



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION
COMMITTEE

Consideration of Budget Estimates

TUESDAY, 11 FEBRUARY 2003

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Tuesday, 11 February 2003

Members: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

Senators in attendance: Senators Allison, Bartlett, Harradine, Kirk, Ludwig, Payne, Scullion, Sherry and Stephens

Committee met at 9.02 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 10 February 2002.

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

Mr Robert Cornall, Secretary

Mr Ian Govey, General Manager, Civil Justice and Legal Services

Mr Ian Carnell, General Manager, Criminal Justice and Security

Mr Bill Campbell, First Assistant Secretary, Office of International Law

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Mr Richard Oliver, General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Ms Robyn Warner, Assistant Secretary, Criminal Law Branch

Ms Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Mr Craig Harris, Acting Assistant Secretary, National Law Enforcement Branch

Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch

Mr Richard Humphrey, Office of Legislative Drafting

Mr Noel Bugeia, Director, Legislative Services and Publication, Office of Legislative Drafting

Ms Philippa Horner, First Assistant Secretary, Native Title Division

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch

Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Aid Assistance

Ms Sue Pidgeon, Assistant Secretary, Family Law and Legal Aid Assistance

Ms Sandra Ellims, Assistant Secretary, Family Law and Legal Aid Assistance

Mr Iain Anderson, First Assistant Secretary, Office of Legal Services Coordination

Mr James Faulkner, Assistant Secretary, Office of Legal Services

Mr Paul Griffiths, Assistant Secretary, Office of Legal Services Coordination

Mr Ed Tyrie, Director, Protective Security Coordination Centre
Mr Trevor Clement, Assistant Secretary, Policy and Services Branch
Mr David Templeman, Director-General, Emergency Management Australia
Mr Morrie Bradley, Director, Knowledge and Business Management, Emergency Management Australia

Royal Commission into the Building and Construction Industry

Mr Colin Thatcher, Secretary
Ms Sheila Butler, Director, Corporate Services

Royal Commission into the failure of HIF Insurance Group

Mr Richard St John, Secretary
Mr Graham Millar, Deputy Secretary

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr John Davies, Deputy Commissioner
Ms Audrey Fagan, Executive Director Protection
Mr Trevor Van Dam, Chief Operating Officer

Australian Crime Commission

Mr Phillip Bradley, Acting Chief Executive Officer
Mr Jon Hickman, National Director, Corporate Services

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer
Mr John Drury, Deputy Chief Executive Officer
Mr John Jeffery, Deputy Chief Executive Officer
Rear Admiral Max Hancock, Director-General, Coastwatch
Mr Tom Marshall, Deputy Director, Coastwatch
Mr John Hawksworth, National Director, Border Compliance and Enforcement
Mr Phil Burns, National Director, Cargo and Trade
Mr Alistair Cochrane, Chief Financial Officer
Ms Gail Batman, National Director, Border Intelligence and Passengers
Ms Sue Pitman, National Manager, Trade Measures
Mr Steve Holloway, National Manager, CMR Transition
Mr Jeff Buckpitt, National Manager, ICS Development

Australian Government Solicitor

Ms Rayne de Gruchy, Chief Executive Officer
Mr David Riggs, Chief Financial Officer

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen, Acting Director
Ms Liz Atkins, Deputy Director, Money Laundering Deterrence
Mr Alf Mazzitelli, Senior Manager, Corporate Resources

Australian Security Intelligence Organisation

Denis Richardson, Director-General
Robert Campbell, Acting First Assistant Director-General
Susanna Kiemann, Chief Financial Officer

CrimTrac

Mr Jonathan Mobbs, Chief Executive Officer

Mr Stewart Cross, Manager, Business Operations and Deputy CEO
Ms Nicole McLay, Director, Finance and Business Services

Family Court of Australia

Mr Richard Foster, Chief Executive Officer
Ms Jennifer Cooke, General Manager, Client Services
Ms Dianne Carlos, Chief Finance Officer

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer
Mr Gordon Foster, Executive Director, Corporate Services Branch

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar
Mr Lex Howard, Marshal

Human Rights and Equal Opportunity Commission

Ms Pru Goward, Sex Discrimination Commissioner
Dr William Jonas, Aboriginal and Torres Straight Islander Committee
Dr Sev Ozdowski, Human Rights Commissioner
Ms Dianna Temby, Executive Director
Ms Rocky Clifford, Director, Complaint Handling
Ms Susan Roberts, Director, Legal Services
Mr Stephen Duffield, Director, Human Rights Unit
Ms Robyn Ephgrave, Manager, Finance and Services

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive
Mr Peter Lowe, Executive Director

Office of Film and Literature Classification

Mr Des Clark, Director
Mr Paul Hunt, Acting Deputy Director
Mr Paul Tenison, Business Manager

Office of Parliamentary Counsel

Ms Hilary Penfold PSM, QC, First Parliamentary Counsel
Mr Peter Quiggin, Second Parliamentary Counsel
Ms Glenyce Collins, General Manager
Mr Tony Perkins, Executive Officer

Office of the Director of Public Prosecutions

Mr Damian Bugg QC, Director
Mr Graeme Delaney, Principal Adviser, Commercial Prosecutions and Policy
Mr John Thornton, Deputy Director, Legal and Practice Management

Office of the Privacy Commissioner

Mr Malcolm Crompton, Federal Privacy Commissioner
Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner
Ms Robyn Ephgrave, Manager, Finance and Services

CHAIR—The committee is resuming its consideration of additional estimates for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. The

committee will begin with the HIH royal commission and when that is completed it will consider outcomes 1 and 2 of the Immigration and Multicultural and Indigenous Affairs portfolio. Bearing in mind that budget estimates occur in May, the committee has agreed to the date of Wednesday, 19 March for the receipt of answers to questions taken on notice and additional information. Evidence given to the committee during these proceedings is protected by parliamentary privilege.

I remind everyone that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Officers should note that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind senators and officers 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 superior officers or to a minister.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and the Minister representing the Attorney-General, officers of the Attorney-General's Department and associated agencies. Minister, do you wish to make an opening statement this morning?

Senator Ellison—I have no opening statement.

CHAIR—Thank you.

[9.04 a.m.]

Attorney-General's Department

CHAIR—As I indicated before, we will begin with questions about the HIH royal commission. I welcome Mr St John and Mr Millar, and I will ask Senator Ludwig to begin with questions.

Senator LUDWIG—The matter that we have been following with the HIH royal commission includes, as I think you might recall, its expenditure and we have been seeking an update on the breakdown of matters that went to expenditure on employees, contractors and consultants. Have you second-guessed the line of questioning relating to that update on expenditure or will I detail the questions? You may have the information before you or you may wish to take the questions on notice, depending on the type of material that you have brought today.

Mr St John—We have an update of information that was sought in a previous question that I think might answer your question.

Senator LUDWIG—I will go through the matters, and if there are parts that you do not have, you can provide the committee with what you do have and take the balance on notice. We will do it by exception. In terms of expenditure, the areas that we requested from you dealt with employees, contractors, consultants, legal and audit expenses, document management, information technology, travel and motor vehicle expenses, security arrangements, communication, stationery and consumables or other suppliers to the HIH royal commission, office accommodation, residential accommodation and depreciation. The breakdown then went to how much money in total has been paid to or is on account for Justice Owen to date. The areas that we were seeking from you related to salary allowances, including but not limited to living away from home and other travel allowance matters that go to accommodation, security measures, air fares and Comcars or, alternatively, taxi or motor vehicle hire. Do you want me to pause at that point?

Mr St John—The information I have responds to all of those categories, I believe, except perhaps for security.

Senator LUDWIG—In addition, we wanted to know how much money in total has been paid on behalf of each legal counsel to date. We wanted that information to be broken down into fees, living allowances, travel allowances, air fares, taxis and motor vehicle hire. There was a further area where we similarly asked the Australian Government Solicitor—and I think they may have pre-empted your advice on this—how much money you had paid the Australian Government Solicitor on account of dedicated services or collateral services.

Mr St John—Yes, Senator.

Senator LUDWIG—Do you have that document here or are you able to take that on notice and provide the information?

Mr St John—We have the documents available in the form of an earlier question, No. 12, updated to 31 January 2003, together with the fees paid to the law firms and the individual counsel, in the form we had earlier, up to 31 January.

Senator LUDWIG—There is an extension, isn't there?

Mr St John—An extension of five weeks was sought and granted. That extension takes the reporting date to 4 April this year.

Senator LUDWIG—Will we have an opportunity in May to see you again or will this be the last occasion? Is there a contract to provide that, once the reporting date has passed, you will continue to come back?

Mr St John—I will come back if required.

Senator LUDWIG—I think there is a standing invitation.

Mr St John—Thank you.

Senator LUDWIG—Minister, is it the case that, similar to the Cole royal commission, members of this commission will be able to come back even if they have finished their work and the reporting date is in April?

Senator Ellison—I cannot see any problem with that.

Senator LUDWIG—I will not hold you to that answer. It is an inquiry. Perhaps you can see whether that is the case.

Senator Ellison—I will take it on notice to make absolutely sure there is no problem. From where I sit at the moment, I cannot see any problem.

Senator LUDWIG—Thank you, Minister.

Mr Govey—I might add one thing. My understanding is that, once the commissions finish up, the department becomes responsible. So it is not as though the questions could not be asked. At that point, the department would become responsible for answering the questions and providing the information about the expenditure. That is not to say that Richard St John and Colin Thatcher could not be back in a contractual capacity if that were considered to be desirable.

Senator LUDWIG—We can certainly examine that. We will see what happens when the time comes. How much has been spent on media liaison? Is there a bill that you expect to pay in total in relation to the media component of the royal commission? This is a matter that we may not have referred to earlier: to date, how many times has the commissioner

communicated information to an agency under section 6P of the Royal Commissions Act and to which agency? Are you able to assist us with that?

Mr St John—Until 31 January the payments for media communications advice and services were \$215,300.

Senator LUDWIG—Are you in a position to update the table that you provided earlier?

Mr St John—Yes, we are.

Senator LUDWIG—We will organise someone—

CHAIR—No, it is okay; it is under control.

Senator LUDWIG—So you will undertake to examine the questions I have asked and compare them with the material you are now producing. If there are any areas that you have not covered in that table, I take it you will undertake to provide them on notice to the committee?

Mr St John—Yes.

Senator LUDWIG—Thank you. I have another, more general matter in respect of the royal commission. Does it employ liaison staff or seconded officers from the Attorney-General's or other departments to liaise with the Commonwealth government? How is the relationship between the royal commission and the government dealt with?

Mr St John—We do not employ staff for that purpose. The staff assisting the commission include, at the present time, I think, two ongoing public servants—apart from some on short-term non-ongoing contracts who are not employed in that capacity. Communications as required would be conducted by me or others in terms of relationships on resourcing and other matters.

Senator LUDWIG—In relation to how that occurs, do you have meetings with the Commonwealth government and are they minuted about issues that you need to have addressed?

Mr St John—There is no formal process of meetings. It is as required.

Senator LUDWIG—What would be the nature of the 'as required' request? Is it a telephone conversation, a print document or an email?

Mr St John—It could be any of those.

Senator LUDWIG—What would be the nature of those documents?

Mr St John—They include matters such as accounting for our resourcing as well as, of course, the requests that have taken place on two occasions for extensions of the reporting period in terms of providing material in support of those requests.

Senator LUDWIG—Who would you speak to?

Mr St John—Communications with officers in the Department of the Prime Minister and Cabinet and the Attorney-General's Department would be the most frequent. Earlier on there were communications with the Department of Finance and Administration when they were responsible for the housekeeping aspects of royal commissions.

Senator LUDWIG—Who would those officers be—anyone from Treasury?

Mr St John—There has been some informal discussion regarding future policy aspects but there have been no formal meetings with Treasury, and I cannot recall any meetings with other departments at this stage.

Senator LUDWIG—Who was involved from Treasury?

Mr St John—I have had discussion with officers in the markets area—Mr Murphy and Mr Ray are two of the senior people.

Senator LUDWIG—What would be the nature of those conversations?

Mr St John—They were fairly general discussions about what we call the future policy directions. They were with regard to areas of interest and in relation to other ongoing initiatives such as CLERP 9 and other matters that have been announced. It was very much just an information exchange, touching base.

Senator LUDWIG—Who are Mr Murphy and Mr Ray? Do you know what their positions are within Treasury?

Mr St John—I know where they sit. I am not sure of their formal descriptions; they are senior officers in those policy areas.

Senator LUDWIG—Which policy areas are they?

Mr St John—I think it is called the financial markets area—the area that includes securities, financial markets and services. As well as inquiring into the past, the commission is required to offer recommendations in terms of possible changes in future regulatory or legislative arrangements in the areas of regulatory corporate governance.

Senator LUDWIG—Did you have formal meetings with those officers and were minutes taken?

Mr St John—They were not formal meetings. There may have been some notes of areas of interest.

Senator LUDWIG—Shouldn't that have occurred via public submissions rather than private discourse between you and the policy people? None of that would be on the public record, would it?

Mr St John—We have had a formal submission, which is on the public record, as we have had for a number of other parties. In most cases, perhaps not all, we have also had discussions of a similar kind with people who have made those submissions. The purpose of those discussions was to clarify issues, to make sure that we are informed of other matters that are on the record that impinge on the areas we are looking at, as well as clarifying any matters in the submissions.

Senator LUDWIG—Why would there be a need for private discussions?

Mr St John—We have had those discussions with a range of industry and professional groups where it has seemed useful. Sometimes it was to allow people to elaborate on submissions but, in the case of the Treasury, it was more to canvas and identify areas of possible interest.

Senator LUDWIG—What areas of possible interest?

Mr St John—Mr Millar reminds me that the commissioner is on the public record saying that we have had discussions of this kind.

Senator LUDWIG—Does Justice Owen name the individuals in Treasury that he has had discussions with?

Mr St John—I do not think they have been named. It was indicated that discussions have taken place both through the formal submissions and through less formal discussions with people with a view to elucidating issues and clarifying them. The commissioner will then

decide which areas the commission can usefully offer views on and he will then form those views. That process is very much a live process.

Senator LUDWIG—Could you identify the page or transcript number in regard to those matters that Justice Owen spoke of?

Mr St John—I could not now, but I could provide that information on notice. My memory is that in fairly recent weeks, towards the end of the hearings, Justice Owen referred to the process that is under way, including informal discussions.

Senator LUDWIG—Were there any discussions with any ministerial staff by you in relation to Treasury or any other departments?

Mr St John—I do not believe there has been; not on my part.

Senator LUDWIG—On the part of anybody you know?

Mr St John—Not that I can recall, Senator.

Senator LUDWIG—Can you be clear about that—no or yes?

Mr St John—No discussion in terms of the policy areas you are talking about and no discussion that I am aware of.

Senator LUDWIG—Could we have a look at whether there are documents or letters that you have sent that form part of private discussions and that are not on the public record? If you have those, can they be made available to the committee? They may include emails or the like to various individuals. What were the content and the nature of them? Is that possible? I am sure it is possible.

Mr St John—They all go to the internal working and manner in which the commissioner carries out the inquiry. They are normally matters privy to the commission. Having said that, a very large amount of material is on the record about the commission's inquiry and the way it is carried out. Our web site has a huge amount of information about the inquiry.

Senator LUDWIG—There was regular contact then, wasn't there? That is the picture you are painting: regular telephone contact or regular communication with various departments, including Treasury and—

Mr St John—I would not say regular; I would say intermittent. The occasions have largely been around the budgetary or extension type periods. We go for quite long periods without any contact. Then, around the gathering of information about legal expenses and so on, there would be a certain amount of checking of information between the relevant agencies.

