in making available to us their own officials. We travelled to Nelson in the north of the south island to meet with owners and growers of, in that case, apples and visited a major packing company. We were also able to meet with some of the local officials on the ground. In Wellington we met with various government officials but also met with the head of the relevant organisation involved in wine grape growing from Marlborough, who came across to meet with us. We also travelled to the Martinborough area, just outside Wellington, and inspected an apple growing facility. That visit, together with other reports from various departments and by our high commission in New Zealand, all provided advice to the Australian government in reaching its decision to proceed with a trial.

I will not go through all of the conclusions, because that would go to matters that related to policy advice to government. But certainly our impression was that the scheme was viable. It was a scheme that certainly required the very close cooperation and participation of the governments of the source countries for the workers. It was a scheme that required significant New Zealand government administration and involvement to ensure that it was working properly. Real partnerships needed to be developed between the various governments

concerned, the various agencies concerned and the industry. One of the critical factors to be taken into account was the local labour market conditions. For example, New Zealand has very low unemployment levels. I think it is three per cent or slightly over that. Indeed, in some parts of the country, there is effectively full employment and it is not possible to source workers.

The feedback from some of the growers and operators was that the cost of the Pacific Island labour was significantly greater than locally sourced employees. There was a significant premium associated with travel costs, with accommodation costs and various things. That, in their view, was offset by the reliability of the workforce. The horticulture industry in New Zealand—and I think in Australia—is characterised by workers who tend to be itinerant or short term. Indeed the comment was made to us that to have one continuous employee through the picking season actually requires the hiring of four or five people through that period, because people come and go. One of the benefits of the Pacific Island scheme was seen to be having a reliable workforce. However, one of the other strong impressions we had was that there are real issues to be addressed in terms of the employment arrangements for people coming from overseas because of the cultural differences that people are coming from—they are coming from island communities, quite often from village communities, and working in a more structured, developed Western economy is a very different experience for them. One of the issues is what could be described broadly as pastoral care: practical issues such as what people do after work finishes for the day, how they engage with the local community and how they are able to observe their religious beliefs and faith.

Of course, there are reasonable populations within some of the towns that people will be coming from in some of the source countries such as Tonga, Kiribati and Vanuatu. All of those conclusions and issues were very valuable to us in looking at designing the Australian trial and pilot arrangements in providing advice to government as to how such a scheme may work.

The final point I would make is that one of the policy objectives is to sustain and develop workforce skills back in the Pacific Island countries. It is relatively early days, but there was evidence of an emerging remittance culture in that people would save money and send it back home and that would result in improvements to the lifestyles of not only the person and their family but also the village and community. Anecdotally, someone said to me that the first thing people do is to build a house and the second thing they do is to build a church. So that was a positive aspect. However, again there were practical issues around the way that money would be remitted, whether there were fees and charges associated with the remittance and so on. So we found it very valuable and, as I said, we are indebted to our New Zealand colleagues for being so open with us in sharing their experience. All of those impressions, issues and ideas are going into the design of the pilot arrangements. The government has made it clear that this is a pilot, and pilots are things where you essentially see how things work and learn lessons.

We have some different paradigms. In New Zealand, of course, they do not have a state government level; they only have a federal government, so they do not have the Commonwealth-state issues that we have. And their immigration authority and their employment authority are within the one department. Whereas we, as you heard earlier, have

a number of departments with an interest in this, led by the department of employment. So there are some Australian features to this which are different from the New Zealand experience, and they are things that we are obviously taking into account.

**Senator FIERRAVANTI-WELLS**—How many workers will be arriving and when is it anticipated? I heard ‘perhaps the end of the year or the beginning of next year’. Is that correct?

**Mr Vardos**—Yes. The target number is 2,500 over the life of the scheme—three years. But initially I think we are looking at a small group arrival of about 100 or so.

**Senator FIERRAVANTI-WELLS**—And the 100 are due to arrive when?

**Mr Vardos**—Whenever all the other framework issues are in place. That is why I was a bit hesitant about trying to predict when it might happen. As the minister has indicated on a number of occasions, people will not start arriving until all of the elements are in place.

**Senator Chris Evans**—I think the plan was to start next year, and then there was a suggestion that they might bring forward a smaller group again as a trial run. Obviously with seasonal work you have to fit in with the seasons as well, so it will be about who is picking—

**Senator FIERRAVANTI-WELLS**—When it rains and when it shines.

**Senator Chris Evans**—Yes. So it will be about who is picking what when.

**Senator FIERRAVANTI-WELLS**—I think it is the onion season soon. You might like to go and observe.

**Senator Chris Evans**—One of the reasons why we have a labour shortage in these areas is that it is backbreaking hard work, which is often forgotten. In the middle of a Queensland summer, if you are out there picking I am sure it is not easy going. As I said, it is a trial and we are very much committed to trying to pick up all those genuine issues of concern. We are looking at whether we can successfully manage them at a reasonable cost while meeting both the Foreign Affairs objectives and the labour market objectives. No-one underestimates the difficulties. We are very clear that it is a trial. If it does not work, it will not work, and we will learn from those experiences.

**Senator FIERRAVANTI-WELLS**—Where are the 100 going? Have we determined where they are going?

**Mr Vardos**—Final decisions have not been made. As Mr Kukoc indicated earlier, consultations are underway in Victoria, Queensland and New South Wales. The outcome of those consultations will determine ultimately where the initial batch of people go, but a final decision has not been made.

**Senator FIERRAVANTI-WELLS**—So you have not determined the pilot regions yet.

**Mr Kukoc**—The community consultation and, most importantly, the labour market surveys are being done in Swan Hill, Griffith and Stanthorpe and a few other locations. That will largely determine the final locations.

**Senator FIERRAVANTI-WELLS**—And they have not been completed yet?



**Mr Kukoc**—I understand that the labour market surveys in Griffith and Swan Hill have been completed, but I would suggest that these questions be referred to DEEWR because they are coordinating it.

**Senator FIERRAVANTI-WELLS**—Okay. Will they be able to tell me what the results were?

**Mr Kukoc**—I would have assumed so.

**Senator FIERRAVANTI-WELLS**—Thank you. So the details of the scheme at this point are just sketchy. We have some information. How much information is available out there for prospective employers about the requirements they will have to meet? At this stage is it just very general information? Are you able to give any information, even for the 100 that are to come out in a relatively short period of time?

**Senator Chris Evans**—I will let Mr Kukoc respond in detail, but I think it is fair to say that the broad framework is in place. The government has announced that broad framework about how selection works, the numbers, the proposed time frames and the requirements regarding wages, conditions and housing et cetera. The negotiations and consultations in the communities are very important because one model might not suit all. For instance, how many growers there are within the region whom you could service from one housing location might be quite different in each region. So would you require people to have two different housing locations during their stay—that is, six months in each—or could you manage it from that point? How many workers does one grower need and at what time? All this is highly complex. You only get that information by engaging with the local community.

Also—and let us be brutally frank about this—some of these growers have in the past accessed illegal labour, despite the department's best efforts and continuing strong efforts to deal with that. They have accessed working holiday-makers or other tourists at probably less than optimum industrial conditions. We are making it very clear to them that this is not a cheap labour scheme; there are serious costs and commitments related to this. We want to make sure that they understand what we will require of them. Officers may be able to help you further with this, but that consultation process was very important because at first blush an employer might say, 'That sounds great. They are going to supply me with 30 cheap labourers for the three months I need.'

**Senator FIERRAVANTI-WELLS**—They all think they are going to get cheap labour.

**Senator Chris Evans**—But there are questions about the costs, health insurance, travel and housing. If you are going to do it properly, it is a big job.

**Senator FIERRAVANTI-WELLS**—Can you tell me about the MOUs with the participating countries? I understand they are Papua New Guinea, Vanuatu, Tonga and Kiribati. How have we progressed the content? Can you just give me an outline of where we are at with that? Have they been signed, or at what point are they?

**Mr Kukoc**—They have not been signed yet. They are in the process of negotiations. I understand some early drafts have been exchanged between countries and Australia. At the moment, we have a senior official delegation in Papua New Guinea. There was one visit in September to Vanuatu, Tonga and Kiribati. It is currently being negotiated.

**Senator FIERRAVANTI-WELLS**—So at this point we do not know what they contain and the MOUs are still under discussion?

**Mr Kukoc**—That is correct.

**Senator FIERRAVANTI-WELLS**—And we do not know when they are going to be signed.

**Mr Kukoc**—We are hoping that they will be signed before the end of the year.

**Senator Chris Evans**—Are you able to give the senator a flavour of the sorts of issues? I do not think the officer was trying not to be helpful. The detail is obviously not finalised.

**Senator FIERRAVANTI-WELLS**—I appreciate that the MOUs are still under discussion but, if you could give me an outline of the framework of the content, that would be helpful.

**Mr Kukoc**—MOUs are predominantly negotiated to provide for procedures in terms of the recruitment of Pacific labour for the visa application processes, health screening and character screening and they set the roles and responsibilities of respective governments and other bodies, including employers, unions and some other stakeholders in implementing the whole scheme.

**Senator FIERRAVANTI-WELLS**—I will now deal with the employer side of it and then I might go to the employee side of it. Can you tell me how many employers it is anticipated will be approved to sponsor workers under the scheme? Do you have an idea of that?

**Mr Kukoc**—I am not in a position to advise you of that. I would refer this question to DEEWR if possible.

**Senator FIERRAVANTI-WELLS**—Will the employers submit their application to be a sponsor to the department as per other employer sponsors of overseas workers, such as the 457 visas? Again, should that be directed to DEEWR?

**Mr Vardos**—The workers will need to complete a visa application in their home country.

**Senator FIERRAVANTI-WELLS**—I am talking about the employers. I am dealing with the employers first and then we will go to the employees. I thought I would look at the employers' responsibilities first and then look at the employees.

**Senator Chris Evans**—I think the question is: are the sponsorship obligations being handled by us or are they handled by DEEWR?

**Mr Kukoc**—There are different sponsorship obligations. The sponsorship obligations in relation to compliance with visa conditions will be monitored by DIAC, but anything in terms of employment and workplace relations will fall under DEEWR's role.

**Senator FIERRAVANTI-WELLS**—I guess what I am getting at to is whether an employer who wants to participate in this scheme have to put an application into DIAC or DEEWR? I understand that, for different reasons, there are different departments that are involved in this scheme. I am really looking at it from the employer's perspective. Will the employer have to put in just one application or will it be a series of applications?

**Mr Vardos**—Australian employers who want to participate in the scheme will need to be approved by DEEWR and they will enter into agreements with DIAC to cover visa arrangements for workers. So DEEWR will have the responsibility for this.

**Senator FIERRAVANTI-WELLS**—So an employer will come along to DEEWR and there will be a set application that they will have to make. Will the employer have to go to two points or one point? Is it just one form? Are the two forms, three forms?

**Mr Vardos**—I do not know how many forms it will involve but the authority to approve an employer to participate—

**Senator FIERRAVANTI-WELLS**—So it will be one stop—

**Mr Vardos**—It is DEEWR's responsibility to approve the participation in the scheme.

**Senator FIERRAVANTI-WELLS**—And behind the scenes they will do what they have to do with the other departments. Is that how it is envisaged?

**Mr Vardos**—In effect. It will be DIAC and DEEWR that are the two front-line agencies for dealing with the implementation of the scheme. A prospective employer will need to be approved by DEEWR to participate. Just what the conditions of that participation will be I cannot articulate at the moment. It may be a question that you may wish to put to DEEWR. The arrangements for us will be in relation to visa arrangements for the workers. For the sorts of things that you are alluding to that we are still working through, for example, health insurance, and the workers will need to have health insurance—who is to pay? That is yet to be determined. Is it the employer? Is it the home government? Is it the individual that is participating? That is the level of detail that is being worked out.

Airfares, for example—who will pay the airfare? Will the employee pay half of it and the employer pay the other half? When we talk about details still being worked out, they are the issues that are being worked out. I do not want to stray into the employee side of the equation because you have not asked the questions yet, but there are a number of things that we will ensure happen in relation to briefings about their work rights, for instance, to make sure that the employee is in a good position to take up this opportunity. This goes to issues to avoid exploitation. There are briefings by the union and those sorts of things. There is a range of issues on both sides of the equation that we are grappling with for employers and employees.

**Senator FIERRAVANTI-WELLS**—I appreciate that there are responsibilities and obligations. My question goes to the facilitation. Do I have to go to one department, two departments, three departments to register to become an employer? Do you understand what I am trying to say, Minister?

**Senator Chris Evans**—Yes, I do.

**Senator FIERRAVANTI-WELLS**—If we are going to make it easier for employers I am trying to get to whether they go to one or two departments—

**Senator Chris Evans**—That is a fair enough question, Senator. I suppose the best way to respond is that when the government considered this matter we agreed that it was necessary to have a lead agency where the buck stopped, if you like, and took responsibility for making it work. In the lead-up to it everyone came to me about it because it was immigration—these were people coming from overseas therefore it was immigration. But when you actually sit

down and work your way through the sorts of issues that you are talking about, most of them go to the employment relationship and the conditions surrounding the employment relationship.

So government took a decision that the Department of Employment, Education and Workplace Relations was the most appropriate department to provide the lead and to deal with those issues. Obviously Foreign Affairs has a role in terms of the MOUs. Our primary role is the visa processing—the health, security, character checks, the normal immigration role—and we would obviously also take an interest in welfare when they are here as part of the role that we traditionally play in helping people settle and seeing to people's social outcomes while they are working in this country. But a lot of the detail is being worked through now in consultation with community consultations because that is part of working through a whole range of those issues like housing, which is obviously vital. But there are other things. If these people are of a particular church, is there a church nearby that they would be able to attend? Would services be made available? There is a whole level of complexity—

**Senator FIERRAVANTI-WELLS**—I will come to issues of pastoral—

**Senator Chris Evans**—DEEWR have got the lead responsibility. We are intimately engaged but we are very much on the immigration front in terms of the sorts of employment contract related issues. We do not want to duck the issue but we deliberately as a government said that DEEWR is where the responsibility lies. So an employer should in the first instance deal with them and we will work out how we fix up the immigration side of it. I do not want to pre-empt but, clearly, they are the first point of contact and are responsible for the scheme.

**Senator FIERRAVANTI-WELLS**—So in other words, issues like requirements for participating employers to show that they have made reasonable efforts to employ Australians and the sorts of administration fees or costs payable to the Australian government to participate in the scheme are the sorts of issues that DEEWR should be able to answer for me?

**Senator Chris Evans**—Yes. They will not forgive me for telling you this but, yes.

**Senator Chris Evans**—They will not forgive me for telling you this—but, yes.

**Senator FIERRAVANTI-WELLS**—This is a hospital pass if ever I have seen one.

**Senator Chris Evans**—It is also the correct answer.

**Senator FIERRAVANTI-WELLS**—And they should be able to tell me about training, careers and all that. At this stage, do we have at least some idea of what costs the employers who want to participate will be responsible for paying or are these still being worked out, Mr Vardos, following your answer?

**Mr Metcalfe**—I think we would again refer that to DEEWR.

**Senator FIERRAVANTI-WELLS**—Likewise, the workers and the costs that workers will have to meet. What about things like tax file numbers—again this was the medical insurance, the accommodation, transport and bank accounts, all that sort of stuff? Are they still to be determined?

**Senator Chris Evans**—I think DEEWR will be able to advise you where they are up to on most of those things. As I said, those things are being worked through. They may not be able to give you final answers but, in terms of where things are up to and how it is progressing, you had best address any questions to them.

**Senator FIERRAVANTI-WELLS**—On a broader perspective, as part of the government's consideration, what steps will need to be taken, for example, to make sure that smaller employers are not disadvantaged by the requirements that may have to be met not just in the pilot program in the first instance? Is that again a DEWR question?

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—I think it is fair to say, and Mr Kukoc may want to say something about it, that the approach has been very much that a community has to engage with the program, not just one employer. It is series of employers and it is community support for the scheme. If you did not have the support of the local councils, for example, it would not work. You do need the community to say, 'Yes, we do need this labour; we need it, we are going to support it happening and we will work with them to make it happen'—as many communities have. As you know, when refugee groups have come to the community, the whole community has got to engage with and accept it and make it work—otherwise you do not get to first base. Part of that, obviously, is a group of employers. If they want to participate they all have access to that. It is not designed to just deal with one big employer. It is a community engagement. Mr Vardos may be able to add something in there.

**Mr Vardos**—The department's Community Relations Program has been funded to develop a community engagement strategy for this project targeted at social cohesion activities at the grassroots level.

**Senator FIERRAVANTI-WELLS**—That is from your department's administered funding?

**Mr Vardos**—From outcome 2, yes. They are community based projects to foster understanding and acceptance and plug into existing Pacific island communities in Australia that can act as a bridge between the people here on the seasonal worker program and the broader community. These, too, are issues that are currently being worked out but—just to confirm—the Community Relations Program of our department has been funded to implement that part of the equation.

**Senator FIERRAVANTI-WELLS**—Will there be a role for the trade union movement in approving participating employers?

**Mr Vardos**—Part of the approach to avoid exploitation of these workers will be to provide them with some training and information about what their rights are as workers in this country. They will receive some training in the workplace and be briefed on arrival, including presentations by unions on industrial rights and how to access the Workplace Ombudsman and state workplace relations authorities.

**Senator FIERRAVANTI-WELLS**—Who will actually carry out the employer and employee orientation? How long will it take, and where will the cost for that be met?

**Senator Chris Evans**—Again, those questions are for DEEWR. They are managing that employment relationship, so I think it would be best to direct your question to them.

**Senator FIERRAVANTI-WELLS**—All right.

**Senator Chris Evans**—This reinforces why DEEWR needed to be the lead agency, in a sense, because all those—

**Senator FIERRAVANTI-WELLS**—Certainly. I have a series of questions, Minister—

**Senator Chris Evans**—I am just saying it reinforces that it is all to the employer-employee relationship.

**Senator FIERRAVANTI-WELLS**—I am just going through my questions to see where your department may have a role. I will certainly be asking DEEWR the same questions.

**Senator Chris Evans**—Maybe Mr Vardos could address your issues by describing our responsibility. There is the immigration and we probably had not previously alerted you to the settlement aspect of it. Mr Vardos, do you want to run through the three or four key things we are responsible for? That might be an easier way of getting there.

**Mr Vardos**—The community relations engagement is, I think, the key on-the-ground initiative that this department is responsible for, because we have a body of expertise in that area through our long-term involvement with settlement grants programs, MRCs and other community organisations. So we do have a sense of engagement with the ethnic communities of Australia. We have had the Living in Harmony program for a long time, and that focuses on social cohesion and community harmony. We have a body of expertise and we play to our strengths. That is why, in this arrangement, this portfolio has responsibility for those activities. Because we will inevitably get dragged into issues to do with overstayers and all the rest of it—

**Senator FIERRAVANTI-WELLS**—Yes, I was going to come to that—

**Mr Vardos**—should there be any, then we do have a responsibility to ensure that the people who are coming in are properly briefed. That may be a briefing that is contracted out to another party, it could be a joint exercise between us and DEEWR. I cannot actually articulate to you at this point how that will be conducted. What I can identify are the various elements that we need to address to make sure that this program works successfully.

**Senator FIERRAVANTI-WELLS**—In that case, then, in terms of the pastoral care—if I could put it that way—of the workers here, will that be part of the engagement component that you spoke about?

**Mr Vardos**—I am wondering whether I need to ask my colleague who will be responsible for administering the program to talk in detail.

**Ms Pope**—Under the department's community relations program, we will be doing work in association with the Pacific labour scheme—to go to the issues that my colleague Mr Vardos was discussing. We have been funded for four years to do work associated with community relations, social cohesion and so on, fostering positive relationships between local communities, recognising that there is capacity for existing communities to help the people

who participate in these pilots to settle well and to ensure that there are no issues of disharmony as a consequence of the pilots being introduced.

For the pre-pilot trial in 2008-09 we have been funded \$100,000 to work on those issues and have funding out for the following four years.

**Senator FIERRAVANTI-WELLS**—So for example, we talked about an orientation. Will there be, through DIAC, the program of information and orientation either on-site before they come and then when they arrive here in Australia? Is that the anticipated situation?

**Ms Pope**—Yes, although I am not involved in that aspect of it. The part that I will be working on is working with employers, relevant state government bodies, local councils, police and community organisations such as the CAA, Rotary, Lions and those kinds of things where they exist in the locations to develop projects that would help improve cultural awareness amongst the employers, for example, highlight any issues that we might anticipate in relation to social cohesion and community harmony in general.

**Senator FIERRAVANTI-WELLS**—What about in terms of understanding the potential for exploitation? I appreciate DEEWR's involvement. I assume that DEEWR will monitor the compliance with any issues to do with exploitation, but as far as the actual awareness of where the potential exploitation would come under—what you are proposing? Or what DIAC is proposing?

**Ms Pope**—Not in relation to community harmony, no. I believe that would be handled by DEEWR and in the pre-briefings and so on. My responsibility is in relation to the community harmony elements.

**Senator FIERRAVANTI-WELLS**—And the pastoral care—who is going to meet the costs of the pastoral care?

**Mr Vardos**—It depends on what you mean by 'pastoral care'?

**Senator FIERRAVANTI-WELLS**—Have you developed some guidelines in relation to 'pastoral care'? Will the employers be expected to contribute pay or something along these lines for 'pastoral care'?

**Mr Vardos**—Again, this is something that falls into DEEWR's patch, but my understanding is that the workers will be supported through ongoing pastoral care to be provided by approved regional bodies or ARBs, which will be established by DEEWR as part of this process. The consultation process currently underway will also include discussions with police and other relevant services located in the regions that will be impacted by the scheme. So, again, they are a set of issues that are being worked out.

**Senator FIERRAVANTI-WELLS**—One of the issues, of course, is the transfer of funds. Issues have arisen. For example, has any work been done to ensure that the sort of issue relating to the funds is not seriously eroded? We have heard rumours that nearly 50 per cent of the funds can be taken by some agencies, like Western Union, in the transfer of the moneys and then, in the potential double-exchange, the workers will miss out. Is that a DEEWR responsibility?

**Mr Vardos**—My understanding is that that particular element is being looked at by AusAID. They are the ones that have the most direct and comprehensive understanding and

engagement with all of the countries concerned. My colleague advises me that that falls into AusAID's patch.

**Senator Chris Evans**—Having said that, we are alert to that issue. I know there was concern about the rates charged in New Zealand, and it is something we are very concerned about. We do not want the remittances eaten away by unreasonable fees. I think you will find the government will put in a very strong point of view on that subject to financial providers but, as you know, there are probably limited options in a number of these places. A couple of these Pacific islands have fairly unsophisticated banking and financial systems. We are aware of the New Zealand experience and we are very focussed on making sure that there is a capacity to transfer money home that is not eaten away seriously by fees.

**Senator FIERRAVANTI-WELLS**—I want to move on to health checks. What health checks would be undertaken prior to prospective workers travelling to Australia and where would they be done? Is that DEEWR or is that something that your department will look at?

**Senator Chris Evans**—That is us.

**Mr Vardos**—There will not be any special dispensation given to people under this scheme to meet those requirements.

**Senator FIERRAVANTI-WELLS**—That is comforting.

**Mr Vardos**—On the health issues we are, as always, guided by the Department of Health and Ageing, but it is the standard health requirement, as well as police checks. I am not sure whether character checks are part of it given the countries that people are coming from. The objective is to protect the Australian community from both contagious diseases and people with criminal backgrounds. So it will be the standard raft of checks that we do; there will be no special dispensation.

**Senator FIERRAVANTI-WELLS**—Has any analysis been done about the availability of health screening facilities in the proposed participating countries?

**Mr Kukoc**—Yes. As far as I understand, our panel doctors are available in the region. They are especially approved by our department and will be doing the health assessment on visa applicants. So health checking for Pacific island countries will essentially be under the standard health-checking arrangements for all visa applicants who are coming here for less than 12 months. That health checking will include a series of health declarations from the client on their visa application form, a check of departmental systems to ascertain any health concerns identified during the processing of their previous visa applications, a chest X-ray taken by one of the department's approved panel doctors, an assessment of the chest X-ray by a medical officer of the Commonwealth in Sydney in most cases and consideration of any other material that comes to light during the visa application that may indicate a health concern.

**Senator FIERRAVANTI-WELLS**—What about blood tests?

**Mr Kukoc**—Blood tests are not normally required. However, as I said, a series of health declarations are made on the visa application form. So, if any of those declarations indicate the need for further health assessment, a blood test may be taken.

**Senator FIERRAVANTI-WELLS**—Will that assessment be made on site in country?



**Mr Kukoc**—And assessment will be made by a medical officer of the Commonwealth in Sydney in most cases.

**Senator FIERRAVANTI-WELLS**—While the worker is still in country?

**Mr Kukoc**—Yes, offshore.

**Senator FIERRAVANTI-WELLS**—A part of this of course is that there will be an impact on the health facilities in the local area from where the workers are coming. Have we thought about the impact on the locals of this greater strain on their health system?

**Mr Kukoc**—These are the standard health requirements that apply to most visitors from these countries if they are coming for less than 12 months. The additional numbers are not that large. We are talking about maybe 100 by the end of this year and an additional 400 next year. That will be dispersed among the three countries and, later, the four countries.

**Senator FIERRAVANTI-WELLS**—Have we done an analysis of the reliability of the records in source countries for undertaking character checks for participating workers?

**Mr Vardos**—I am not sure that an assessment of that nature has been conducted in relation to this particular project. However, people have been coming to Australia from Pacific island countries as either visitors or migrants for a considerable period of time, so the standard checking measures we have had in place to deal with that case load, which is far greater than the number of people that will arrive under this scheme, will be applied.

**Senator Chris Evans**—Senator, I would just like to make one other point that might assist you. One of the aspects of the scheme that we are keen to encourage is that people return—they will be repeat workers—because that has huge advantages for the employer and for the worker. So an aspect of this is about ensuring that we get people who have a commitment to work on a continuing basis and have a reason to go home and spread the wealth, as it were. So I would just like to reinforce that that is the kind of relationship we are looking for—a long-term relationship with incentives for that person to contribute to it. One of the things that greatly appeals to farmers et cetera is having the capacity to get the same person back and not having the constant cost of investing in new backpackers and others.

**Senator FIERRAVANTI-WELLS**—Can I move on to the criteria that may be used to select the recruitment organisations for approval. What criteria will be used for the recruiting organisations in country?

**Mr Kukoc**—There will be approved recruiting organisations in the Pacific island countries. These approved recruiting agents will need to be approved by our agency and by DEEWR before they can recruit.

**Senator FIERRAVANTI-WELLS**—So both DIAC and DEEWR will have a role?

**Mr Kukoc**—Yes—and, in some cases, they will be approved by the government of that country. In some countries, such as Tonga, they are government-run recruiting agencies. In some other countries, such as Vanuatu, they are private agencies.

**Senator FIERRAVANTI-WELLS**—And that will be subject to the MOU?

**Mr Kukoc**—Yes, that is one of the issues that will be part of the MOU overview.

**Senator FIERRAVANTI-WELLS**—What type of organisations will this be?

**Mr Kukoc**—I understand that they can be either government- or privately-run recruitment agencies.

**Senator FIERRAVANTI-WELLS**—Have we looked at their roles on an offshore basis? As part of the development of the MOU will you be looking at their specific roles and responsibilities?

**Mr Kukoc**—Yes, that is part of the MOU negotiations.

**Senator FIERRAVANTI-WELLS**—Who will monitor their performance?

**Mr Kukoc**—DIAC in the first place and DEEWR as well.

**Senator FIERRAVANTI-WELLS**—So you will have joint responsibilities or separate responsibilities for separate aspects of the monitoring?