Senator LUDWIG—But the discussions did go to issues before the royal commission, didn't they?

Mr St John—Discussions have not gone to issues relating to the inquiry into the past except to the extent that there was information sought. If information was sought to inform the inquiry, there would be discussion. Putting that to one side, the other inquiries would all be resource administrative related, relating to contracts, matters within our authority and so on. Matters about the further treatment of our accommodation, our premises, our resources and when we wind up were discussed. Other than that, there were a few discussions that touched on the future policy and that related to the submissions that have been put to us, which are largely to provide the background or context in which we are looking to identify possible further recommendations.

If that is a bit general I can give an example. In the last year or more there has been a lot of attention given to issues relating to audits, auditors and audit independence. There have been

inquiries, recommendations and proposals put afoot in that area. To this extent the royal commission might have considered whether there is anything that it would want to add in those areas in which it sought to inform itself as to the evolving shape of things. Attention was given to the existing inquiries, to what has already been said and what has been gathered, rather than proceeding in ignorance of other inquiries, reports and proposals that have become public.

Senator LUDWIG—Did you discuss any issues relating to the causes of the HIH collapse?

Mr St John—No, the meetings have not addressed those issues in any way.

Senator LUDWIG—So they did not cover any issues regarding the past collapse?

Mr St John—No. The issues regarding the past collapse are the subject of what I call the inquiry. They have been conducted in a very transparent and public form, culminating in the last public phase, which was the making of closing submissions both by counsel assisting the commission and by counsel representing parties. That phase has now ended and any conclusions, findings or recommendations regarding what happened in the past are very much matters for Justice Owen at this stage.

Senator LUDWIG—I noticed an article in the *Financial Review* this morning headed ‘HIH inquiry: was Costello warned?’ by Andrew Main, which then stated:

The HIH Royal Commission is investigating a report that federal Treasurer Peter Costello was among Treasury officials warned about troubles at HIH Insurance in early 2000.

Is that proceeding? I thought that period was now finished. Have you had an extension for further investigation?

Mr St John—I have not seen the report this morning but there have been some reports to that effect in recent times. In the course of its inquiry the commission has looked into questions of ministerial and regulatory oversight, following some reports along those lines. Evidence has already been given in the inquiry about several instances in which, following receipt by government of information about HIH from industry or other sources, matters were raised with the regulator. That has already been covered. Following those reports, we have made further inquiries regarding those matters to see whether there is anything more beyond the matters we have already looked at. Those matters are not concluded.

Senator LUDWIG—In relation to the calling of witnesses, APRA is the regulatory authority and Minister Hockey was the relevant officer. Why wouldn’t he have been called to explain what he knew about the issue? It seems odd that we have the press making connections and the royal commission apparently has not looked at them.

Mr St John—The royal commission has addressed the question of government oversight. It has required extensive documentation and has spoken to many people. It has pursued issues and, where those assisting the commission from the record that has been uncovered have seen a need, they have pursued further statements or, where required, have taken evidence. There has been very extensive evidence taken in these areas.

Senator LUDWIG—How many witnesses were called in total?

Mr St John—In the commission, through the inquiry into the past?

Senator LUDWIG—Yes.

Mr St John—Something like 128.

Senator LUDWIG—An extensive list.

Mr St John—It is an extensive list.

Senator LUDWIG—But in all of that, were any of Minister Hockey's staff called to give evidence?

Mr St John—No, I do not believe they were. Inquiries may have been made of people. Inquiries are made of a much larger number of people that are called those 'assisting'. The commission reviews any information or statements received and considers whether they are relevant to issues within the terms of reference to be pursued.

Senator LUDWIG—Were any Commonwealth or public service officers called, of the 138?

Mr St John—The answer is yes.

Senator LUDWIG—Perhaps you could have a look at that and see if you can explain to the committee or provide a breakdown of the witnesses and whether they were Commonwealth officers or employees of the Commonwealth. But you are clear that Mr Hockey, Mr Costello, Mr Costello's staff or Mr Hockey's staff were not called?

Mr St John—They have not been called, no.

Senator LUDWIG—But you have had contact with Treasury about historical issues?

Mr St John—Yes, and through the lawyers representing the Commonwealth directly and through their lawyers there has been a good deal of contact. The commission has requested information it has wanted and has also approached individuals and spoken to them where it has seen a need.

Senator LUDWIG—If we go back a fraction, is there a witness list? I am not familiar with the complete workings of the royal commission, but is there available a witness list which is then broken down by name and occupation? You can do that for the committee, in any event. Are those who did not make it on the witness list—those whom statements were taken from—on a sublist that can be broken down similarly?

Mr St John—Yes. We have a list and we can break down the list at the moment. I think the list is on the public record. It will not necessarily indicate where they are from, but that can be done.

Senator LUDWIG—And you are positive that you never had any discussions with Mr Hockey, Mr Costello or their ministerial staff respectively?

Mr St John—I have not. On past matters, in terms of ministerial staff, at the legal end there may have been inquiries made of individuals in the course of that inquiry.

Senator LUDWIG—So you are saying that you have spoken to ministerial staff?

Mr St John—Inquiries have been made that—

Senator LUDWIG—I am not sure what you mean. Perhaps you could start again. The question was: have you spoken to Mr Hockey or Mr Costello or their respective ministerial staff?

Mr St John—There has not been contact with the ministers, as far as I am aware. Through the inquiry staff, there has been contact with at least one staff member or former staff member—there may be others. In the course of the inquiry, the team pursues information from a very large sweep of information, so to speak. That includes information both from the regulatory end—from the regulator—and also from the government end. The team then pursues matters that appear pertinent to the inquiry. As I say, a good number of matters—in

fact, those matters that those assisting saw as being of relevance and any possible significance—have been canvassed in the public proceeding.

Senator LUDWIG—Who was the ex-ministerial staffer that you referred to?

Mr St John—There were one or possibly two former officers of staff who were approached. Statements may have been taken from them. One, I am told, was Peter Cullen. Andrew Lumsden may have been approached. I think they were former staff members.

Senator LUDWIG—Whose?

Mr St John—Mr Hockey's, I believe.

Senator LUDWIG—What was the nature of the inquiries made to them or the information sought from them?

Mr St John—I am loath to go into matters of evidence as such, but I can say that in the evidence that has been given on the public record there are instances of inquiries being made from ministers' offices to APRA, the regulator, raising questions from the officer on behalf of the minister. Those matters and the responses that were given have been canvassed before the royal commission in public hearings.

Senator LUDWIG—Did their statements form part of the evidence considered by Justice Owen?

Mr St John—All the matters that have been put forward in the hearings and tended to him, both orally and in documents, are matters before him on the basis of which he will make his findings.

Senator LUDWIG—You mentioned the transcripts. Is there a page or folio number you can provide to the committee?

Mr St John—Certainly.

Senator LUDWIG—Thank you. Turning to APRA for a moment, when you read the *Financial Review* this morning and you look at the position that seems to be being put, isn't it the case that APRA, the Australian Prudential Regulatory Authority, reported to Minister Hockey and ultimately Minister Costello during the period of the HIH collapse? Doesn't it lead you to that conclusion?

Senator Ellison—I think that is an opinion, which is not appropriate to be asked of the witness. Certainly the officials can give evidence as to what has taken place and what the commission is doing, but for them to draw conclusions or give opinions has long been accepted as not the role of officials.

Senator LUDWIG—Perhaps I can rephrase it. Are you aware of whether counsel assisting explored why APRA was operating inadequately including during that environment when the relevant ministers were in charge of their portfolios?

Mr St John—Those matters have been canvassed extensively, including in evidence that was given by an expert retained or engaged by APRA itself who put in a report which became part of the evidence. The evidence before the inquiry, the submissions of counsel assisting the inquiry and also the submissions of those representing APRA canvass those issues of regulatory performance and responsibility in considerable detail. Those matters are very much ones before Justice Owen and await his conclusions and report.

Senator LUDWIG—Are you aware of whether the royal commission examined the history of the resourcing of APRA as part of that?

Mr St John—Questions of resourcing were in evidence and were discussed.

Senator LUDWIG—Were any of Mr Costello's advisers contacted by the commission?

Mr St John—I cannot answer in that detail. As I have mentioned, the inquiry people, our team, both directly and through the lawyers representing the Commonwealth, pursued many matters on questions that were asked of them. Other than those matters that are on the record, I am not in a position to say.

Senator LUDWIG—Perhaps you could have a look today and get back to the committee today.

Mr St John—I am not sure if I understand—

Senator LUDWIG—You could make inquiries.

Mr St John—Senator, if the question is: 'Were matters raised about resources?' my answer is yes, they have been dealt with in evidence. They are on the record.

Senator LUDWIG—What about matters outside of resources—was anything else dealt with that you are aware of? Perhaps you could ask.

Mr St John—My difficulty is that the question is broad. The whole range of issues relating to performance were covered, in terms of expertise, processes, resources and experience.

Senator LUDWIG—Let us zero in on Mr Costello's advisers then. Do you know whether any of those were contacted by the royal commission?

Mr St John—No, I do not.

Senator LUDWIG—Perhaps you could then make inquiries and find out and report back to the committee today. It is a simple inquiry.

Mr St John—Yes. Our inquiries of the Commonwealth I think would largely have been directed to the regulator itself in terms of its resources and experience.

Senator LUDWIG—So you will undertake to do that today? You can find out from your staff whether the royal commission—

Mr St John—I will take that on notice, Senator.

Senator LUDWIG—And you will get back today?

Senator Ellison—In the circumstances I think that it is always difficult because there may be something that prevents Mr St John abiding by that undertaking, and that sort of locks him in. We will take the matter on notice and try to get back to the committee as quickly as we can.

Senator LUDWIG—I appreciate that. I only say that it is a simple question, a simple inquiry, and it should not take too long.

CHAIR—Thank you, Minister. Mr St John, can you make an undertaking to come back to the committee as soon as possible, please?

Mr St John—I will come back to the committee as soon as I can, Madam Chair.

Senator LUDWIG—Did the Commonwealth provide documents to the royal commission? Is there a list of those documents? Do they have a folio number and then become exhibits which are on the public record? Or have documents been provided which form part of the overall royal commission workings?

Mr St John—Senator, the Commonwealth did provide information covering the regulators as well as the Canberra end. As with the information provided by other parties too, the

commission collected a huge amount of information and something like 1.6 million documents of that information have been put on the commission's electronic database as matters of current possible relevance. Those documents that council assisting the commission see as particularly relevant to the evidence taking were tendered—the formal process in the public hearings—and the ones that were tendered are referred to in the evidence which is on the public record or in the submissions. There are many documents that are still within the commission's records that are not on the public record, certainly at this stage. They are the documents that have not been regarded as relevant to pursuing the questions raised by the terms of reference.

Senator LUDWIG—Is it possible to provide all those documents that the Commonwealth has provided to the royal commission or by Minister Hockey's staff or by Mr Costello's staff?

Mr St John—Could I take that on notice, Senator? The documents will be identifiable and there may not be a list extant.

Senator LUDWIG—Is there a reason they are not normally made available in the sense that they are not categorised and made publicly available or a list of them at least put on—

Mr St John—I make it very clear there is no different treatment of any documents depending on their source. I am talking about the process that the inquiry team have followed with the information from any of the individual parties, the companies involved, the professional firms—any of the many parties before the commission. The requests tend to be broad and then those assisting the commission review and analyse the material and identify those records that are pertinent.

Senator LUDWIG—So you will be able then to provide a list of those documents. In addition, as part of that, when the Commonwealth provided those documents to you, were they provided on any undertaking or condition?

Mr St John—In some cases, as with other parties, documents that might be subject to claims of legal privilege or immunity of some sort would have been tagged. Normally the commission would receive the documents and then, if it wanted to use them, it would inform the party and, if it wanted to object, it could take any objection or go to a court if it wanted. But I do not believe that issue has come to a head, so to speak, in this case. There may have been documents, for reasons of whatever privilege, that have been identified.

Senator LUDWIG—I have two questions. Firstly, I wonder if, in the information you provide, you can tag or highlight them in similar way so we can identify those documents that were to be produced that might have had a condition or caveat put on them. Secondly, were any of those documents provided by the Commonwealth, whether you chose to use them or not, objected to and then, as a consequence, not used?

Mr St John—To the last part, the answer is no, that did not arise. Could I take that first question on notice in terms of the details of the process?

Senator LUDWIG—Yes. Was there a main officer you dealt with from the various departments in the production of those documents from the Commonwealth?

Mr St John—We dealt with it through the lawyers, the private firm, that on the record was representing the Commonwealth in the inquiry.

Senator LUDWIG—And that was?

Mr St John—Abbott Tout.

Senator LUDWIG—I know you answered no to the earlier part, but if I put it slightly differently, did the Commonwealth refuse to produce any documents? So it is a matter that

you would have gone back to and said, ‘Do you have A, B, C?’ and they have said, ‘Yes, but we are not go to produce it’?

Mr St John—The answer is no.

Senator LUDWIG—Are you satisfied that all of the documents from the Commonwealth that you requested were supplied—in other words, that all the documents you asked for were provided?

Mr St John—All of our requests were met.

Senator LUDWIG—Did the royal commission receive any requests from any organisations or persons for documents provided to the commission? Has anyone asked the commission or any organisations similar questions to the ones I am asking? Have they sought information from you?

Mr St John—I do not believe so. Parties, in the course of the inquiry, through their lawyers may do that. There is a process of interaction in terms of the inquiry process, with people asking to see documents that may bear on something that is said about them, so certainly there are requests of that kind that go on fairly regularly.

Senator LUDWIG—Perhaps you could take that on notice and ask whether or not there were any requests for documents by organisations or people to be produced by private individuals or private organisations from the royal commission.

Mr St John—We may have had requests from people looking for documents that are on the public record. We handle those. I am assuming that the question goes to documents that are not on the public record.

Senator LUDWIG—Yes, they have made a request for something they cannot find.

Mr St John—There may have been a request. We would like to take that question on notice.

Senator LUDWIG—How many of the documents produced by the Commonwealth made it onto the record?

Mr St John—I could not say here and now.

Senator LUDWIG—Perhaps you could take that on notice.

Mr St John—Yes.

Senator LUDWIG—That is in terms of making it onto the public record.

Mr St John—Yes.

Senator LUDWIG—I will go to the Financial Sector Advisory Council. Mr St John adverted earlier to the fact that he had not seen the article in the *Financial Review* today, so I am happy for him to be shown it, if that is possible.

CHAIR—Could we hand that to Mr St John now.

Senator LUDWIG—That article seems to follow on from an earlier article by the same journalist, Mr Andrew Main, on 17 January, when he reported in the *Financial Review* that the Financial Sector Advisory Council, the FSAC, did in fact raise the issue of HIH in 1999, well prior to the collapse. Has the royal commission examined this issue with the private sector members of the FSAC or the following news article that is now available?

Mr St John—I had seen earlier reports along similar lines. In response to suggestions about possible communication to government of concerns about HIH by the Financial Sector

Advisory Council, the commission has undertaken and is carrying out further inquiries. The results of those inquiries will be considered by those assisting the commission and will be brought to the commissioner's attention. If he considers it appropriate, further inquiries may be made. But with this matter, as with all others in the inquiry, any findings are yet to be made.

Senator LUDWIG—Is it the case, then, that the royal commission would follow the media coverage of activities and related issues that occurs in various papers such as the *Financial Review*? What would be the process by which that occurs—is there an officer that looks at these issues and brings them to the attention of the royal commissioner, or does he read them over his cup of tea in the morning?

Mr St John—We have our eyes open, but we also monitor media.

Senator LUDWIG—Has anyone from the FSAC been called?

Mr St John—I would rather not go into the detail of the inquiry. This inquiry is still live. All I would say is that the commission reacted as soon as it saw an initial report. It reacted in terms of looking to see if it was an indication of something relevant that goes beyond matters that had already been addressed in public evidence.

Senator LUDWIG—Can you say whether or not this issue has been raised with the ministers and/or their advisers or senior bureaucrats?

CHAIR—Senator Ludwig, it is my understanding of Mr St John's previous response that he indicated he was not able to go into the processes of the commission in that way. You accepted that response. Merely recasting your question does not necessarily mean you will get a different response.

Senator Ellison—It is opportune to remind the committee of what was said by counsel assisting the royal commission in relation to Minister Hockey, because we are talking about looking at this article that has been mentioned and about the line of questioning. I think it is only fair to put on the record that counsel assisting the royal commission stated:

“On the information available to the Commission, the relevant Minister was perfectly entitled to rely on what he was told in the briefing note and therefore in our submission, there is no basis for criticism of the conduct of the Commonwealth Minister in relation to the handling of the HIH matter, either then or at any later time in the sequence of events.”

“I've referred to the briefing note to the Commonwealth Minister. There was a briefing session of that Minister on 3 November 2000. It is our submission that the terms of the briefing note very likely had the effect of misleading the Minister into thinking that APRA were on top of the situation when in fact they weren't.”

APRA itself admitted that the Minister was misled:

“We accept that Mr Hockey was misled.”

I just think that should be placed on the record in light of what is being covered by the committee at this stage.

Senator LUDWIG—Thank you. In respect of the examination of the prudential regulation of the general insurance industry, are you confident that the royal commission has examined all the issues about APRA and its prudential regulation?

Mr St John—The commission assiduously addressed that, among other issues, before those issues were looked into closely, and there were several days of evidence taken on those issues. That part of the proceeding was able to be conducted with the benefit of some very detailed statements of witnesses—for example, the detailed statement from an expert who had

been engaged to look into the performance of the regulator. A good deal of the facts were not in contention. Those issues have been examined closely and, together with the other issues, are very much before Justice Owen.

Senator LUDWIG—Another issue: does the royal commission also examine relationships that may exist? I understand that it may be something you cannot comment on, but the Attorney-General, as I understand it, selects counsel assisting. Is that the way it works?

Mr St John—Counsel assisting are selected by the commissioner. The Attorney-General's officers helped in the process of selecting them, and the Attorney-General appoints them under a section of the act that gives them a certain standing in the proceedings, but it is a selection by the commission and a matter in which the commissioner took a very close interest.

Senator LUDWIG—Who would have suggested Mr Wayne Martin QC?

Mr St John—The commissioner would have, from his own knowledge as well as from other inquiries he would have made, together with advice from others assisting him.

Senator LUDWIG—Is there a process whereby someone would put their name before the commissioner?

Mr St John—Individuals may have done that when it was made public. The Attorney-General's Department at some stage indicated that appointments were being made. Some people may have put up their hands, but a careful selection process was undertaken by and under the direction of Justice Owen.

Senator Ellison—Mr Govey has a point to make. It is a fine point but I think the committee should be aware of it.

Mr Govey—I am not sure whether the point has been made, but after the recommendations are made by the royal commission there is a formal process of appointing counsel assisting the royal commission, and that is done under section 6FA, I think, of the Royal Commissions Act. That does not change the substance of what Mr St John has said, but I think it is important to note that formal role of the Attorney-General.

Senator LUDWIG—I appreciate that. In that process did the Attorney-General's staff suggest Mr Martin QC?

Mr St John—I am not aware of that.

Senator LUDWIG—Could you ask the—

Mr St John—I assume that Justice Owen had known Mr Martin, among others, as he practises in the judge's own jurisdiction.

Senator LUDWIG—Perhaps you could take it on notice and have a look at the staff within the commission and that process to see whether the Attorney-General or one of the staff or bureaucrats suggested Mr Martin. Are you aware of whether Mr Martin, counsel assisting the royal commission, had received any appointments from the Western Australian government?

Mr St John—I am not aware of that.

Senator LUDWIG—Are you aware of whether Mr Martin, counsel assisting the royal commission, had received any Commonwealth appointments from the Attorney-General?

Mr St John—I understand that he holds an office on the Administrative Review Council. I think he is a convenor of that body; I am not aware of any other appointment.

Senator LUDWIG—Are any of your staff aware? Perhaps you could take that on notice. Are any of your staff aware of any Commonwealth appointments?

Mr St John—I am not clear on the question.

CHAIR—Nor, Senator Ludwig, am I. What exactly are you asking Mr St John?

Senator LUDWIG—I am curious about the process of examining the issue of how Mr Martin's name came before the royal commission. I do not believe a name gets plucked out of the air or you get 4,900 barristers' names and you pick a list. There has to be a way of funnelling that to a point where people get selected. I do not know whether there was an advertisement and people put their hand up.

CHAIR—Your question is: by what process was Mr Martin QC appointed to the position? Mr St John, will you take that question on notice?

Mr St John—Yes.

CHAIR—Thank you.

Senator LUDWIG—In examining that issue, in the process itself was any examination made of Mr Martin QC's previous appointments or his background to establish whether he was the best candidate for the job? That would be a normal course if you were going to employ an employee in a sensitive or confidential position. Are you able to assist the committee with that?

Mr St John—Justice Owen had a very real interest in the selection of his senior counsel. Beyond that, I will take the question on notice.

Senator LUDWIG—Perhaps you could look at the issue of whether there were any examinations or questions in relation to Mr Martin to ensure that he was free of any conflicts of interest in his role in assisting the royal commission. Please take that on notice as well.

Mr St John—Yes.

Senator LUDWIG—That is all I have. Thank you for your time.

CHAIR—As there are no other questions in relation to the HIH royal commission, Mr St John and Mr Millar, thank you for assisting the committee this morning. Mr St John, you will be aware that you have taken a number of questions on notice this morning and have undertaken in a number of instances to respond to the committee as soon as you are able to do so, and we would appreciate your assistance with that.

[10.09 a.m.]

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

Consideration resumed from 10 February 2003.

In Attendance

Senator Ellison, Minister for Justice and Customs

Department of Immigration and Multicultural and Indigenous Affairs

Executive

Mr Bill Farmer, Secretary

Mr Ed Killesteyn, Deputy Secretary

Ms Philippa Godwin, Deputy Secretary

Outcome 1—Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people

Mr Abul Rizvi, First Assistant Secretary, Migration and Temporary Entry Division

Ms Arja Keski-Nummi, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Mr Chris Smith, Assistant Secretary, Migration Branch

Mr Peter Hughes, First Assistant Secretary, Refugee and Humanitarian Division

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Jo Baker, Acting Assistant Secretary, Humanitarian Branch

Mr Steve Davis, First Assistant Secretary, Unauthorised Arrivals and Detention Division

Ms Rosemary Greaves, Assistant Secretary, Detention Policy Branch

Ms Christine McPaul, Acting Assistant Secretary, Unauthorised Arrivals and Detention Services Branch

Mr Vince McMahon PSM, Executive Coordinator, Offshore Centre Management and Infrastructure Division

Ms Mary-Anne Ellis, Assistant Secretary, Detention Infrastructure Branch

Ms Yole Daniels, Assistant Secretary, Offshore Asylum Seeker Management Branch

Ms Lesley Daw, Acting Assistant Secretary, Detention Strategy Branch

Mr John Moorhouse, First Assistant Secretary, Border Control and Compliance Division

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

Ms Janette Haughton, Acting Assistant Secretary, Onshore Compliance and Integrity Support Branch

Mr Steven Larkin, Director, Intelligence Analysis Section

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

Mr John Eyers, Assistant Secretary, Legal Services and Litigation Branch

Outcome 2—A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Ms Jennifer Bryant, Senior Assistant Secretary, Settlement Branch

Mr David Doherty, Assistant Secretary, Citizenship and Language Services Branch

Dr Thu Nguyen-Hoan PSM, Assistant Secretary, Multicultural Affairs Branch

Outcome 3—Sound and well-coordinated policies, programs and decision-making processes in relation to Indigenous affairs and reconciliation

Mr Peter Vaughan, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Ms Dianne Hawgood, Executive Director, Indigenous Community Coordination Taskforce

Ms Michelle Patterson, Assistant Secretary, Indigenous Community Coordination Taskforce

Internal Products

Mr Jim O’Callaghan, Acting First Assistant Secretary, Corporate Governance Division

Ms Louise Gray, Chief Financial Officer, Resource Management Branch

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Mr Andrew Endrey, Acting Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

Aboriginal and Torres Strait Islander Commission

Mr Wayne Gibbons, Chief Executive Officer

Mr Bernie Yates, Executive Coordinator

Mr Mick Gooda, Executive Coordinator

Mr Brian Stacey, Manager, Land and Development Group

Mr Les Turner, Manager, Culture, Rights and Justice Group

Mr Peter Schnierer, Manager, Coordination and Review Policy Group

Mr Rod Alfredson, Director, Office of Evaluation and Audit

Mr Peter Taylor, National Policy Manager

Mr Paul Barrett, Chief Finance Officer

Mr John Kelly, Manager Network

Migration Agents Registration Authority

Andrew Cope, Director, Migration Agents Registration Authority; National Vice-President, MIA

Len Holt OAM, Director, Migration Agents Registration Authority; National Vice-President, MIA

John Young, Director, Migration Agents Registration Authority; Victorian State President, MIA

Ray Brown, Director, Migration Agents Registration Authority; Past President, MIA

Venie Ann Moser, Deputy Executive Officer, Migration Agents Registration Authority

Allisar Katrib, Professional Standards Officer, Migration Agents Registration Authority

CHAIR—The committee will now resume the examination of the proposed expenditure for the Immigration and Multicultural and Indigenous Affairs portfolio. Keeping in mind that we have budget estimates in May, the committee has, as I indicated yesterday, agreed to the date of Wednesday, 19 March, for receipt of answers to questions taken on notice and any additional information.

Evidence that is given to the committee during these proceedings is protected by parliamentary privilege. I remind everyone that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Officers should note that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its

committees unless the parliament has expressly provided otherwise. I also remind senators and officers that an officer of a department of the Commonwealth 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 superior officers or to a minister.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Farmer; your officers and those of associated agencies. Minister, do you wish to make an opening statement?

Senator Ellison—Madam Chair, I have no opening statement other than to say what a great pleasure it is to be appearing with the department of immigration at an estimates committee hearing once again.

CHAIR—Mr Farmer?

Mr Farmer—No, thank you.

[10.12 a.m.]

CHAIR—We will begin with questions on outcome 1—Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people. Are there any questions on output 1.1?

Senator KIRK—Madam Chair, we do not have questions on output 1.1. Can we start with questions on output 1.3—Enforcement of immigration law, and then go back to output 1.2, if that is acceptable to the committee?

CHAIR—Please proceed.

Senator KIRK—I begin by referring to a safety report on the Port Hedland detention centre dated October 2002—the one that arose out of an investigation under section 87 of the Workplace Relations Act. Can you advise the committee what the recommendations and findings of the report were, specifically in relation to fire safety equipment and preparedness at the Port Hedland centre.

Ms Ellis—Fire safety at Port Hedland has been under review by the department for quite a period of time. The department commissioned a comprehensive review of fire safety systems in mid-April 2001. The review identified a number of issues to be rectified and the need for improved maintenance. The results were referred to the service provider for action. Follow-up investigations acknowledged the efforts by the service provider to improve fire safety through repairs to existing systems and improved maintenance arrangements. One of the issues that was identified in the report was ongoing vandalism of fire detection systems that were hampering efforts to ensure that the fire safety systems were always properly maintained.

A detailed investigation into underground services, including fire hydrants, fire hose reels, potable water supplies, sewerage and stormwater systems, has been completed. The advice from specialist advisers is that the existing fire protection infrastructure appears adequate for the anticipated remaining life of the facility under its current operating conditions. There have been follow-up reviews since the initial report, and those reviews have established that the works and maintenance that were required to be undertaken have taken place.

Senator KIRK—When were the follow-up reviews conducted and by whom?

Ms Ellis—Fire Safety Science Pty Ltd reinspected the facility.

Senator KIRK—What was the date of that review by Fire Safety Science Pty Ltd?

Ms Ellis—I am sorry, I do not have the date for that but I will get it for you. The comprehensive investigation into the infrastructure elements was undertaken by Gutteridge Haskins and Davey Pty Ltd in April 2002.

Senator KIRK—What were the findings in April 2002?

Ms Ellis—The finding, in summary, was that the existing fire protection infrastructure appeared to be adequate for the anticipated remaining life of the facility.

Senator KIRK—Are you familiar with the report that I referred you to at the beginning, conducted under section 87 of the Workplace Relations Act? The copy I have was sent under covering letter from the Department of Employment and Workplace Relations to the Australian Industrial Relations Commission.

Ms Ellis—I have read the report; I do not have it in front of me at the moment. My recollection is that there were two aspects of infrastructure that were mentioned. One related to asbestos and the other related to maintenance issues of the fire safety systems. Those issues, and vandalism of smoke detection systems that I referred to earlier, are ongoing issues in terms of ensuring that the systems are working.

Senator KIRK—According to this report, DIMIA conducted a site visit in April 2002 to the Port Hedland site. Is that correct?

Ms Ellis—Certainly the Gutteridge Haskins and Davey report occurred in April 2002.

Senator KIRK—Perhaps you can comment on this: the report says that the inspection in April 2002 found that fire hose reels had been reinstated to correct positions, fire hydrants had been serviced and maintenance procedures were in place. Does that sound more or less right to you?

Ms Ellis—That is correct.

Senator KIRK—It goes on to say that, when the report or the investigation, which I understand was done in October 2002, was conducted, ACM personnel advised the author that the local fire brigade is a volunteer unit and this unit would not respond to a fire in the accommodation area, the gate from the maintenance yard to the accommodation area would restrict the entry of fire engines and the intention of the fire team is that the fire engine would pump water onto a fire from outside the fence. Detention centre officers advised the author that they were not confident with the operation of the fire panels, although they had to reset them, and that training requirements should be reviewed. Are you familiar with the concerns that were expressed in this report?

Ms Ellis—Some of those concerns are related to the provision of detention services. I have to hand over to my colleague to address those.

Mr Davis—We are aware of those issues, and ACM are aware of the recommendations and they are being actioned. We are aware of them and we are following them through with ACM.

Senator KIRK—This was as at October 2002. What follow-up was there of this report?

Ms McPaul—We have a team of monitors from my branch that have been up to Port Hedland since that time, as part of our ongoing contract monitoring process with ACM, to make sure that our expectations in terms of delivery of the immigration detention standards are being met. We have had an ongoing dialogue with ACM around these issues.

Senator KIRK—What has been the outcome of that dialogue?

Ms McPaul—ACM have undertaken to do what they can to rectify any deficiencies that we might have identified from time to time.

Senator KIRK—What have they done?

Ms McPaul—I would need to check the specific details of what they have done but my understanding is that they involve things like checking that their operational orders are adequate to address anything that we have identified that needs rectification, additional training for their staff and appropriate liaison with local emergency authorities.

Senator KIRK—What feedback have you received about the outcome of those tasks on their part?

Mr Davis—We would need to check the specifics but certainly we have had no indication from local authorities at Port Hedland that anything has gone awry or amiss in recent incidents when the fire authorities had to attend the centre and deal with matters there. Nothing has arisen or been brought to our attention to say that there were any concerns in the way ACM and the fire authorities cooperated in those processes. We will check the specifics for you but there is nothing of concern to us at the moment, from an operational perspective, in terms of how fire safety is operating at Port Hedland at the moment.