**Mr Kukoc**—Yes, and the home government as well. That will be defined in the MOU.

**Senator FIERRAVANTI-WELLS**—This is really important as you can appreciate, particularly in some countries. Could you please think about the monitoring of the performance and in particular the responsibilities for monitoring? In particular, I would like to know their roles and responsibilities and who is going to be responsible for monitoring each aspect of that. Please do take it on notice because I think it probably requires that.

**Mr Kukoc**—We will take it on notice, Senator, but may I say that this is very important for the integrity of our immigration program and that is why this is still subject to MOU negotiations between us and overseas countries. DIAC will have considerable stakes in this.

**Senator FIERRAVANTI-WELLS**—How will they be reimbursed for ‘inviting’ participants to the pilot scheme? You appreciate where my concerns are.

**Mr Kukoc**—The intention is that visa applicants will not be paying a fee to a recruitment agency.

**Senator FIERRAVANTI-WELLS**—How are we going to ensure that the workers selected are 1) the most suitable and that 2) the selection process will be free from political interference?

**Mr Kukoc**—This is subject to MOU negotiations. We are developing those criteria.

**Senator FIERRAVANTI-WELLS**—Can you please tell me what are your priorities in terms of the criteria you are pushing for? Can you assist me with that? What sort of assurances are you seeking? Are we going to have instances where somebody is brokering the arrival of 10 cousins into Australia for a fee? That is potentially an issue.

**Mr Kukoc**—I would like to take that on notice, if you do not mind.

**Senator FIERRAVANTI-WELLS**—Will there be any restrictions—

**Senator Chris Evans**—We are alert to the problem.

**Senator FIERRAVANTI-WELLS**—I think you understand where I am coming from.

**Senator Chris Evans**—We are alert to the problem and it is being discussed with the governments, as I say. One of the issues is that the government resources in some of these countries are pretty slim. We have to find officials capable of making this work and make sure

that we have the capability at that end. We are conscious that the success and integrity of the scheme is highly dependent on the proper selection process and getting the right people. There is a big focus on that. I understand your concerns. All I can say is that they are concerns that have been raised and understood.

**Senator FIERRAVANTI-WELLS**—As a consequence of that is there scope for any restrictions potentially to be placed on companies or organisations that can recruit and select participating workers?

**Mr Vardos**—I think again that is a level of detail that we cannot respond to at the moment.

**Senator FIERRAVANTI-WELLS**—I appreciate that, but in the vein of the sort of concerns that the minister has agreed—

**Senator Chris Evans**—Again, I would say that we are talking about very small numbers in the first instance, so you might be getting 30 out of one country. I do not think we will be talking about multiple recruiters in that sort of circumstance certainly in the initial stages. Even if we went to the full 2½ thousand over the life of the program, you still have relatively small numbers.

**Senator FIERRAVANTI-WELLS**—It is a question of integrity, Minister.

**Senator Chris Evans**—It is. I guess what I am saying is that we are not going to be employing half-a-dozen of them to recruit 30 workers from a particular island.

**Senator BARNETT**—I wanted to ask the department if they were aware of the story that was produced by AAP on 15 October 2008. It was headed ‘Vet work visas carefully—rape victim’. I am happy to table this, but I am sure you would be aware of it. The article says:

AN Australian woman whose eight-year-old daughter was raped by a former Papua New Guinean boyfriend is urging the Australian government to carefully vet candidates for a pilot seasonal workers’ scheme.

Single mother-of-four Lynda Ridgeway formed a relationship with PNG student Raphael Eso after taking him in two years ago when he was studying at a Brisbane TAFE on an AusAID-funded scholarship.

She later discovered he was abusing her youngest child.

... ..

Ms Ridgeway today said the Australian Government must carefully vet candidates for a scheme that will let Pacific workers come to the country to do seasonal work.

This is pretty serious, and it is important that Australians know that the safeguards are tough, stringent and rigorous. This sort of—

**Senator Chris Evans**—What are you suggesting; that we ought to bar all PNG residents from coming because one woman made an allegation about sexual abuse?

**Senator BARNETT**—Not at all. I am asking the department whether they are aware of the story and then asking about—

**Senator Chris Evans**—I certainly saw the article. I am a bit concerned about what implication you are trying to draw from that about PNG nationals.

**Senator BARNETT**—So you have seen the article? How do you respond to the article, Minister?

**Senator Chris Evans**—It seemed to me that it had no relationship at all to the Pacific Island workers scheme. I am not sure whether there was a conviction, but it was certainly a very serious claim. I cannot remember whether or not there was a conviction. But, whether or not there was, I do not see how a concern about one PNG national in Australia as a student translates to some broader concern about people from Pacific islands. I would not want to have any sort of racial stereotyping or—

**Senator BARNETT**—Neither would I, and I do not think anyone would, Minister.

**Senator Chris Evans**—That is why I am quite surprised that you are raising this.

**Senator BARNETT**—It is very important in terms of the safeguards.

**Senator Chris Evans**—That we should be more concerned about people from PNG than anybody else?

**Senator BARNETT**—No, not at all.

**Senator Chris Evans**—As we just discussed, Senator—though I do not know whether you were in the room at the time—the normal immigration rules will apply to workers under this scheme as apply to anyone else. There is no diminution of health or character checks. The normal immigration rules will apply. I am not quite sure what this example is supposed to mean to us, but I do urge you to be a bit careful about how you intend to use it.

**Senator BARNETT**—Thank you for your advice. It is good that you are aware of it, and I assume the department is aware of it, to ensure that the safeguards are stringent, rigorous and appropriate, so that everything that can be done should be done to ensure that that sort of thing does not ever happen.

**Mr Vardos**—All I can do is repeat the advice I gave to Senator Fierravanti-Wells: that people coming in under this scheme will not be given any special dispensation; they will be subjected to our health and character requirements under immigration law.

**Senator FIERRAVANTI-WELLS**—If I understood correctly the previous official who gave evidence, as part of your Living in Harmony and engagement as part of the community, Australian way of life type aspects—if I can put it that way—will be raised with the workers both before they come and then as part of an orientation program when they do come to Australia. I mean general issues about Australia, our Australian way of life and those sorts of things.

**Mr Vardos**—Yes. I think I can safely say, though, that rape is an offence in all of the countries that are participating in this scheme. So I do not think it will come as news to the individuals that it is unacceptable behaviour.

**Senator FIERRAVANTI-WELLS**—I would like to touch on issues about overstaying. What will be the consequences for the participating workers who overstay or abscond? Will normal immigration rules apply?

**Mr Vardos**—As the minister indicated earlier, the biggest incentive for a person to go home is the opportunity to come back for another picking season the following year and

maintain the continuity of that external foreign exchange source of income. But if people do go to ground, then yes they will be subjected to our standard approach to compliance activity. When they are found they will be returned to their country of origin and they will be taken off the list of eligible persons to participate in the scheme.

**Mr Hughes**—My understanding is that—and Mr Metcalfe will correct me if I am wrong—in the experience of the New Zealand scheme there was not a significant problem with immigration compliance. The construction of the scheme and the incentives were such that it was certainly in the interest of the workers to comply so that they could come back for future stints of work. The issues, really, that had to be dealt with in New Zealand were more in the area of preventing worker exploitation.

**Mr Vardos**—Just to add to that, if the scheme is well designed, which we obviously intend it to be, there will be positive incentives for the participants to comply with Australian immigration law and to return home at the end of their period in Australia on the basis of seeking to come back here again. As the minister said, that provides some significant advantages for the growers in that they develop a trained, reliable workforce as opposed to an itinerant workforce. While the sort of work we are talking about is extremely demanding physical work picking fruit, in some areas there is a degree of specialisation required, particularly when it comes to pruning grapevines and that sort of thing, so investment by the employer has benefits.

The other thing that of course is pertinent here is that this particular industry has been characterised by relatively high levels of illegal labour, and so if we can get this right not only will we provide pathways for a reliable legal workforce with benefits to Australia and the Pacific Island nations but it will, at the same time, remove incentives for the employment of illegal labour and the associated exploitation and other undesirable features of that. So not only are there compliance benefits from the scheme but there are probably compliance benefits for the broader Australian immigration perspective.

**Senator FIERRAVANTI-WELLS**—And then of course there are consequences. I was going to ask about those. That is the other side of participating workers who overstay or abscond, so the answer is of course—

**Mr Vardos**—Certainly our department's activities will be not only working with other departments to ensure that this scheme has the very best chances of success but also working with other departments to ensure that illegal labour in this industry is acted upon and generally raising the standard of the industry altogether. I know that the industry is keen for that to occur as well.

**Senator FIERRAVANTI-WELLS**—I assume the consequences are for the local village from whence they come as well—from the source countries.

**Mr Vardos**—It was interesting. I was talking to a provincial minister from Alberta, Canada, and we were reflecting upon the fact that Canada has had a scheme going for well over 30 years now in relation to people coming from the Caribbean. He was talking not only about how the incentives have worked so that people return home at the end of the year and come back again—and this has happened over a period of some years—but about how

introductions are made and how jobs have been taken over by family members and others, subject to the selection requirements.

Some additional people-to-people benefits have emerged, such as farming families in Canada developing friendships with families from Jamaica, where people were coming from, voluntarily sponsoring children through university courses back in Jamaica and actually forming friendships. So the potential of a well-managed program not only in relation to the needs of the Australian horticulture industry and the benefits of the Pacific Island nations but also for a better set of people-people relationships at the community level is apparent. This is a pilot. We will learn lessons from it but it would appear, based certainly on the Canadian experience, that there are very profound and long-term benefits for all concerned.

**Senator FIERRAVANTI-WELLS**—Can I just pick up on the comments you made earlier about the current economic situation, with the changes in unemployment. Even in your own budget forecast there will be another 134,000 unemployed people over the financial year. Are we looking at Australians losing jobs, or are these jobs that Australians just will not do? You know the gist of my question—are these jobs that the Australians will not do, or will there be some Australians that will lose their jobs as a consequence of this scheme when it is in full flight? I appreciate that the 100 now are not of great impact. But, over the life of the scheme, and given the fact that unemployment is going to go up, Minister, do you have any comments in relation to that?

**Senator Chris Evans**—Successive governments have been under constant pressure from growers and agricultural organisations for many years about their severe labour shortages. They tell us there is huge demand from their members—from the growers—to access a pool of labour to help them with seasonal work. One of the main reasons we have responded was to try and respond to those concerns.

Obviously, if that were to change over time you would have to assess it. But what growers say to us is that they cannot get Australian labour to meet their needs in the picking seasons. They are strong and consistent on that and have strongly supported the trial as being a good step forward to addressing their needs. I do not think there is any suggestion at this stage that there is any threat to Australian jobs. These people tell you that they have been trying for years—they have left fruit on the vine and they have been unable to deal with it. One of the things the immigration department knows is that there is currently strong demand for illegal labour, and that is creating problems for us because demand drives response.

We have had large numbers of arrests—I cannot quantify it, but I know 14 or so people who were here illegally were picked up in my own state quite recently. They had overstayed visas because there is a huge demand. Farmers, despite the threat of prosecution, invariably find that they had no knowledge of these people—

**Senator FIERRAVANTI-WELLS**—In their barns—that is right!

**Senator Chris Evans**—despite our advising them they have the capacity to check, and we support them in any way we can. There is clearly a demand currently and I think the trial will test how all that works. Every agricultural group I have spoken to has reinforced the fact that they cannot source Australian labour for this seasonal work. The only complaints I have had

about us trialling this scheme are from the areas Senator Ellison mentioned, who are complaining they did not get in on the trial.

**Senator FIERRAVANTI-WELLS**—What measures will be implemented to ensure that the guest workers return home at the conclusion of their employment? I think you have partly addressed that, but who pays the costs incurred in overstaying and the non-compliance component of that? Who is actually going to bear the cost of that?

**Mr Vardos**—If a worker has gone to ground in the community and has to be located then that is an overhead the department bears through its compliance program. I am not aware of any special funding arrangements to supplement us for this activity. I have to seek the views of others on it.

**Mr Metcalfe**—We will take that on notice.

**Senator FIERRAVANTI-WELLS**—Yes, please.

**Senator Chris Evans**—I do not know how many people we have in that category—overstayers of visas—in Australia per year, but these are not small numbers.

**Mr Metcalfe**—It is 48,000.

**Senator Chris Evans**—Our best estimate is 48,000 currently in the community, the secretary tells me. That is part of the normal work of the department. I doubt that we would be putting in special arrangements. What we try to do is build in safeguards at the start, not at the compliance end. Clearly, if there were an overstayer or someone failed to meet their conditions, they would be treated like anybody else: they would be located and removed.

**Senator FIERRAVANTI-WELLS**—Given the numbers, have you done any modelling on the impact of such a scheme in relation to unemployment—although you have picked up a couple of points on that—and the economic benefits of the scheme? Have you actually done any modelling that looks at what the economic benefits are of this scheme to Australia—taking into account potential unemployment and welfare?

**Senator Chris Evans**—There is no welfare component, unless you are alleging that Australian workers will be forced onto unemployment as a result of the scheme.

**Senator FIERRAVANTI-WELLS**—That was part of the previous question that I had asked.

**Senator Chris Evans**—Obviously, there has been the New Zealand experience in terms of the benefits for the South Pacific, and benefits to employers by being able to source labour. I think officers earlier described DEEWR's work in terms of labour.

**Mr Kukoc**—As the minister mentioned earlier, this is a trial, a pilot, and its purpose is precisely to do the analysis of the sort that you are asking for in terms of the impact on the Australian labour market and the benefits to the local community and the local growers in Australia, and also the benefits and costs to the sending country. So that is exactly the key purpose of the pilot.

**Senator FIERRAVANTI-WELLS**—And at the end of the pilot you will do an assessment of the economic costs and benefits in both Australia and the home countries.

**Mr Kukoc**—The initial evaluation will be done 18 months after the commencement of the pilot. The pilot is taken to formally commence in July 2009, although we may bring over the first small group before the end of the year.

**Senator Chris Evans**—I think I gave you the figures earlier but 500,000 people a year come into Australia temporarily with work rights.

**Senator FIERRAVANTI-WELLS**—I understand; putting it into context.

**Senator Chris Evans**—So you have to put the 100 into the context of the 500,000. We have to bear that context in mind.

**Senator FIERRAVANTI-WELLS**—Thank you. I have finished with the issue of guest workers.

**CHAIR**—We will keep going with output 1.1.

**Senator ELLISON**—I still have questions on 457 visas. We dealt with the labour agreements.

**CHAIR**—We will give these people a bit of a break.

**Senator MARSHALL**—There was a special World Youth Day visa. Have those all expired now?

**Mr Vardos**—The expiration date is determined by the issue date. It is my understanding that some of them might have come on visitor visas, so there may still be some people in the country whose visa is still current, but we are getting to the time where the visas have expired or are about to expire.

**Senator MARSHALL**—Some would have come with a normal visitor visa and some came with a special category of visa. I recall seeing a press report earlier that indicated that some people were going to actually stay or apply for different sorts of visas. I am really just interested in getting a report on the wash-up of the World Youth Day event.

**Mr Vardos**—As at 29 September, we had identified 31 people who had overstayed their visas from approximately 100,000 people who had arrived in the country for World Youth Day who came in under a range of visas. For example, people from ETA eligible countries would have applied for an electronic travel authority and we would not necessarily have known that they were coming for the purpose of participating in World Youth Day. So, to the extent that we know how many people came for World Youth Day activities, our estimate, as I said, at the end of September is that there were 31 overstayers.

**Senator MARSHALL**—I am just relying on press reports at the time. I do not know the veracity of them but I thought there were people indicating that they were going to apply for asylum. Is that included in those 31 overstayers?

**Mr Vardos**—People could apply for a protection visa while their substantive visa was still current. They do not wait until they become overstayers.

**Senator MARSHALL**—So how many instances of that have there been?



**Mr Vardos**—We have recorded 186 protection visa applications from people that we understand arrived in the country for the purpose of participating in World Youth Day. That was as at the end of September.

**Senator MARSHALL**—What is the process of those applications?

**Mr Vardos**—I cannot answer that question, but Mr Hughes will take that one.

**Mr Hughes**—They would be in the same situation as any other person who applies for protection whilst they are in Australia on a valid visa. The application is considered by the department and a primary decision is made, which could be yes or no. If the answer is no, they would have the right of appeal to the Refugee Review Tribunal on the merits of the case. There are also people refused by the Refugee Review Tribunal. If they wish to pursue it further, there is recourse to the courts.

**Senator MARSHALL**—So are any of the 186 at the point where a yes or no has been given?

**Mr Hughes**—To date, I understand that two have been granted protection visas. I might say also that 186 is not many in the context of the 100,000 visitors. I just make the observation that we actually regard that as a quite low figure in terms of 100,000 visitors from a very broad spectrum of countries, including countries where there may well be protection issues involved.

**Senator MARSHALL**—I was not making any judgement about that. I would purely like some information. So two have been approved. How many have been rejected?

**Mr Hughes**—I do not have the figures on that. I can take that on notice for you.

**Senator MARSHALL**—If you could. So we are really in the early stages of that process. How do we know about the 31 overstayers? Is it because we know that people simply have not left? We do not know where they are or what they are doing, or do we?

**Mr Metcalfe**—We do not normally know where they are. They will be somewhere in Australia. The way we would calculate that figure is by running matches against people who have arrived and whether or not they departed by the date of expiry of their visa. That has thrown up the 31. Those folks could be anywhere in Australia.

**Senator MARSHALL**—What is the process of tracking those people? Is there an alert out for them if they try to open an account or get employment? How do we find people who overstay?

**Mr Metcalfe**—They are in the same category as any visa overstayers. As the minister indicated before, our estimate is that there are around 48,000 illegal immigrants or visa overstayers in Australia. That number has remained fairly constant over the last few years. We have information recorded in our own departmental records, should that person come to the notice of our staff. The most significant way that people come to our notice quite often is if they seek employment in Australia. We encourage employers to check to see whether or not foreign nationals have work rights.

We operate a system that allows the checking of entitlements in that regard and we appeal to employers not to employ people who may be without work rights. But all of those folks

who are overstayers are the subject of targeted departmental compliance action, working with employers, and if they come to the notice other government agencies by seeking to access particular benefits then those referrals come to us. Later in the hearing we will come to that particular element of the department's work and we can certainly talk further there.

**Senator MARSHALL**—Okay. I accept that 31 is a very small number from the number of people who came, but is it the usual suspects or has it thrown up a surprise? We have different areas which, to my understanding, are renowned overstayers and others that are not.

**Mr Metcalfe**—Interestingly, in proportionate terms I think our annual report for this year will show that, in absolute numbers, the largest number of visa overstayers in Australia are citizens of the United States of America. That reflects the numbers in the country. Quite often our experience is that people may only overstay for a day or a week and then leave at that stage. For example, all of those 31 people could leave tomorrow or some of them may decide to stay longer. Some of them of course could apply for refugee status in Australia. I do not have a breakdown of which nationalities those 31 are. We could take that on notice.

**Senator MARSHALL**—All right then. I should know the answer to this, but if someone overstays by a few days and then they try to leave the country legally, what happens there?

**Mr Metcalfe**—We are very happy to see them at the airport and to farewell them. The majority of visa overstayers leave voluntarily. It is unusual for us to have to take firm action to supervise or enforce their departure.

**Senator MARSHALL**—If someone has overstayed by a couple of years and then tries to leave legally, you do not happily wave them goodbye too, do you?

**Mr Metcalfe**—Again, if the first time we see the person is when they pass through the outwards Immigration control at the airport, we are delighted to see them leaving. There is no hindrance to someone who has overstayed their visa. The policy objective is to secure their departure. If they have overstayed, even if they leave voluntarily, it will have implications for any future visa applications that they may make. That is not only of interest to Australia. On the immigration forms of many countries, you have to advise whether you have overstayed or been the subject of action by immigration authorities elsewhere. If overstayers honestly answer that question, it would be apparent that they have not complied with Australia's immigration laws.

I have just been given a figure in relation to your early question. Of the 186 World Youth Day protection visa applications lodged by people who came for the purpose of attending World Youth Day, about 11 of them have so far been refused and two have been proved. The others are currently under consideration. It is possible that more will be received. We estimate that around 100,000 people came to Australia for World Youth Day from 170 countries. A one per cent overstay rate against our visa programs is regarded as the usual rate. So far we have had only 31 people overstay and 186 apply for protection visas, which is a very good result in terms of the very large number of people who came here and had a great time and have gone home.

**Senator ELLISON**—I would now like to go back to 457 visas. I would like to get an idea of the backlog we now face. As at 1 April 2008 there were 5,795 on hand that were older than

the time set for finalising them, and that was 75 per cent of cases. Could you also tell me the time set for finalising them.

**Mr Fox**—I might start by giving you an update on the way we have performed against the Public Service standards in the first three months of this financial year compared with the full year of 2007-08. We have four categories of 457s. For those lodged onshore—that is, in Australia—and in the low-risk category, our standard is for 75 per cent to be finalised within two months. For those that are onshore and high risk, the standard is for 75 per cent to be finalised within three months. For those lodged offshore and low risk, our standard is the same as for those that are lodged onshore—that is for 75 per cent to be finalised within two months. Similarly, for the offshore and high risk, our standard is for 75 per cent to be finalised within three months.

Starting with the onshore low-risk category, in the first three months of this financial year, 86.74 per cent of them are being finalised within that processing standard. For the onshore high-risk category, the figure is 85.73 per cent. For the offshore low-risk category, it is 86.73 per cent and for offshore high-risk it is 87.58 per cent. The figures for the full year of 2007-08 were 66.5 per cent, 71.9 per cent, 70.7 per cent and 67.4 per cent. So can see that we have had a significant improvement in our 457 processing this financial year compared to the full year of 2007-08. That, I think, reflects the move to the centres of excellence for processing that we instituted from the beginning of July this year.

**Senator ELLISON**—How have the centres of excellence been affected by the staffing cuts that we mentioned?

**Mr Fox**—There have been no reductions in those centres of excellence. As the secretary, I think, indicated earlier the reductions that we made were largely in the national office rather than in our service delivery network.

**Senator ELLISON**—So none in the centres of excellence. Do they have staff, related to their work, in the head office who may have been cut?

**Mr Fox**—There are staff who work in the 457 area within national office. They fall into Mr Vardos's division. I do not know the numbers of those.

**Senator ELLISON**—Have any of the staff at head office, who deal with 457s, been cut?

**Mr Vardos**—Cut?

**Senator ELLISON**—Voluntary redundancies?

**Mr Vardos**—Across the division I had a reduction of about 10 or 12 staff, but that was spread across the division. From recollection, it did not impact on any officers working in the 457 area.

**Senator ELLISON**—On those figures, that is a good improvement.

**Senator Chris Evans**—Can I formally put on record—a sort of an ad break—my thanks to the officers involved for doing a fantastic job in dealing with the backlog. Many of them put in long hours. I want to record my thanks to the staff for those efforts. We have had tremendous feedback from industry for the improved processing times. I went to an AMMA conference the other day and they were very complimentary in the introduction of the

changes. We have had really good feedback. I record my thanks to the departmental officers. I have now set them a couple of other tasks, because if we can do it there, we can do it elsewhere. The secretary always wants to talk to me about extra resources, but I am sure we can achieve great things within current resources.

**Senator ELLISON**—One thing we have kept a tab on is the number of 457 visa holders who successfully applied for permanent residence. What are the latest figures on that? I think, for 2006-07, we had 19,170, around 20 per cent. What are the latest figures for 2007-08?

**Senator Chris Evans**—I think it was about 20 per cent of the program, rather than 20 per cent of the 457 visa holders—

**Senator ELLISON**—I misunderstood. So it is 20 per cent of the total migration program?

**Senator Chris Evans**—Permanent skilled migration.

**Senator ELLISON**—As a percentage of the 457s, how much would that be?

**Senator Chris Evans**—That is why I was making the point that, in a sense, it is another figure, because we have the annual figures for the intake of 457s but of course there are also people leaving all the time. So you have, if you like, a 457 stock in the country, which is another figure again. I am not trying to confuse you.

**Senator ELLISON**—Do you have a figure for that stock?

**Mr Vardos**—I have some figures here which indicate across a range of categories that have been sourced from the 457 program. I can give you the figures for 2008-09. Employer nomination—

**Senator ELLISON**—2007-08?

**Mr Vardos**—Sorry. For 2007-08, employer nomination, 13,999; regional sponsored migration scheme, 3,350; skilled independent, 4,646; spouse, 1,281; establishing a business in Australia, 258; state or territory sponsored, 751; and other, 669, a total of 24,954 in those categories that originated from the 457 visa stream.

**Senator ELLISON**—And they are permanent residents?

**Mr Vardos**—Yes, they moved into the permanent category.

**Senator ELLISON**—Of the stock that the minister mentioned, what percentage would constitute 457s? I am just trying to get a rough figure. What is the percentage of 457s who have converted to permanent residency?

**Senator Chris Evans**—I will see whether the officer can help you. That has been changing, and what we are finding is that those in some categories who have been arriving more recently have been more interested in permanent residency than in past years. Certainly, the numbers seeking permanent residency have increased.

**Mr Vardos**—My colleague indicates that, in 2007-08, in excess of 40 per cent sought permanent residence.

**Mr Kukoc**—From the 457 stock, but we need to take this on notice.

**Senator ELLISON**—You appreciate the two different figures—one is a percentage of the total migration program and then the other is a percentage of the 457 stock who have become permanent residents.

**Mr Vardos**—We will take that on notice and give you a precise figure.

**Senator ELLISON**—They are quite different figures.

**Senator Chris Evans**—The other thing is that one of the things we are finding, partly because of the speed of processing, is a change in behaviour occurring. We have not helped in this regard by speeding up the 457 processing, as employers are tending to bring people in who want to permanently migrate on the 457 scheme and who are seeking permanency once they are here rather than originally coming in on the permanent program. You might source a nurse from Ireland as a hospital worker, but it might take you six months to get the permanence approvals. If you bring them in as a 457 within a month, then you let them seek permanency. So we are seeing a bit of a change in behaviour, which complicates the picture a bit.

**Senator ELLISON**—The reason why I ask is that the other day I was talking at cross-purposes with someone. I said it was 20 per cent, and they were talking about how much of the 457 program it constituted. They were referring to departmental figures and I was, too, but we were talking about two different things.

**Mr Vardos**—They are two different things.

**Senator ELLISON**—Also, how long does a 457 visa holder have to wait before they can apply for permanent residency? Do they have to wait a certain period?

**Mr Vardos**—Conceivably, if you take one of the categories, employer nomination, they do not have to wait until the end of their visa term. The employer can sponsor them if they meet the requirements of that category at any time after—

**Senator ELLISON**—So they could apply the day they arrive in Australia?

**Senator Chris Evans**—They cannot apply for permanent residency. They can apply for permanent skilled migration. It is not as though they have to serve two years and they get in automatically. They can apply to migrate to Australia permanently by—

**Senator ELLISON**—By other streams?

**Senator Chris Evans**—Yes. But they do have an application available to them for permanency and, depending on the stream, the time varies because, if it is employer nominated, they can apply for permanent skilled migration as soon as they arrive.

**Mr Metcalfe**—Are you asking whether there is any prohibition on a 457 visa holder from applying for permanent migration?

**Senator ELLISON**—Yes.

**Mr Metcalfe**—We will just check that point and make sure we are quite clear on that. My understanding is that there is not, and it would then depend on the particular category that they were applying for. For example, if they got married and applied as a spouse then there would be nothing preventing them from coming under the spouse program immediately. But we will just check that.