Senator KIRK—Are you familiar with a quote that ACM has dated 10 October—I am not sure who the quote is from—for supplying and installing new fire extinguishers, including locating some inside locked fire house reel cabinets to manage the theft of fire extinguishers; pressure test and recharge fire extinguishers; and fire blankets? Are you familiar with the quote for those items of expenditure?

Mr Davis—Sorry, was that a quote to ACM?

Senator KIRK—Yes, it was a quote provided for ACM.

Mr Davis—I am sorry, we are not aware of the details of that.

Senator KIRK—I am wondering whether or not that quote was acted upon; in other words, whether or not those items and those services were in fact supplied at Port Hedland.

Mr Davis—We would need to ask ACM or seek information from our service provider on that matter.

Senator KIRK—So you will take that on notice?

Mr Davis—Yes.

Senator KIRK—So you cannot say whether or not those flaws or defects in the fire systems were in fact addressed following 10 October?

Mr Davis—We would need to take it on notice to give you the specifics of the response of the service provider to the issues. But, as I stated, our understanding from working with ACM is that the matters have been addressed. We understand, as I said, that fire authorities did not raise any concerns in the context of recent incidents at Port Hedland. Nothing has arisen in recent monitoring of ACM's performance or contract service delivery at Port Hedland that raises any concerns for us in this particular area. We can take the specifics of the question on notice and seek more information, but our understanding is that ACM have been working to deal with the issues.

Senator KIRK—I will read a paragraph from this report, which sums up the findings of the investigator in relation to this. He says:

In my opinion ... the performance of the fire safety system in the detention environment should be re-evaluated for the detention environment by risk assessment, to ensure that the required objectives of the fire safety system are achieved.

I am wondering what the department or ACM did in response to this report upon receiving it. That is the bottom line of what I want to know: upon receiving it, what action was taken?

Mr Davis—In terms of the specifics of what we have done, as Ms McPaul outlined, our monitors monitor the performance of ACM at the centre, and we have been working with ACM with regard to implementation. In terms of implementing the particular operational aspects, we would need to seek that information from ACM. In a broader sense, our monitors have been looking at recent incidents across all centres, not just at Port Hedland, and at issues of fire safety and what we can learn from those incidents to improve our fire safety systems and processes across all the centres. That is something we are looking at from the investigations and monitoring going on at the moment. We are undertaking those investigations—for want of a better word—at all of the centres across Australia, not just at Port Hedland. We are seeking to learn the lessons from recent incidents to see whether there are other ways of improving. However, as I said, in this particular case we are not aware of any specifics from the fire authorities at Port Hedland that would have caused us to have concerns about their capacity to assist us in dealing with the fire incident we had across the new year period. We would have to get the details of exactly what response was made by the service provider and by us. We can get that detail to you.

Senator KIRK—Just coming back to this report—and perhaps I just have not understood this—did someone in your department see a copy of the report I am referring to?

Ms McPaul—Are you referring to the Comcare report?

Senator KIRK—Yes, the one prepared under section 87 of the Workplace Relations Act.

Ms McPaul—Yes, we have seen it.

Senator KIRK—I am trying to establish what your response was to it and what measures you put into place immediately. The sections I read to you contain quite strong words. They state that there is a need for a re-evaluation of the detention environment by risk assessment. Was a risk assessment made immediately or was some time taken? Are you still sitting on it? What happened immediately following receipt of this report?

Ms McPaul—I understand that the services provider has a process of cyclical review of their emergency procedures and contingency plans for each centre. I understand that those processes are working effectively. We sought copies of updated emergency plans from the services provider for all centres, including Port Hedland, in the later part of last year which we believe picked up on the elements that were raised here. However, as to the question of whether particular hydrants or nozzles were replaced, we would need to check the details at that level for you.

Senator KIRK—My question was not so much about specifics, it was about whether a risk assessment was conducted following receipt of this report. If you have received anything from ACM in relation to that, we would appreciate a copy of that advice.

Ms McPaul—Sure. It is my understanding that risk assessments are conducted by the services provider around these issues in the preparation of their emergency plans. We can certainly ask for a copy for you and see whether there is something we can provide.

Senator KIRK—I am trying to tie it specifically to a response following receipt of this report, so we are looking at some time in November as to whether any action was taken.

Ms McPaul—I understand that.

Mr Farmer—We will try to be helpful in the response, whether that is through a copy of a report or an indication of actions that have been taken—whichever is appropriate.

Senator KIRK—That is what I am after.

Senator BARTLETT—I presume we will cover offshore issues like Nauru later. I have a couple of quick questions in relation to a couple of people who were mentioned to me when I was at Woomera a week or two ago. These people were Iraqis who I gather have had a wait of around two years for a primary decision based on their first interview. I gather it had something to do with security issues. Could any more detail be provided on that? That length of time is obviously not desirable for a primary decision.

Mr Davis—The processing of people within our detention centres is dealt with under output 1.2, humanitarian. We do not have the relevant officer here at the moment, but perhaps we can return to that.

CHAIR—I would like to stay with output 1.3 at this stage.

Senator BARTLETT—With regard to the phone access into and out of detention centres, particularly after the fires et cetera, some complaints have been received that in various places people can get phone calls in but cannot phone out, or that general telephone communication has been dramatically restricted, still far more so than it was last year. Where is that going?

Senator Ellison—Senator, before the officers answer in detail, could I make a point. We hear statements about restrictions on phones and people's lack of access to phones, yet I read a newspaper report last week which said that the journalist had spoken to someone in Port Hedland who was complaining about lack of access to the phone. People overlook the fact that in general there is access to the phones, and in relation to a number of recent incidents it is quite clear that there has been collusion of some sort between people inside the centre and people outside. It is a reasonable proposition that that was facilitated by the provision of phone contact inside the centre. My point, in a nutshell, is that there are two sides to the access to phones issue. One side is that that access has been used by some people extremely inappropriately, I think, and with very deleterious effects on the stability and good order of the centre. That is a preliminary statement; it does not go to the question of appropriate amenities for detainees in the centres, which is where your question started. We are happy to answer that.

CHAIR—Minister, to follow on from what Senator Bartlett said: one of the points that I would be interested in having clarification on is whether, post the disturbances, the use of telephones was restricted, particularly in relation to single males in detention centres—whether or not those single males had been involved in the disturbances—and what steps are being taken to reinstate those services to those individuals who are not involved, as well as what time frame will be involved in that process.

Senator Ellison—Yes.

Mr Davis—Perhaps I can respond in the broad to both issues in terms of a brief outline of the incidents and our responses to them, and come to the issue of the telephones in particular. In terms of the incidents that have occurred, indeed there were some immediate issues around the access to telephones. It is true to say that, for those areas largely affected by fire or incident, telephones were unavailable shortly after those incidents or from that time. It is also true to say that, largely, parts of our detention centres which were not affected by incidents had no such restrictions on telephone or other issues imposed upon them, or restrictions in place. The family compounds at the Baxter centre, for example, had no disruption to their

telecommunications; nor did stage 2 and stage 3 of Villawood. Stage 3 is a single male—adult male—compound. The Maribyrnong and Perth centres did not have any disruption to telephone systems.

The area that was affected was largely the Woomera centre, where we lost both accommodation compounds in full. In the movement of detainees to new compounds, there were limitations on telephone access to those new compounds for a period. It has been restored to those compounds over the last few weeks. Indeed, subsequent to a telephone being restored in one of the compounds we had another incident at the Woomera centre with some escapes. Whether or not the telephone was part of that is not something I would seek to comment on, given that investigations are ongoing. In terms of the other centres, certainly there have been limitations on the adult male compounds at the Baxter centre. The systems, over the last week or so, have now been restored, with telecommunications in all compounds except one.

CHAIR—I understand that aspect of the process in terms of the physical provision of the service. I am concerned about the restriction of calls that may be made to, for example, HREOC, the Ombudsman or DIMIA and that calls outside of that are not able to be made.

Mr Davis—At no time have we restricted the access of any detainee to contact with HREOC, the Ombudsman or their legal representatives; they have been facilitated at all times.

CHAIR—No, I understand that. I am seeking information about access to the telephone being restricted for calls other than that—say, for example, to friends or to family.

Mr Davis—When I talk about the telephone restrictions across centres, that is what I am referring to—restrictions on, if you like, ringing anybody as opposed to HREOC, the Ombudsman or legal representatives. Those are the sorts of restrictions that have been placed on the adult male compounds at Baxter. There were some limitations at stage 1 of Villawood for a short period but they were restored within a week or so of the incidents at Villawood. At Woomera, as I said, the phones were restored there over the middle weeks of January. But in one compound, in particular, the phones have been turned off again for that compound.

Port Hedland is probably the centre where we have had the longest limitations on phone access. The difficulty we have had there is the capacity for the compounds—the different populations, if you like, within the centre—to be separated and the limitations on compound separation have meant that we have had to facilitate access for families and others not involved or not suspected to be involved in incidents to telephones in the DIMIA office. We have facilitated access for them to calls. We are just checking where we are at as of today with Port Hedland. There was a review being conducted yesterday of the Port Hedland centre to see whether we are at the point where we are going to reopen full access to telephones there. But we have not had confirmation as to whether or not we have done that.

CHAIR—So the policy in relation to adult males is to restrict access to calls—to allow calls to HREOC, the Ombudsman, DIMIA and so on, but not to allow adult males to make other calls to friends and family—notwithstanding the fact that they may not have been involved in any incidents?

Mr Davis—I think that is overstating the population we are talking about. The limitations have been put in place within compounds or within areas of our centres where we have had the capacity to deal with them separately and for those where incidents have occurred. So it has not been that all adult males have not had access; it is a situation whereby compound by compound we have made assessments as to the involvement or suspected involvement of

people in incidents and the restrictions on the use of telephones has been targeted on that basis.

CHAIR—I am waiting for some advice on that, so I look forward to getting the details in relation to the specific issue I have raised.

Senator BARTLETT—There are a couple of other issues to do with that general principle of people being able to have access to communication—whether it is by telephone, visitors or whatever. As I am sure you would know, all of us repeatedly are given information saying that this or that was refused, and it is always handy to get that clarified where possible. But equally—and this has probably always been the case, but certainly it is becoming more apparent—of importance are some of the links between supporters, the general community and the people inside in terms of the value of people having that regular contact with the outside world, whether it is by letter or phone calls from people who are just trying to keep them sane. One issue is—and I know you do not like the use of the term ‘incommunicado’ detention but in management detention or things like that—the restrictions placed around that in terms of visitors or other outside communications. Is that uniform across all the centres or is it dependent on each centre, and does it vary from time to time?

Ms Godwin—While the officers are conferring on the specifics, I will make a couple of general points about the issue you have raised. You are aware from our presentations at these committees and others over the last couple of years that we have put a huge amount of effort into improving the overall amenity of centres, including people’s access to facilities such as telephones and visits and so forth. It is something which we have paid very particular attention to. Our difficulty at the moment, and the reason that we have had to make various decisions and arrangements between centres and between parts of centres over the last couple of months, goes to a point Mr Farmer made in his introduction to this part of the hearing. Clearly, in some instances, people have been using access to those amenities to make arrangements or to talk amongst themselves about things that bring not only them but all of the detainees, the staff who work there and other visitors to the centre into potential or actual danger. That is something we have to pay very particular attention to. We have a duty of care to every single detainee, not just to those who may be intent on making trouble. We also have a responsibility to try to maintain the good order and security of the centres in the interests of all the detainees and of the staff who work within them. This is an area of particular focus for us, and one, as I say, where we have put a tremendous amount of effort to improve amenity over the last several years. The decisions that have been taken—and Mr Davis and Ms McPaul will give you some more details—have been taken purely in the interests of maintaining security and good order at the centres and protecting the safety of all of the detainees, consistent with our duty of care obligations.

Mr Davis—In answer to the specific question you asked about the management places we have within our centres, it is true that our service provider has a general approach to the management units, which means that people are put in those units because of some demonstrated behavioural issue associated with risk to themselves or to other detainees. The management approaches at specific centres have their own individual processes, but, generally speaking, the approach to people in the management unit is individual. There is no uniform ban on visitors for people in management units and so forth. It depends on the circumstances in which the individual is there. Any detainee who is placed in a management unit within a centre has an individual management plan immediately developed from the point of their arrival in the management unit. The focus of that plan is to facilitate as soon as possible the re-placement of that person back into the general compounds of the relevant centre in which they may be placed. While they are there—it depends on the purpose or

reason for the person's placement in the management unit—some may be restricted in terms of visitors. Others may have visitors or other amenity provided, depending on the individual circumstances. There is very much a case by case consideration of those issues by our service provider, with the focus being that the individuals spend a minimum period of time within such management units.

Senator BARTLETT—By way of example, an email allegation came to me this week about two people at Woomera. I will not go into names, but one is an Iranian who returned to Woomera from Glenside Hospital in Adelaide and has been in a management unit. Another person also suggested that they had not been allowed any contact other than with centre staff in a week. Is that length of time normal for prohibiting contact? Is it accurate, for that matter?

Mr Davis—We would need to check the details and provide information to you on that.

Senator BARTLETT—Finally, on the issue of telephone communications and phone cards—I have not been listening to every question, so I hope I am not doubling up on something that has already been asked—are official arrangements in place with firms to provide phone cards for detainees?

Ms McPaul—There are different arrangements in different centres depending on whether they have a Telstra set of payphones or payphones provided by other companies. Appropriate arrangements are put in place depending on which cards can be used on the particular set of phones.

Senator BARTLETT—I have had a report of someone trying to buy a PayTel phone card for use at Woomera. They were told that the government arrangement meant that they would only be sold for Woomera inside Woomera. They cannot be obtained elsewhere and they are priced at a rate that is somewhat higher than would seem normal.

Ms McPaul—I am not aware of that particular complaint. It is certainly something we can check for you and give you an answer on notice.

Senator BARTLETT—Perhaps you could just give us the details of the phone card arrangement for each centre and whether they are only available inside—

Ms McPaul—Sure.

Senator BARTLETT—and the pricing structure, because certainly one reasonably consistent complaint that is made—and these are by people outside—is that they are hard to get and grossly overpriced.

Ms McPaul—Particularly in relation to the PayTel phones? We will check that for you.

CHAIR—We will now return to Senator Kirk's questions.

Senator STEPHENS—Chair, can I ask a final question about Port Hedland?

CHAIR—I have a feeling it will not be the final question about Port Hedland. Call me prescient!

Senator STEPHENS—Mr Farmer, I presume that you have had an evaluation done of the incidents that occurred there during the Christmas-New Year period. Has that review and evaluation led to any changes in the fire and safety management of the centre since that time?

Mr Davis—A review of incidents that have occurred across the New Year period is still under way, so I do not have an answer at this point.

Senator STEPHENS—Perhaps you could take that on notice.

Mr Davis—Yes.

Senator KIRK—I notice that the minister made a statement on 3 December last year in relation to the expansion of the alternative detention trial. What progress, if any, has been made in expanding the alternative detention trial?

Mr Davis—We are in active discussion with relevant authorities and the local council in the Port Augusta area on the issues around establishing a residential housing project in conjunction with the Baxter centre. The process is at an early stage, so certainly we do not even have any identified sites or anything of that nature to consider at this point. We are taking forward the consultation processes, as the minister has asked us to do, with the local community—including a public meeting on 25 February—to discuss a range of matters including the housing project. At this stage, in conjunction with the Baxter centre, it is at a very early stage and I cannot give you any feel as to the size, the configuration or exactly what sort of housing stock or anything of that nature is either available or planned for a housing project. It is at a very early stage.

The Woomera housing project remains in place. Occupancy at the moment is around 15 individuals within a maximum capacity of 25. For the moment we are continuing to operate that RHP but we are seeking to do what we can to establish a residential housing project in conjunction with Baxter over the next little while.