**Senator ELLISON**—If you could.

**Senator Chris Evans**—If they are looking at the independent skills stream they apply as someone offshore would and they get processed in the normal course of events so, subject to being corrected, there is no advantage or disadvantage in applying for permanent residency. Whether they are onshore or offshore, they have to meet the same qualifications.

**Senator ELLISON**—Perhaps you can double-check that. The final report of the trucking industry working group was placed on the department's website, as a result of a question from May estimates. Has anything come of that? I asked about this before and some people were vitally interested in it.

**Senator Chris Evans**—I made a decision and an announcement.

**Mr Vardos**—I do have a brief on the trucking industry.

**Senator ELLISON**—A report was there, but I wonder whether anything had been done about it?

**Senator Chris Evans**—I am sure I issued a press release.

**Mr Metcalfe**—While we are just checking that information, I can come back to you to conclude an answer I gave earlier about labour market testing. Would that be of assistance?

**Senator ELLISON**—Sure.

**Mr Metcalfe**—I said that I was searching the deepest recesses of my memory about changes that may have been made around the time of the change of government in 1996. Colleagues back at the department have now provided me with some detail. Prior to July 2001 there were two groupings within the subclass 457 program, firstly, relating to key activities, which were activities essential to the overall operations of the employer and which required specialist knowledge either in terms of professional or specialist skills or proprietorial knowledge. These applications were fast-tracked and did not require any labour market testing.

Secondly, there were the so-called 'non-key activities' which generally required labour market testing and/or skills assessment. As demand for skilled workers that could not easily meet the definition of key activities increased, it became obvious that skill level, remuneration, work conditions and training were the elements upon which a decision for sponsoring an overseas worker should be based.

A further factor was the regular dispute about whether occupations in which businesses were, were in fact key or non-key activities. Furthermore, the labour market testing process that was in place at the time in our view added little value as it was seen to be highly bureaucratic and did not usually lead to the employer failing the test but rather having to re-advertise in a manner that suited the regulations.

The migration regulations were thus changed in July 2001 by replacing the distinction between key and non-key activities with a distinction between skilled occupations on the one hand and unskilled and semiskilled occupations on the other. That was done by gazetting a list of skilled occupations which fit into ASCO 1 to 4 category levels

To prevent the prospect of employers inflating the description of positions that they were seeking to fill and to ensure that there was a clear price signal for employers to consider hiring Australians first, a minimum salary requirement was also introduced at that time. That minimum salary requirement has been indexed a number of times following its introduction in 2001. Subsequently, the previous government allowed access to some of the semiskilled occupations for 457 visas but only where the application was supported by a regional certifying body. So that provides a bit more history I think on the issue of the market testing and other signals in relation to where you might have access to overseas workers, but only after you have looked at the issue of employing Australians.

**Senator Ellison**—Thank you. You mentioned those regional certifying bodies. The government is changing that; you are putting in something different. What has happened with that?

**Senator Chris Evans**—There is an ALP policy commitment to some change in that area. We are considering options but that has not gone too far yet, to be frank.

**Senator ELLISON**—So the certifying bodies still continue?

**Senator Chris Evans**—Yes. There has been no change in that area of any significance. While we are looking at some of the policy issues there, the debate around this is dominated by South Australians being fearful of us taking away their regional status, and by everybody else demanding it including the cities of Brisbane and Perth. Personally, I think there is a need for some serious change in this area but it is fair to say that they are fairly entrenched positions around these issues. As for the trucking industry, Mr Vardos is prepared to—

**Senator ELLISON**—Yes, the trucking industry: where are we up to with them—not entrenched, I hope.

**Mr Vardos**—On 1 July 2008 a legislative instrument came into effect which excludes some road transport drivers including heavy truck drivers from access to the subclass 457 visa program—and this is following the minister's endorsement of the outcomes of the trucking review. The occupations that have been removed from the 457 program are heavy truck drivers but with the exception of heavy truck drivers primarily working at mining or construction sites. It has also removed furniture removalist; automobile driver and delivery driver.

**Senator ELLISON**—In relation to 457s, do you have statistics on those people who enter Australia without the skills they purport to have? Someone says that they are a welder and they come under that guise, if you like, and basically they are frauds. They might have done it on the basis that they thought they were qualified, but they were not by our standards. Do you have any statistics on that?

**Mr Vardos**—I would have to take that on notice. It is something that would be difficult to compile because it is the employer that has to satisfy themselves in the first instance that the person they are sponsoring has the skills that they need. It would not be until after arrival at the employer figured out that they do not.

**Senator ELLISON**—But there have been cases that have come to the attention of the department where someone has not possessed the skills?

**Mr Vardos**—Yes.

**Senator ELLISON**—Do you have an idea of the number? I am just trying to work out how widespread it is.

**Mr Vardos**—We will take it on notice, but I am forecasting that our statistics are not very comprehensive in this regard. This issue is not a huge pressure on the department. It does not come up on a regular basis.

**Mr Metcalfe**—It is an issue though in that part of our work involves considering the sponsorship of overseas workers and part of that is: do they in fact have the qualifications or work experience required? We deal with that on a risk management basis. We have developed some extensive knowledge and databases, particularly through our processing centres. Indeed, one benefit we will obtain from the specialist centres that we have established in this area is an understanding of the occupations where the nominated or sponsored worker does not in fact have the relevant background, qualifications or experience and how we can uncover that.

At the most interventionist end, some of our officers overseas will spend some time actually travelling to and looking at a person's place of employment to see whether they are in fact a welder, an engineer or whatever it might happen to be. Our resources are not infinite, obviously, so we deal with that on a risk management and a profile basis. It is an area of serious work by the department.

**Senator Chris Evans**—It is very much a risk based thing. Most employers want the skill and want to bring in someone who can do it, so, if you like, they do a lot of the checking. Woodside are not going to bring in a mechanical engineer if they do not think they have mechanical engineering experience. Their human resources people would check it. What we have are some higher risk areas where we are not as familiar with the qualifications and where the employer is smaller, without perhaps the human resources capabilities. That is where we have risks also of exploitation. It is not hard to work out where your problem areas are. It is not counterintuitive. Fundamentally though, the thing that drives this is the employer having to sponsor the person, having to take responsibility. Some of the measures in the workers protection bill may well assist us in this regard and be much clearer about those sponsorship responsibilities.

**Senator ELLISON**—In relation to the method for verifying those overseas qualifications, do you have any plans for a review? Is the process you outlined what is in place and is it staying?

**Mr Metcalfe**—What I outlined was largely what I describe as integrity checking, and that is an area of continuing work within the department. As the minister said, we make decisions around where to intervene and how much to intervene based upon assessed risk. It is not possible, or necessary, for us to examine the background of every worker coming to Australia. As the minister said, the vast majority are being sponsored by significant and highly reputable companies and they will do every check they can to ensure that the person who is coming out is in fact who they claim to be, but there are certain occupations and industries, particularly as you move down the skill factor, where that sort of work by the department becomes more necessary.



**Mr Vardos**—Some skills will require registration in Australia, depending on the state jurisdiction, so they would need to meet the state or territory licensing requirements. Checking their qualifications would be part of that process.

**Senator ELLISON**—Going back a touch to the case load, we sorted out how many 457s are being cleared in a space of time but I am interested in how we are going for sheer numbers. Can you give us any idea how it is going? Is it increasing, dropping off or staying the same?

**Mr Metcalfe**—Certainly last year, Senator—and I think this has already been reported and the minister has commented on it—we saw an increase in 457 visa numbers from the last few years. From memory, around 110,000 people entered Australia last year on 457 visas. That figure includes not only the principal applicant but dependent family members as well. We can check as to whether we have got any figures for the first couple of months this year. We will take on notice what data we have for perhaps the first quarter of this year.

**Senator ELLISON**—Yes. I think question on notice 30 had some figures, but that would need updating. So if you can provide that, that would be good.

**Senator Chris Evans**—It will vary of course. It should be sensitive to the economic conditions because of the employer nomination. One would assume that if the labour market worsened that the rate should fall off—that is the economic theory. I have never been very strong on economic theory.

**Mr Metcalfe**—Putting my economist hat back on, Senator, you would say that in fact that should be a fairly leading indicator as to employment intentions. Employers know their business, know what demand is going to be. You would have thought that one of the early indicators of a slowdown in the economy would be whether those sorts of numbers drop off, bearing in mind of course that many of those 457 workers are coming into areas where there are no skilled Australians available. It then adds to the more complex issue as to whether the skills are available in Australia, notwithstanding the fact that unemployment might be increasing. It depends where the jobs are being lost in Australia and what sort of mobility there might be. For example, I would assume there will continue to be strong demand for skilled workers in the mining sector in Western Australia and Queensland, and the extent to which that is able to be filled from a softening of the Australian labour market is an issue that would play into that.

**Senator ELLISON**—Mind you, if it is dropping off in those areas then it is a leading indicator which causes concern—and that actually gives rise to my next question.

**Senator Chris Evans**—There is another thing to broaden that understanding. I do not know if this has changed but, certainly the last time I was briefed on it, the largest employer of 457s over the years has been the New South Wales Health Commission. If you think about it, that probably would not be responsive to changing economic conditions. The shortage of doctors and nurses remains, and if we have unemployment or layoffs in the car industry that is not going to have any impact on our need for nurses or doctors. So some sectors will be responsive and others will not be. There is a constant demand that will not change, short of some sort of major economic catastrophe.

**Senator ELLISON**—Yes, and it is also government as opposed to private, which is a difference. On that point, can you give us an idea of what applications you have in the pipeline? We talked about how many have come in. How many are in the pipeline, where are they coming from and what can you tell us about that?

**Mr Fox**—I can tell something about that as at the close of business on 30 September, which is the last update that I did. We had 6,624 visa applications in the case load in our department. That is a reduction of about 22.2 per cent of the on-hand case load over the previous three months. That is a different statistic to that which you are asking for about how many are coming through the system. What it shows is that we are moving them through our system more quickly than we were three months ago by about 22 per cent. Of those, 1,289 were going to be outside our published service standards. That is about a thousand cases, fewer than we had outside the service standards in July, which again goes to that improvement in our processing standards. That is the comparable figure to the backlog figures that we gave you at the last estimates.

**Senator ELLISON**—Whilst your improved efficiency might mask the figures to some extent, surely you can still compare apples with apples and see how you are going?

**Mr Fox**—Yes. I do not have the total number of applications to date with me. That is the question we took on notice earlier.

**Senator ELLISON**—So you need to have that number to compare with the prior point?

**Mr Metcalfe**—That is right. What we know is that we are dealing with applications more quickly. That is because of our own improvements and because we have been working carefully with sponsors to make sure that we get better and fuller particulars when people actually apply. But the figure that we need to provide you and which we have said we will take on notice is the actual application rate for that first quarter.

**Senator ELLISON**—If there is any chance of getting that fairly soon, I would appreciate it. I know it is a bit detailed, but—

**Mr Metcalfe**—We will see if we can get it while we are here today if possible.

**Senator ELLISON**—Only if you can. It is a crucial figure in many respects. This is a tell-tale sign depending on where the applications are, how much it has fallen et cetera.

**Senator Chris Evans**—I take your point, Senator, but I think it will be more relevant in a short while. If you think about it, the economic difficulties globally have been around for a while, and certainly we were cognisant of them when we framed the budget. I think it is fair to say that it is probably the last six or eight weeks where things have been more serious. I think there would be a lag in that respect. Applications we would have would have been in for some time. I just think we will get a much better idea a bit further down the track.

**Senator ELLISON**—I guess we are all trying to see the canary in the mine—watching it very closely—because there was a forecast of employer confidence, where employers said several months ago that they were looking to take on fewer staff. And, whilst the pinch was not on then as much as it is now, I think it still would be interesting to see. In areas of demand it might well be. As I am sure you are, Minister, I am still getting contacted by people saying

that we need skilled people in Western Australia particularly. Anyway, if we could get that, that would be very useful.

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—I just had a casual conversation with Reg Harold-Smith, from the Chamber of Minerals and Energy, Western Australia. They were in the parliament this morning and I bumped into them on the way out this morning. I made that point to him, and he said that we would not want to overstate at this stage the drop-off in demand. He still said there were employers, as you say, looking for labour. I do not want to verbal him, but I think his message was, ‘Don’t overreact just yet; we’re still seeing what the real impacts are going to be.’

**Senator ELLISON**—Sure. I want to ask about English tuition for 457s. I saw a letter from the Subiaco Primary School, which I think the minister might have some knowledge of—not the letter but the school.

**Senator Chris Evans**—The young bloke left last year, but I still regard it as our primary school.

**Senator ELLISON**—They wrote to the former state minister for education back in June this year. I have a copy of the letter. They were talking about the number of children of 457 visa holders for whom English was a second language, and it was really hitting the school, according to this letter. They were wondering what could be done in relation to that issue. There are English language centres, and I saw in the electorate of Cowan the Greenwood school doing this. Has there been any progress on the provision of English language tuition?

**Senator Chris Evans**—I will let the department answer in terms of the detail. I want to declare a conflict of interest. My partner has been very active in the P&C association and the school council activities at Subiaco primary. Having said that, she was no longer an officeholder and was not involved when that letter was drafted, but I want to put on the record that we have an association with the school. They have raised legitimate issues that have been raised by other schools. They raised the pressure put on the school of having kids without English language skills coming into the class. While they are welcoming of the kids, they raised the pressure it puts on for English as a second language support and the time of the teachers to cope. It is a very legitimate concern. I have raised it with a number of state governments as part of the discussions on 457s. I certainly raised it with a couple of the former ministers in the Western Australian state government. Of course, part of the answer was to say, ‘We fund those children out of the Commonwealth education budget.’ Mr Hughes might be able to help with some of the detail.

**Senator ELLISON**—I certainly heard it from other schools as well, but this was articulated very well, I might say.

**Mr Hughes**—I think the normal case for permanent migrants is that child ESL is funded through DEEWR federal programs. I do not believe that children of temporary entrants are covered under those federal funding arrangements, although that is something we will confirm for you. At this stage it is a matter of what local funding arrangements are adopted by state and territory governments as to whether schools are appropriately funded for any additional ESL classes or support that they are providing. The department, in the context of

the Ministerial Council on Immigration and Multicultural Affairs, is doing a survey of the various federal and state benefits—loosely interpreted—that are provided to visa holders, and hopefully that process will throw more light on what the practice is around the country.

**Senator Chris Evans**—Some charge, don't they?

**Mr Hughes**—That is right. In some states I believe they charge. I think New South Wales does, for example. But that is why we are doing the national survey, to get a better understanding of the differing provisions in each state and territory.

**Senator Chris Evans**—I think some states charge depending on the status of the visa holder. There is also some work being done within the context of the 457 review—the whole question of employer obligations. I think we put some of these issues in the draft discussion paper, which excited some interest. It was to really provide the scope of issues that occur when you bring somebody into the country, with their family, for a fairly reasonable period of time. It is not just about the employment relationship. There is the broader social impact of their participation in Australian society, and I think the school's letter brings home one of those points. We often have issues about health costs, access to other services and requests from some to provide access to our settlement services for people who are having trouble settling. They are provided only to permanent residents or people on the humanitarian program, et cetera, but I have had the plea from some people to provide those sorts of services to those on 457s without English-speaking skills, or those from different cultural backgrounds. I think the Victorian government has been raising those sorts of issues and has put some efforts in. I do not know if anyone at the table is au fait with this; it is probably in the area of settlement services. If you want more information, settlement services might be able to help.

**Senator ELLISON**—One of the questions asked was, 'How many children of 457 visa holders are enrolled in English language centres?' Do we have any statistics on any of that?

**Mr Vardos**—I do not believe that we would have that sort of data. I can take it on notice and check.

**Senator ELLISON**—If you could. What capacity do the English language centres have to accommodate the large increase of students enrolling from this sector? Do we have anything on that?

**Mr Vardos**—I would have to take that on notice as well. I would need to liaise with the education part of DEEWR to see if they have any data on this.

**Senator ELLISON**—Okay. If you could do that I would be grateful. Still on 1.1, but moving now to students, in relation to the verification of qualifications, what compliance activity does the department undertake to ensure that students are in their course and meeting their requirements? One of the things I am asking about is the 20-hour-a-week work limit—

**Mr Vardos**—I can give you a preliminary answer. The onus is on education providers to report on nonattendance, and that reporting then drives further compliance activity.

**Senator ELLISON**—There has been some press on this over the last few months, about students not being involved in studying and working, because of the lucrative situation that

we have been in with the demand for labour and skilled labour. Does the department have any statistics on this? It is a bit similar to the question I asked you on the 457s.

**Mr Vardos**—I will have to take it on notice. I cannot get you an instant answer on that.

**Senator ELLISON**—Does the department take any proactive measure to ensure compliance? That is, you rely on the provider but, in addition to that, do you have compliance units that go out and check with providers and do a random check?

**Mr Vardos**—We certainly do have a compliance network across the country, operating out of all of our state and territory offices, but I cannot comment on the breadth of their program activities. My colleague may be in a better position to do that.

**Ms O'Connell**—Yes, we do have proactive compliance activity in terms of all areas of compliance work, including students. I think the important points are about, firstly, whether students are attending. That is a reporting obligation by the educational institutions. And we do take follow-up actions where students are not attending their courses.

**Senator ELLISON**—Have you come up with anything as a result of that activity?

**Ms O'Connell**—We do have a cancellation activity. Where students are not attending their courses or not achieving a satisfactory pass mark from their courses as a result of the reporting of the educational institutions, then the visas of those students are cancelled. Some depart voluntarily; others we need to detain and remove. I do not have the stats and numbers of students we have detained and removed in the last financial year, but I can take that on notice to provide it to you.

**Senator ELLISON**—Thank you. In relation to data about the number of residents and citizens who re-entered Australia in 2006-07, question on notice No. 15 from May gave figures for 2006-07. Could we have an update for 2007-08? Take it on notice, because I think you had to take it on notice last time, and I understand that.

**Senator Chris Evans**—What was the data source for that one, Senator Ellison? Was that one of ours or was it an ABS one?

**Senator ELLISON**—It did not say. It was question on notice No. 15 from estimates last time, and it said 'passenger movement card'—it cited as its source. That would be a DIAC responsibility.

**Senator Chris Evans**—We will take that on notice and get it for you.

**Senator ELLISON**—There was article and you put out statement saying that we were having a net deficit with people leaving Australia.

**Senator Chris Evans**—I tried to draw attention to the fact that people were leaving as well as arriving. The debate gets a bit one-dimensional. We have had more arrivals than departures but, when we got some stats on the actual departures, I think the figures are 70,000 leaving permanently and 100,000 leaving temporarily. I think 'temporarily' is for one year or more. I was trying to put it in context, but when we talk about immigration there is also emigration, and one of the things that has been occurring is that Australians have been highly marketable in the world with their skills. So you will run into Australian ex pats all over the world, working in law, architecture, mining and what have you. I was just trying to get a more

sophisticated debate about migration, and part of that is the fact that we have been losing a lot of our best people who can demand high wages.

When I spoke to the Business Council of Australia about their attitudes about 457s, they were more interested in talking to me about how we stop people leaving. Big companies were more worried about losing the people they had working for them and developing their skills. A number of them have devised various programs to try to maintain an employment relationship, even by allowing people to work overseas for a couple of years and then come back. I was trying to draw attention to the fact that it is not a one-way impact for Australia. We live in a global economy. People more and more are moving around the world, temporarily or permanently, for work. It is much more dynamic.

**Senator FIERRAVANTI-WELLS**—Is five million the number of people who go out of Australia for a week and come back? In question on notice No. 15 in output 1.1, in answer to Senator Ellison, it says there were 5,114,647 residents and citizens who re-entered Australia in 2006-07.

**Senator Chris Evans**—That is for less than one year, so it could be people who have just gone on holidays to Bali for a couple of weeks.

**Senator FIERRAVANTI-WELLS**—A breakdown of that would be interesting.

**Senator Chris Evans**—The 110,000 was for people who had been away for more than a year, so they are more likely to be the people working overseas—

**Senator FIERRAVANTI-WELLS**—And the others include the holiday-makers.

**Senator Chris Evans**—The five million are more likely the tourist holidays. One question now in the public debate is whether the fall in the economic activity in overseas countries will see more Australians returning. That is another live issue. People in some of the markets which we have been struggling to attract immigrants from in recent years because their economies have been booming may well be more keen on migration now. Great Britain is a classic. We have had a resurgence recently. When the British economy was going very strongly it was harder for us to recruit. I suspect it has been getting easier. Numbers from Great Britain have been up in recent times.

**Senator ELLISON**—Yes. I was in the UK in July—and, in fact, I saw the very good work being done by the immigration officials there, Mr Metcalfe.

**Mr Metcalfe**—Thank you, Senator.

**Senator ELLISON**—Can I have an update please on the visa applications submitted to each embassy post each year? I asked last time and we were not able to get a final figure, of course, for 2007-08. If you could give the final figure when you have it. You can take that notice.

**Mr Metcalfe**—Sorry, what was the question last time?

**Senator ELLISON**—It was question on notice No. 19.

**Mr Metcalfe**—I will update that for the full year.

**Senator ELLISON**—I just want to see how the flow is at each embassy. I think it had also the number of applications on hand, awaiting decision. We had some big volumes indeed. The biggest ones were New Delhi, Mexico City, Beijing and Shanghai.

**Mr Metcalfe**—That is consistent with our big posts these days. London, China and New Delhi are all very big posts. That would represent the pattern of where people are coming from. The numbers reflect the migration and temporary visa lodgements on hand on that particular day. There is very high throughput of course. Last year we saw record numbers of people coming to Australia as immigrants, students and tourists. That reflects those figures.

**Senator Chris Evans**—There has been a huge increase in the Chinese tourist trade, for instance. And very good compliance rates as a result of the arrangements that were put in place.

**Senator ELLISON**—We were doing some work there, weren't we?

**Senator Chris Evans**—Yes, with the travel agents. Compliments to the previous government, it has worked very well.

**Senator ELLISON**—What about New Delhi, which is going through the roof with 80,000-odd? That is up there with Beijing. There would be lots of 457s.

**Mr Metcalfe**—Mr Hughes was there just last week, so he can give you a firsthand account.

**Senator ELLISON**—How is India going—our new hope?

**Senator Chris Evans**—And he is off to the Philippines next week. The things he does for the taxpayers.

**Senator ELLISON**—I am sorry I dug up this question on notice. It is a very interesting answer.

**Mr Hughes**—Thanks for exposing me, Senator. New Delhi has very large numbers of both permanent migrants and students. Students are a very big growth area. I think India is now either level with or ahead of China as the largest source of students. The 457s would figure significantly but perhaps in nowhere near the kinds of numbers involved with students. Tourism would be on the increase but not necessarily in huge numbers.

**Mr Metcalfe**—What these figures also show you is that we have only one post in India, in New Delhi. Those figures represent pretty well our entire Indian case load on that day, whereas in China you have posts in Beijing, Shanghai, Guangzhou and Hong Kong, so the workload is distributed. None of these issues are straightforward of course. A lot of the processing work around some of these visa categories is actually done in Australia. You would be aware that skilled migration applications, for example, are considered in Adelaide and working holiday visa applications are considered in Hobart, in the same way that the 457 visas are considered in Sydney, Melbourne and Perth. So trying to get an accurate fix on exactly what the case load is and where it is belies a simple explanation; you need to get into a bit of detail.

**Senator ELLISON**—You are heading me off at the pass, because I was going to ask about staff cuts and how they were affecting things at our foreign posts.

**Senator Chris Evans**—I do not think India is a big source country for 457s. I stand to be corrected but my recollection is that it was not—

**Mr Hughes**—It is a big source country, but not in Delhi. It is the second biggest.

**Senator Chris Evans**—The second-biggest? There were 15,000 in 2007-08, but the largest number is students. There has been a huge growth in numbers of students. I would also say we are seeing some change in activity as a result of the changes made to the English language standard. So you are seeing in a range of areas, including 457s, changes in behaviour driven by the previous government's change to the English requirements.

**Senator ELLISON**—Pretoria is very high, at 39,000. That is a small population.

**Senator Chris Evans**—Packing for Perth.

**Senator ELLISON**—That would be mainly permanent migration?

**Mr Fox**—No, that would be nearly all visitors. The vast majority of applications in Pretoria would be visitors.

**Senator ELLISON**—Really? I thought there would be a few 457s.

**Mr Metcalfe**—Some would be but, again, because there is a visa application required for South Africa the tourist visa applications are dealt with in Pretoria, whereas for countries such as the United Kingdom, where the electronic travel authority is available, there would not be a visa application at the post. It is dealt with electronically.

**Mr Vardos**—South Africa is the third largest source of 457s in 2007-08, combined primary and secondary grants, at a total of 9,330. It is the third largest after the UK and India.

**Senator ELLISON**—You mentioned that India is second and South Africa third; who is No. 1?

**Mr Vardos**—The UK. In 2007-08 total grants, primary and secondary, were: UK first, with 23,780, or 20 per cent of the program; India second, with 15,110, or 14 per cent of the program; and South Africa third, with 9,330, or eight per cent of the program, closely followed by the Philippines.

**Senator ELLISON**—For Taipei the figure is 43,000—students mainly?

**Mr Metcalfe**—Again, there would be a lot of visitor visas there. There would be students, business migrants and others in that case load but, because a visa application is required, that would be considered there.

**Mr Fox**—For your interest, Senator, as well as the South African nationals we process a number of other African countries' applications through Pretoria.

**Senator ELLISON**—Like Zimbabwe and others, yes.

**Mr Fox**—Correct.

**Senator Chris Evans**—I think you could draw a line between economic and political conditions and visa applications and you would have a correlation.

**CHAIR**—Is that all for output 1.1?

**Senator ELLISON**—Yes. I can put other questions on notice so we can move along.



[5.59 pm]

**CHAIR**—We will now move to outcome 1.2, Refugee and Humanitarian Entry and Stay.

**Senator ELLISON**—Is the government considering decoupling or proposing to decouple the onshore and offshore components of Australia's refugee, humanitarian and special humanitarian programs?

**Senator Chris Evans**—It is a policy issue that is being considered, but there are a lot of people who make submissions and speak to us about that issue. There has been no decision taken about that. If decisions were to be taken, it would probably be in the context of next year's program and the budget. It is a live issue but no decision has been taken on that.

**Senator ELLISON**—How many onshore visas have been applied for since the new government was sworn in?

**Ms Keski-Nummi**—It would be hard to give you a statistic from 24 November. I can give you a full-year program outcome, but not from that particular date. There were 3,987 applications for onshore protection visas in the year 2007-08.

**Senator ELLISON**—What is the situation with ministerial intervention in this area? There are a number of different visas involved here, aren't there?

**Mr Metcalfe**—Ministerial intervention can occur in a number of ways: following an adverse decision by the Refugee Review Tribunal—this is under section 417 of the Migration Act—or under section 351, relating to adverse decisions of the Migration Review Tribunal. There are certain other non-compellable ministerial powers which are loosely called ministerial intervention, such as placing a person in a residence determination or allowing a repeat application for refugee status under section 48B. Most commonly, ministerial intervention refers to post-Refugee Review Tribunal decision making.

**Senator ELLISON**—Can you give us any indication as to what the level of ministerial intervention is by comparison. Can you tell us anything about that?

**Ms Keski-Nummi**—Could I just clarify what question you are asking?

**Senator ELLISON**—Yes, according to sections 417, 351, 391 and 454—that is, the powers that enable the minister to substitute a decision of the RRT or the MRT—the minister may grant a visa to the applicant under these powers. What are the latest figures in the exercise of ministerial intervention in relation to those? There was a question on notice which you might want to refer to—question on notice No. 25. That referred to 417s, but perhaps it would be best if I left the question on notice.

**Ms Keski-Nummi**—Could I just take it on notice and come back?

**Senator ELLISON**—Yes. What I am after is the number of ministerial interventions there have been in these areas and how that compares to previous exercise of the discretion—that is, is it trending down or up or staying the same? I understand, Minister, that you said that you were looking at reviewing the whole area and looking to limit the exercise of ministerial intervention.

**Senator Chris Evans**—It is one of the things that I have been very unsuccessful at achieving. The system is a weight against me, but we are trying to make some improvements

to the system. We will certainly get you the figures. I do want to urge caution, though, because I have some concerns about the accuracy of some of these figures—not just for my term but also previously. It is delightfully referred to as cleaning up the data. I am never quite sure what that means but it gives you a different result than before they cleaned up the data, and that always worries me.

We are trying to get a better handle on it. Part of the problem—and I think I have mentioned this before—is that I do the second pass in meeting Mr Andrews' decisions. In fact, I have done a couple of Senator Vanstone's. So the delay between the first pass and the second pass can be quite lengthy. So, when we have a look at process, when I grant a visa after Mr Andrews said he began considering it and establishing a health and character check, is it my decision or his decision? Finally, the visa grant is my decision.

**Senator ELLISON**—It was in the transition?

**Senator Chris Evans**—No, it is just the time taken. Often they get referred off for, say, health and security checks, and in a couple of years they come back. This is not the norm but often there is a long lag time.

**Senator FIERRAVANTI-WELLS**—They have to go back to the country of origin and—

**Senator Chris Evans**—Sometimes, yes.

**Senator FIERRAVANTI-WELLS**—Often the checks in the country of origin take so long.

**Senator Chris Evans**—There was obviously a backlog when I came into office. As I say, I am just putting a note of caution because I have become a little concerned and queried some of the statistics. It is partly making sure that we are comparing apples with apples. Nevertheless, the ministerial intervention load and numbers continue—and we will get to those figures—but we have also pretty well caught up with the backlog. I checked on my way out and we had about 10 files in the office. I do not know whether that means you are saving them up for me. But we will get you the figures rather than be imprecise.

**Senator ELLISON**—This is 1.2 but some of the ministerial intervention, of course, relates to other areas. That is what my difficulty is with this. If I could just ask about ministerial intervention generally and if we can have those figures updated. You have 501s which are in compliance and you have got 417s, which are in this area here, 1.2. So can we have a look at the ministerial interventions in each stream—if that is the correct term?

**Mr Metcalfe**—In your question on notice 25 of May, you asked in respect of section 351, opposed MRT, and the 417s, opposed RRT. We will endeavour to update the answer. I think that is the way to deal with your question.

**Senator ELLISON**—Thank you for that.

**Mr Hughes**—I would just add one point to the minister's answer about comparisons over time between ministers' activities. That is a question that has been asked several times over the years here in an attempt to get some sort of comparison about how different ministers have used the power. I think I have said in previous answers that, when you look at the figures over the years, it is very difficult to make comparisons because there have been different cohorts of people seeking ministerial intervention, which have produced very different results.

One example I have nominated in the past was when the previous government at one stage resolved the case of 1,400 East Timorese by the use of the ministerial intervention power which, of course, involved a very different behaviour from the ongoing use of the power. Comparisons made between ministers in terms of particular raw figures actually hide quite different underlying circumstances. It is very hard to make any valid comparison that reflects the use of a power in a particular way by ministers. There are just too many underlying differences in each time period.

**Senator Chris Evans**—We are keen to get a more transparent assessment of what is going on in that ministerial intervention stream because it is important. The old data is pretty unreliable, and I have been keen not to produce data on previous ministers that somehow might misrepresent what they have been doing. Those 1,400 East Timorese are a classic example, and there are a whole range of things like that. We have to get the data base and the reporting to a point where we can report accurately and people can assess how that is going. But at the moment we have a long way to go.

**Senator FIERRAVANTI-WELLS**—You want to compare apples with apples?

**Senator Chris Evans**—That is right.

**Senator HANSON-YOUNG**—My first question is in relation to temporary protection visas—I know we have moved forward and that is not the current approach—and family reunions for people who have formerly been on temporary protection visas. A number of people have still not been able to bring their families out to Australia. Can you clarify why that is and how we can move forward and get this process moving for them? Some of them are quite distressed about it.

**Ms Keski-Nummi**—As you know, we are working through the abolition of the temporary protection visas through to a resolution of the status of all TPV holders. Once we have done that, all those who have already been granted permanent protection visas will be able to sponsor their families under the Special Humanitarian Program, which is particularly for split families, and others will be able to do so under the normal migration routes.

We give priority to processing for split families. One of the things that we are currently managing around that is the offshore program allocations. These are essentially for people from Islamabad and Amman, the two posts for which we have the largest split family provisions. There is also a fair amount of pressure on those posts in terms of former TPV holders who are already proposing to sponsor families. We are trying to work through them as quickly as we possibly can, but they are given priority in terms of processing.

**Senator HANSON-YOUNG**—Are all the people who have formerly been on temporary protection visas being given permanent protection? Or are some people being given other types of visas?

**Ms Keski-Nummi**—Some would have applied for other types of visas. Some may have got visas through one of the skilled migration streams. But the vast majority moved onto a permanent protection visa.

**Senator Chris Evans**—If you are talking about following the abolition, I think we can give you the figures on what is happening there, otherwise we might create the wrong

impression. We are moving them to a resolution of status visa and that has required them to apply. We are making progress on that, but they are not yet all processed.

**Ms Keski-Nummi**—The cohort that was still on temporary protection visas at 9 August, when the temporary protection visa was abolished, contained 713 people. Of those, 277 were deemed to be applicants for the resolution of status visa because they already had a further protection visa application in process. We are now processing their ROS visas. There are 227 who have lodged an actual resolution of status visa application. But you cannot count those and give the total as the actual number because there may be some double counting. Some people who already had a further protection visa application may now have also put in a ROS application. We are currently trying to sort that out.

**Senator HANSON-YOUNG**—Take those people that are still going through the process. What type of access to Medicare and social security—

**Ms Keski-Nummi**—They have all that access now.

**Senator HANSON-YOUNG**—And work rights as well?

**Ms Keski-Nummi**—Yes, that is right.

**Senator HANSON-YOUNG**—I will move on to the trafficking of humans. I know there is crossover here between what DIAC do and what the Federal Police do; I am involved in that stuff. If the department is made aware through some type of operation that the Federal Police undertake, what type of visa is somebody who is working in a brothel, for example, given in terms of protection? Is it just the 30-day processing visa before they are deported? What is the process?

**Mr Metcalfe**—Madam Chair, in responding to Senator Hanson-Young, I should note for the record that this is actually in output 1.4. But we have the officer available so we are happy to answer the question now.

**CHAIR**—Thank you.

**Ms O'Connell**—In relation to trafficking, we work closely with the AFP and other Commonwealth agencies. There is a whole-of-government approach to people trafficking. But specifically in relation to the visa framework, the visa framework which was introduced on 1 January 2004 has four stages of visa options in it. The first of those is bridging visa F, which is the short initial visa—

**Senator HANSON-YOUNG**—Is that the 30-day one?

**Ms O'Connell**—That is the 30-day initial visa. After that people may be eligible for a criminal justice stay visa, if they are staying to assist with a prosecution. They would subsequently then be eligible for the witness protection trafficking temporary visa and then after that there is an option for a witness protection trafficking permanent visa.

**Senator HANSON-YOUNG**—So how does this fit into our obligations under CEDAW and other similar types of conventions where we could be providing people with protection first and foremost as to their humanitarian needs as opposed to simply because they are participating in a prosecution?

**Mr Hughes**—We do not have any information with us on CEDAW. I am not sure that there is actually a specific—

**Senator HANSON-YOUNG**—There is as far as I am aware.

**Mr Hughes**—These things are open to interpretation. We will take that on notice.

**Senator HANSON-YOUNG**—If you could that would be great. I understand you have got the four different stages. What I would like to see is how we can be helping young women in particular. A lot of them are under age. I mean helping them in terms of their humanitarian needs, not just because they are helping us with the prosecution of the people who have brought them out here.

**Ms O'Connell**—The visa regime associated with trafficking is under review. We undertook some consultations a while ago. There was a roundtable. It is led out of the Attorney-General's portfolio and is with the Minister for Home Affairs, Mr Debus. He chaired that roundtable to have a look at some possible changed approaches. There have been representations from the bodies involved with trafficking in relation to their views on changes to the visa regime.

**Senator HANSON-YOUNG**—When should we expect a report from that review?

**Ms O'Connell**—I would have to ask Attorney-General's about the plan for reporting on that because they are managing it within a whole-of-government framework.

**Senator Chris Evans**—I think it is fair to say that Minister Debus is very much concerned about this. He convened the roundtable. When I was in South-East Asia in August, I travelled with him on a delegation. While we were talking about people smuggling, he also had a huge focus on trafficking issues and raised those with the governments we were talking to. We have been looking at what we can do within the immigration space to assist with a more comprehensive response. I am not sure of the time line but it is being driven. I think the activity of certain nuns around the place has added to senators' and members' interest in this thing. There must have been a very good lobbying campaign as I have had this raised with me by an awful lot of Labor backbenchers. I suspect coalition backbenchers have had similar visits. So there is a good campaign which is working in terms of keeping the government focused on the issue. But, as I have said, Minister Debus is very much focused on it anyway. Ms O'Connell, are you able to say where our work in terms of visa considerations is up to?

**Ms O'Connell**—Yes. We certainly participated in the roundtable, so we understand the views of the various representative groups in terms of their input on the visa framework. As I have said, I would have to talk with Attorney-General's about the whole-of-government considerations, because they are the lead portfolio in terms of taking that work forward.

**Senator HANSON-YOUNG**—My next question is about complementary protection. My understanding is that over the last little while there has been some focus on looking at complementary protection. Can the department give me some idea as to where that is up to? Are we moving forward?

**Senator Chris Evans**—I have certainly indicated that I am in favour of our making some changes to introduce complementary protection. I have got some authority inside government

to pursue that. We have started a consultation process. Perhaps Ms Keski-Nummi might like to take us through what is happening.

**Ms Keski-Nummi**—We have been preparing a framework document around complementary protection. There were some discussions and consultations that the minister had in, I think, July. We are currently in the process of putting together some more consultations that will probably take place in the first few weeks of November with some key stakeholders, whom we have met with in the past in terms of the framework and the model, to be able to then take something forward to government in the new year in relation to complementary protection and the introduction of complementary protection within the protection visa framework.

*Senator Barnett interjecting—*

**Ms Keski-Nummi**—We are currently developing and working through a particular framework.

**Senator BARNETT**—Can we have a copy of the framework?

**Senator Chris Evans**—I think that when we go out for consultation we will probably be able to provide you with the stuff that we provide to the groups. We are meeting with the refugee groups, the churches and others to talk about how we might progress it. There will be some information provided as to that as the starting point. We have had initial discussions—I have met with them—but the department is getting to the stage of putting some substance around what is generally—

**Senator BARNETT**—When could we expect that?

**Senator Chris Evans**—As I say, the consultation is due to go on in November. I am happy to make it more broadly available. It will be going out to the groups around then, so I am happy to make it more broadly available.

**Senator BARNETT**—All right.

**Senator HANSON-YOUNG**—That would be great. So at this stage is there any indication as to what kind of legal basis there would be in terms of the duration of stay and the entitlements that CP would involve?

**Ms Keski-Nummi**—Yes. We would be looking essentially at bringing into the visa framework issues around our other international treaty obligations, particularly around nonrefoulement. It would be a permanent visa with all of the entitlements that go with a permanent visa.

**Senator HANSON-YOUNG**—Do you think that this will help relieve some of the anxiety? I know we have got a handful in detention at the moment—people who are considered stateless.

**Ms Keski-Nummi**—Yes, it would if it comes within that protection framework. Clearly, one of the issues that we will be looking at will be the issue of statelessness.

**Senator HANSON-YOUNG**—Minister, I know you have made a number of announcements in relation to moving things forward. But from what I saw that statelessness issue shows there is still a gap in how we move forward.

**Senator Chris Evans**—That is right. It is a particularly difficult issue. I do want to say though, Senator—and I say this to all the groups, and I do not want to be lecturing you—that people do need to understand that I think complementary protection is important and it will be a useful addition to the protections we offer. But I do want to stress, because I think some people think that there are thousands of people in the system who would be affected by this, that the numbers are relatively small in terms of the ministerial intervention requests I see. So I always want—

**Senator HANSON-YOUNG**—But that does not mean that their rights are no longer recognisable.

**Senator Chris Evans**—That is right. That is why I support our seeking to do that. But some of the groups I meet with tend to think, because they see that there are 3,800 seeking ministerial intervention, that their people are all in this group. The majority, the large groups, are spouses, compassionate reasons et cetera. So it is an important solution. I always like to put on the record—

**Senator HANSON-YOUNG**—I understand that. I am thinking of one particular guy who is being held in residential housing in Perth at the moment. He has been there a while now and the level of anxiety is building up. So we are going to get a copy of some type of framework so we can have that discussion, and that would be fabulous.

**Senator PRATT**—My questions pertain to temporary protection visas and intersect with some of the questions that Senator Hanson-Young asked. I note in the answers to Senator Hanson-Young that there were 730 temporary protection visa holders at the time they were abolished. Do we know how many temporary protection visa holders there were in total in the time that temporary protection visas existed?

**Mr Hughes**—While Ms Keski-Nummi is getting the exact figure, it was 11,206.

**Senator PRATT**—What proportion or number of those were granted refugee status and gained a permanent visa?

**Ms Keski-Nummi**—Nine thousand, six hundred and ninety.

**Senator PRATT**—Out of 11,206—a very high proportion, isn't it? How many left Australia?

**Ms Keski-Nummi**—I cannot give you an accurate figure on that.

**Mr Hughes**—That is probably okay for the purposes of the issues that I wanted to try and get through. I note that 9,000 people held temporary protection visas. Do you have any figures on the length of time that people were on temporary protection visas?

**Ms Keski-Nummi**—I would have to take that notice.

**Senator PRATT**—I note that whilst on temporary protection visas there is a range of restrictions on people in relation to the kinds of activities that they could undertake. I note that Sarah Hanson-Young asked a question in relation to family reunions and how they are progressing now. But I also note that it was a condition of temporary protection visas that there were a great number of limitations on people's ability to visit family or have them come to Australia. In noting that a number of temporary protection visa holders were on them for a

considerable length of time, I have a question about the impact of that long-term visa status particularly on families.

**Ms Keski-Nummi**—I will just go to some of those issues that you raised. With temporary protection visa holders there were no restrictions on people leaving Australia, but if they did leave Australia their visas ceased so that they could not return. TPV holders could not also sponsor families to Australia. Those were the two issues that I think you are raising in relation to that.

In terms of impact this had on families, I do not have any authorised research around that, but clearly there have been issues raised—certainly from service providers and others—about the impacts on people. When people have been proposing sponsoring a family, once they receive their permanent protection visas, because it was under the split family provisions, we attempted to provide expedited and priority processing for them.

**Senator PRATT**—I raise this issue because I have had a large number of constituents bringing those issues to me over the years. Can you give me some idea of the costs and resources that were involved in reprocessing TPV holders in terms of duplication of resources?

**Mr Hughes**—I think we have been asked that in the past and because temporary protection visa processing was done as part of the whole onshore protection activity, we were not able to disaggregate the temporary protection visa cost. But clearly, if you were talking about a caseload of about 10,000 people that had to be considered a second time, there was a significant cost there. But we will not be able to provide an exact figure so I think that it is probably not very useful to take it on notice.

**Senator PRATT**—So you indicate that there is some duplication of costs in having them processed that way?

**Mr Hughes**—Indeed. If a cohort of 10,000 people had to be considered a second time, obviously there were additional costs.

**Senator PRATT**—I certainly recall them telling me that they were asked the same questions over and over again on multiple occasions. I think that concludes my questions.

#### **Proceedings suspended from 6.31 pm to 7.45 pm**

**CHAIR**—We are continuing with our questioning in the area of immigration and citizenship in the department. My understanding is that we are still at 1.2. Senator Ellison, is that correct, or are we ready to move on to 1.3?

**Senator ELLISON**—Yes. That is my understanding. I think Senator Hanson-Young went straight into 1.4 at one stage dealing with trafficking. I will come back to that later.

**Senator Chris Evans**—That was very generous of her.

**Senator ELLISON**—She had to go somewhere else.

**Senator Chris Evans**—She reserved the 15 to 20 minutes we took.

**CHAIR**—So 1.2.



**Senator ELLISON**—Outcome 1.2 we are still on. This really does not deal with the mandatory detention side of things, does it?

**Mr Metcalfe**—No. That is really across 1.5.

**Senator ELLISON**—Okay. I think we are pretty right on 1.2, then. We will move on.

**CHAIR**—In that case, we will move to 1.3, border security.

**Senator ELLISON**—There are reports in the paper today of a vessel intercepted in the waters of East Timor, if I am not mistaken. Can we have some detail on that, please.

**Mr Metcalfe**—Yes, Senator. We are aware that a group of 16 Sri Lankan nationals and four Indonesians have been detained by the East Timorese government. We have obviously sought further details and information from the East Timorese authorities. I am sure that will be forthcoming. We are very pleased, of course, that they have worked in this way. We have worked very closely with East Timor over the years to assist them to develop their capabilities and develop an immigration service. As part of our overall efforts on border security issues in the region, it is good to see that this particular venture was intercepted and stopped.

**Senator ELLISON**—When was the vessel intercepted?

**Mr Metcalfe**—I do not have further details at this stage as to the precise location.

**Senator ELLISON**—Are the people on board being detained by the East Timorese authorities, do you know?

**Mr Metcalfe**—My understanding is that they have been put in the care of the International Organisation for Migration, which is consistent with arrangements that are elsewhere. But if there are further details as they come to hand, we would be happy to provide advice on notice.

**Senator ELLISON**—Thank you. Of course, we certainly have the AFP in East Timor. Do we have any DIAC officials?

**Mr Metcalfe**—Yes. We have a post there in the Australian embassy. Our officer ordinarily posted there is on leave at the moment, but we had a replacement there from Jakarta. We have dispatched an additional officer up there today from Darwin as well.

**Senator ELLISON**—What will be the procedure now that IOM is more or less charged with this?

**Mr Metcalfe**—Look, my normal expectation is that the East Timorese authorities would work with IOM and IOM will take on a role in relation to the care and support of the foreign nationals. If there are any issues that go to their seeking protection, then that is an issue for the East Timorese authorities, and I am sure they will work closely with the UNHCR in that regard.

**Senator ELLISON**—Do you know the circumstances of the apprehension?

**Mr Metcalfe**—No. I do not have any further details at this stage. Sorry, Mr Correll can provide a bit more detail.

**Mr Correll**—We do have a little more information in that we understand they were apprehended as they were in the process of boarding a fishing boat in a village location.

**Senator ELLISON**—In East Timor, though?

**Mr Correll**—Yes.

**Mr Metcalfe**—On the south coast of East Timor.

**Senator ELLISON**—Okay. There were previously some other vessels which had been intercepted. We had two vessels intercepted off Western Australia on 29 September and 6 October. Is that right?

**Mr Metcalfe**—That is correct, Senator. The first vessel was apprehended by the Australian navy to the north of the Ashmore Islands on 29 September. The second vessel was tied up alongside a floating production storage and offloading facility by the name of Front Puffin within the Australian economic zone.

**Senator ELLISON**—Correct me if I am wrong. Was there not another vessel tied up to a rig of some sort?

**Mr Metcalfe**—My recollection is that there was another vessel some years ago that tied up to a floating offshore installation as well.

**Senator ELLISON**—Some years ago. I am talking more recently.

**Mr Metcalfe**—Not in the last year or so. But Mr Correll can assist.

**Mr Correll**—Yes. There was a case, Senator, involving a vessel that moored itself to another platform. It occurred on 20 November 2007, so not so long ago. The platform was the *Jabiru Venture*.

**Senator ELLISON**—Okay. But in recent times we have these three vessels. Prior to that, any other vessels this year?

**Mr Metcalfe**—Well, we have only had two vessels this year arrive in Australian waters, Senator. The one that we referred to earlier was stopped from leaving East Timor.

**Senator ELLISON**—I know of it. I am talking about vessels suspected of being involved—suspected, I stress—in people smuggling ventures to Australia.

**Mr Metcalfe**—Well, certainly there have been ongoing efforts over the years from people smugglers active in Indonesia and elsewhere. There have been a significant number of very successful operations to prevent their departure from Indonesia and elsewhere. That pattern has been the case for some years.

**Senator ELLISON**—I went to Jakarta earlier this year and saw very good work being done by the Australian officials there—the forward intervention and all the very good work in that regard. But in this case, it is just that we have seen three suspected people smuggling enterprises in the space of the last four weeks. That is three in four weeks. That would be right, yes?

**Mr Metcalfe**—We have had two successful enterprises and one disrupted enterprise.

**Senator ELLISON**—Yes. Firstly, the first two have had charges laid, have they not?

**Mr Metcalfe**—The Australian Federal Police have certainly charged the master of the first vessel, which is known by the code name Snug, by the way. On the second vessel, which has the code name Tucana, I think both the captain and one of the crew members are now the subject of charges.

**Mr Correll**—Yes. They appeared in the Perth magistrates court yesterday, I understand.

**Senator ELLISON**—Do we have extraterritoriality for the suspected enterprise in East Timor?

**Mr Metcalfe**—I think that you should probably address that question to the Federal Police or the Attorney-General's Department. But if there is evidence to link the activities directly to Australia, then it is possible to seek extradition, providing, of course, there is an appropriate reciprocal law in the particular country. I do not have that detail before me. But, as you would be aware, Senator, a number of people smugglers have been extradited to Australia.

**Senator ELLISON**—Yes.

**Mr Metcalfe**—We are very pleased that a people smuggler who has been active in Indonesia is the subject of extradition arrangements. That matter is well progressed within the Indonesian system.

**Senator ELLISON**—Without going into detail, can you say whether this matter is now the subject of an investigation by Australian authorities?

**Mr Metcalfe**—The East Timorese matter?

**Senator ELLISON**—The East Timor one, yes.

**Mr Metcalfe**—Well, it certainly will be the subject of work involving both Australian and East Timorese authorities.

**Senator ELLISON**—We certainly have the IOM taking care of things in the process.

**Mr Metcalfe**—They are taking care of things. Of course, this is something that has happened in another country. As I said earlier, we work very, very cooperatively with many nations in our region, including, of course, East Timor. My expectation is that there will be close cooperation to come to understand who the people are, who their intentions were and what that might mean in terms of any breaches of Australian or other law.

**Senator ELLISON**—So it is at that preliminary—

**Senator Chris Evans**—Both DIAC and AFP have resources in East Timor, Senator, so I think you can be assured there will be follow-up.

**Senator ELLISON**—The AFP is substantial. Thank you for that. In relation to these three enterprises, there have not been any other enterprises of that sort prior to them earlier in the calendar year?

**Mr Metcalfe**—There certainly have been quite a number of disrupted enterprises, Senator.

**Senator ELLISON**—Further up the chain?

**Mr Metcalfe**—In Indonesia and elsewhere.

**Senator ELLISON**—Can you give us an idea how many?

**Mr Metcalfe**—I think we might take that on notice—

**Senator ELLISON**—Take it on notice. That is fair enough.

**Mr Metcalfe**—to see what we can say publicly or whether there are any issues that may go to areas of confidentiality. But I can confirm that there have been a number of operations by

Indonesian authorities working closely with Australian authorities to prevent people being smuggled to Australia.

**Senator ELLISON**—Would it be fair to say that the activity of people smuggling and related enterprises has increased in the last 12 months?

**Mr Metcalfe**—I think that we have seen a fairly steady level of activity over the last several years. Of course, we have seen in each of the last few years some numbers of people—fortunately, compared to the numbers we saw at the beginning of the decade, it is very small numbers of people—actually reaching Australia. For example, I think in 2005, four boats arrived, all very small ventures, with 11 people. In 2006, six boats arrived with a total of 60 people. In 2007, there were five boats comprising 148 people. So we have seen activity across the years.

As you would appreciate, Senator, there is a complex set of factors that go to this issue. International events, particularly in source countries of refugees—most notably Sri Lanka, Iraq and Afghanistan—can all have an impact on the numbers of people seeking asylum either within their own neighbourhood or more broadly. We have, of course, seen some terrible reports of drownings and deaths of people seeking to leave north Africa and travel to southern Europe or the Canary Islands. There are continuing extraordinary pressures, for example, on the US border with Mexico. So in that general area of high levels of illegal immigration and refugee flows, we have seen significant and steady activity in our region across those years. We have been able to work very cooperatively with countries in our region not just to prevent people from leaving for Australia and risking life and limb in doing so. You would be aware that the vessel that arrived at the Front Puffin facility recently was taking on water. Tied up at that facility were the people, who were clearly in distress. It was very fortunate that they were able to be rescued effectively in that way. So all of those areas of cooperation remain important. One of the important issues here is that if people are in fact seeking refugee status, there are arrangements that have now been in place in Indonesia for some years to ensure that they are cared for by the International Organisation for Migration and have access to UNHCR. If there are issues that go to refugee status, they can be dealt with there rather than people not being able to access those facilities and risking hazardous voyages to Australia.

**Senator ELLISON**—I want to ask about the pattern of activity. You mentioned 2005-06 and 2007 and the various number of small boats that came. Did they arrive in close proximity to each other, or were they spaced out over that calendar year? Can you give us some information about that?

**Mr Metcalfe**—In 2005, as I said, there were very small numbers. We had a person arrive in September. Seven people arrived in November. Another person arrived later in November and another two people arrived around the same time in November. So it was across the last quarter of that year. In 2006, we had a large number of people—43 people—arrive on Cape York Peninsula on 18 January. We had an individual arrive in March. We had some more people arrive in May on two different vessels. We had some people arrive in August—eight people. We had a couple of people arrive in October. Last year, we had arrivals in January, in February, in August, in November and in December. We had no arrivals this year until September and then we have had the two vessels—one in September and one in October.

**Senator ELLISON**—Thank you. I asked I think back in May, and I think I did in February, about the threat level. I think I asked whether it has remained the same as previously advised in the estimates of May last year. Without disclosing that—if it is sensitive to operations, do not—has there been any change in the threat level?

**Mr Metcalfe**—Well, not in the technical sense in that there is not a threat level per se. But as I have said earlier, we have seen a consistently high level of activity of people smugglers seeking to smuggle people to Australia over many years. That perhaps ebbs and flows depending upon international circumstances. There was a major reduction in activity in 2001-02 or 2002-03. There is a range of reasons that you might attribute to that. Certainly there is the liberation or invasion of Afghanistan and the resolution at that stage of the very significant refugee issues. Similarly, the invasion of Iraq subsequently had an impact. What you have now seen, of course, is with the increased activity of the Taliban and the insurgency in Iraq, refugee pressures re-emerge in those countries that may not have been present some years ago.

**Senator ELLISON**—In relation to the excision of islands and territories, Minister, I asked you a question in the Senate about this and you said the government was maintaining that excision. Is it the government's policy to continue the maintenance of those excised areas?

**Senator Chris Evans**—It is, Senator. We committed prior to the election campaign to maintain the system excision. There has been no change to the excision arrangements.

**Senator ELLISON**—I might be mistaken, but I thought there was a policy of having it reviewed. There was a review of it.

**Senator Chris Evans**—Senator, the government committed prior to the election to maintain excision of offshore places. There has been no change in the excision arrangements from those that existed under the previous government.