Senator KIRK—What about the other centres? You mentioned Baxter and Woomera but what about Port Hedland and the others?

Mr Davis—The focus of our attention is on establishing a housing project in conjunction with the Baxter facility. There is no focus at the moment on the other centres.

Senator KIRK—The minister's statement is very broad in its range. He did not limit his comments to the Baxter area. Is it your understanding that it is intended that the women and children be moved out of Port Hedland as well?

Mr Farmer—I am not aware of any current consideration along those lines, Senator. We are focusing on Baxter. We have the capacity, of course, to move people around the centres depending upon their individual circumstances.

Senator KIRK—How many women and children remain in the Baxter centre at present?

Mr Davis—We will just get those figures for you.

Senator KIRK—Perhaps you can also tell me the numbers in Port Hedland.

Mr Davis—These figures are as at 31 January. At the Baxter centre we have a total of 231 detainees of which 33 are adult females, 27 are male minors and 17 are female minors. At the Port Hedland centre we have a total of 143 detainees of which there are nine adult females, 14 male minors and six female minors.

Ms Godwin—Senator, over the last several estimates we have been in the practice of providing a comprehensive set of tables that give this breakdown for all of the centres, if that would be helpful to you.

CHAIR—Could you get that for us again, Ms Godwin?

Ms Godwin—Yes.

Senator KIRK—That would be very helpful and it means we do not need to run through all the figures.

CHAIR—Can they be tabled?

Ms Godwin—I do not know whether we have a set at the moment. We can certainly get the information to the committee very quickly.

Senator KIRK—Coming back to Port Hedland, is it the case that there has not been any attempt to negotiate with the local community or the council in relation to setting up a similar alternative detention trial outside the centre?

Mr Davis—No discussions have been held.

Senator KIRK—Is there any suggestion that that will happen in Port Hedland or any of the other centres? As I said, the minister's statement is very broad. He says he has requested his department to develop further flexible detention arrangements to cater for detainees with special needs such as women and children. I am trying to determine how far this will go and when it will happen.

Ms Godwin—It is not a question of a decision not being taken to do anything else; because Baxter is now our largest centre with our largest population of women and children, that is our focus. It is also related to the configuration of the centres. I think the minister has made the point that if we can get something going at Baxter, that will assist in looking at the overall configuration in relation to Woomera, for example.

Senator KIRK—So you are suggesting that you might start with Baxter and attempt to achieve something there and then move on to other centres later?

Ms Godwin—I am saying that our focus at the moment is to try to get something going at Baxter as quickly as we can because that is where our particular population is at the moment.

Senator KIRK—So at present there are no plans to do anything about the women and children in Port Hedland?

Ms Godwin—There is no active consideration of that at the moment. Our focus is on getting it going at Baxter. If it were necessary for people to have access to something, as Mr Farmer said, we can move people between centres to give them access to a different range of services and facilities. So it would not preclude people who are currently at Port Hedland, but in terms of where we can put our effort and resources we have made a decision that the focus should be on getting something going at Baxter if we possibly can.

Senator KIRK—When is the focus likely to shift to Port Hedland? Will that occur when you complete the Baxter project?

Ms Godwin—At the moment that is our focus. It is a big project; there are a lot of negotiations, discussions and consultation with the community to be gone through.

Mr Farmer—Senator, I do not want to leave you with the impression that we will move our focus on to a particular project of the sort we have at Woomera in the case of Port Hedland. That would be misleading.

Senator KIRK—It seems that there are no real moves to do anything about Port Hedland at this stage in terms of women and children.

Mr Farmer—I would rather put it in the way that we already have: namely, that our focus is on Baxter and we have the capacity to use those facilities flexibly, depending on the circumstances of the individual detainee.

Senator KIRK—Has there been very much by way of movement of women and children from the Baxter centre to the Woomera alternative detention trial? You talked about this potential for movement of detainees from centre to centre.

Mr Davis—Since the Baxter centre was opened in September, I am not aware of any transfers from that centre to the Woomera residential housing project trial. It is possible but it is not something that has occurred. One of the key things is that, in establishing Baxter, we sought to establish a community type environment within each of the compound areas and so, in a sense, whether or not detainees wish to move to the housing project is an issue. There have been no transfers at this point but they are not ruled out.

Senator KIRK—You mentioned that the Woomera alternative detention trial has a capacity for 25—

Mr Davis—At maximum, yes.

Senator KIRK—and you say that presently there are 15 there, so that would suggest that there is capacity to move 10 people into the Woomera alternative detention trial?

Mr Davis—Not necessarily on a long-term basis. When we talk about a maximum of 25, usually that would be a short-term maximum figure. Operating at something less than that is desirable in a sense but, for short periods of time, it has the capacity to hold 25.

Ms Godwin—It depends a fair bit on the configuration of families because—I do not know if you have seen the facilities there—

Senator KIRK—I have.

Ms Godwin—the way the rooms are set up, it would be a happy accident if you had an exact match between the configuration of families and the maximum capacity of 25 because of not wanting to mix up different family groups.

Senator KIRK—Have you tried to bring about that happy accident, as you describe it, by approaching people in Baxter to see whether or not they would be prepared to go on a short-term basis to Woomera and live in alternative housing?

Mr Farmer—Subject to answering on the point of detail, I think that, for us, the energy has really gone into trying to establish something at Baxter so that the most appropriate ordinary detention facility is linked with a special facility for women and children. The minister has been moving for quite a few months in that direction. He first asked the South Australian government for cooperation in that matter quite some time before his statement in parliament. The state government perfectly appropriately talked about a quite extensive process of consultation, and that is what we are going through. The minister has said that he is minded to close Woomera when we have a facility at Baxter that matches the women's and children's facility at Woomera. I think we made that point to the committee at our last hearing. That is where our energy is going—to focus on the future, which is at Baxter.

Senator KIRK—I understand that. I just wondered whether or not the option had been made available to the women and children in Baxter, given that there is this capacity at present in the Woomera alternative detention trial.

Mr Davis—It is probably true to say that we turned our minds to looking at who may be eligible for a housing project, but I do not believe any formal offers have been made to people since they have been at Baxter, which only opened in September. We have not precluded people at Baxter from participating in the Woomera project but I do not believe we have made any formal offers at this stage to people in Baxter.

Senator KIRK—Do the figures that you were going to provide us with have the breakdown of the details of children detained in all of the centres across Australia and also on Nauru and Manus?

Ms Godwin—Our tables cover Australian detention centres, not the offshore processing centres of Manus and Nauru.

Mr McMahan—We will take that on notice.

Senator KIRK—Yes. It would be good if you could take that on notice.

Ms Godwin—As for the other part of your question, yes, the tables that we will give you for the Australian detention centres give a breakdown for every centre: adult male, adult female; minor male, minor female.

Senator KIRK—That is what I am after. Thank you.

Mr McMahan—People are not detained under Australian immigration law on Nauru and Manus, so we are simply providing the number of children, if that is what you want, who are being processed on Manus and Nauru.

Senator KIRK—That is what I want to know.

CHAIR—That would be as a component of a full breakdown of the people on Manus and Nauru?

Mr McMahan—Yes, we can provide that.

CHAIR—Thank you. Otherwise we will have to come back and ask again.

Senator ALLISON—I would like to go back to the question about telephones. Why are detainees not entitled to call 1800 or free-call numbers?

Ms Godwin—We will have to take that on notice.

Senator ALLISON—On Maribyrnong detention centre, I raised at the last estimates session the question of visitors, including lawyers, not being permitted to take in their own writing equipment and documentation. Now I understand that pens and paper are provided to visitors if they wish. Can you explain the rationale behind that? Why is it that you cannot take your own writing pad and you cannot take notes if you are a lawyer talking with detainees? Why can't you have those kinds of notes with you?

Ms McPaul—I understand that it is an operational decision that is taken at the centre at the time as to whether certain items could be taken in with visitors. If you have something in particular, or a particular instance, that you would like us to comment on, we can certainly see if there is—

Senator ALLISON—What do you mean by 'operational'? What is that code for?

Ms McPaul—There may be any number of things happening in a centre on a given day.

Senator ALLISON—No, it is not a given day; it is a rule that no-one is entitled to take in documentation, notes, their own notepaper or their own pen. If they wish to have something to write on, they have to use what is given to them when they come in. It is a rule. It is not operational, it is not day to day, it is the rule, and I wonder what the rationale for it is.

Mr Farmer—I would like to check the facts. I am not aware—

Senator ALLISON—I raised this matter at the last estimates and I was assured that you would check the facts then. I have checked the facts: this is the rule and I want to know why.

Ms Godwin—I do not think this specific question was raised. The question, I think, was whether people could take in pens. I think we have provided an answer but I do not have it in front of me. If you have further information, we will again check it.

Senator ALLISON—My further information is that that is the rule: you cannot take in any documentation or material to detainees and, if you do, it is opened and treated like mail before it is handed over. I wonder why this kind of security is necessary. Is it not the case in other centres too? What are the rules at Woomera, Baxter or Villawood?

Ms Godwin—We will need to take that on notice, particularly the question on the comparison with the other centres. The issue, though, is that all centres have restrictions on certain things that can be taken in, for reasons of security and good order. Mail, of course, is able to be sent to detainees, but the general practice—we would have to check centre by centre—is that the detainee is invited to open the mail in the presence of an officer in case there is anything in it that is restricted. That is a general comment.

Senator ALLISON—What would be an example of a restricted item in terms of documentation? What are detainees not allowed to receive in Maribyrnong?

Ms Godwin—It is not so much documentation, as I understand it. It is the other things that might be in it.

Senator ALLISON—So why is it that a visitor cannot just hand over a document when it is pretty obvious it does not conceal a gun or a knife or anything else? It is quite difficult, I would have thought, for a piece of paper—

Ms Godwin—I have already said we will need to take it on notice to tell you the rationale for that. Clearly, documentation of all sorts goes in and out of the centre regularly. If there are certain restrictions at Maribyrnong, we will check what those restrictions are and what the purpose for them is.

Senator ALLISON—Would you check them for the other centres as well.

Ms Godwin—Sure.

Senator ALLISON—That is so that we can be clear about what the reason behind it is, and how common it is. There is still, as I understand it, a problem with visitors at Maribyrnong—this may be the case in other centres, but Maribyrnong is the one I know of—where the rule was changed so that detainees would receive family visitors. That was aimed at keeping the numbers down to 50 in the visitors centre, which is about the capacity; everybody agrees on that. But this means that detainees without family cannot, effectively, receive visits from non-family members, which restricts enormously the support groups that are set up to visit, and that frequently there are far fewer than 50 in the visitors area but there is not the next stage, if you like, of going to visitors who are not connected to family. Can you please indicate what is happening and why this is the case.

Ms McPaul—It is my understanding that each visitor is able to nominate a detainee that they may wish to visit. As you know, the configuration of the visits area has some limitations on it, and it is my understanding that each detainee is able to nominate up to four visitors per session to be there. But, of course, it is subject to the number of other visitors that might wish to attend on that particular day.

Senator ALLISON—So if there are far fewer than 50 in the visiting area, can you think of any reason why people who just want to come and visit detainees, who may not even know the name of any specific one, are not entitled to do so?

Mr Davis—Certainly visitor visits are for individuals in the sense that detainees have visitors for them as individuals. It is not open to us to allow access for groups who are not visiting specific detainees. Indeed, the detainees themselves need to indicate their willingness to meet with the relevant visitor who may be seeking to meet with them. So it is not a

situation whereby anybody can simply visit detainees in the broad. The visiting arrangements are for detainees as individuals.

Senator ALLISON—Are there similar arrangements in Baxter and Villawood?

Mr Davis—All centres have that general approach.

Senator ALLISON—So the same rules apply to Maribyrnong as elsewhere; is that correct?

Mr Davis—In terms of visiting individual detainees, what I just said is true. Each centre, depending on the configuration, the way the visits area operates and its size, the flow of people through the screening process in and out of the centre for visitors, whether there is a dedicated visitors area et cetera and how that is configured all dictate the centre by centre rules, if you like, around the numbers of visitors and so forth. But, generally speaking, if a visitor wants to visit a specific detainee and that specific detainee wishes to speak with that visitor, to the extent that the local rules may limit numbers or other things, that is the arrangement.

Senator ALLISON—So if it were the case that a visitor named a detainee, the detainee was willing to meet with them and there was space in the centre, regardless of the relationship between the visitor and the detainee—that is, family—you would expect that that person would be able to visit and speak with the person in the visitors centre?

Mr Davis—Generally, if the detainee wished to speak with them, yes. I would be surprised to find that—

Senator ALLISON—You say ‘generally’. What might be the exceptions?

Mr Farmer—If there were a particular operational reason on the day. For example, if we had notification of a demonstration or something like that or if there were some disturbance in the centre, then it could be that sort of operational reason.

Senator ALLISON—But under those circumstances you would close down visiting, as I understand it.

Mr Farmer—That might very well be the case.

Senator ALLISON—There are no other circumstances where this might be denied?

Mr Davis—That would generally be in the area of security if an issue arose, I would have thought.

Senator ALLISON—So visitors could be assured that, provided there is no demonstration on, provided there is space in the centre and provided the detainee is willing, they should be entitled to meet with that detainee. Is that the case?

Mr Farmer—Yes. You are asking me for the what if’, and another what if—

Senator ALLISON—No, I am asking you for the general rules of operation.

Mr Farmer—And we have given you that, Senator, but the what ifs in terms of the circumstances in which there might be an exception to the general rule could include also, for example, if a group of 30 people asked to see the one detainee. Depending on numbers, that might be an issue.

Senator ALLISON—Okay. Perhaps you will let me know if you discover other reasons why this would not be applicable. Could we perhaps have an understanding of the circumstances in which detainees in the various centres are strip searched?

Mr Davis—There are very specific legislative provisions around the authorisation and undertaking of strip searches. It would be in the circumstances whereby there was a reasonable suspicion of an implement or contraband or something compromising the good order and safety of the centre or the individual that a strip search may be undertaken. It is a measure of last resort, in a sense, if I can phrase it that way. Certainly it is not authorised or undertaken lightly.

Senator ALLISON—How many strip searches have been authorised so far, and at what centres?

Mr Davis—My understanding—and I would need to confirm this—is seven across the recent period, but I would have to double check the exact figures.

Senator ALLISON—Only seven detainees have been—

Mr Davis—Sorry, can I clarify that: perhaps there were seven occasions, as opposed to seven individuals. Some of the recent strip searches that were undertaken across the new year period were of groups and, when giving you the figure of seven, only six of those were conducted in recent times. The first strip search was conducted sometime last year and was not related to recent incidents—if that is where you are heading with the question.

Senator ALLISON—So how many people were part of these seven occasions? What were the occasions? What were the circumstances around them?

Ms Greaves—Under the legislation we are required to table a statement within 15 sitting days of the end of the six-month period from 31 December, so we will shortly be tabling a statement on strip searches that have occurred.

Senator ALLISON—But you can't tell the committee in the meantime what these occasions were and how many were involved?

Ms Greaves—We can certainly give you some further information.

Mr Davis—There were six recent strip searches conducted across the new year period or after the new year period. Four of those were at the Baxter IDF, one at Woomera and one at Villawood. At the Baxter IDF three of those were strip searches of groups of detainees and one was of an individual. At Woomera it was a group of detainees, and at Villawood it was, again, a group of detainees.

Senator ALLISON—When you say a 'group', how many people typically are in the group? Is it the entire population?