**Senator ELLISON**—And there is no review of it at all? Okay. I suppose you have taken on notice the upstream engagement, if I can put it that way. Let me ask this: has there been any change to the operational arrangements in Indonesia of the anti-people smuggling taskforce? The numbers remain the same?

**Mr Metcalfe**—This is within the embassy, Senator?

**Senator ELLISON**—Yes.

**Mr Metcalfe**—The people smuggling taskforce does not quite go by that name. But there is an interagency group within the Australian embassy in Indonesia.

**Senator ELLISON**—Yes. For want of a better name.

**Mr Metcalfe**—And, indeed, in many of our other embassies and high commissions throughout the region. It is usually the deputy head of mission. In the case of Indonesia in recent times, that has been Louise Hand, whom I am sure you have met, who is an excellent ambassador for Australia. The deputy head of mission brings together on a very regular basis the agencies that have some operational involvement in relation to people smuggling. It is not only ourselves but the Federal Police and Defence and where the department of infrastructure is represented. There are ADF representatives. There is a number of other agencies involved as well. That has continued to do very effective work, as borne out, I think, by the fact that

there has been extremely close cooperation with several parts of the Indonesian bureaucracy as well as with the International Organisation for Migration and with the UNHCR.

**Senator ELLISON**—Can I take it, then, that, since the briefing I had in February this year, nothing would have changed?

**Mr Metcalfe**—If anything, I suspect because of the couple of recent arrivals, the activities there have intensified to ensure that we are doing everything we can to work very closely with the Indonesian authorities. But, yes, you are correct; it has been and remains a significant area of work by the embassy. The ambassador and the deputy ambassador and others are in no doubt as to how important this is.

**Senator Chris Evans**—Can I say, Senator Ellison, just so that there is no doubt—I will not go into the detail of the resources; you have been briefed in your previous time as the minister, I understand—that there has been no diminution of resources or effort. In fact, there have been a range of initiatives to add to those that were in place under the previous government. It remains a significant focus for the government to prevent people smuggling. All those resources that were in place remain in place. There has been a number of initiatives to try to build on that effort. There is no change, in a sense, but we are looking for new things we can do or things we can do better. But all of the resources that were deployed in support of our efforts to prevent people smuggling remain in place.

**Senator ELLISON**—I want to ask about Christmas Island. Of the two earlier boats—the one of 29 September and the one of 6 October—where have the people from those boats gone? Are they being held somewhere?

**Mr Metcalfe**—Yes. They are being held in the Phosphate Hill facilities and the construction camp facilities on Christmas Island.

**Senator ELLISON**—The construction camp, I think, was a previous place they used to hold them?

**Mr Metcalfe**—Essentially the construction camp was a facility that was used to accommodate the people who were involved in building the large new centre. But it remains a very useful resource and has been used in the past for reception and other arrangements with vessels. So the old detention centre at Phosphate Hill, which is more or less across the road from the construction camp—

**Senator ELLISON**—That is right.

**Mr Metcalfe**—has been used in relation to single men from the two boats. But the construction camp is being used in relation to the minors and family groups and whatever is consistent with the government's policy that the children not be held in an immigration detention centre.

**Senator ELLISON**—I think in these two vessels there was only one juvenile, was there not?

**Mr Metcalfe**—No. There were a number of juveniles.

**Senator ELLISON**—More than one?

**Mr Correll**—Yes. There were a number of juveniles. On the first vessel, there were three minors. Two of them were passengers and one was crew. On the second vessel, there were eight minors. Of them, two were crew and six were passengers.

**Senator ELLISON**—So they are being kept under different arrangements?

**Mr Metcalfe**—They are being kept outside the detention facility.

**Senator ELLISON**—And what about the detention centre itself in Christmas Island? You talked about the construction camp and then the old one on Phosphate Hill. What about the adult males? Could they not be kept in the detention centre?

**Mr Metcalfe**—The new detention centre?

**Senator ELLISON**—Yes.

**Mr Metcalfe**—We formed the judgement, Senator, that there is no need or requirement or, indeed, cost efficiency in opening up the new centre. The facilities at Phosphate Hill are quite adequate for the time being. The issue of whether or not the new centre will be used really depend upon a cost analysis and a caseload analysis as to whether there is a requirement to do so.

**Senator ELLISON**—When was the change in the government's policy on mandatory detention put into effect?

**Mr Metcalfe**—The minister made a speech on 29 July.

**Senator Chris Evans**—Just to correct the record, there was no change in the policy on mandatory detention. It is often reported as that. But I announced new detention values, the first of which was the maintenance of mandatory detention. So I want to be clear about that. The premise of the question is wrong.

**Senator ELLISON**—Well, then perhaps you could explain to us. Is there in fact no change at all, then? It was reported as a change.

**Senator Chris Evans**—There were some changes to the values to be applied in detention centres. I am not trying to say there was not a change. I want to be clear about mandatory detention. We committed to maintain mandatory detention, and that has been done. Most of the changes related to long-term detention and bringing in a risk based assessment of holding people in detention after initial health security and character issues had been addressed.

**Senator ELLISON**—Well, this has been done since the last estimates, so perhaps we could just go through those details and see exactly what the changes in the values are. Is there someone who could perhaps take us through that?

**Senator Chris Evans**—Are you interested in the government's policy, which is publicly available, and the speech and more generally, or are you interested in the implementation of it, Senator?

**Senator ELLISON**—Well, both, because you have the policy and its implementation, which go hand in hand, of course. But perhaps it helps if we deal with the latter first. That is, how is it being implemented? What effect has it had? How many people have been affected by the change? What does the change in values actually mean?

**Senator Chris Evans**—Well, that is obviously a big set of questions. It will take some time—

**Senator ELLISON**—I am just giving you a rough outline to work with.

**Senator Chris Evans**—Well, maybe I will be clear for you. The seven key values I enunciated on behalf of the government are, first, that mandatory detention is an essential component of strong border control. Second, to support the integrity of Australia's immigration program, three groups of persons will be subject to mandatory detention: (a) all unauthorised arrivals for the management of health, identity and security risks to the community; (b) unlawful non-citizens who present unacceptable risks to the community; and (c) unlawful non-citizens who have repeatedly refused to comply with their visa conditions. Third, children, including juvenile illegal foreign fishers and, where possible, their families, will not be detained in an immigration detention centre. Fourth, detention that is indefinite or otherwise arbitrary is not acceptable, and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review. Fifth, detention in IDCs is only to be used as a last resort and for the shortest practicable time. Sixth, people in detention will be treated fairly and reasonably within the law. Seventh, conditions of detention will ensure the inherent dignity of the human person.

You can see clearly from that, Senator, that in terms of mandatory detention—the detaining of persons—all unauthorised arrivals will be mandatorily detained for the management of health, identity and security risks to the community. That has remained. Those persons who have been taken to Christmas Island have been mandatorily detained while those checks are undertaken.

**Senator ELLISON**—Well, perhaps the change is around value too more than anything, with the three groups who will be detained. The previous government policy did not have it put that way, did it? It was not a question that you brought in the element of risk in relation to unlawful non-citizens who pose an unacceptable risk. There are unauthorised arrivals who do not pose a risk. Just correct me if I am wrong. The unlawful non-citizens do not face mandatory detention if they do not pose a risk. Refusal to comply with a visa does involve mandatory detention. Unauthorised arrivals who do not pose a risk—

**Senator Chris Evans**—No. All unauthorised arrivals are mandatorily detained. We are very clear about that, Senator. I know there has been some interpretation in the media, but it is all laid out in my speech and outlined in a number of documents.

**Senator FIERRAVANTI-WELLS**—But it is for a shorter period of time. That is the point. That is the inference from the language that you have used, Minister.

**Senator Chris Evans**—No. That is right, Senator. I do not support, and the government does not support, indefinite detention. That is the difference. We will not indefinitely detain people if they do not pose a risk. Once we have established the health, identity and character checks on those persons, we then make a risk assessment as to whether they continue to be detained in the community during whatever visa processes they are going through. But all will be mandatorily detained. What we have sought to address—I do not want to be political here—is the long-term indefinite detention of persons. We have tried to address that. But that is addressed on a risk based approach. If there is a reason for someone to be detained—



security or character concerns—they will be detained. There are still significant numbers of people in detention. What we have tried to do is remove from detention those who pose no risk to the community and who have ongoing visa processes that are not likely to be resolved in the short term.

**Senator FIERRAVANTI-WELLS**—So what is the criteria that is going to be used to determine this new view of risk?

**Senator Chris Evans**—Well, I will get the department to take you through the implementation phases. There is a lot of work going into an implementation program. Officers were asked, on the announcement of the government's policy position, to work on an implementation of the new detention values and the policy direction outlined.

**Mr Metcalfe**—While Mr Correll is doing that, I will just add to one answer. Senator Ellison asked me about the whereabouts of the various people on Christmas Island. I should add that the adult male who is the master of the vessel is now being held in a correctional facility in Perth. The minor, the young man who was a crew member, was not charged by the AFP and has been returned to his home in Indonesia. In relation to the second vessel, the adult male who was the master of the vessel is being detained at a correctional facility in Perth. The young man who has also been charged is on supervised bail and is being detained in immigration facilities in Perth. The other young man, who I gather will probably not be charged, is also being held in immigration facilities in Perth with the expectation that he will return home soon.

**Senator ELLISON**—Before we go to Mr Correll and the question of risk, I just want to clarify value three. Of course children are not to be detained. But did I understand you, Minister, to say illegal fishers as well?

**Mr Metcalfe**—Minors.

**Senator ELLISON**—Illegal minor fishers?

**Senator Chris Evans**—Juvenile illegal.

**Senator ELLISON**—That is okay.

**Senator Chris Evans**—That is current practice, wherever possible, Senator.

**Senator ELLISON**—That is right. I just wanted to make sure that my note was not mistaken.

**Senator Chris Evans**—As I say, I think the values are outlined on my website et cetera. It is all publicly available.

**Senator ELLISON**—It is.

**Senator FIERRAVANTI-WELLS**—I think Mr Correll was about to take us through the aspects of this new risk approach.

**Mr Correll**—The implementation of the new detention values involves a large number of initiatives that we are treating as project initiatives that are being advanced to implement the full range of changes. There are 26 of those initiatives spanning across compliance work, detention work, our border security areas and our humanitarian programs as well. Specifically in the risk area, the implementation aspects are looking at defining the specific criteria that are

to be applied under the risk. It is based around the considerations of overall risk factors to the community. It is being implemented on a progressive basis. Proposals are progressively being brought forward to the minister to implement each of those initiatives stage by stage. In the current stage, I think the minister in his speech indicated that the department would be developing an implementation plan. That has been developed. We are now advancing that with those various project initiatives. So essentially in the area of risk definition, we are still in the process of implementing the precise criteria to be applied in the calculation of those risks. But it is essentially measurements of the criteria relating to risk factors from a reasonable point of view from the community's perspective.

**Senator FIERRAVANTI-WELLS**—If you are changing 26 program initiatives, that sounds to me like a pretty big change in direction. I appreciate the language. You start with the blanket 'No, we're going to keep mandatory detention.' But if you are changing 26 program initiatives across a wide range of areas, from the sounds of things, including a very key component, which is risk, surely that to the average person means a substantial change of direction.

**Senator Chris Evans**—Obviously, the officer can answer questions of fact. It seems to me a policy question, so I will respond. I did not say it was not a substantial change in direction. But I want to make clear that my understanding of mandatory detention is that you mandatorily detain people. What I have said to you is that has been maintained in terms of persons we do not have knowledge of—unauthorised arrivals et cetera or people who seek to come to this country unlawfully. What the detention reforms do tend to focus on is what happens after that. As you know, we have had a history of the long-term detention of persons. It is about trying to manage the risks involved in those detention issues. I might say it was work that was started after the previous government's 2005 reforms. The number of people dropped quite considerably in detention after those changes. One thing they did is asked the department to manage risk partly by issuing greater numbers of bridging visas. The officers can take you through that. In some ways, this is an extension of that approach. That is, the officers make a decision, as they do every day with all sorts of other categories of persons, and make an assessment of the issues and the risks. So the officers can take you through how that works in practice. But, yes, there are major changes—there is no question about that—but that has been confused with the issue of mandatory detention, which is a different concept.

**Senator FIERRAVANTI-WELLS**—Perhaps I will ask it on a practical basis. For example, let us take a person where you need to do a security check and check their identity. If you have a circumstance where you have to, say, go back to Iraq or Syria or a place like that, and that can take months or perhaps years, that person will stay detained. Is that the practical effect? If you cannot ascertain their security background and to be satisfied as to whom the person is, do I understand that that person will be released into the community or you will make an assessment as to whether that person should be released? Or will that person stay in detention until you can ascertain for sure that that person is who they say they are?

**Senator Chris Evans**—Perhaps I will answer in general.

**Senator FIERRAVANTI-WELLS**—I thought that was a practical sort of—

**Senator Chris Evans**—Sure. The first point is clear. An unauthorised arrival will be detained until such time as we are satisfied about those identity, health and security risks. In the normal course of events, that takes weeks or months et cetera. But there are delays, Senator; I accept your point. One of the things we have sought to do is put checks into the system so that people do not just remain in detention because nothing happens. Successive governments have struggled with this because there are complex issues involved, particularly with stateless persons. Some do not know their identity. We had a very famous case with a person in detention who gave false information about identity. We recently had a person with amnesia up in Brisbane, which actually went very well. I am pleased to say the system has worked. But the presumption is that those persons are detained until those checks occur. There is a three-month review of all detention by the department to case manage to make sure we do not let the issues lapse for want of action.

I have asked the Ombudsman to do a six-month review of all persons in detention. The previous government instituted a two-year review, which has been working for the last three years. I was concerned, and the government was concerned, that the long expiration of time between their detention and the Ombudsman's review was too long for that independent oversight of the decision to detain. So I have asked the Ombudsman, and he has agreed—and the officers can help you with where we are at in the details—to bring forward their oversight of the case to much earlier and to do that after six months. So the focus is on case management. But in terms of persons who arrive unauthorised, we are seeking to be assured about their health, identity and security risks and they will be mandatorily detained.

**Senator FIERRAVANTI-WELLS**—Have officers in the department looked at other areas around the world where similar programs are in place? For example, have you looked at the experience in the US, where illegals are released from detention? Apparently they sign some commitment to appear and comply with immigration requirements. I understand that fewer than 15 per cent of those unauthorised foreigners actually show up in terms of their compliance with their immigration hearing, or whatever it is. In other words, there is quite a high incidence of non-compliance, with about 85 per cent simply disappearing into the American heartland. Is that something that seems to be a similar sort of situation? Have you looked at those sort of experiences in other countries around the world where there may be similar releasing in community type programs? What have been the experiences there?

**Mr Metcalfe**—Yes. We certainly have, Senator. We work very closely with counterpart agencies in a whole range of countries. But we have had for a very long time now a very close dialogue with the United States, the United Kingdom, Canada, New Zealand and many other European countries as well. We are aware that there are quite different arrangements in relation to what I would broadly describe as immigration compliance detention. Some go to sheer volume and capability. Others go to political decisions as to what is appropriate in the circumstances. The latest figure I saw from the United States as to their estimated illegal immigration population was something in the order of 10 to 11 million people. According to my estimates, somewhere around 3 per cent of their population is actually illegally in the country, particularly in the states of California and Texas. As you would be aware, a large amount of their economy is based around that illegality.

**Senator FIERRAVANTI-WELLS**—Yes, I was.

**Mr Metcalfe**—So the Americans have a massive problem not only in terms of the size of it; proportionally it is very large as well. As we were discussing earlier, for quite a long time now, the estimate of overstayers or illegal immigrants in Australia has been at just under the 50,000 mark, which is proportionately a much smaller population than in the United States. Of course, in absolute terms it is minuscule. We have a whole suite of policy options in relation to these issues. They range from what you would broadly describe as very loose contact arrangements to reporting arrangements through to a range of options involving some form of detention, be it in the community under a residential determination, which was created by the previous government in June 2005, through to immigration residential housing through to immigration transit facilities through to immigration detention centres. So we believe that we now have a suite of infrastructure and policy tools that allows us to manage the issues quite effectively.

One of the significant benefits or reforms in recent years has been the community care pilot that the minister referred to earlier, which was established by the previous government as a direct response to the Palmer and Comrie reports. We are able to essentially have a case management and early intervention model in relation to people. That has proved a remarkably successful pilot and I am hopeful that we will be able to continue with that particular work.

So, learning from the United States experience, I would argue that there are no direct parallels because of the scale. But there are certainly lessons to be learnt from other jurisdictions, particularly in Europe. I think we are probably moving towards a model that means that we can continue to achieve strong immigration outcomes and a very strong, well-managed immigration program but without the need to have numbers of people in immigration detention for long periods of time.

**Senator FIERRAVANTI-WELLS**—The statistic I have is that only three per cent of the failed asylum seekers in the US are ever located by law enforcement authorities and deported. In other words, you do not say that we—

**Mr Metcalfe**—The situation and the scale are so different. The Americans have unique issues. They have two major land borders. They have a closely proximate sea border with Cuba and countries in the Caribbean. They have large sectors of their economy which actually rely upon low-cost illegal labour to operate, so there is a significant pull factor associated with that. You would have been aware, I am sure, of the major effort by the US administration in the last year or so to reach agreement on legislation. That legislation failed in the Congress, notwithstanding the work of many people. That sought to bring around some sort of regularisation of that massive problem they have. So I do not believe that the Australian and American situations can be compared because our systems are different, the scale is different and the land borders are different.

We have some unique advantages. We have a universal visa system. We are an island. Although it is possible to reach Australia by sea, the work of successive governments in Australia has proved remarkably effective in working with countries in our region in this area. We also have a range of policy tools and options that mean that we are able to address these issues in new and innovative ways. As the minister said, some of the things that he has recently announced are in fact a continuation of some of the work that has been underway for some time in this area.

**Senator FIERRAVANTI-WELLS**—If I can summarise, you are basically saying our unique continental position insulates us against large-scale, unlawful immigration but you are prepared to take a higher risk. That is in effect or in a nutshell what it is.

**Mr Metcalfe**—No. Well, I do not believe it is a higher risk. I think that we understand our risks.

**Senator FIERRAVANTI-WELLS**—I did not say high risk. I said a higher risk.

**Mr Metcalfe**—A higher risk. No. I do not believe that we are taking a higher risk. I think that we understand our risks and we are managing them well. We are able to finetune and change our situation. We have advantages of scale. We have advantages of a universal visa system. We have the advantage of the things I mentioned earlier—employer awareness schemes and various other things. We have been able, through a whole range of policy measures, to limit both the overstay population and the unauthorised arrivals population by sea or by air quite well. But, as we have seen in the past, pressures can emerge. It is important that responses occur in relation to them.

**Senator FIERRAVANTI-WELLS**—Can I just say, Mr Metcalfe, do you not think that this change, canvassed in whatever terminology or otherwise that you want, does signal to the people smugglers that there has been a change of attitude? Do you not think that in the end in effect all this has really done is make the risk of taking human cargo to Australia a lot easier for the people smugglers? You do not think that this sends any message whatsoever? The fact is that we have had four boat arrivals in a relatively short period of time.

**Senator Chris Evans**—That is not factually correct, though. What are the four arrivals?

**Senator FIERRAVANTI-WELLS**—We have just had four incidents.

**Senator Chris Evans**—Senator, I think it is reasonable, though, that you represent things accurately. There have been two boat arrivals.

**Senator FIERRAVANTI-WELLS**—Well, there have been incidents recently which have included people arriving to our shores. I will be precise about my language.

**Senator Chris Evans**—As there have been every year, if you read the AFP reports.

**Senator FIERRAVANTI-WELLS**—My question, Mr Metcalfe, is: do you think that this change in attitude in any way signals to the people smugglers that smuggling people to Australia is going to be easier because at the end of the process it really means that unlawful arrivals are now going to be able to access services and all sorts of things with the abolition of the temporary protection visas? It is going to be easier for them when they get here.

**Mr Metcalfe**—Senator, I want to be very careful in how I respond to this. I am happy to respond. But you are talking about this thing, and I am not quite sure what thing you are talking about. Is it the announcements by the government on 29 July?

**Senator FIERRAVANTI-WELLS**—Yes, it is. You are changing what I understand to be 26 program initiatives. It is, and the minister has said it is, a change of direction. Let us call it a major change of direction.

**Mr Metcalfe**—The minister has called it a new direction. I think the minister has outlined in some detail that the very first of those values are that mandatory detention remains an

essential part of strong border control. The minister has made it clear that certain people will be subject to mandatory detention, including unauthorised arrivals. So I think that what the minister is seeking to achieve here is to ensure that Australia's good record on border security remains and is enhanced. We have discussed earlier with Senator Ellison the very significant efforts that have been in place for some time and continue and have been enhanced in relation to those measures. But at the same time it is very clear that long-term indefinite detention has terrible effects upon people.

We talked earlier today about the range of compensation cases the department is now receiving. Significant settlements are being made because of harm that was done to people in a legally liable manner. So we have been having a discussion, I think, over the last 20 minutes or so as to how you devise a system that protects our borders while at the same time does not do harm and does not contravene Australia's international obligations under the refugees convention or other conventions. It is not appropriate for me to comment on the merits or otherwise of government policy; that is a matter for the minister. But as someone with extensive experience in this area, I can say that there are many different policy approaches around the world. I think that Australia in many respects is regarded as a world leader in policy work in this particular area.

Mr Hughes has a particular insight in relation to internationally comparative systems. One of the bodies that Australia has been involved with for a long period of time is known as the intergovernmental consultations on asylum and refugee issues. That is a network of countries—largely, Australia, North America and Europe—that work together to compare data, to exchange information and to seek to ensure the best possible arrangements. So given that I know you are vitally interested in us having a well-functioning system, it might be worthwhile if Mr Hughes perhaps added to what I have just said.

**Senator ELLISON**—I will just ask a question in that context because I think Mr Hughes has been over there. I was in the UK and Geneva visiting the IOM and the UNHCR and talking to UK authorities. I gained a distinct impression that in Europe the policy is to tighten up and to clamp down in relation to border control. They have looked to Australia for that lead. In fact, they looked at the policies of the previous government and this government. But they are tightening up, in effect. The IOM has acknowledged that, and so has the UNHCR.

**Senator PRATT**—Do you think they would go so far as to lock children up?

**Senator ELLISON**—Well, we changed that policy. That was done in 2005.

**Mr Metcalfe**—I think the lesson for all countries here is that it is often too late when people have got here. International cooperation is critical. The issues that we face in relation to unauthorised arrivals both by sea and by air usually relate to people from a long way away from our shores. It is how they are given protection and support in their countries of first asylum—in countries like Pakistan and Jordan and Syria and those sorts of places. It is how we cooperate with immigration authorities between here and there in relation to their visa arrangements and in relation to the capacity of their immigration authorities. But, as we have seen, what has been particularly effective over the years has been strong cooperation with our counterpart agencies in Indonesia—police, defence, immigration and so on. But it has been done in a way that has not meant that people who are genuinely in need of international

protection have been denied the opportunity to seek that. That is a clear policy objective. It has been pursued by the previous government and it is being pursued by this government. The arrangements where people are put in the care of IOM and have access to UNHCR as refugees who are then able to access international resettlement options are a part of this arrangement as well.

**Mr Hughes**—I will just make the point that I guess I was invited to by Mr Metcalfe. The situation in Europe is variable. There are 27 countries. It is right, as you say, Senator; they are looking at ways of tightening border control. But at the same time they are looking at ways of reducing the use of detention as a tool to ensure the removal of people or to deal with people who are not lawfully in European countries. The European Union is currently looking at a directive that would affect all 27 member countries that would limit detention to a maximum of six months except in exceptional circumstances. I do not think this directive as yet has been promulgated, but it is in the well-advanced stages of preparation. The commission is consulting extensively with member states. So, if adopted, that would except in exceptional circumstances put an upper limit of six months on the use of immigration detention in the 27 member states.

**Senator ELLISON**—As I understand it, Mr Hughes, I think it was the President of Spain who said that if you have that system, at the end of it there is an objection; the person is deported. So when you look at that finite term of detention, it finishes with deportation, whereas ours does not necessarily end that way.

**Mr Hughes**—I think there are two aspects to that. I think in Europe there has been more use of detention in connection with removals, where historically in Australia detention has been more used as a place where people are kept while their status is resolved. The European approach more often has been in connection with removals. I am sure the Spanish authority that you quoted would see that as the desirable objective. But from my understanding of talking to the European Commission, that may not be the case. They are simply trying to lay down an upper limit except in exceptional circumstances, for which immigration detention should be used in the European Union.

**Senator ELLISON**—But it is still coupled with the person getting tossed out at the end of it. That is what I am saying.

**Mr Hughes**—That is the hope.

**Senator ELLISON**—There is a big sting in the tail.

**Senator FIERRAVANTI-WELLS**—Mr Hughes, I appreciate your talking to the commission. Certainly if you start looking at the policies in each of those individual countries—for example, countries like Italy, where they are certainly moving and they have a major problem, particularly with the island of Lampedusa—I think you will find that the requirements or the political reality is now to the point where certainly the push is in the other direction. But I will not go and dwell on that. I would like, if I could, to refer you to an article in the *West Australian* headed ‘New people trade feared with easing of detention’. It quotes Mr Hodges, the chairman of the government’s Immigration Detention Advisory Group, who stated, that:

... the “major question on everyone’s lips” was whether the watering down of mandatory detention would renew the people-smuggling trade. “I’m personally of the view that when there was the enormous surge of numbers in 2000-02 that the Pacific Solution (offshore processing of asylum seekers) and the excision of the migration zone was a good move. There was a degree of deterrence to the policy,” he said. “What is going to happen now is a bit of a lottery but we could well be signalling to the people smugglers to make Australia their objective and to come on over.”

Minister, would you like to comment? Mr Hodges is the chairman of the Immigration Detention Advisory Group, which I understand is quite a broad group. Do you agree with his comments? Would you like to comment on the quite serious concerns that he does raise? As a person who chairs your Immigration Detention Advisory Group, are you going to take into account his opinion?

**Senator Chris Evans**—I value Mr Hodges’s opinion. He was a distinguished Liberal minister for immigration, so he has some background in the area. He was a member of parliament for many years. As you would be aware, Senator, he was a Liberal minister for immigration appointed by the previous government to head that advisory body. I have continued his appointment, and he makes a useful contribution. But I think you also would probably do well to read the whole *Hansard* regarding his comments, which were made at an appearance before the joint migration committee. I think he certainly contacted my office after he was quoted to discuss those measures. I have not spoken to him personally, but he certainly rang my office following the publication of the quotes. As I say, I refer you to the whole *Hansard* for his contribution.

Senator, Mr Hodges’s opinion, as I say, as a former minister is clearly one for him. What I would say is that I think there are two parts to this issue. You and other senators tend to confuse border security and then talk about things like TPVs and detention principles. I define border security measures as things like the excision, the patrolling by Defence and Customs of our northern waters and the mandatory detention of unauthorised arrivals. Those three measures remain in place and have continued on the previous government’s policies in terms of border security.

You now seek to argue that changes to TPVs, the abolition of the Pacific Solution and changes in detention principles inside Australia provide a large deterrent to people seeking safe haven and who are potential customers of people smugglers. I just reject that. I do not think that is right. There are different views in the community about that. My view is that, from all I have seen of the interviews of people who have come to this country unlawfully, their understanding of the finer points of Australia’s detention policy is not great. They actually focus on the lifestyle, the opportunity and the freedom that this offers to them. Equally, their understanding of the details of temporary protection visas versus permanent protection visas is not great. So I think it comes down to this, Senator: border security measures, excision, border patrols, mandatory detention and processing at Christmas Island are all designed to send strong border security measures. Of course, there is key engagement with our northern neighbours to stop departures. Once people have departed and entered our waters, it is too late. The pre-emptive, up-the-line activity, which the former government undertook post the major arrivals, has I think been the most effective thing.



The other debate, which I think you seek to have, is whether the ongoing punishment of people once they arrive in Australia acts as a deterrent. Primarily, I do not think it does, but fundamentally I do not think it reflects well on Australia. I do not think the punishment of people once they reach Australia is an appropriate public policy response. This government does not see long-term indefinite detention and punishment of men, women and children as an appropriate policy response. I am happy to argue that in any forum in this country.

**Senator ELLISON**—Minister, for whatever reason, changes to the values that you mentioned or the principles for mandatory detention do constitute, though, do they not, a relaxation of the former government's policy?

**Senator Chris Evans**—Senator, you can draw your own conclusions. The previous government, if you like, relaxed its policy in 2005. I note that there were a large number of boat arrivals compared to the previous years and the years following that. I have not yet heard Liberal politicians arguing that that was a result of the relaxation in 2005, but I am interested in your position on that. I do not think it is a relaxing of policy. I think it is an adoption of a new direction in detention policy, one that says you maintain strong border security messages, you are actively engaged with trying to prevent people smuggling but that you treat people humanely who have arrived in this country. I think that is a proper balance for a democracy like Australia's. That is why we abolished the Pacific Solution.

I do not know whether the coalition seeks to reinstate the Pacific Solution. I would be interested in your views on that. That is why we abolished TPVs. I do not know what the opposition's policy is on the abolition of TPVs—whether you seek to reintroduce TPVs. We have enunciated new detention principles that take it further than the previous government's 2005 principles. But I think they reflect the fact that the Australian community found the previous policies unacceptable. The previous government changed its policies. We have taken the changes further. But I think they reflect the appropriate balance. It is a risk based policy that seeks to manage this immigration problem in a similar risk based way to how we manage other immigration problems, such as World Youth Day and the risk balance in terms of people who have overstayed. As in all our policies, we manage the risks.

**Senator FIERRAVANTI-WELLS**—I have one last question, if I may. Could you, Mr Correll, please take on notice and provide details of those 26 program initiatives that are going to be changed. Thank you very much.

**CHAIR**—We are up to 1.3. Have we finished questions on 1.3?

**Senator FEENEY**—I have one question. Earlier in general questions you were questioned about what I would characterise as the \$65 million cut that was asserted to have occurred with respect to border protection. You recall the lining of questioning? I have some questions further to your answers around that matter. Can you tell us what the resources for border security—that is, for output 1.3—are in the current budget as opposed to the previous budget?

**Mr Metcalfe**—I will just ask the relevant officer to come to the table.

**Ms Prothero**—The resources applied to output 1.3 are on page 25 of this orange booklet. Basically, in 2008-09 it is a total set of resources of \$204,999,000 compared to \$201,317,000 for 2007-08. So in relation to border security outputs, the resources actually went up slightly.

**Senator FEENEY**—It is \$3.6 million or thereabouts. Is that right?

**Ms Prothero**—That would be right, yes, Senator.

**Senator FEENEY**—Terrific.

**Senator Chris Evans**—Can I just say, Senator Feeney, of course—we did not get to this earlier—a large part of the border security arrangements funding is in Defence and other agencies. This is just immigration's part of that. Obviously, customs, border control and defence border control are not shown as cost items in our budget papers.

**Senator FEENEY**—Sure. But at least insofar as the department is concerned, resources for this output have increased rather than decreased. In considering that, earlier in general questions you alluded to certain programs that I would like to know a little more about. One of them was the humanitarian migration program. That was discussed as being a program that plays an important role in terms of preventing the demand for people smuggling.

**Mr Metcalfe**—Yes. I think the program you are probably talking about relates to contributions made by the Australian government to the displaced persons and refugees fund, Senator. That is a fund that has been in place for some years, largely to provide support to international bodies such as the UN High Commissioner for Refugees. There was an additional \$10 million provided in this year's budget for that particular fund with a particular objective of assisting stabilising populations in the Middle East, the sort of people who may be targeted by people smugglers and be tempted with offers to travel to North America, to Europe and to Australia.

**Senator FEENEY**—When you say the Middle East, is that Iraq in particular or is it broader than that?

**Mr Metcalfe**—It could apply to Iraqis. But Afghanistan is the other major area. Sadly, with the resurgence in Taliban activity there, what had become less of a refugee problem some years ago has again re-emerged as some real pressures relating to people seeking to leave that area.

**Senator FEENEY**—I see. Are you able to tell us how much was saved in budgetary terms with the closing of those offshore processing centres in Nauru and Manus Island?

**Mr Metcalfe**—Just give us one second, Senator.

**Ms Prothero**—That was reported in Budget Paper No. 2 at page 67. I think it was in the vicinity of \$69 million. I do not have the total here. I have the individual amounts. It was \$2.3 million in 2007-08, \$16.1 million in 2008-09, \$16.4 million in 2009-10, \$16.7 million in 2010-11 and \$17.2 million in 2011-12. That is on page 67 of Budget Paper No. 2.

**Mr Metcalfe**—So a bit over \$16 million a year. The figure extends into the forward estimates period. But of course if those centres had continued beyond the forward estimates, that \$16 million would have kept recurring, I imagine.

**Senator FEENEY**—Mr Metcalfe, a little earlier—about an hour or so ago—you took us through a list of maritime arrivals and detailed some dates and provided some other details. One of the things I do not believe you said—if I did not hear you, I apologise in advance; you

talked about boats—is the total number of persons in 2007 and the total number of persons to date in 2008. That is persons as opposed to vessels.

**Mr Metcalfe**—To date, in calendar year 2008, 26 people have arrived unauthorised by boat. In 2007, 148 people arrived unauthorised by boat.

**Senator FEENEY**—So 148 in 2007 and 26 in 2008. Is that correct?

**Mr Metcalfe**—That is correct, Senator.

**Senator FEENEY**—Thank you.

**Senator JOYCE**—Any further dorothy dixers, or do you want to ask real questions?

**CHAIR**—Senator Joyce, it is not helpful. Everyone is entitled to—

**Senator FEENEY**—Perhaps if you display some of the courtesy you expect to receive, we will all move on swiftly, Senator.

**CHAIR**—Senator Joyce, everybody is entitled to ask questions without comment. No-one has passed comment on questions any other senator has asked today.

**Senator FEENEY**—Mr Metcalfe, you have spoken at various moments in relation to ascertaining threat or ascertaining future areas of activity for people smugglers. You have spoken of various places—of Iraq, Sri Lanka, for instance, and Indonesia certainly—but I have not heard you speak about Papua New Guinea. I refer you to some of the press. This appeared in the *Geelong Advertiser* and the ABC in early October. That press coverage reported—I will be careful with my language—allegations of corruption amongst PNG immigration officials. At least as I understand it, the assertion or allegation was that those officials were engaged in a process of providing PNG visas to persons who would then be forwarded them, if I can use that term, for use. What can you tell me about that in particular? What can you tell me more broadly about what you are doing with respect to people smuggling in PNG?

**Mr Correll**—Senator, the department has a very close and effective relationship with Papua New Guinea's immigration and citizenship service. We are providing four advisers under a whole-of-government program. We are funding and developing an enhanced border management IT system that is designed to better monitor and manage people movements in and out of Papua New Guinea. There has been funded a number of locally developed and delivered management and leadership training programs and work with the International Organisation of Migration in developing entry level training and operational procedures for the ICS. So there have been a number of measures. I could go on. In fact, there are areas covering—

**Senator FEENEY**—Perhaps I will cut to it. I am particularly interested in the Australian personnel who are actively engaged in PNG in particular and what you can tell me about the numbers of those persons and, at least in general terms, their activities.

**Senator JOYCE**—You raised this at the last estimates.

**Senator FEENEY**—And I am making no such insinuation.

**Mr Metcalfe**—The Australian personnel were in fact placed under the previous government's originally called, I think, enhanced cooperation program. A number of

agencies—ourselves, the Federal Police, Treasury and others—provided officials to assist the PNG government and the bureaucracy to strengthen their capability. I do not think it is appropriate for me to talk in a public forum about allegations of corruption of foreign officials. I have no information personally as to whether those allegations are true or not. I know that the acting head of the PNG immigration authority has been quoted as rejecting that allegation. But of itself I just make no comment on that issue.

What I do say, though, is that PNG has a very small immigration service. At one stage it was around 18 staff for their country. They are in the process of building up their numbers. Like many Pacific islands and other developing countries, they do have real issues relating to capability and effectiveness. Our department over some years has worked very closely with them to try to assist them in building that capability to give them the professionalism in their officers to resist potential corruption and to ensure that their systems work effectively. That is something that we will continue to seek to do.

Our officers in Port Moresby are dedicated to doing that work. We also have an airline liaison officer stationed at Jackson's Field at Moresby to seek to prevent boarding in Port Moresby of people who may be seeking to travel to Australia without proper authorisation. That is one of a number of—

**Senator FEENEY**—So that is boarding of planes?

**Mr Metcalfe**—That is correct. We have arrangements in a number of countries, where we have our staff stationed in international airports. Port Moresby is one of those airports. With the cooperation of the local officials, we are able to actually ascertain prior to boarding the aircraft whether people have authority to travel to Australia. That is a clear sign of the sort of cooperation that we have. It is true that the border between the western province of Port Moresby and the Torres Strait is very close. You would be aware that the distance from the PNG mainland to Saibai Island in Australia is only a couple of kilometres. We have seen very small numbers of people coming through that route over the years. We have a particularly effective arrangement in the Torres Strait—

**Senator JOYCE**—At this point in time, this is unfounded and unwarranted.

**CHAIR**—Senator Joyce, Senator Feeney has the call. I will call you when he has finished.

**Mr Metcalfe**—Chair, I was just concluding by saying that we have a very strong network, which has been there for some years, of indigenous Torres Strait Islanders employed by the department who act as movement monitoring officers. We are well aware, because we work with the people who live in the area, should foreign nationals stand out, as to whether people are coming through that particular route. So for all of those reasons—our network of 27 movement monitoring officers, our presence at Jackson's airfield and our assistance of headquarters to the PNG authorities—we believe that we are getting strong cooperation from PNG. We of course hope that any allegations of corruption are not well-founded. We certainly want to work with the PNG authorities to continue to build strong immigration arrangements there.

**Senator FEENEY**—Would the personnel you have just described, in terms of their work in PNG, also be personnel who were contemporaneously having regard for West Papua?

**Mr Metcalfe**—No. It is an entirely different country, Senator.

**Senator FEENEY**—That much I understand. But clearly the routes by which such persons might enter Australia are not entirely different. In fact, they are exactly the same.

**Mr Metcalfe**—We have a very large presence in the Australian embassy in Jakarta. Of course, the other country in that region that we discussed earlier is East Timor. We have a presence there. So we have essentially a strong capability across Indonesia, East Timor and Port Moresby. It is not only us; other Australian agencies are represented in those places. Collectively, we work the people smuggling issue together in both those countries and further back up the chain.

**Senator FEENEY**—Thank you very much. I have no further questions.

**CHAIR**—I think we are still considering 1.3.

**Senator JOYCE**—I have an issue, Madam Chair.

**CHAIR**—Have you got questions under 1.3, Senator Joyce?

**Senator JOYCE**—Yes. Just one question. Minister, you said that the public did not endorse the previous government's position on border protection. Can you clarify by what methods you ascertain that belief?

**Senator Chris Evans**—Well, I think you will find if you check the *Hansard* that that is not what I said, Senator Joyce.

**Senator JOYCE**—You said that there was not a public endorsement of the previous government's position on border protection. I just want to know how you came by that belief.

**Senator Chris Evans**—Well, I can assure you, Senator Joyce, that is not what I said so I find it hard to respond to the question. What I did say is that there were two sets of issues—one which went to border security and one which went to how one treated people when they were in this country. I made it clear that, in terms of the key border security measures and resources provided to support those, those of the previous government have been left in place. They are border patrols by Customs and Defence, the mandatory detention of unauthorised arrivals, the excision of offshore places and serious and ongoing engagement with our northern neighbours to stop people smuggling and departures. All those remain in place.

**Senator JOYCE**—So in that instance, then, Minister, you would have to agree that the previous government's position on border protection is endorsed by the public?

**Senator Chris Evans**—Just as I do not think I would have made the first claim, I would not make the second either. What I have said is—

**Senator FEENEY**—Senator Joyce might benefit from reading the *Hansard*.

**Senator JOYCE**—You are irrelevant, Senator Feeney.

**Senator Chris Evans**—Those measures have been continued by this government because we think they are effective in combating people smuggling and unauthorised arrivals in Australia. We undertook before the election that we would maintain them, and we have.

**Senator JOYCE**—So you do endorse or you do not endorse the previous government's position on border protection?

**Senator Chris Evans**—Well, if you are talking about those border security measures—I do not know how better to put this—they have been maintained by this government and this government’s policy, the ones I described. If you want to move to the question of detention, which we have had a debate about, we have had a different approach on detention, on the Pacific Solution and on TPVs. They have all been announced in the first 10 months we have been in government. They were all election commitments and they have all been honoured.

**Senator JOYCE**—It sounds like you do endorse them. Thank you.

[9.14 pm]

**CHAIR**—Now we are moving to output 1.4, compliance. Any questions in this area?

**Senator ELLISON**—This is a matter I formerly had a lot to do with as the minister for justice. I have maintained an interest in it because of the prevalence of it today. In a visit I had to the UK and Geneva, certainly at the top of the list of priorities was the question of worldwide human trafficking. Have we seen any evidence of trafficking from Eastern Europe in Australia—Eastern Europe being the source and Australia being the destination?

**Ms O’Connell**—In terms of trafficking, that is certainly not one of the countries in which we have seen any sort of significant numbers. In fact, I am not aware of having seen any cases at this stage. But I would just like to check that. It certainly is not one that is high on our list.

**Senator ELLISON**—I just say that without any forensic evidence to support it. It is just something I am keeping an eye on because of the prevalence of it in Europe and the UK. I met with the head of the Serious Organised Crime Agency. It is an issue there. I just want to make sure that, much like heroin, which is in Burma or Afghanistan, we are not getting any here. I am not suggesting we are. I just want to know that. So there is no checking my question.

**Mr Metcalfe**—I recall I probably had a briefing from Scotland Yard similar to you when I was in the UK a couple of years ago. I know they were very concerned, I think, about young women from Albania.

**Senator ELLISON**—Albania, yes.

**Mr Metcalfe**—It was a very prevalent issue. I think it is fair to say that the sorts of nationalities that we see in trafficking, particularly in the sex industry in Australia, are people from South Korea, from the PRC and from Thailand. It tends to be more our part of the world.

**Senator ELLISON**—In relation to Thailand, we put a DIAC official there a few years ago to deal with anti-trafficking measures. Is that person still there?

**Mr Metcalfe**—Yes. We have a similar position in Manila, from memory.

**Ms O’Connell**—That is right. And in the Philippines and in China. I think that is our other position. So we have gone from that one single position in Bangkok to three positions.

**Senator ELLISON**—Thank you. Have joint operations continued with the AFP, state police and other agencies in relation to the trafficking of sex workers in Australia?

**Ms O’Connell**—Yes, they have, Senator. There are frequently joint operations in terms of pursuing that. The department of immigration frequently refers to the AFP any sign of a possible indicator of trafficking and then there can be further AFP investigations and joint investigations.

**Senator ELLISON**—Do you have any idea of the number of current prosecutions pending? Take it on notice if you need to.

**Mr Metcalfe**—We certainly have interest in a number of matters that either have been or currently are in court. Ms O’Connell could perhaps outline those four or five cases to you. But we might then take on notice whether there are other matters that are pending.

**Senator ELLISON**—In the brevity of time, you can just take all of that on notice—the number of convictions, the offences for which the convictions were incurred and continuing prosecutions.

**Ms O’Connell**—We certainly will, Senator. There is a significant case at the moment that is going through the courts in Sydney, where they have been convicted of trafficking but they are awaiting sentencing. So there are a number of live matters afoot. But I will take that on notice.

**Senator ELLISON**—Are we doing any work in the region in relation to not only the trafficking of women but the trafficking of children? I have seen some disturbing examples of that not to Australia, I stress, but that Australia is working to bring it down. The old adage is one child trafficked is one too many and it does not matter where that child has been trafficked. Are we doing any work in the region with other countries?

**Mr Metcalfe**—I think we would probably defer to other agencies in relation to Australia’s work internationally, be it the Federal Police or possibly through DFAT or AusAID programs. Our focus tends, of course, to be people coming into Australia.

**Senator ELLISON**—Okay.

**Senator Chris Evans**—Senator Ellison, I think I mentioned earlier that when I went out to South-East Asia on a delegation, including with Mr Minister Debus, the Minister for Home Affairs, and Mr Potts, the people smuggling ambassador, and the secretary, certainly Mr Debus raised the issues of trafficking and was engaged with local authorities. The AFP were still very much engaged, it seemed to me. He had his own program, and at various stages I was involved in that. But I know the trafficking issues were very much on the agenda and the AFP, as you would be aware, were continuing to focus activities in that area. I certainly know that in Thailand it was raised with me as well as a serious concern. I think that is when I was first really made aware of how serious the trafficking in children was. I guess I tended to focus on the sex workers and the exploitation of women. But obviously the trafficking of children is a terrible and, I suspect, growing issue.

**Senator ELLISON**—I certainly agree, Minister. Closer to home, Mr Metcalfe, are you aware of the anti-slavery project, work by Jennifer Byrne at the University of Technology Sydney? There were interesting recommendations made as a result of the project. I just wondered if the department was aware of the work done there.

**Ms O’Connell**—Yes, Senator. We are aware of the work. We have had discussions with Ms Byrne. She was also a participant at the recent roundtable representing anti-trafficking measures.

**Senator ELLISON**—Good. In relation to the 15 recommendations, has any work been done in relation to that? Is that being fed into the mix, the work that she did in relation to it?

**Ms O'Connell**—It is being fed into the mix and considered. One aspect is the visa regime. The other is the broader whole-of-government initiatives in people trafficking. So we are aware of those—certainly the representations and the views. I think she contributed those again at the recent roundtable as well. They are in the mix for consideration.

**Senator ELLISON**—Good. Thank you very much. In relation to 1.4 but a different area, I asked back in February whether there are statistics on the number of those who have been released from prison and put straight into detention and the length of their stays. The answer from those estimates indicated there were section 501 cases currently in immigration detention. There were 15 between zero and 200 days; seven between 201 and 500 days; and then seven in the 501 plus days category. I was just wondering if there are any more recent statistics in relation to that. That was on 12 March this year.

**Mr Metcalfe**—We could update you on those.

**Senator Chris Evans**—I think it would probably be affected by the Sales decision. We were required to release a number of persons as a result of that decision. Thanks to the support of the opposition, we have successfully moved legislation which will allow the re-detention of some of those persons. But I think they released a couple in that group.

**Ms O'Connell**—There were certainly a number in that group. We have also more recently been able to remove a number of longer staying section 501 cases as well. So I will update those figures for you.

**Senator ELLISON**—If you could update that, that would be good. Previously we discussed the question of people with criminal backgrounds and people who posed a serious risk being possibly detained in other than immigration detention. They could be detained in a prison. I asked a question on notice. I am just trying to find it. I asked if it had been raised at the corrections ministers council and I do not think it had. Who would be raising that? It was an issue which I agreed with you, Minister, needed to be looked at. It was the question of using prisons for that sort of person. I just wonder what progress is being made in relation to that.

**Mr Metcalfe**—We will just check on that point, Senator. One thing we have been seeking to do as part of that overall initiative is to examine the liabilities of visa cancellation earlier during a person's prison term so that in fact the issue of whether they should leave Australia and any appeals that relate to that are dealt with prior to the completion of their criminal sentence. They can then be removed immediately from Australia without having to move into immigration facilities or be detained in immigration detention after the end of their sentence and pending removal. Mr Correll may be able to assist on the issue.

**Senator Chris Evans**—We are keen to get a straight from prison to airport arrangement which does not require permanent immigration detention in the meantime. In a sense, you have people convicted under the criminal justice system being at the end of their sentence put into immigration detention. We are very keen to try and streamline the process because that would eradicate the need to have them in immigration detention. It would also allow us to have them removed expeditiously. One of the things that we have been focusing on, Senator, is this question of long-term character cancellation people who have been in detention. People assume they are all refugees and they have been there. I think we got rid of a couple of really



long-term ones. A well-known drug dealer had been there six years. We finally got them on a plane back to the West Indies. They are the really complex, difficult cases. But you have to say, 'Should they have been in immigration detention for six years?' The system has to be able to work better than that.

**Senator FIERRAVANTI-WELLS**—Well, I will give you one example, Minister. Somebody who took five years to find out who they actually were ended up having a criminal record because of different names that they used. There was a criminal record back in the country where they were. So it cuts both ways. That person could have gone out and done something and been out on community service. So there is a balance here. It takes us back to the issue. Finally—

**Senator Chris Evans**—Sorry, the point I was making is that we have to get better at being able to get them out of the country. One of the reasons we have had long-term detention in this country is our incapacity to get people removed quickly. One of the things I put a lot of effort into is working with the department to try to ensure that people we do not want here get removed, not left in detention. We have had some success. I think 12 of the 24 of the long-termers have gone. A couple of them have been quite long-termers. Part of it is the court challenges and the stuff we discussed before. But we have to make sure we do it better. We are working hard at that. The department has made some real inroads. So I was not talking about the release. These are serious criminals who we want out of the country. But we have ended up with them in long-term immigration detention for want of our capacity to achieve that. That is the only point I would make.

**Senator ELLISON**—The question on notice, Mr Correll?

**Mr Correll**—Yes. The answer to the previous question on notice, Senator, is that the annual meeting of the corrections services ministers conference was held on 12 June, which was just two weeks after the budget estimates hearing. At the time, the issue was still under consideration so we would need to, I think, come back to you with an update on where that is at. The annual meeting of the correctional services ministers conference occurred just after the last budget estimates hearing. So we just missed that meeting.

**Mr Metcalfe**—We will update that on notice, Senator, I think is probably the best thing.

**Senator ELLISON**—Thank you for that. In relation to section 501 cases, can you give us an update of how many visas have been cancelled and how many remain? I guess that would then add up to all those considered by the minister, I guess—those that remain and those that have been cancelled. Is that right?

**Ms O'Connell**—Senator, I am happy to take that on notice and provide you with an update.

**Senator ELLISON**—Thank you. I think that that is all I have for compliance on 1.4.

**CHAIR**—No other questions there?

**Mr Metcalfe**—Sorry, Chair, I was just going to say, if we are finishing 1.3, that I flagged earlier that another officer is leaving us as well. That officer is Ms O'Connell. I just wanted to place on record my congratulations on her promotion to be a deputy secretary in the department of infrastructure. She shall have the pleasure of looking after transport security

and infrastructure issues. Lyn has worked with the department for three years in both the detention and compliance areas. They are critical areas in the post-Palmer reforms. We are very sad to see her go but we are delighted that her talents have been recognised.

**CHAIR**—On behalf of the committee, we wish you all the best, Ms O’Connell. Going to infrastructure is great. You will be the person we will talk to when we try to get—

**Mr Metcalfe**—That superhighway to Darwin, Senator?

**CHAIR**—No. We are still on a mission to get that detention centre off the Stuart Highway and down the track somewhere. We might come knocking on your door, Ms O’Connell, because I know you know a lot about the temporary detention centre, now permanent centre, there for fishing people.

**Senator Chris Evans**—Madam Chair, I am also not talking to Ms O’Connell at the moment. I have made this clear at the department. I very much appreciate the contribution she has made. She has been a real strength in the department, from my experience. While I congratulate her on her promotion, I am most displeased, as I was with the loss of Carmel McGregor. As I say, it is a good sign for the department that people who have done a good job in the department are recognised for a promotion elsewhere. I guess it is part of normal process, but ministers do not like losing good people. We wish her well.

**Senator BARNETT**—It is not the minister causing all these departures?

**Senator Chris Evans**—I understand the secretary’s position is the minister and the minister’s position is the secretary.

**CHAIR**—She has been promoted so it has been the influence of the minister. All the best in your new role. We certainly will know who to lobby when we want that centre moved down the highway.

**Senator ELLISON**—Madam Chair, the coalition senators join with you and the minister in wishing Ms O’Connell all the best for the future. Thank you very much for the great work you have done, Ms O’Connell. You have worked in some very difficult areas and acquitted yourself with great professionalism, so thank you very much. We will be knocking on your door for infrastructure, as has been said.

**CHAIR**—Does this mean that you just go to another room for estimates next time?

**Ms O’Connell**—That is right. Same day even, yes, Senator.

**CHAIR**—Same day, different room.

**Ms O’Connell**—Yes.

**CHAIR**—Thanks very much again and all the best. Good luck and well done.

[9.31 pm]

**CHAIR**—Now we are going to 1.5, detention.

**Senator ELLISON**—Is anybody leaving here?

**Senator Chris Evans**—They cannot escape. They are detained.

**Mr Metcalfe**—I can announce that we have recently appointed a new division head in this area, who will be joining us from the department of finance in a few weeks. In the meantime, Mr Casey has been acting in the position and doing a very good job.

**CHAIR**—I remind people that we were going to stop at nine o'clock for a break but we have not done that. We are not stopping. We are going to work through. I just want to remind people they should feel free to go out and get a coffee and refresh themselves if they need to.

**Senator ELLISON**—What is the current status of the immigration detention contracts? I think there is more than one.

**Mr Correll**—Yes. Senator, there is currently a tender process underway covering both detention centre services, health services, services associated with residential housing and immigration transit accommodation centres. Pending the outcome of that process, existing contracts have been extended. We are currently in a detailed negotiation phase in relation to the health services tender and in the final stages of evaluation in relation to other tenders.

**Senator ELLISON**—Is the government considering returning the operations of immigration centres to the public sector?

**Senator Chris Evans**—The government, on coming to office, found that the detention contract was well-advanced in consideration. Bidders had bid et cetera. I took advice from the department on that in terms of the costs already expended on the development of the new model. There had been significant changes to the detention arrangements or what we were seeking to get contracts for. These were decisions taken under the previous government. We are seeking to let two tenders on this occasion—one dealing with the health services and one with the actual detention services. Mr Correll can take us through the detail. Anyway, the government made an assessment on where we were and where the process got to. We had some concern about potentially paying compensation if there was any change to the arrangements, so the government determined for the current tender arrangements to continue. The tender will go ahead in the same form as was planned. There has been some movement on timings for a range reasons. Mr Correll can take you through that. But the tenders will be let as planned.

**Senator ELLISON**—Okay. Has the department finalised its inquiry into allegations of alcohol and drug use in Villawood? It was an issue where, I think, one allegation was referred to the police. But I think the department said in any event it was having its own inquiry. That was a few months back.

**Mr Correll**—Senator, the matters in relation to the allegations were referred to the New South Wales police. I will just ask Mr Casey to give us an update.

**Mr Casey**—Senator, the allegations of drug usage in Villawood were referred to the New South Wales police. I would have to take on notice whether they have progressed those. I am not aware of the outcome of those investigations, although they did speak to a number of people, including people who had put those allegations in the public sphere. But my last understanding was that they have not got sufficient evidence in which to pursue those inquiries. The matter that the department was looking at that you referred to was in relation to getting some external assistance and review of the policies and procedures at Villawood that could guide the detention service provider and ourselves in terms of trying to limit the risk

that illicit substances may be taken into the facility. We sought advice from the Australian Federal Police on this. They put us in touch with a person who had worked in New South Wales corrections, who is currently working with us in looking at those policies and procedures. Again, I would have to take it on notice and come back to you with the details of where that review is up to. But that was much more of a policy and procedures review. Are there things that we can do differently? What is the level of risk? Bear in mind that the actual detection of illicit substances at Villawood is quite low.