Mr Davis—The sizes vary. Perhaps I can briefly outline the circumstances of each of these searches. The three group strip searches of detainees at the Baxter IDF were all in the circumstances of moving groups of adult male detainees from compound to compound. In all three the adult males were coming from compounds where other search processes had revealed contraband of the nature of matches, cigarette lighters and other things that may have led to further fire incidences. The reasonable suspicion that our service provider had was that those detainees would take such contraband from the compound that they were in to the 'clean' compound, which had already been comprehensively searched before the detainees moved into it. Indeed, detainees were moved and searched as part of those processes. In those three situations with the groups in Baxter, all detainees who were moved into the new clean compound were searched because of the suspicions of the service provider, and that was appropriately authorised by us.

Senator ALLISON—How many contraband items were found in those searches?

Mr Davis—It varied across the different searches. The sorts of things found in searches generally include things like scissors, medication, keys and cigarette lighters. In one case a sum of money was also found concealed upon a detainee, which was immediately put into his property store in the centre. So, a range of items were found.

Senator ALLISON—In no cases have women been strip searched?

Mr Davis—In no cases have women and minors been strip searched—no males under 18 and no females.

Senator ALLISON—Across the board?

Mr Davis—Across the board.

Senator ALLISON—For groups, the authorisation is for the whole group and not for individuals?

Mr Davis—In each case the authorisation was for the whole group. The requests were authorised by the acting secretary at the time. Within that authorisation, the individuals who were to be strip searched were named in the request. Therefore, in authorising the group, it was authorising a group of individuals.

Senator ALLISON—So you would be surprised if someone said that there were two boys who were strip searched a number of times because the guards hated them?

Mr Davis—I would be very surprised.

Senator ALLISON—What sort of surveillance is there of the strip searching arrangements? Is DIMIA there for them? What measures are in place to make sure that this kind of 'guards hate them' stuff does not happen?

Mr Killesteyn—At the time of these particular incidents over Christmas—this is the background to the searches, both the strip searches and the general searches of the compounds—I was the approving officer for the strip searches. In each case, where a proposition was put to me by ACM, all of the individuals who were to be strip searched were identified by name and a table was provided of the identity of the person, their sex and, of course, their date of birth. As Mr Davies has already stated, we were satisfied—and I was satisfied, as the approving officer—that there were no minors and that all of the provisions under which a strip search takes place, pursuant to the relevant legislation, were fulfilled by the service provider.

Senator ALLISON—So strip searching always takes place in a specific place at each detention centre?

Ms Greaves—Yes, it has to be in a private room.

Senator ALLISON—And there is segregation of the genders—no women would observe a male strip searching exercise; is that correct?

Ms Greaves—The arrangements are that people will only be strip searched by persons of the same gender, unless the detainees themselves request that some other person of a different gender be present. That is the only reason that someone of another gender would be present.

Mr Davis—Our understanding is that that did not occur in any of these searches that were conducted.

Mr Farmer—Senator, you mentioned an allegation and I would not like to leave that on the record. If you have details and would like us to check that, we would be very happy to do so.

Senator ALLISON—I will attempt to give you dates and places. I think it has come to me about third hand. It is very difficult to have first-hand knowledge.

Mr Farmer—You asked whether we would be surprised to hear that. My colleague answered yes. In some ways I would answer no because the capacity for ill-founded, third-hand allegations to be made in this area is very high. My colleagues, who work extremely hard under quite difficult circumstances to administer the laws of the Commonwealth, are I think quite unfairly subject to this sort of innuendo and slur. So I am very happy—

Senator ALLISON—We do not know, Mr Farmer, that it is a slur until it is followed through.

Mr Farmer—I am talking in general terms, Senator. I am very happy to stand by my words. I am very concerned that if there are allegations of any sort we look into them. If there is something wrong with the system, we will do our very best to fix it. If there is not something wrong with the system, we are very happy to clear the record.

Senator ALLISON—I think this is probably clear from your answers, but the other suggestion that has been made is that detainees moving from one part of a centre to another—for example, going to make a phone call—need to go through a strip searching process. Would that ever be the case?

Mr Davis—No, Senator.

Senator KIRK—I want to ask a few questions about an incident that occurred in the Woomera detention centre on 19 December 2001. I refer to an assault by three ACM guards on Zihar Sayed, an unaccompanied minor—a 13-year-old Afghani boy. Can you provide the committee with an update as to the charges against the three ACM officers, how far they this has progressed and whether or not they have been brought before a court.

Senator Ellison—Madam Chair, this may be a fine point but it is important for the people concerned: it is an alleged assault at this stage; they have not been convicted.

Senator KIRK—I beg your pardon; an alleged assault.

CHAIR—I did note in passing that the use of that word may have been helpful.

Senator KIRK—I would still like some information.

Mr Davis—Our understanding—and we cannot go too far for legal reasons; I think we need to be constrained in what we say—is that two of the charges against the three officers have been withdrawn due to insufficient evidence. The third charge is being pursued by the relevant authorities. That is about all the detail we have on the matter.

Senator KIRK—So you are unaware of whether, in relation to the third person, that matter has come before the court yet?

Mr Davis—Our understanding is that it has not yet come before the courts.

Senator KIRK—What about the three individuals concerned? Are they still working in detention centres and still employed by ACM?

Mr Davis—Our understanding is that none of the individuals are working in detention centres.

Senator KIRK—None of the three?

Mr Davis—That is our understanding.

Senator KIRK—Is that because their employment was terminated or because they resigned?

Mr Davis—We do not have any details as to that.

Senator KIRK—In relation to this sort of incident, what measures, if any, have been taken to prevent this kind of activity occurring again in the centre?

CHAIR—Again, alleged activity, Senator.

Senator KIRK—Alleged activity occurring again.

Mr Farmer—We have a very broad ranging set of guidelines and instructions for the running of detention centres, and under those guidelines there are quite clear arrangements for the reporting of and reporting on incidents. Those general arrangements, I believe, would be adequate for the purposes of identifying this sort of activity, were it to happen.

Senator KIRK—I might move on to another alleged sexual assault of a detainee, this time at the Curtin detention centre. I am referring to the alleged assault on an Iranian woman some six months ago, I think—about July last year. Are you familiar with that?

Ms McPaul—We are aware—

Senator KIRK—Sorry, I cannot hear you.

CHAIR—That microphone did not seem to be operative at all then.

Ms McPaul—I am just saying that we are aware, Senator.

Senator KIRK—Aware of the incident?

Ms McPaul—Of the allegation, yes.

Senator KIRK—Perhaps you can tell me the status of this matter.

Ms McPaul—As I understand it, the matter was referred to the relevant authorities and that is where it remains.

Senator KIRK—Who were the relevant authorities?

Ms McPaul—It was the AFP, in this instance.

Senator Ellison—I could take that on notice, Madam Chair. The AFP are not here at the moment, but I have got a responsibility for them. I do not know anything about this matter, but I can take it on notice.

Senator KIRK—I have a more general question in relation to the way that these sorts of alleged incidents are dealt with. Is there any kind of documentation as to whose responsibility these types of incidents fall within—whether it is the state police or the Federal Police? As I understand it, there was some confusion, perhaps I could say, in relation to this incident, as to whether it was the Western Australian police who ought to be investigating or the AFP.

Mr Davis—The situation is that we are in active discussions with the police of New South Wales, South Australia and Western Australia, and the AFP, on issues about investigations in our centres. In terms of referring to relevant authorities, if one authority indicates to us that it should go to a different authority, then we pass that on. We are seeking to, I guess, do some documentation around responsibilities, to make it clearer for all parties concerned on such matters, but if matters come to our attention they are referred to the relevant authorities for relevant follow-up by those authorities. As I say, if confusion arises on a particular incident, we make sure that referral to an alternative authority is undertaken.

Senator KIRK—When are you expecting those negotiations to be concluded and some documentation to be prepared?

Mr Davis—There are different stages, perhaps, in the different states—if I can put it that way. We hope to conclude discussions soon in the context of South Australia and New South Wales. Perhaps Western Australia will be a little bit further on from that. Let me state, though, in saying that, that the level of cooperation of police authorities with us in our detention facilities is high, and we have very good on the ground working relationships with all relevant police authorities across our centres. So, in saying that, we do not have formal documents in place at this stage. That is not to say that current operational arrangements with local authorities are not working well. They are indeed, in our view, working very well across our centres.

Senator KIRK—The fact that you are trying to get together some written documentation suggests that you believe it is better to have the written documentation.

Ms Godwin—Could I perhaps make a comment, Senator. As a general proposition, across a whole range of areas of the operation of detention centres—not just in this area of police but in education, health, corrections, a whole variety of areas—we are seeking to have formalised arrangements with relevant state authorities. But, to pick up the point Mr Davis was making, essentially in many if not all instances those formalised arrangements are an attempt to put into writing what already happens in practice. Our focus in many instances has been on getting the practical arrangements right and then formalising them in written form. As a general proposition, yes, we think it is better to have a written agreement, but that is not reflective of the fact that we think we have necessarily got a problem in any particular area.

Senator KIRK—Going back to criminal matters, how soon do you think these formalised arrangements will be completed with each of the states that you referred to? You referred to ‘soon’, but I would like a time frame.

Mr Davis—There are other parties to those discussions, so it is difficult to speak for them, but I would say that in New South Wales and South Australia we believe we are very well advanced in reaching an agreement. As I say, the operational arrangements with Western Australian are working very well and I expect that once we turn our attention to further detailed discussions as needed with the Western Australians an agreement will not be far behind. I do not know if I am bold enough to say that over coming months we expect to conclude agreements with at least two of the three states I mentioned. It is not because of a lack of cooperation with Western Australia or anything of that nature that we would not reach agreement sooner. It is just that our attention right at this moment is third in line from our perspective in terms of dealing with the matter.

Senator KIRK—What happens in the meantime? From what you are saying, it seems to be a few months away before you have these formalised agreements. I am focusing on the question of criminal law. It seems to be the case that there was some confusion as to whether or not it ought to have been the AFP or the Western Australian authorities investigating this particular alleged sexual assault that I was referring to. What is going to happen in the meantime? Is this now sorted out? If there is another such incident, will it be immediately referred to the AFP, or have you worked that out?

Mr Davis—We are not aware that in the particular incident you mentioned that there was an issue of jurisdiction. It has not been brought to our attention that jurisdiction was an issue nor the need to refer it from perhaps the AFP to the Western Australian police at that time.

That suggestion is not something that we are aware of in that particular incident. It is true to say that, with some incidents that occur in our centres, there is a combination of state and Commonwealth law which may apply in a particular incident. It is in those sorts of situations where perhaps ambiguity may have arisen. We are seeking to clarify that. Our understanding is that all state police forces have cooperative agreements with the AFP anyway in terms of referral of matters across the police authorities. In a sense, we are not aware that jurisdiction was actually an issue in the particular incident you are talking about. Where it does become an issue in other cases, I think it is just a case-by-case consideration of what is the appropriate way forward, both between the police authorities and between us and them, as is needed to make sure that the relevant matter gets to the right place and is investigated as the relevant authorities see fit.

Senator KIRK—Would it be the case that policing in detention centres is generally a matter for the AFP, in relation to criminal matters?

Ms Godwin—Can I perhaps make a general comment. It depends largely on the nature of the incident and, in some instances, on the availability of resources. It may well be—and this has certainly happened from time to time—that there will be an agreement between the two police forces that, because someone is available or in situ, they will take on a particular incident even though under normal circumstances it may be dealt with by the other police agency. As a general proposition, matters of crimes against the person—assault and so forth—would normally be considered by state police in the first instance unless there has been a decision between the two police forces that in a particular incident the AFP will get involved. Commonwealth property issues are, generally speaking—and I am using these words very carefully—the focus of the AFP. Often the two things are not unrelated. If you have an issue involving both property and an individual detainee or an officer, rather than splitting it up, one police force or the other would take it on. As I say, there have been instances where those things have been taken on by the AFP because they are there and are available or, vice versa, the state police have taken them on.

Senator Ellison—Madam Chair, I have the information in relation to this matter, and this is the advice I have received from the AFP. During 2002 the AFP received referrals in relation to two separate alleged assaults on a female detainee in the Curtin immigration detention centre. At the time of the referrals the information provided indicated minor assaults, not sexual assaults. Both referrals were rejected by the AFP after assessment, with a recommendation being made in one instance that the matter should be referred to the Western Australian Police Service. Subsequent to the rejection of the referrals, Amnesty International wrote to the AFP indicating that one of the assaults on the female had in fact been an attempted sexual assault, which differed substantially from the alleged incident originally referred to the AFP. The AFP, based on the views of most state jurisdictions, replied that such offences against the person might best be dealt with by the Western Australian Police Service. In December 2002 the AFP received further information from Amnesty International in relation to the alleged assault which indicated a higher level of criminality and, based on this, it reviewed the original referral. As a result of this additional material and review and the subsequent movement of the victim from Western Australia, the AFP is investigating the alleged assault.

Obviously, I cannot comment further on matters relating to that, as the investigation is now pending. I can say, however, that the AFP is committed to the safety of all persons detained in immigration detention centres, but its major focus is, of course, the investigation of offences against Commonwealth legislation. Whilst legislative considerations allow the AFP to investigate state offences in a Commonwealth place, likewise state police have the power to

investigate state offences in a Commonwealth place. Offences against a person are usually investigated by state authorities, particularly where immigration detention centres are located in isolated areas and the AFP has no full-time presence or infrastructure. Such a case would be the Curtin detention centre, where there is a police station at Derby, the nearest town, and of course the Western Australian Police Force has a presence there. The nearest Australian Federal Police officer would be in Broome and, as I recall, there is only one officer there for the Kimberley region. The AFP is working collaboratively with all state jurisdictions to ensure that all detainees are afforded effective legal protection against violence, and a protocol is being developed to facilitate this.

CHAIR—Minister, thank you very much for that response, and particularly for providing it so promptly to the committee.

Senator KIRK—In the, I am sure, unlikely event that such an alleged incident occurs again, what are the guidelines for the staff on the ground? What happens if there is such an allegation? Do the staff call in the state police or the AFP? What is going to happen in the unlikely event that there is another such alleged incident?

Ms McPaul—It is my understanding that the services provider in the first instance would contact the local police authorities. As we have just explained, that varies a little bit from one locality to another. The DIMIA staff on site would, as a matter of course, report to the relevant authorities as well.

Senator KIRK—In relation to the Iranian woman, are you aware of where she is now? Is she still at the Curtin detention centre?

Ms McPaul—No, Senator. The Curtin centre has been closed for some months. I believe that she is at the Baxter centre.

Senator KIRK—When there are such allegations of sexual assault, is the person who is making the allegation separated from the person who is his or her alleged attacker? Is there any attempt operationally to do something about this on the ground?

Ms McPaul—It really depends on the particular type of alleged incident that might have occurred. Reasonable steps are taken to ensure that both the alleged victim and the alleged perpetrator are dealt with appropriately in the centres. We would also act on the advice of the relevant authorities in that regard.

Senator KIRK—Can you tell me what occurred surrounding this alleged incident? Did the woman who made the complaint continue to be accommodated in the same compound as her alleged attacker?

Ms McPaul—I might need to take that on notice and check the specifics for you. This is at the Curtin centre?

Senator KIRK—It occurred at the Curtin centre.

Senator ALLISON—I have just found in my notes some specifics on the question of strip searching. It is Baxter compound where apparently the move from White 1 to White 2 compounds might have been the one you described where there was a group strip search. The note said that those who were in that compound would be subjected to two strip searches at the compound gates, in the open in front of two officers and a camera, to attend to property—so going from the compound to the place where property is distributed or to DIMIA's office or to medical.

Mr Davis—We would need to follow up the details and respond, but our understanding is that as part of the process of moving the detainees from one compound to another the strip searches were conducted in a private room, as we discussed.

Senator ALLISON—Yes, you did say that; I am just telling you what my notes were.

Mr Davis—But, in conjunction with that, other search processes—that is, property searches and other things—were also conducted. People's belongings were searched as part of the transfer process as well.

Senator ALLISON—I am not suggesting there is a problem with searching the property. What this suggests is that when someone moves from White 1 compound or White 2 compound to where property is dispensed—that is, parcels are received—there is a need to go through strip searching on two occasions to do that.

Mr Davis—We could follow that up, but it does not sound like our understanding of what happened.

CHAIR—Thank you, Mr Davis. There are more questions from Senator Allison and Senator Kirk in relation to output 1.3 and detention centres. Senator Kirk, would you like to continue?

Senator KIRK—Thank you, Chair. I have some questions in relation to people who overstay their visa. First, what is DIMIA's definition of a visa overstayer?

Mr Moorhouse—An overstayer is a person who remains in Australia after the period of validity of their visa has expired—in other words, after their authority to remain in Australia has expired.

Senator KIRK—How many people who have made protection visa claims have absconded from detention in the period 1993-2002?

Mr Moorhouse—I have some figures in that regard; I just need to pull them out for you. Can I clarify the question: did you say 'have absconded from detention' or have remained in Australia?

Senator KIRK—Those who have absconded from detention.

Mr Moorhouse—I am sorry, I do not have those figures. I am not sure that my colleagues have figures in terms of people who have absconded from detention.

Mr Davis—Senator, I think we would have figures on those who have absconded or escaped from detention but we would not necessarily have what stage of processing they might have been up to or whether their cases were related to a protection visa or another particular type of visa. We would need to take that further detail on notice. We do have with us some figures on escapes and absconding from detention. From what year did you specify?

Senator KIRK—From 1993 to 2002.

Mr Davis—Your going backwards surpasses me, so perhaps we will take that on notice as well. I have from the 1999-2000 financial year onwards here with me. In the 1999-2000 year we had 19 incidents with 57 detainees absconding or escaping; 47 of those 57 were recaptured. In 2000-01 we had 24 incidents with 57 detainees escaping or absconding, and 17 of those 57 were recaptured. In the 2001-02 financial year we had 13 incidents with 145 detainees escaping or absconding, and 91 of those 145 were recaptured. In the 2000-03 year to date we have had eight incidents with 14 detainees escaping or absconding, and 10 of those 14 have been recaptured. Those figures for the current year are as at 7 February.

Senator KIRK—Thank you. Perhaps you could take the figures for the other years on notice.

Mr Davis—For prior to 1999 we would have to check our records.

Senator KIRK—That is fine. Does what you have there also give us a breakdown as to which detention centres these persons absconded from?

Mr Davis—Yes, I do have that. Do you want any of that detail now?

Senator KIRK—That will be okay on notice in terms of that breakdown. What is the number of protection visa applications that are made in the community each year? I have the same years from 1993 to 2002 in mind, but you could even give us the figures for the last five years.

Mr Farmer—I think that comes under another outcome, outcome 1.2.

Senator KIRK—In that case I may need to leave these questions for a moment.

Senator ALLISON—I will raise a question that I have raised once before about women who are trafficked or brought into Australia for prostitution and find themselves in detention centres before being deported. Do we have any figures on them? How many are currently in detention centres and how many were in that category over the 12 months of 2002?

Mr Moorhouse—There are a number of issues in terms of the terminology that you have used. You have spoken about women who were trafficked to Australia. That is a term that is often used but often misused as well. The term ‘trafficking’ is usually used for people who are in some way deceived or coerced into coming to Australia. By and large the people that we encounter who are involved in prostitution have entered prostitution willingly and have travelled to Australia in order to work illegally or remain unlawfully, knowing what they were up to and without coercion involved. In terms of the precise numbers, if you are talking about those sorts of people, I do not have that information with me at the present time. I am not sure whether my colleague does.

Senator ALLISON—So you attempt to discover in your processes whether women have been trafficked or knew what they were coming for?

Mr Moorhouse—If there were indications that a person—a woman or a man or a child—had been trafficked to Australia, those instances would be referred to the police.

Senator ALLISON—But isn’t the problem that it is hardly worth referring them to the police as the persons are deported almost immediately? We do not keep them here to provide evidence to the police for their prosecutions.

Mr Moorhouse—This is where the terminology becomes quite important. If a person made claims that they were trafficked to Australia, we would refer that matter to the police. It is open to the police to apply for a criminal justice visa for the person to remain in Australia in order to conduct a prosecution.

Senator ALLISON—How often has that happened, and in how many cases?

Mr Moorhouse—I would have to take that on notice. I am not aware of it having happened at all. I can recall one instance where a woman remained here in order to assist in the prosecution of the people who had brought her to Australia, but that was not for a trafficking offence; it was for another offence.

Senator ALLISON—You say that there are nonetheless some who say they have been trafficked into Australia.

Mr Moorhouse—No. I am saying that that is not something that we normally encounter. The particular case that I mentioned to you, which was a case of some five or six years ago, involved a woman who came to Australia knowing that she was coming unlawfully, knowing that she was going to work unlawfully, but not knowing that the work that she was expected to undertake was tabletop dancing.

Senator ALLISON—How do you regard instances where women are brought to Australia and they know that they are expected to be prostitutes while they are here, but they are then confined once they are here in a way which they did not anticipate? How often do you strike those circumstances?

Mr Moorhouse—It does happen occasionally that people are not aware of the circumstances in which they will be working and they object to those circumstances. It is open to those people to come to us and to participate in prosecuting the people who have been associated with them. It is not our experience that that occurs at all regularly. Generally, the people who have come to Australia to work in prostitution have been aware of what they are doing and, whilst they may be disillusioned with the circumstances under which they are working, they have not been prepared to participate in the prosecution, as far as I am aware.

Senator Ellison—Madam Chair, this was raised yesterday and I mentioned people-smuggling. Senator Kirk raised it then, and I said that it is an issue of concern to the government. We have to be very clear what we are talking about here. People-smuggling is at one of the spectrum. People-trafficking, as it is termed, is believed by some people to be a sort of slavery where people are traded in, as goods and chattels might be, and are chained up and moved around against their will. We have not found that there is a slavery chain where people are brought into Australia under force and are trafficked in that manner. I said yesterday that internationally there is the smuggling and moving of people against their will. Domestically, we have not found evidence to support that sort of activity. However, at the other end of the scale, people come here voluntarily to work in the sex trade, leave voluntarily and are quite willing to work in the sex trade. That of course is illegal, and that is at the other end of the spectrum. In between you have the situation which Senator Allison has just touched on, and that is of someone who comes here to work as a sex worker and finds that they work under conditions that they did not anticipate and that there is some form of coercion. Similarly, you might also get that with someone who comes to work as a domestic worker.

CHAIR—And finds themselves working in a different capacity?

Senator Ellison—Exactly. Those two instances are more the issue that we are looking at. To talk in terms of people-trafficking, we have to be very careful that we are not saying that there is a slave trade as such, where people are used and moved against their will. There is, however, this other aspect which has been touched on here and the term ‘trafficking’ is used to apply to that. I want to make it very clear that there are different degrees of criminality in relation to this. One phrase could describe all of them, if you like, and we have to be very careful. I will take on notice for the Australian Federal Police the issues raised by Senator Allison. You may well be interested, Senator Allison, to have information from the Australian Federal Police on this issue, which of course has come to their attention.

CHAIR—Thank you, Minister. That consolidates the discussion we were having on the issue with Senator Kirk yesterday as well.

Senator ALLISON—There was a report back in 1996 titled *Report into the trafficking of women into the Australian sex industry* which seems to have disappeared. Mr Farmer, could you take this matter on notice. It is often quoted in reports prepared by DIMIA but it is not on the web site; it is not available in our library here. No-one seems to be able to track it down. It

would be useful if we had it. A subsequent report titled *Protecting the border* suggested there was a quadrupling of the number of unlawful noncitizen sex workers—from 56 in 1996-97 to 243 in 1998-99. But it has been difficult to get data since that time. Can you indicate why it is that more recent figures are not available in this category? I would have thought they would be pretty much immediately known after the preceding year.

Mr Moorhouse—I would need to take that on notice, Senator. I am aware that there have been different forms of monitoring of people who have been located working unlawfully in Australia in the past. Some of our statistical recording mechanisms have changed. In the last 12 months we have improved our current recording of people who are located working unlawfully, but I am afraid I do not have knowledge of what the recording systems have been in the past and when they have changed.

Senator ALLISON—If you could provide the committee with the latest statistics on this matter, it would be useful to us. It is said that the number that DIMIA discovers is probably the tip of the iceberg in terms of the real numbers working in this industry here. What size is your task force that presumably mostly visits brothels to check the immigration status of these workers? How many do you have doing that work? What sort of coverage of brothels do you have at present? Do you get around to one every six years? What is your system?

Mr Moorhouse—I will try to answer those questions. Perhaps one of my colleagues can give some statistics in relation to the number of staff working in our compliance area. In relation to your introduction, you suggested the number was probably the tip of the iceberg. I would question that in the sense that each year we locate a very substantial number of people who are working unlawfully. In the past year we located over 17,000 people who either had overstayed or were working in contravention of their visa conditions. That should be taken in the context of an estimated—it is a relatively accurate estimate—60,000 people who are in Australia unlawfully. We could break that down further in terms of the people who are here for very short periods of time and people who have been in Australia for very long periods who are well established in the community. We would say to you that, in finding 17,000 people who are unlawful or who are working in breach of their visa conditions, we are actually addressing the problem very substantially. We are locating in the region of 40 to 50 per cent in that group that I have referred to.

Senator ALLISON—But not all of those end up in detention centres, do they?

Mr Moorhouse—Not all of them end up in detention centres.

Senator ALLISON—But sex workers would all end up in detention centres?

Mr Moorhouse—Not necessarily.

Senator ALLISON—What are the circumstances in which they do not?

Mr Moorhouse—The decision to take a person into detention is made having regard to the individual circumstances of the case. It would be influenced by the person's immigration history—for example, whether they have engaged in identity fraud or document fraud, whether they have not abided by the terms of any bridging visas they have been given in the past, whether they represent a flight risk and so on.

If we encounter people who are working unlawfully and those people indicate that they are prepared to leave the country and we have reasons to accept their assurances in that regard then it is open to the immigration officer to grant a bridging visa or a bridging visa with a surety—a financial bond. Many people who are found working unlawfully are released in order to make arrangements for their own departure. I will take the question on the total number of compliance staff on notice. Addressing your question, our compliance staff work in

a general way. They are not specifically directed towards dealing with prostitution or the building industry or the hospitality industry.

Senator ALLISON—You do not know the area they are working in?

Mr Moorhouse—The compliance staff deal with all people who have overstayed their visas or who are working in breach of their visa conditions. From time to time and in various places we will specialise, particularly in a state like New South Wales. Where we have substantial numbers of staff we will at times have a task force or a particular group of people who are focused on the sex industry or the building industry. But that is a flexible arrangement depending upon the challenges that are facing us and the strategies we are pursuing at that particular time.

Senator ALLISON—Apparently, there were two women who died in Villawood detention centre who would be in this category of possibly having been trafficked but certainly having been detained and who were working in the sex industry. There was a report about it written by Kathleen Maltzahn. Are you familiar with that report? It is called *Trafficked women in Australia*.

Mr Moorhouse—I am not familiar with the specific details of those two cases. My colleagues in unauthorised arrivals and detention may be able to give you more details in relation to the specific cases. In one of the cases I am aware of I believe the lady concerned was a frequent drug user and her death may have been related to her use of drugs. I am not sure whether my colleagues wish to talk about those two specific circumstances.

Senator ALLISON—I will quote a section from that report that goes to the question of apprehension of women in brothels. It says:

The closest things we have to system in our approach is the Department of Immigration's response. DIMA regularly apprehends women in brothels without working visas and systematically 'removes' them from Australia. We have no idea how many of these women might be trafficked, because DIMA doesn't ask them. Instead, it returns them to the country on their passport, without finding out first how they got here, without linking them in with support services at the other end, without asking them if they have been a victim of crime. Without a doubt, they are returning trafficked women to the place where they were vulnerable to trafficking in the first place, back to the place where they possibly still have huge debts to the initial trafficker.

Do you reject that?

Mr Moorhouse—Partially, yes. Some of the comments that you have reported to us there imply a careless attitude, which is not supported in the approach that we adopt. We certainly would not ignore any indications of trafficking whatsoever. In Australia, as you are aware, trafficking of people is a serious crime. It is one that successive governments have indicated they take very seriously, and that our colleagues in the police do take very seriously. If we encounter any indications of people trafficking then we would refer them to the police. All immigration compliance staff would do that.

Senator ALLISON—But there have been no incidents. We have had 243 people in 1998-99 and none of those has been reported to the police for possible trafficking.

Mr Moorhouse—I am willing to answer the other parts of your questions, but to answer that particular question I think it is very important to look at the context. We do encounter some people who work in the prostitution industry as illegal immigrants. There is across the world a high degree of sensitivity about people trafficking. There seems to be an assumption that because people trafficking around the world is a problem then we will encounter it in

Australia. It is important to note the point that I mentioned before: successive governments, Australian police forces and Australian laws treat people trafficking very seriously indeed.

A question that is raised occasionally, particularly in monitoring conducted by the US authorities, is: are there indications of people trafficking in Australia and if not why not? Australia has very strong laws and a determination to enforce those laws. There is no shortage of people willing to engage in prostitution. Illegal immigrants would do that willingly. It would be unnecessary for some of the people in the organisations involved to risk their futures and chances of prosecution in Australia by coercing or duping people to engage in prostitution in Australia. The circumstances in Australia are quite different from the circumstances in many other countries and I do not believe that it is reasonable to assume that there will be substantial levels of people trafficking in Australia.

Senator ALLISON—Even though in your publication, *Protecting the border: immigration compliance*, one of the tables lists the business sectors which your compliance section has identified and the sex industry is second in terms of numbers found in that industry. Does that not suggest that it is a significant problem?

Mr Moorhouse—I do not believe that it is. I am seeking to distinguish between illegal employment in the prostitution industry and people trafficking.

Senator ALLISON—What makes Australia so special in terms of the numbers who are brought here who are not trafficked and those who are? You say the circumstances are different, but in what way are they different?

Mr Moorhouse—The point is that Australia has very strong laws in relation to people trafficking and there is a determination at all levels of government to enforce those laws. I am not—

Senator ALLISON—Are they stronger than in other countries?

Mr Moorhouse—I believe so generally, but I am not aware of the detail of the laws in other countries.

Senator ALLISON—So how can you be confident that Australia is likely to be a special case?

Mr Farmer—Given your interest in this, Senator, you might be interested in the United States State Department annual report on trafficking which I think is particularly related to sex workers. That comments country by country on national regimes and experiences in this area.

Senator ALLISON—So are you saying that the US has similar circumstances to Australia? Are the laws similar? What relevance does this have to Australia?

Mr Farmer—The point is that the United States State Department is mandated to do a yearly report on the incidence of trafficking, I believe particularly related to sex workers, country by country just as the State Department does a country-by-country human rights report each year.

Senator ALLISON—So the US State Department would do one on Australia?

Mr Farmer—Yes.

Senator ALLISON—Is that what you are referring me to?

Mr Farmer—Yes. Given your interest in comparative—

Senator ALLISON—How do they collect the statistics?

Mr Farmer—They do it country by country. They have a variety of sources. I do not know what they are, but they have their local embassies and I guess they have research—

Senator ALLISON—So you are saying that that is what Mr Moorhouse was referring to when he said Australia was a special or different case from most?

Mr Farmer—I do not believe so. I am trying to provide you with a helpful footnote because it is a global study which deals country by country with particular circumstances. You might be interested in that.