**Mr Metcalfe**—I would just point out for the record, Senator—I am sure you are aware—that the Villawood detention centre operates on the basis that people are not searched when they come in. They are certainly not body searched. So given the geographic location, its proximity to the outside world and the fact that people do come and go, unlike in a prison, where there might be more intrusive searches occurring, it would, like many community facilities, be something where drugs potentially are able to be taken in. We do know that some of our immigration detainees—although the numbers in Villawood are very low now compared to what we have seen in the past—have had drug habits. They have been on methadone programs and whatever. While we certainly view these allegations with concern and they have been referred to the police, and while we certainly would seek to ensure that within the applicable laws our arrangements are as robust as possible, I think it is probably unrealistic for us to expect that we would have a drug free environment at all times in that particular facility or in any immigration detention facility.

Just for the record, I recall that at the time of those allegations coming forward some photographs were released. They were photographs of drug use equipment, one of which involved a white substance photographed on a spoon. The photograph seemed to indicate it was a plastic spoon. I think if it was being used to heat anything, it probably would not have been a particularly effective instrument. So those photographs, of course, were referred to the police. Whether or not they were evidence of drug preparation instruments or whether they were simply some other sort of photograph I am sure the police will look at.

**Senator ELLISON**—Thank you. How many instances of hunger strikes have there been in detention centres in the last 12 months?

**Mr Casey**—I can give you those statistics. You use the term ‘hunger strike’. We have a definition in relation to voluntary starvation rather than hunger strike. It involves somebody who claims to be on voluntary starvation for more than a period of 24 hours.

**Senator ELLISON**—That is the definition that has been used?

**Mr Casey**—Yes.

**Senator ELLISON**—So we are still comparing apples with apples.

**Mr Casey**—For the year 2007-08, we have a total number of 27 participants.

**Senator ELLISON**—How many this year?

**Mr Casey**—Currently?

**Senator ELLISON**—This calendar year.

**Mr Casey**—Sorry, that is the 2007-08 financial year. Year to date we have had—I think this is the number of participants—two. I have year to date 10/10/08. I will just check on that.

**Mr Metcalfe**—We will just check on that and make sure we are—

**Senator ELLISON**—Do you want check that and give it on notice. It is getting late so we will not press you.

**Mr Casey**—Yes. I could certainly give you those numbers.

**Senator ELLISON**—Thank you. The other one was: how many instances of self-harm have we had in the last 12 months? Perhaps you could do the same if you do not have that readily available.

**Mr Casey**—I will just check that.

**Senator ELLISON**—Still on detention, we did talk earlier about the detention policy of the government. How many people have been released from immigration detention as a result of the announcement on 29 July?

**Mr Metcalfe**—We will have to take that on notice, Senator.

**Senator Chris Evans**—Hang on. I am not sure that is right. Senator, as we discussed earlier, on 29 July I announced the government's decisions in relation to new directions in detention. As Mr Correll informed you earlier, that required the department to put in place an action plan and the 26 measures that he described. I did not know there were 26. They were the measures that would be required to implement those policies. They will be progressively implemented. So I do not want to create the impression that on 29 July everything changed.

**Senator ELLISON**—Let me change the question. Have any people been released from immigration detention as a result of that announcement on 29 July?

**Senator Chris Evans**—Again, that creates a bit of a difficulty. You then have to analyse whether they would have been released under the new policy or the old policy. One of the points Mr Correll made is that a number of the measures have not yet been implemented. I did ask the department to implement the government decision immediately. They had to put in place processes, instructions and advice to officers. I am not trying to be difficult. We can certainly give you the figures in and out of detention. I am just trying to be clear.

**Senator ELLISON**—But if the answer is that it is still being implemented and that there has been nobody released as a result of that, that is the answer, I guess.

**Senator Chris Evans**—No. What I am saying to you is that I do not know that you could necessarily say, 'Were they released because of the change in policy?' What I can tell you about is the long-term detainee review, when I personally oversaw those cases and we made decisions on them. They have been made public and attached to the Ombudsman's report. We are happy to take the question on notice. I just did not want to create the impression that, one, it had all been implemented or, two, Mr Correll would be able to say, 'Yes, this was because of the change of policy compared to a decision we would have made.'

**Mr Metcalfe**—What we can take on notice, Senator, is the number of people who may have been released from immigration detention since 29 July. As the minister says, I think it is a more difficult question as to whether they would have been released in any event or whether

they were specifically released because of a measure as articulated in the principles outlined by the minister previously.

**Senator ELLISON**—But you can appreciate at some point there is going to have to be a point, because of the new direction, where someone may have been released who otherwise would not have been.

**Senator Chris Evans**—That is true. That happens all the time. Under the previous government, people were moved to IRH or to community housing as a risk assessment decided we could safely put them into community housing. That was a very good initiative of the previous government. It is an extension of those risk based policies. I guess all I am saying is that you will have to wait a bit longer to assess what the overall pattern is. If you are talking about current detainees, we can provide you information on that. That is largely related to the long-term detainee review, which I undertook in conjunction with the Ombudsman. Those figures have already been made available. As I said, I can give you an update on those.

**Senator ELLISON**—Of those people released—there are two aspects to the question—there are those who have been released since 29 July and those who may have been released as a result of the new direction in policy as described by the minister. There is a third question. Of those released, are they still in Australia? If not, are they still in Australia? If the answer is yes, are they meeting reporting requirements?

**Mr Metcalfe**—We will take that on notice, Senator. I think to give a complete answer, some may have been released from the immigration detention facility but been placed in some other form of immigration detention as well, such as in community housing. So as we described earlier, there is a range of gradations of detention now available.

**Senator ELLISON**—If that can be described and whether they have complied with it. If they have left Australia, they have left Australia.

**Mr Metcalfe**—What I would say as a general observation, Senator—this is an issue that Mr Correll and I have taken a great interest in over the years—is that I think when we were both appointed to our current jobs just under three and a half years ago, there were around 1,000 people in immigration detention. Of course we had Baxter still operating and, from memory, Port Hedland still operating at that stage. There has been a progressive reduction in the numbers of people in immigration detention. I think the annual report, which will be published in the next week or so, will indicate that at the end of June, at the end of the reporting period, it was around 400 people. The number of people in detention has fallen further consistent with that longer term trend.

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, while we are on the question of numbers in detention, I would really appreciate it if you could go back through your history books. Numbers of people in detention are always bandied around. I would appreciate it if you could provide me with a list since detention was instigated under a previous Labor government. Could you give me a history of detention in this country, including of children. I do recall instances—

**Mr Metcalfe**—I will do what I can, Senator.

**Senator FIERRAVANTI-WELLS**—Could you also tell me where you cannot and for what reason you cannot.

**Mr Metcalfe**—The reason I am hesitating—I might try to define your question—is that immigration detention has existed in one form or another since 1901. The immigration detention is sort of—

**Senator Chris Evans**—Mr Metcalfe was only new in the department at the time.

**Senator FIERRAVANTI-WELLS**—Now I am showing my age.

**Mr Metcalfe**—So the Immigration Restriction Act 1901, the sixth act—

**Senator FIERRAVANTI-WELLS**—I think you know what I am trying to say. Suffice it to say from the Keating period. Why not build on that time—

**Mr Metcalfe**—Immigration detention, in the sense of there being a particular focus on the—

**Senator FIERRAVANTI-WELLS**—or the 1980s.

**Mr Metcalfe**—detention of unauthorised arrivals dates to 1989.

**Senator FIERRAVANTI-WELLS**—That is right. Why do we not start there?

**Mr Metcalfe**—I will see if we can draw together those figures. You have asked also for children. We have provided some information to the joint standing committee, which is inquiring into detention.

**Senator FIERRAVANTI-WELLS**—If that is the case, then—

**Mr Metcalfe**—Well, I do not think we go back to 1989. The only hesitation I have, Senator, is that if this amounts to a very large task, I would beg your indulgence as to how we might negotiate that.

**Senator FIERRAVANTI-WELLS**—Yes. I appreciate that. I did try myself through annual reports.

**Mr Metcalfe**—So I do not have to go back to 1901?

**Senator FIERRAVANTI-WELLS**—No. You do not.

**Mr Metcalfe**—Thanks, Senator.

**CHAIR**—Have you finished?

**Senator FIERRAVANTI-WELLS**—No, I have not. While we are on detention, what is the status of progress on the upgrade of the Villawood IDC stage 1 facility?

**Mr Correll**—There are two aspects to the Villawood upgrade and redevelopment work. Firstly, there are short-term, immediate works in relation to the stage 1 facility and what has been described in the past as the management support unit at Villawood. There has been a significant amount of work done on both those venues.

**Senator FIERRAVANTI-WELLS**—I was there recently.

**Mr Correll**—Yes. You would have seen that construction work in action. That is nearing completion. My colleague, I think, will update me. I do not think it has been finalised as yet.

It is not quite complete at this point, but it is nearing completion. The second aspect is the complete longer term redevelopment of Villawood, which is currently being looked at from the point of view of the long-term planning of that. There is the development of the specific detailed plans for that redevelopment. That is geared to the completion of the complete redevelopment in the timeframe of 2013. The immediate works we are expecting to have fully completed by March 2009.

**Senator FIERRAVANTI-WELLS**—Without going into the previous discussions that we had about the detention, clearly one of the reasons why people who are unlawful non-citizens are held in immigration detention is to make them available for removal from Australia. Can you tell me what framework will be put into place or what sort of restrictions or whatever you will put in place to keep track of, locate and obtain a person when they are residing in the wider community when you do have to remove them so that you do not have the sort of problems of them disappearing or absconding into the community?

**Mr Correll**—My colleague, Ms O’Connell, is probably better placed to respond to this question than me because it is more in the compliance space. Where an individual is in a community detention situation, as has been indicated earlier, that would be based on a comprehensive risk assessment. We mentioned earlier that the consideration of what that risk component and criteria would represent is a key factor of the implementation, which is not yet fully finalised. That is progressively occurring at the present stage. One aspect of risk that is an important consideration is flight risk. That is being examined in the context of those overall risk criteria that you were alluding to. Therefore, the overall assessment that is made in relation to the placement of the individual would be related to those risk considerations. Our experience overall has been that that area of a flight risk, we think, can be much more effectively managed. We do not have a huge incidence of flight problems. We believe by a proper consideration and closer case management that we would be able to apply appropriate criteria to ensure that the individual is placed in the appropriate circumstances. The overall controls that can be applied can range from quite limited to more substantive, regular reporting arrangements if there be a need in the community.

**Senator FIERRAVANTI-WELLS**—So what if they abscond into the wider community? Do you report them?

**Ms O’Connell**—I am happy to add further to that. In terms of removal from the community, that is not new. We have been doing removals from the community for quite some number of years for people who are typically on bridging visas. They are granted those bridging visas on the undertaking that they will depart. Frequently they will have progressive appointments with us to ensure that departure arrangements are being made. That might be around preparations and purchasing of air tickets et cetera. We then typically might monitor that person’s departure rather than see it as an enforced removal. So there are a range of measures around the grant of the bridging visa and the reporting conditions that go with that. They are remaining in contact with one of our officers to ensure that that is seen through. Having said that, there are times that people will not abide by that undertaking that they have given and they will disappear into the community or attempt to disappear into the community. Part of our normal compliance activity is to try to locate people who have disappeared into the community. We do that through a range of measures, such as tracking them through use of



phone accounts and other accounts that you can track to attempt to locate people. Sometimes it might be tax records. At other times, there are people who phone in from the community to report on someone. So there are a range of measures by which we can locate people.

**Senator FIERRAVANTI-WELLS**—In terms of the understanding of the wider community, you obviously know the communities where there is a potential risk for them to abscond. What sort of education, communication and understanding exists in those communities of the need to report potential absconding illegals, unlawful non-citizens?

**Ms O'Connell**—Senator, I would say that is probably mixed. I would not see any community is particularly homogenous about whether they do or do not.

**Senator FIERRAVANTI-WELLS**—The question I was really asking, just to clarify my point, is that previously you may have heard some discussion about understanding and community information and that sort of thing. How much information is disseminated community wide in those communities about the pitfalls of overstaying and all those sort of things and aiding and abetting somebody who is overstaying or who is in some way not regular?

**Ms O'Connell**—We certainly use our community outreach officers and people like that in terms of standard consistent messages. I would also mention initiatives like the employer sanctions legislation, whereby now employers check someone's right to work before they commence work. All of those are measures, if you like, that help to ensure that people do remain lawful and remain in contact with us.

**Senator FIERRAVANTI-WELLS**—Thank you.

**Senator HANSON-YOUNG**—Minister, you mentioned earlier, in clarifying the announcements you made, that that does not necessarily mean we have had a legislative change yet. I know some of those things are able to happen because you can liaise with the department. But other things actually need some legislative changes. Do you know when we can expect to see this happen?

**Senator Chris Evans**—The government's policy announcements can be implemented by administrative action, by change to regulations and by legislation. I took the view, and the government took the view, that we would not wait to implement those changes until we had all the legislative framework changed, partly because of the time delays in drafting and getting it through the parliament and, dare I say, the Senate. So what we have sought to do is a phased program, which means I am implementing administratively or by ministerial decree some aspects. We are looking to amend regulations for others and then we will need to bring forward legislation to address a number of fairly fundamental issues. I would think that would come forward some time next year. There are drafting issues et cetera. I have yet to work out whether—we have a number of projects that we want to pull together—we do it in one bill or a series of bills. For instance, the complementary protection legislation I would hope to bring forward next year. So we have not yet finalised how we would bring forward the legislation, be it in an omnibus bill or a series of bills. Yes, I would hope to bring to the parliament next year legislation that sought to provide a better framework for the new policy arrangements.

**Senator HANSON-YOUNG**—Great. I want to touch on the recent arrivals. I was listening to the answers that you were giving on the 1.4 section, where you said that there are obviously

two boats that were intercepted but one boat was left in Indonesia. Can I just clarify whether that is right? There were originally three boats?

**Senator Chris Evans**—No. I think the senator was referring to reports in the press about East Timorese authorities detaining people who were thought to be about to embark on a sea journey. We have not got full information on that as yet and we are seeking it. But in terms of the debate here, I think there have been two boat arrivals in 2008—the two we have been discussing—containing 26 passengers. Those people are all currently detained on Christmas Island. We expect most of them, if not all of them, to make claims for protection. They will be processed.

**Senator HANSON-YOUNG**—Where is the processing of these visas up to currently?

**Senator Chris Evans**—I will get an official to answer that question.

**Mr Correll**—The initial interviewing processes have been completed for the group on the first boat and are, I think, expected to be completed this week for the group in the second boat.

**Mr Metcalfe**—Ms Keski-Nummi can give us a detailed answer, Senator.

**Senator HANSON-YOUNG**—All right.

**Ms Keski-Nummi**—With the first group, the first lot of interviews has been completed and officers are now examining them and starting to make assessments on them. On the second group, we have just commenced interviewing all of the people in relation to their particular claims.

**Senator HANSON-YOUNG**—In terms of the minors that were on board both of those, where are they being held currently in terms of the facilities?

**Mr Metcalfe**—I answered that before, Senator, but we are happy to repeat that.

**Senator HANSON-YOUNG**—Sorry.

**Mr Metcalfe**—Firstly, the young man who was crew on the first boat has been returned to Indonesia. He was not charged by the Australian Federal Police. There were two young men on the second boat who were both Indonesian nationals. They are both currently at the immigration facilities in Perth. I understand that one is on supervised bail but the other has not been charged. In relation to the young people who arrived on the two boats, where there are family members, they are accompanying their family members and they are all being held in the construction camp facilities on Christmas Island.

**Senator Evans**—I might say, Senator, that ‘construction camp’ sounds a bit austere, but I think it was decided it has a bit more of a community feel and has some better recreation and mess facilities et cetera. We had some of the refugee groups go out and have a look at the facilities. I think the common view was that it was a better alternative.

**Senator HANSON-YOUNG**—Is that where the barbed wire has been taken down from?

**Senator Evans**—As far as I know, the construction camp was never wired. I think there have been some arrangements changed in terms of Phosphate Hill, which was the old camp, and there is a fenced and a non-fenced section. The children and families are in the construction camp, which I would describe as being like a mining or other construction camp,

but there is a range of communal facilities that are a bit better. I think the general view was it was a better place to accommodate families and young people.

**Senator HANSON-YOUNG**—How long do we expect the rest of the health and security checks to take?

**Ms Keski-Nummi**—On the security checks, processing is taking place at the moment. I think on the health screening, Mr Casey will probably be able to comment on that.

**Mr Casey**—All of the health screening has been completed.

**Senator HANSON-YOUNG**—All of the health screening?

**Mr Casey**—All of the health screening has been completed.

**Senator HANSON-YOUNG**—And the security checks?

**Ms Keski-Nummi**—They are underway at the moment.

**Senator HANSON-YOUNG**—They are underway for both boats?

**Ms Keski-Nummi**—Yes.

**Senator HANSON-YOUNG**—And you have no idea how long that is going to take?

**Ms Keski-Nummi**—No.

**Senator HANSON-YOUNG**—So, just to clarify, are all of those people are seeking protection visas?

**Ms Keski-Nummi**—Yes. They have prima facie engaged our international obligations and we are currently assessing those.

**Mr Metcalfe**—Just to be quite clear, Senator, because they have arrived at an excised place, they have not applied for protection visas. What the department is doing is ascertaining whether or not they have claims to international protection. That is the process that we are currently going through.

**Senator HANSON-YOUNG**—Can you tell me how much it costs to run the Christmas Island centres when no-one is being detained?

**Mr Metcalfe**—I think we gave some advice on that to this committee at the previous hearing, on notice, Senator. So I will take that on notice and we will probably refer you to an earlier answer.

**Senator HANSON-YOUNG**—That would be great. You might need to take this one on notice as well. My follow up question was going to be: how much has it been costing per day since the first boat arrived?

**Mr Metcalfe**—We will certainly take that on notice. Obviously, there has been an increase in tempo, given that we now have clients accommodated on the island. That has brought with it the need for additional contract staff from the contract service provider and of course a number of our own staff have been present and various other people as well. But I take your question mainly to be about the cost of operating the centres at the moment, as opposed to other costs such as processing staff and that sort of thing.

**Senator HANSON-YOUNG**—Operating the centre would include also flying the staff there and flying them back.

**Mr Metcalfe**—Yes, what I have been trying to do is draw a distinction between operating the centre now we are providing accommodation to 24 or so people. That involves not only security arrangements but also provisions for their wellbeing. Some of that of course has involved staff flying from the Australian mainland to Christmas Island to be able to provide that increased service.

**Senator HANSON-YOUNG**—Which, of course, would not be a cost if they were being held in a mainland detention centre.

**Mr Metcalfe**—Well, there are other costs, in that staff would need to be augmented if additional people had come in. I am drawing the distinction between what I would describe as other staff, our officers who have gone up to interview them in relation to why they have come to Australia and who they are and that sort of thing. What I take your question to be is the first aspect of actually providing for their care and accommodation on Christmas Island.

**Senator HANSON-YOUNG**—If you could provide me with both, that would be wonderful.

**Mr Metcalfe**—We will see what we can do. I will that on notice.

**Senator Evans**—There is no question that there is an initial flurry of activity. For instance, the AFP flew up and interviewed people, as you would expect. We provide translators, support for health checks and all those sorts of things. So there is sort of a peak of activity of lots of people being required to do the processing. As I think the secretary indicated, it then scales down to provide secure accommodation.

**Senator HANSON-YOUNG**—To run of the mill, yes.

**Senator Evans**—Obviously, there will be the ongoing assessment of their claims. But, in terms of the people on the island, those numbers would come down once that initial phase had been gone through.

**Senator HANSON-YOUNG**—Can you explain to me what the plan is for the old Port Hedland centre? We still own that, don't we?

**Mr Metcalfe**—We, the Commonwealth, still do own that.

**Senator Evans**—There is a very nice hotel there.

**Mr Metcalfe**—There is a bit of symmetry to this, Senator, in that the department acquired the Port Hedland facilities back in the early 1990s from, I understand, BHP—where it was previously the single men's quarters. The decision was taken some time ago that the centre was not required for the department but, as a prudent contingency measure, it would not be sold but rather be made available on a leased basis with the ability for it to be re-acquired should circumstances warrant—and hopefully they never will. The previous minister announced in March last year that the centre was to be leased out as temporary accommodation to assist the acute housing shortage in Port Hedland due to the mining boom. That lease started on 1 May this year and is a two-year lease. But if in extremis we required it, we have the ability to resume the facility with three month's notice.

**Senator HANSON-YOUNG**—In relation to the immigration centre at the Perth Airport, my understanding is we still have an eight-year lease on that. Is that right?

**Mr Metcalfe**—Certainly it is an operating centre. My impression was that it was owned by the Commonwealth, but Mr Casey may be able to assist us.

**Mr Casey**—I will probably need to take this on notice, but I believe that there is a time limit on our usage of that. I am not sure whether it is seven or eight years.

**Senator HANSON-YOUNG**—To 2016.

**Mr Casey**—It is something like that. I can get you the exact date, but that sounds about right—seven or eight years. After that we do not necessarily have a right of access to the land; it is part of the airport's ownership.

**Senator HANSON-YOUNG**—I was there only a few weeks ago and even the staff were apologising the whole time. It really is inadequate. I guess eight years may seem like a short amount of time. It is just over two elections.

**Mr Metcalfe**—Unless you are a senator.

**Senator HANSON-YOUNG**—That is right. Are there any plans for the future? I know they are doing refurbishments and trying to change things around a little bit at the moment but it just seems completely inadequate from my perspective.

**Mr Casey**—Senator, you would have also seen while you were in Perth the residential housing—

**Senator HANSON-YOUNG**—Yes.

**Mr Casey**—which we would be using. We are spending about \$2.6 million on renovating that facility. It is only a small facility and it only has a small usage, but it is one of the last immigration detention centres to undergo a refit and that refit will be completed by the middle of 2009. Part of the disruption you would have experienced during your visit was because the builders were in. It is being used very much for reduced numbers at the moment because of that building work that is going on.

**Senator HANSON-YOUNG**—In terms of just moving to the residential housing facilities, what is the department's view in terms of people who are being held there? Do you still view that as being detained?

**Mr Metcalfe**—Yes, legally they are detained in a residential housing facility.

**Senator Evans**—That is true of community detention as well. Under the act people are still detained.

**Senator HANSON-YOUNG**—So, when we talk about having no children in detention, if they are being held in a residential housing facility, they are still being detained.

**Mr Metcalfe**—I think the commitment made by the previous Prime Minister was that children would be held in an immigration detention centre—and the word 'centre' is an important word—only as a last resort. And the period of time that the children would be held in an immigration residential housing project would be, from memory, a period of some weeks at the most until appropriate community accommodation could be obtained. That

undertaking by the previous government pre-dated later infrastructure initiatives such as the development of what we call 'immigration transit accommodation'.

You will be aware that we have facilities close to Brisbane Airport and at Broadmeadows in Melbourne, which are more in the form of a Hotel Formule 1 motel type facility. Broadmeadows is a refurbished officer's mess from an army base which is arguably very low security but is intended for short-term stay largely for people who may have arrived from overseas and are being held overnight, pending return home the following day. That particular idea and initiative actually was the result of some comments made by Neil Comrie in his report on Vivien Alvarez where he remarked upon the unsuitability of holding people in motel-type accommodation which did not provide for adequate privacy and which did not provide for what he would regard as the safeguards of proper induction into a facility. In the case of Vivien Alvarez, he believed that if there had been proper safeguards and a proper induction into detention then she may well have been identified as having medical issues and it may well have led to a discovery as to her true identity as an Australian citizen.

**Senator HANSON-YOUNG**—In terms of the transit centre, my understanding is that there was originally meant to be a seven-days or 14 day-limit. Is it seven or 14?

**Mr Correll**—It was originally seven days, Senator. We have tried to apply a little bit of flexibility to that to ensure that it is not just a cliff-fall situation. But the intention with transit accommodation centres is to be absolutely that—a very short-term form of accommodation. The detention services network, if you like, that exists in Australia today is very different network that has been developed over the last three years. It represents a range of different types of facilities, ranging from community based detention to more secure facilities. That again is to provide, rather than a one-size-fits-all type of solution, facilities that are designed to the risk circumstance faced by the individual and the individual circumstances involved, including family circumstances, children and a range of the services are available.

**Senator HANSON-YOUNG**—That is a good point and I can completely understand that we need to have different levels. One of my concerns about children in residential housing is that even though it may not be a detention centre, if children are still being held there and they are surrounded by other detainees, the majority of them would be adults. How many children do we have in detention at the moment?

**Mr Correll**—It is 24.

**Senator HANSON-YOUNG**—The people they are surrounded by primarily are adults. If those adults are being held in residential housing, some of them may have been there for quite a while. Some of them may be under quite significant stress and anxiety because they perhaps have not processed their way through their applications the way they would have liked. It is being in that environment with those other detainees that I think impacts on children, not just the facilities themselves. How does the department approach that when they decide whether it is okay for a child to go into that environment?

**Senator Evans**—Can I just say, before the department replies, that I think you identify an important issue and one of the reasons why we will need legislation to implement the new detention values. I am uncomfortable with children being regarded as being in detention when they are placed in a house with their parents and living and interacting in the broader

community. This is because the previous government brought in community housing. If you put a child and their family in a community house, you still technically have the child in detention. I do not think that is what people—

**Senator HANSON-YOUNG**—That is not what people think has happened.

**Senator Evans**—No, it is not what they think and I do not think it is what we mean. I think the reality for that child is they are not really in detention if they are out in community housing, but it is the legal construct that is a problem there. When you say ‘community detention’ people assume there are security guards and a fence and those sorts of things. I think most people would say that if you placed the family in rented accommodation in suburban Australia and the children are going to school, et cetera, they would not regard that as detention. So I think there are some definition issues.

I think what the secretary and Mr Correll were highlighting is that we have now got a range of housing options. We are keen to extend those and provide appropriate options for the department to deal with different circumstances. That is what we have done on Christmas Island, to try and use what we have got to give a better balance of the appropriate response. While we are limited by the facilities, it is still a bit of a problem. It is about case managing and finding the best solution.

The other thing the department has raised with me is that, in Sydney, finding suitable rental accommodation for people we want to put in the community has not been all that easy. The department, like everyone else with a housing shortage, have had trouble finding rental accommodation. There are issues about renting to the department and renting to people who are in community detention. There are a whole range of issues there. I think it is fair to say that the department is trying to act in the best interests of those people and the children and provide those housing options. One of the reasons they have occasionally kept people a bit longer than they would want to in a certain level of housing is having the next option or the better option. That is part of the problem. We have the definitions in the act which do need changing. People still say to me, ‘You’ve still got that child detained.’ That is legally true but I would argue they are not really detained if they are in community detention. I will finish here, but the other point I would make is that I think the Migration Act does not adequately deal with children per se.

**Senator HANSON-YOUNG**—I would agree.

**Senator Evans**—One of the things we are looking to do is to fundamentally overhaul the way the Migration Act deals with children in a whole range change of circumstances. I am responsible, for instance, under the act for unaccompanied minors and the guardianship of children, but I am also making decisions about them. I just think there are some really unsatisfactory arrangements in the way the legislation deals with children, and that is something we have got on the agenda. Anyway, that is by the by, but this is another example of that. I will hand over to Mr Correll to respond.

**Mr Correll**—The only thing I would add to that, Minister, is that, as at 10 October, of the 24 children in detention, 21 are in the community. There were two children in the Perth residential housing. One of them was a member of the crew from the recent visit. The issue there was rapid repatriation to Indonesia. The other was with their parents, and action was

being taken to try and find an appropriate rental accommodation in the community as quickly as possible.

**Senator HANSON-YOUNG**—Is that the family from Iran? Is that the same family?

**Mr Correll**—I would rather not go into detail.

**Senator HANSON-YOUNG**—Okay, sorry.

**Mr Correll**—The residential housing tends to be used as very short term to give sufficient time to enable appropriate community housing locations to be identified. In different property markets across the country, the ability to do that varies. That is the key principle that we are following in relation to the location of children.

**Mr Metcalfe**—Senator, when we discussed this issue before the Joint Standing Committee on Migration a few weeks ago, I think possibly Mr Georgiou raised the issue of some children who had been in residential housing for some weeks, firstly in Perth and then in Sydney. That certainly was an issue of concern to the department. But, as the minister indicated, we had actually been working very hard with the Red Cross, who assist us with community options. The community housing options that had been identified had been rejected by the family as not suitable, and it was their stated preference to remain in the residential housing at Villawood. Fortunately, we were able to find somewhere for them. But, there is a very clear intention here that children would only be in residential housing for a short period of time, until other arrangements are made; that is, as soon as a community placement is possible or, as was the case of one young man in Perth, they are returned home—in that case to Indonesia.

**Senator HANSON-YOUNG**—Thank you.

**Senator ELLISON**—Madam Chair, may I ask a question? We have 35 minutes left and we have 1.6, 1.7 and then we have output 2 as well.

**Senator HANSON-YOUNG**—I have got two more questions. Jumping topics, can you let me know—and you might need to take this notice; I am not sure—if there have been any instances of self harm at detention centres or facilities since April?

**Mr Metcalfe**—We have already taken on notice a question from Senator Ellison on that issue.

**Senator HANSON-YOUNG**—Great. My next question is in relation to detention debts. I know in the past, Minister Evans, you have responded to a former colleague of mine, Senator Nettle, about concerns that you have had with detention debts. Where is that up to in terms of review? Can I also put on notice some questions about the break down of the daily debt from the different facilities around the country, the level of interest that is charged on these debts, the process for the debt waivers—and my understanding is that the Department of Finance and Deregulation is involved in that—the stock of debts that are still outstanding, and the standard size of a detention debt, if there is some type of medium or average?

**Senator Evans**—I think we might take a fair bit of that on notice.

**Senator HANSON-YOUNG**—That is fine.

**Senator Evans**—I have asked the department to provide me with advice on ways we might move forward on the issue of detention debt. I know there is a lot of concern in the



community about detention debt—although I have to say that some of it is based on misinformation, because those who have been granted a PV have their debt waived. Clearly, there are numbers of people who have been in detention who move onto other visa classes or have a range of other expenses.

In terms of resolving the issues, there is also the fact that a lot of people have left the country. Some have made serious efforts to repay and others have not. I certainly began to question it, not just on the basis of the justice of it. When I heard it cost us almost as much to collect as we gained, I said, ‘Hang on, this does not look like very good public policy.’ So, on a couple of fronts, I think it has to be reviewed. We are in the process of doing that. I have not seen this list of 26 things, but I am told now that this on the list of the 26 things that arise, allegedly, out of the detention policy. Anyway, it is in the detention space. I am not being critical but, if I had not heard that and you had asked me whether that was on the 26, I would have said no. I think I will also get a copy of the 26 measures.

**Senator FIERRAVANTI-WELLS**—Both you and I will study them very carefully.

**Senator Evans**—I am sure I have been advised about each of them, but I have not heard of them referred to in that way before.

**Senator HANSON-YOUNG**—I ducked off early today to ask some questions in the finance hearing about detention debts as well, and Senator Sherry said that he was waiting to have a meeting with you to discuss moving forward. Do we know when that may happen?

**Senator Evans**—When I have got a solution that I know you will accept. I am advised, that it is apparently scheduled for 12 November. See, no one tells me anything, Senator.

**Senator HANSON-YOUNG**—So 12 November.

**Senator Evans**—But there is no point in me going to a meeting with him unless I have got the answers.

**Mr Metcalfe**—We have got plenty of time, Minister.

**Senator Evans**—The meeting is on 12 November, so we hope to have something before I meet with him.

**Senator HANSON-YOUNG**—Does anyone know now—and you can take it on notice if you have to—what the level of interest is that is accumulated on debt?

**Mr Metcalfe**—I think we should take that notice.

**CHAIR**—Senator Pratt has got a couple of questions.

**Senator FIERRAVANTI-WELLS**—I have a question this point, Senator Crossin. It is directly associated with debt.

**CHAIR**—Sure.

**Senator FIERRAVANTI-WELLS**—Could you also take on notice whether there are any contingent liabilities outstanding in relation to the detention centre contract and the contractors arising out of any court proceedings where allegations have been made about any incidents? There was a series of cases some time ago relating to incidences in detention centres where the department and the contractor were sued, alleging all sorts of things had

happened. I do not know if there are any more of those cases, but I would be interested to know if there are. Could you take that on notice if there are any contingent liabilities in relation to that?

**Mr Metcalfe**—We will take that on notice. I am certainly aware of the case of the Badraie matter, where I think there was a cross claim against the detention service provider. In relation to Cornelia Rau, the Commonwealth has settled but continues to pursue costs against the detention service provider and the Queensland government. Those are two examples, but we will take on notice whether we are aware of any more.

**Senator FIERRAVANTI-WELLS**—Senator Crossin, can we just ask at what point we will be able to do citizenship 2.3? That is really the only area where Senator Ellison and I have got questions left.

**CHAIR**—Senator Pratt, do you have questions?

**Senator PRATT**—I have got just one set of questions on detention. I would imagine we could then do citizenship.

**Senator ELLISON**—We can go to citizenship and we will place the rest on notice.

**CHAIR**—That would mean then that it would seem that officers associated with 1.6, 1.7, 2.1, 2.2, 2.4 and 2.5 could go.

**Mr Metcalfe**—Thank you very much, Chair. We will just keep 2.3 citizenship staff here and the rest can have an early night.

**CHAIR**—Sorry we could not let them know earlier.

**Mr Metcalfe**—They have been waiting all day, Senator, but I will send them home.

**CHAIR**—Yes, that is the unfortunate part about it.

**Senator PRATT**—Minister, back in May you announced the outcome of a review of 72 people in immigration detention for longer than two years. I note at that time there were 31 people being granted visas, 24 people being placed for removal and 17 subject to ongoing proceedings, which meant that their status could not be resolved at that time. I note at this point in time there are 43 people left who have been in detention for longer than two years. I just wanted the new breakdown of figures as to what was happening with that cohort of people.

**Senator Evans**—Thank you, Senator. I will ask Ms O'Connell to give you an update on where all that is at.

**Ms O'Connell**—Certainly, Senator. In terms of those specific numbers that were announced in the May review, of the 24 who were to be removed, as of earlier this week 12 have now been removed, 37 were granted visas or have further progressed in the process of granting visas, seven have remaining, ongoing proceedings still in relation to their resolution—and they may be a merits review or ongoing judicial review—and four were released from detention.

**Senator PRATT**—I think you said there were 12 people removed. In general, for how long have those 12 people been in detention?

**Ms O'Connell**—I would have to take that on notice, Senator, to give you the breakdown of how long they have been in detention.

**Senator PRATT**—Okay. I understand that there is a review of the remainder of the detention population and I want to inquire as to progress in relation to that.

**Ms O'Connell**—Certainly, Senator. That is one of the initiatives that Bob Correll mentioned earlier. One of the priority initiatives surrounding the new directions in detention is to review the existing case load beyond that case load of the 72 in detention. In terms of that, going through that review is work in progress. Quite a number of cases have been considered. The full case load at this stage has not yet been finalised, but it is not that far away.

**Senator PRATT**—So in terms of the discussions that we had earlier this evening, the focus is clearly now on expediting people through the process as quickly as possible without there being any risk to the community? In terms of the discussion we have had about so-called deterrents and using detention as a deterrent, I would have thought that being turned around and sent home pretty quickly under the current arrangements was a fairly significant deterrent factor in and of itself, considering a proportion of people are not going to be confident of their claims.

**Senator Evans**—Senator, I will let Ms O'Connell respond. My view is that the integrity of our migration system means that those who are entitled to a visa or to stay in this country are given a visa quickly and have it resolved in their favour; those who are not entitled to a visa are removed quickly. We want both outcomes. One of the reasons we have had a lot of people in long-term detention is that we have not resolved their case either way. So, yes, I am very committed to swift removal of those who have exhausted any review or appeal rights they have. Obviously the length of time people can seek review or appeal is a determining factor, but, as Ms Bicket mentioned earlier, the legal branch has done a good job of working through some of those issues and has had much better cooperation from the courts as well, so we are actually getting a better turnaround.

But, as far as I am concerned—and this is not popular in some circles—the integrity of the system demands that you can remove quickly people who are not entitled to our protection and have no entitlement to be here, and we have been working hard to get those long-term detainees who are not entitled to be here out. Of those 12, I think we have now removed three who have been in detention for more than six years. So we are very pleased, and the department has done a good job on making that happen. But it is also the case that the longer term detainees tend to be the more intractable cases—one of the reasons they are there is that they are not easy. I have been reviewing those progressively with the department and I can confirm they are not easy. We are working our way through all those cases to make sure we have tried to resolve them as best we can, but a number of them have ongoing issues that just do not allow resolution at this stage.

**Senator PRATT**—Thank you, Minister. You have just answered the rest of my questions without my needing to ask them.

**CHAIR**—All right. Thank you. Senator Ellison.

**Senator ELLISON**—Thank you, Madam Chair. I will start with the number of people taking citizenship tests. In particular I refer to question on notice 65 that was placed by

Senator Barnett and Senator Nettle. Can we have an update on those figures? It refers to the people who sat the test between October 2007 and March 2008. So what we are looking for is the period 1 April 2008 onwards for the purposes of comparison. If that needs to be taken on notice—

**Senator Evans**—I will get the officer to respond, Senator. I have been seeking to make sure we put the updates on the web so that that information will publicly be available, but I will get the officer to answer whether that information is actually posted or not.

**Ms Forster**—I am sorry, Senator, what exactly was that question?

**Senator ELLISON**—Question on notice 65. Have you got that handy?

**Ms Forster**—Yes.

**Senator ELLISON**—If you turn to that, that will give us—

**Ms Forster**—Senator, the snapshot that was updated, which is on the website that the minister referred to, gives the information for the number of clients who sat the citizenship test between 1 October and 30 June 2008. That is the latest update.

**Senator ELLISON**—Can you give us the total number, then, that is available?

**Ms Forster**—The number of clients who have sat the test during that period is 48,713.

**Senator ELLISON**—That would mean in the period April-May-June there were some 23,500 who sat the test, which shows quite a substantial increase on the previous six months.

**Ms Forster**—That is right, Senator.

**Senator ELLISON**—So very clearly the trend is that more people, as opposed to fewer, are sitting the test.

**Ms Forster**—Yes. The number of people who are doing the test has gone up. That is right.

**Senator Evans**—I think that is right, Senator. Also we had that pre-test bump—

**Senator ELLISON**—That is right.

**Senator Evans**—where everyone raced in, so we had a larger drop-off than we would normally have had.

**Senator ELLISON**—I think it was the *Sydney Morning Herald* that wrote an article that the number of people sitting the citizenship test had dropped off, but we will have time to argue that. I think the *Sydney Morning Herald* was wrong.

**Senator Evans**—I think we find with most migration programs that when you set a deadline you suddenly get a surge before the deadline, as we found with those 2007 reforms of the previous government.

**Senator ELLISON**—Can I now also ask about pass rates? Can you tell us how many passed on their first attempt, and how many passed on their second attempt and third attempt, if you have that, for the period October through to—what was it—June?

**Ms Forster**—Till the end of June, Senator. Of the 48,713 people who sat the test, 46,500 passed on the first or subsequent attempt at the test—in other words, there was a pass rate of 95.5 per cent overall. The update to the question on notice that was taken previously is that

40,809 people passed on their first attempt. I am sorry, I do not have the other components broken down into second or third attempts. I do have that 5,691 passed on their second or subsequent attempt.

**Senator ELLISON**—But, roughly put, it would seem that your pass rates improved?

**Ms Forster**—Slightly, Senator, yes.

**Senator ELLISON**—That is all I needed on the test pass rates.

**Senator FIERRAVANTI-WELLS**—Can I just check that these rates are since the test was introduced?

**Senator ELLISON**—Yes. Can you update question 66 on notice. I will put that on notice, too, due to the late hour. That asked for a breakdown of those who failed the mandatory questions, or the rights and responsibility questions, and an answer was given in relation to that. If that could be updated for the same period. I will go on to the citizenship review. Mr Woolcott has been conducting a review of the citizenship test. That has now been finalised. I understand the report is with the government. Where are we at with that and can the report be released if it has not already been released?

**Senator Evans**—The decision on how to respond to the review is currently with government. I think a decision on that is likely in the near future and the report will be released at the same time as the government responds. That is my intention, anyway.

**Senator FIERRAVANTI-WELLS**—Are you aware of public comments that Mr Woolcott has made about not being favourably disposed towards the citizenship test?

**Senator Evans**—I have seen some commentary by Mr Woolcott. He contacted my office at one stage because he was a bit concerned about the media treatment he had on one occasion. I would have to check the details. I think he was a bit concerned about how it had been portrayed. All I can say is that the report of the committee—I think the committee has done an excellent job; there are very good people involved—is with government. A decision by government is expected soon, the report and the government response will be released and all will be made publicly available.

**Senator FIERRAVANTI-WELLS**—Can I just ask whether Mr Woolcott and his committee have been provided with all the statistics in relation to the sorts of questions that have been answered on notice about passing and all those sorts of things? I assume that this has occurred.

**Senator Evans**—The secretariat services were provided with a lot of assistance from the department. They have had extensive consultations throughout Australia. A large number of organisations and individuals have spoken with them at public meetings, public consultations, and all the information that was available to the department has been made available to them as part of their process. It has been a very extensive process, and they have had the opportunity to go through all the material. I think you will find they have done a very comprehensive job.

**Senator FIERRAVANTI-WELLS**—Minister, do you think it is appropriate that Mr Woolcott has voiced his opinions or that he has given a negative deliberation on the

citizenship test as it is at the moment before properly reporting to government and, in turn, the public? I would have thought his comments were somewhat premature.

**Senator Evans**—All I can say is that I have received the report. I think Mr Woolcott and the committee have done an excellent job. I think you will see the quality of their work when the report is released. Whether or not you agree with all their findings or whether the government does is another thing, but I think you will see it is a very comprehensive report, and, as I say, I think the government decision on that will be released in a relatively short period of time.

**Senator FIERRAVANTI-WELLS**—Perhaps you might like to take this on notice. Could you explain to me the basis of the appointment of each of those people to the Citizenship Test Review Committee and the reasons it was deemed appropriate that they be appointed to that committee? Why they were specifically chosen? Were there other people who were under consideration for appointment? I asked on notice on the last occasion for a list of all appointments to boards, advisory committees or quasi-autonomous non-government organisations within the department since 24 November 2007. And the answer that has come back is that Mr Woolcott, Ms Hawkes, Ms Masselos—and I believe that you might like to look at some questions that were raised in the SBS estimates in relation to her antecedents—Ms Nkrumah—

**Senator Evans**—Sorry?

**Senator FIERRAVANTI-WELLS**—Certain questions were raised about her appointment to SBS at the time she was appointed to SBS. I would be interested to know whether she has been appointed to this committee because of her involvement with SBS. That is the question. That is why I mentioned Ms Masselos.

**Senator Evans**—I can answer that for you: no. The individuals were selected on the basis of their qualifications and experience.

**Senator FIERRAVANTI-WELLS**—I would be very happy if you could provide me with details of those qualifications; also those of Mr Pearson, Vice Admiral Ritchie and Kim Rubenstein, and also whether other people were considered or were they the only nominees considered for appointment to the Citizenship Test Review Committee?

**Senator Evans**—I will take on notice some of that, but the decision—and the secretary can correct me if I am wrong—was a decision taken by me.

**Mr Metcalfe**—That is correct.

**Senator Evans**—On advice from the department on some of the candidates. We certainly cast the net wide, but we did not take nominations.

**Senator FIERRAVANTI-WELLS**—I would be interested to understand the process.

**Senator Evans**—That is what I am telling you now. That is the process: I asked the department to suggest some names, and we cast the net for people who would provide a balance of experience, life experience and experience in Australian public affairs. Quite obviously, Vice Admiral Ritchie was the former chief of the Navy and Ms Rechelle Hawkes is a former Olympian and captain of the Australian women's hockey team.

**Senator FIERRAVANTI-WELLS**—I am just asking you if you could explain the procedure.

**Senator Evans**—That is it.

**Senator FIERRAVANTI-WELLS**—That is it? The department just came up with seven names?

**Senator Evans**—No, it came up with a range of options for me, and we workshopped that and also, to be honest, spoke to a couple of people who said they did not have the time or availability.

**Senator FIERRAVANTI-WELLS**—Sure. I am just asking if you can take that on notice and produce an outline of that procedure, and if you do have any documents in relation to it I would be happy to see them.

**Senator Evans**—I think you have got the answer, to be honest. I am just not sure what more you want from me, but that was the process.

**Mr Metcalfe**—Just to add to the minister's answer, I would describe it as quite a routine process that I have seen many, many times in relation to the appointment of government advisory boards. The minister asks the department for some ideas as to names of people who might be suitable. A range of names is provided. There is then an iterative process of discussion as to the right sort of balance and experience in relation to the composition of the group. Some people are approached and sounded out as to whether they might be available. That perfectly routine type of process brought together this particular group of very distinguished Australians.

**Senator FIERRAVANTI-WELLS**—I am not criticising, Mr Metcalfe. I am simply asking if I could have details of what the procedure was and if you are able to supply for me the original suggested names and the process.

**Mr Metcalfe**—I think the answer would have to be no. There are quite clear protocols in relation to that. If there is anything that we can add—

**Senator FIERRAVANTI-WELLS**—Were there 30 names considered at the beginning, or 20 names, or 15?

**Mr Metcalfe**—I think the minister said that if there is anything we can add on notice—

**Senator FIERRAVANTI-WELLS**—Perhaps if you could just take it on notice.

**Mr Metcalfe**—we will but, if not, we have probably answered the question.

**Senator FIERRAVANTI-WELLS**—There was a question asked by Senator Barnett in relation to the Australian citizenship ceremonies and the various procedures that are required to be undertaken in relation to them.

**Mr Metcalfe**—Was that a question on notice?

**Senator FIERRAVANTI-WELLS**—Seventy-one, thank you. By way of explanation or clarification, I assume that from time to time organisations conducting citizenship ceremonies are reminded of their obligations in relation to invitations. I place on record that I actually had to go to a minister once to actually get an invitation to attend a citizenship ceremony.

**Senator Evans**—I will make sure you are on the invitation list for all mine, Senator.

**Senator FIERRAVANTI-WELLS**—Thank you, Minister. No, the reason I raise it is to inquire whether from time to time you remind organisations that conduct ceremonies what their obligations are?

**Ms Forster**—There is, as you would be aware from the question on notice, a ceremonies code, a code of conduct for ceremonies.

**Senator FIERRAVANTI-WELLS**—Yes.

**Ms Forster**—That was recently updated and reissued, sent out to all local councils, which, of course, are the main bodies that conduct the ceremonies. We also are holding a series of information sessions for local councils to go through the code. I think we held one in Melbourne two or three weeks ago. Forty local council representatives turned up. They are happening around Australia at the moment and into the next couple of months.

**Senator FIERRAVANTI-WELLS**—The code says:

When the minister is not able to attend, the minister may nominate a representative. The minister's representative may be a government member of the House of Representatives, a government senator, a senior officer of the department or another person deemed appropriate by the minister.

Does that include a local councillor, assuming it is held at a council, from the same political party as that of the minister or government senator? Minister, I am just really asking for an opinion here. I am not—

**Senator Evans**—The clause says 'another person deemed appropriate by the minister', so I guess it would be someone I deemed appropriate.

**Senator FIERRAVANTI-WELLS**—Just for clarification: I have attended ceremonies where councillors have represented the minister; a councillor of the same political persuasion as the minister at a particular council. Can I just get some guidance on whether that is appropriate. Perhaps somebody could—

**Ms Forster**—Perhaps I could explain that.

**Senator FIERRAVANTI-WELLS**—Sure.

**Ms Forster**—All mayors, and usually the CEOs or general managers, and in some instances the deputy mayor, depending on the size of the local council, are authorised to preside over ceremonies. Obviously, the minister takes precedence if the minister is wishing to be at a particular ceremony or, indeed, wishes to nominate his particular representative, and that person will preside. That obviously is handled usually with the local council or the organisation conducting the ceremony.

**Senator Evans**—I just want to check there is not some confusion, though, between presiding and representing the minister.

**Ms Forster**—There is also your message. That is also read out, Minister.

**Senator Evans**—Yes. I think that is more what your question is addressing.

**Senator FIERRAVANTI-WELLS**—That is right, and I only ask by way of clarification so that I do know what the situation is.



**Senator Evans**—I think we advised in the answer on notice that it is a person the minister deems appropriate.

**Senator FIERRAVANTI-WELLS**—So if you deem appropriate the presiding officer who happens to be the mayor in a particular area who is, say, of the same political ilk as you, then that is fine.

**Senator Evans**—Are you talking about representing me or as presiding officer?

**Senator FIERRAVANTI-WELLS**—No, I am talking about representing you.

**Senator Evans**—The local mayor would be presiding, usually.

**Senator FIERRAVANTI-WELLS**—Yes, that is my point: as to whether it is appropriate for the mayor, who may be presiding, to also be your representative and read your message. That is what I would really like to—

**Ms Forster**—That is actually part of the code.

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Evans**—Perhaps the officer can help with that. That has not been raised with me before.

**Ms Forster**—I am desperately trying to find the right component of the code here, Senator. If you could just bear with me for one moment, I can actually find the correct spot.

**Senator FIERRAVANTI-WELLS**—I am happy for you to take it on notice. I just really want to get some clarification.

**Senator Evans**—But I want to know the answer, too, now. If you can find that quickly, that would be good but if you cannot—

**Ms Forster**—I will have to go through it more thoroughly.

**Senator FIERRAVANTI-WELLS**—Could you kindly take it on notice? You can appreciate—and I am pleased to see that—and periodically you do remind—

**Ms Forster**—We do, and we are explaining it through information sessions.

**Senator FIERRAVANTI-WELLS**—It becomes a particular issue, especially in areas where you do not have representatives of a particular persuasion, and it works both ways.

**Senator Evans**—Yes. I would say, though, that I have been more liberal than any previous minister, I understand, about encouraging members of parliament from both sides of parliament—

**Senator FIERRAVANTI-WELLS**—Oh, I think so, and—

**Senator Evans**—to participate and officiate in ceremonies—

**Senator FIERRAVANTI-WELLS**—I have seen that.

**Senator Evans**—without fear or favour or political bias. I hope that my successors of both persuasions follow my lead.

**Senator FIERRAVANTI-WELLS**—Thank you. I have actually taken you up on your offer to preside.

**Senator Evans**—I am glad to hear it, Senator. A new Australian like you should set an example.

**Senator ELLISON**—Madam Chair, a quick question—there was somewhat of a precedent set when Mr Metcalfe shaved his hair off—and that is: can you update us on the charitable works of the department, which we follow with interest? What is the latest fundraising drive at the department?

**Mr Metcalfe**—Sadly, we are about to enter the month of 'Movember', and I must say this year I am not going to participate. It was just too awful, and my wife did not talk to me for some time afterwards.

**Senator Evans**—And I refused to meet with him.

**Mr Metcalfe**—I do not think you were minister at that stage, but I am sure you would not want to meet with me, Minister. Senator, thank you for the question. We continue to look for opportunities. The most recent example was an extremely well-attended staff trivia night, involving 500 to 600 people, including a couple of the minister's staff. We raised more than \$9,000, and we presented the proceeds to a very interesting charity called AusHarvest, which essentially takes gifted food from restaurants and takeaways, and whatever, which is perfectly fine food but simply has not been used that day, and then delivers that food to shelters and other places where people will appreciate it. It is operating certainly in parts of New South Wales and the ACT. I am not sure if it is operating elsewhere. But they need petrol, they need things. So we were able to donate about \$9,000 to that. Later this week, of course, we have the Pink Ribbon Day, which is an incredibly important cause in relation to breast cancer research, and we will be undertaking a whole series of fundraising activities there as well.

**CHAIR**—Mr Metcalfe, it is almost 11 o'clock, and, in accordance with the decision of our committee and the Senate, estimates finish at 11 o'clock, I understand before we do finish, though, that you wanted to make a final statement and say something.

**Mr Metcalfe**—Yes, thank you very much, Chair. It is my understanding, and I am sure Senator Ellison will correct me if I am wrong, that this might be the last time that the department appears before him.

**Senator Evans**—We certainly hope so.

**Senator ELLISON**—I had better make damn sure.

**Mr Metcalfe**—And, Chair, with the indulgence of the committee, we would like to wish Senator Ellison all the very best. I know that you have a relatively young family. Hopefully, the frequent travel to Canberra will cease and you will spend more time with your family, which is so important. Chair, I recall that I first appeared before Senator Ellison in a parliamentary committee some 14 years ago when he was a member of the legal and constitutional committee. During consideration of a migration bill relating, of all things, to people-smuggling issues, I recall that Dennis Richardson, our ambassador to Washington, was the deputy secretary and led the department in work on that particular bill. We very much enjoyed working with Senator Ellison, both in opposition and in government, as the occasional acting minister for immigration, usually at times of some crisis, not of his creation,

and, of course, as Minister for Justice and Customs. So, Senator, on behalf of the department, can I wish you all the very best, and I hope that we see you from time to time in the future.

**Senator ELLISON**—Thank you, Mr Metcalfe, and, Madam Chair, if I could just thank the department and all the officers, it has been a great pleasure working with you on both sides of the desk, if you like. It is much more pleasurable on the other side, but it has been a great pleasure working with you. You do an outstanding job, which sometimes—in fact, more than sometimes—is not recognised. You should remember the great contribution you make to Australia and also to the community. Of course, not many people realise that this process of estimates is a very essential part of our democracy. So, thank you very much, Mr Metcalfe, and if you could convey my appreciation to all the officers—

**Mr Metcalfe**—I certainly will, Senator.

**Senator ELLISON**—for their cooperation and the great work they do. Thank you very much.

**Mr Metcalfe**—Thanks, Senator.

**Senator ELLISON**—It has been a great pleasure, Madam Chair, to be on this committee and at estimates. Minister, Madam Chair, my colleagues, certainly I will be looking at estimates in the future with great interest but from somewhat further afar. Thank you.

**Senator Evans**—Thanks.

**CHAIR**—Thank you, Senator Ellison.

**Senator BARNETT**—Madam Chair, as this is the last estimates committee hearing of this committee of which Senator Ellison will be present, could we perhaps on behalf of the committee thank him for his long, wonderful and tremendous professional service to this estimates process and to the parliament, and on behalf of the committee to say congratulations, well done, and best wishes for the future.

**Senator ELLISON**—Thank you.

**CHAIR**—Thanks, Senator Barnett. The sitting of this Senate Standing Committee on Legal and Constitutional Affairs stands adjourned. Thanks, everybody, and thank you, Mr Metcalfe, and the members of your department for being with us today. Thank you, Hansard and Broadcasting.

**Committee adjourned at 11.01 pm**