Senator ALLISON—I am interested in that. I am also interested in the fact that Australia has been criticised for not taking this issue seriously enough with regard to women who are trafficked here; hence my questions. Could the minister give the committee some idea of the government's thinking with regard to signing on to the UN trafficking protocol?

Senator Ellison—I will have to refer that to the Department of Foreign Affairs and Trade and I will take it on notice.

Senator ALLISON—As I understand it, it would include a new visa class for trafficked women and introduce specific legislation aimed at traffickers. Would this be a barrier? Presumably this means that such people would be sent not to detention centres but to some sort of supported accommodation.

Mr Moorhouse—It would not necessarily mean a new category for trafficked women, because Australia's immigration laws already provide the capacity to have a person who was trafficked remain in Australia for the purposes of prosecution.

Senator ALLISON—That is the provision whereby the police can apply for—

Mr Moorhouse—For a criminal justice visa.

Senator ALLISON—What are the circumstances in which a person in this category might make a complaint? Would that have to be supported by a police request for this status?

Mr Moorhouse—If a person is willing to assist in the prosecution of a person with whom they had been associated in those circumstances, the police would issue a criminal justice stay certificate to allow the person to remain in Australia. The department of immigration would then consider the grant of a criminal justice visa, which would give the person continued lawful status.

Senator ALLISON—It would be useful to know how many women in particular but other persons too are not prepared to take that step of pursuing prosecution but who have initially at least indicated that they were trafficked. Is it possible to get that data?

Mr Moorhouse—We can have a look for those statistics. I am not sure whether there are such statistics, but I go back to the point I made earlier: from our experience in this area we receive very few indications that people are trafficked into Australia.

Senator ALLISON—Regarding people currently detained in detention centres, is it possible to get figures relating to those who have worked in the sex industry?

Mr Moorhouse—I am unsure whether it is possible. My colleagues would have to comment on that. But the people in these circumstances do not normally remain in the detention centre for an extended period so they would not be part of the longer term population of our detention centres.

Senator ALLISON—Because there is no right of appeal for them?

Mr Moorhouse—Because people who are located working unlawfully in the community generally leave Australia promptly.

Senator ALLISON—It would still be interesting to know how many we have currently and, perhaps, how many have been detained over the last 12 months.

Mr Farmer—We will take that on notice and reply in the most helpful way we can to try to give you a snapshot at a particular time, and perhaps over a year. If we have those statistics we will try to be as helpful as we can.

Senator ALLISON—It has also been said that some of these women suffer harassment and all sorts of unpleasant behaviour at the hands of other detainees once it is understood why they are in detention and so forth. Do we provide any guidelines for detention centre management to make sure that this does not happen?

Mr Farmer—Our duty of care extends to every detainee, so the cascading set of instructions and so on applies to every detainee.

Mr Moorhouse—At a practical level, unaccompanied females and unaccompanied males are not usually accommodated in the same areas of detention facilities, so you would not find that a woman in these circumstances was necessarily exposed to unaccompanied males in the detention facilities.

Senator ALLISON—It is certainly the case at Maribyrnong.

Mr Moorhouse—No, women are usually located in the family section at Maribyrnong.

Senator ALLISON—The dormitory area is in a different place but the mess area and the dining facilities are mixed.

Mr Davis—Indeed in some centres that is true. It is a centre-by-centre configuration and underlying infrastructure issue in terms of dining, health and other facilities that support centres. At Villawood, for example, there is a separate compound for such women, which has its own separate supporting facilities, as I understand it.

Senator ALLISON—So why are not all women who are detained for that reason housed in places where they are segregated?

Mr Davis—As Mr Moorhouse said, at Maribyrnong, for example, the accommodation units are separate, and indeed in—

Senator ALLISON—The sleeping quarters are separate.

Mr Davis—Yes.

Mr Moorhouse—The sleeping quarters and living quarters.

Mr Davis—I understand that some recreation areas there are separate as well.

Senator ALLISON—Not at Maribyrnong. There are no segregated recreation areas at Maribyrnong.

Mr Moorhouse—With respect, at Maribyrnong there is a separate living area with some recreational facilities.

Senator ALLISON—The dining area, the main area and outdoor area are mixed.

Mr Moorhouse—No, there are separate outdoor areas. In the family compound—

Senator ALLISON—One is the family area—it is about the size of this table.

Mr Farmer—It is quite a lot larger than that actually.

Ms Godwin—I have been there.

Mr Farmer—I was there last week. There is another element to this. It is not a pretty spotlight to shine on human behaviour but, nonetheless, there it is—that is, from time to time there are instances when detainees are functioning as prostitutes in the centres, and that is an issue that we obviously have to try to manage and to prevent.

Senator ALLISON—How many instances of that have there been?

Mr Farmer—I am sorry, I do not have that information.

Senator ALLISON—Perhaps you could provide it for the committee. That would be useful.

Mr Farmer—Yes. I hesitate to say that we could do that, because that would require looking at incident reports and there are obviously many thousands of those.

Senator ALLISON—Mr Farmer, if you make those suggestions, I think it is reasonable for you to be asked to back them up by stats.

Mr Farmer—I would say two things about that: firstly, I would not say it unless I believed it to be the case; and, secondly, I will try to be helpful in answering the question by providing the details that we have. But there is a question about the ready availability of statistics on any particular sort of incident because they may or may not be aggregated out of the individual incident reports.

Senator ALLISON—I suggest that this would be a useful area to have aggregated out.

Senator KIRK—I have some questions in relation to seafarers and shipping visas. Could the department provide the committee with figures for the number of seafarers that were issued with transit visas from 1994-95 to the present?

Mr Moorhouse—I would need to take that one on notice. A very large number of seafarers travel on transit visas to join vessels in Australia.

Senator KIRK—So you do keep figures as to the number of visas?

Mr Moorhouse—We do keep figures of transit visas but it is a very large number.

Senator KIRK—Does any other department—you might not be able to answer this, I suppose—keep records of the number of transit visas issued or is it only DIMIA?

Mr Moorhouse—I would expect that it is only this organisation because we are responsible for visa issue. Transit visas are used by crew who are travelling to Australia in order to join a vessel and then sail that vessel away from Australia.

Senator KIRK—So it is probably only DIMIA.

Mr Moorhouse—It would be only this organisation that is involved. Customs, of course, is involved in dealing with people, but they essentially are handling the individuals on our behalf rather than processing their visas.

Senator KIRK—Can you tell me under what conditions a seafarer can leave their ship?

Mr Moorhouse—The seafarer can sign off from their ship for a number of reasons. Generally they sign off because their time with the vessel has finished. It is quite usual for positioning crew to join a vessel in Australia, be that aircraft or sea vessels. In those circumstances the crew that might have sailed the vessel to Australia would sign off from the vessel and then would leave the vessel. There are other circumstances where a person may need medical treatment, for example, in unforeseen circumstances.

Senator KIRK—Does the special purpose visa allow crew to leave and then rejoin a ship? If so, how is that monitored?

Mr Moorhouse—The special purpose visa allows a person to disembark from the vessel. Sometimes crew will undertake their shore leave and return to the vessel as part of the crew of the ship. It would not be normal for a person to sign off the crew of a particular vessel and then sign back on again. I am unsure whether I have misunderstood your question or whether there is a particular purpose behind it, Senator.

Senator KIRK—I am just thinking of leaving, going on shore for a while, doing whatever and then coming back.

Mr Moorhouse—If that was part of the agreement with the captain of the vessel, the shore leave would, I believe, simply be part of their normal business pattern. They would return to the vessel after their shore leave. If a person were to leave without the permission of the captain, that person would be considered to be a deserter. They would be reported to Customs and through Customs to us and their special purpose visa would be ceased.

Senator KIRK—Is there any upper limit on the amount of time for which a person can leave under those circumstances? Is there any legal requirement for the captain or the master to keep track of the period for which the person is away and then to report a crew member missing? As you said, if a person did not come back, presumably they would be thought to be a deserter. What are the legal requirements on the part of the captain in those circumstances?

Mr Moorhouse—I will take that on notice. I do not want to give you wrong advice by talking in generalities. However, in principle, if a crew member were to leave the vessel without the authority of the captain, that person would be absent without leave and would need to be reported to the Australian Customs Service. That would cause us to move promptly to cancel that person's special purpose visa.

Senator KIRK—I am trying to work out what the legal requirements are if a person does make an application to leave the ship for a period of, let us say, 30 days. Is there any obligation on the captain to advise Customs or DIMIA of that? Or is it just an arrangement between the master and the seafarer concerned and action is only taken if and when that person does not return?

Mr Moorhouse—Perhaps I can give you some information around that subject, rather than dealing with it specifically. There will be circumstances when, as we have discussed, a member or a number of crew members of a vessel will leave. In those circumstances a person can sign off the vessel and remain lawful for a period of time. Basically, they can have a holiday before leaving Australia. I think they remain lawful for 28 days. A person who signs off a vessel does not necessarily have their visa ceased; they have a period of time in which to depart Australia.

A person who leaves a vessel without authority would have their special purpose visa ceased. The third circumstance, which we have touched on already, is: if a vessel is going to remain in port for a period of time, the crew may be given shore leave and return to that vessel. It would be unusual for a crew member to be given a four-week holiday from a vessel, because ships do not sit around for four weeks waiting for individual crew members to come back. They need to be signed off or they will remain with the crew.

Senator KIRK—Are transit visas and special purpose visas in paper or electronic form?

Mr Moorhouse—A transit visa is evidenced in paper and recorded electronically. When we talk about a visa, we evidence a visa on paper but those records are kept electronically. In a sense, all of the visas that we grant are recorded electronically. A special purpose visa is

slightly different. It is taken to exist because of the circumstances or status of the holder. Special purpose visas are not recorded in the same way; they are derived from the status of the holder of that visa.

Senator KIRK—Do the ‘holders’ of both types of visas actually hold a visa? Do they hold something, a piece of paper, in their hand?

Mr Moorhouse—They have lawful status. They do not hold a visa, because someone with a special purpose visa does not hold a visa. A special purpose visa is, in concept, an authority for a person to be in Australia, in circumstances where the grant of a visa could be difficult. If, for example, service personnel are parachuting into the Northern Territory as part of a military exercise, it is very difficult for us to get there and give them a visa. So they are taken to hold a special purpose visa by virtue of their status—in other words, by being a service person of an allied nation participating in a military exercise. The same thing applies with crew of shipping vessels. As we have been discussing, the crew of a nonmilitary vessel travelling to Australia are taken to hold special purpose visas.

Senator KIRK—I have just been talking generally so far. Let me take you to a specific example. The ship *Stadacona* travelled from Melbourne to Brisbane to Port Pirie, arriving on 1 May 2002 and departing on 18 May 2002. It changed crew, as I understand it. I want to ask you some questions generally about that. To what place outside Australia did the *Stadacona* travel during the course of its voyages from Melbourne to Brisbane to Port Pirie? I understand that it travelled outside Australia during that time.

Mr Moorhouse—I do not have the information with me, Senator, to answer about the specific circumstances in relation to the vessel CSL *Stadacona*. The CSL *Stadacona* is one of two vessels that have been the subject of a substantial amount of media coverage over the past year. I am aware of the broad circumstances of the *Stadacona*, but I am not aware of its specific voyaging pattern.

Senator KIRK—Perhaps you could answer this question, then. What types of visas did the foreign crew working on the ship hold whilst they were in Australia?

Mr Moorhouse—The crew of the *Stadacona* would have been taken to hold special purpose visas, in line with the circumstance and the conditions that I have outlined to you earlier. This is an area that has been the subject of some considerable attention in the media, so perhaps I could give you a little bit more background in relation to that.

Senator KIRK—Thanks, yes.

Mr Moorhouse—The migration regulations basically envisage two circumstances with international vessels travelling to Australia. The first is where a vessel is being imported into Australia—the regulations provide for a limited period of special purpose visa for those vessels that are being brought to Australia for the purpose of importation. The other circumstance that is envisaged by the regulations is where a foreign vessel is coming to Australia for a period of time and then will be leaving Australia. In those circumstances again it is referred to as a visiting nonmilitary vessel, and the crew of visiting nonmilitary vessels are taken to hold special purpose visas.

Just so my answer is comprehensive: you alluded to the idea of the vessel leaving Australia. One of the requirements of the migration regulations relating to the crew of visiting

nonmilitary vessels is that the vessel will leave Australia to a point outside Australia during the course of its voyage. It is that particular provision that has been tested by the two vessels of the CSL line that you have referred to.

Senator KIRK—That is why I asked the question as to where the boat went during the course of its time in Australia. You do not know that?

Mr Moorhouse—I am not aware of its precise circumstances. I am aware that the *Stadacona* has spent periods of around two to three months in Australia between its international voyages. The *CSL Pacific* has spent longer periods in Australia. My recollection is that it spent one period in excess of five months, and a subsequent period that was approximately six months.

Senator KIRK—Do you know whether or not any of the members of the crew of the *Stadacona* are still in Australia, and, if so, what sorts of visas they hold?

Mr Moorhouse—I do not know that. If they are on the *Stadacona* at the present time, they would hold special purpose visas. But I am unaware if crew have departed from the *Stadacona*. It would be normal sometimes for crew changes to occur and for positioning crew to be brought in, and for existing crew to leave, but those crew would then be expected to leave Australia within the validity of their special purpose visas. Otherwise they would become unlawful.

Senator KIRK—I am thinking about the monitoring of that. If these people have the special purpose visas that you describe, how is it monitored if they were to leave the ship and they have a special purpose visa? How are DIMIA or Customs meant to know that this person should no longer be in the country? I am trying to link this with the earlier questions.

Mr Moorhouse—All vessels that arrive in Australia are required to report the details of their crew to the Australian Customs Service 48 hours before the vessel arrives. So ACS, working on behalf of this department, is notified of all crew that are arriving in the country, and also crew that are departing. So we have a mechanism there for recording and monitoring the presence of crew in Australia. The captain of the vessel is required to advise ACS on our behalf when a person leaves the vessel, when they sign off the vessel, and also if they leave the vessel without authority.

Senator KIRK—Do you have any specifics in relation to the crew of the *Stadacona*?

Mr Moorhouse—No, I do not have specific information with me. I am not quite sure whether you are talking about individuals on the vessel or—

Senator KIRK—Yes, whether there are any foreign crew who have left the vessel and now may be working in Australia—whether there have been checks as to whether anyone has left and may possibly be in breach of the special purpose visa.

Mr Moorhouse—No, I do not have that information, Senator.

Senator KIRK—Can you take that on notice?

Mr Moorhouse—We can take it on notice and see whether we have that information, but in those circumstances, if a crew member does not leave within the period of validity of their visa, they will become unlawful and that would then be a similar situation to that of other people who become unlawful—it is a relatively routine circumstance. I think it would be unlikely that we would record all of them according to the vessel. I will certainly take on

notice whether we are able to provide that information. If not, we will give you an explanation as to why not.

Senator Ellison—Madam Chair, before we continue, I would like to follow up a question by Senator Allison to Mr Moorhouse in relation to trafficking in sexual servitude. I can advise that the Criminal Code Act 1995 criminalises some of the most serious forms of exploitation which are particularly associated with trafficked persons and persons who are in Australia illegally. Slavery, sexual servitude and deceptive recruiting for sexual services are prohibited and carry substantial penalties. Any allegation in relation to these criminal activities receives close attention by the AFP. Slavery carries a maximum penalty of 25 years imprisonment; sexual servitude attracts a maximum penalty of 15 years imprisonment; and deceptive recruiting carries a maximum penalty of seven years imprisonment. If a sexual servitude or deceptive recruiting offence is committed against a person under 18, higher penalties apply—19 years and nine years imprisonment respectively.

Since the creation of these offences in 1999, the AFP has investigated 13 matters referred to them. Three of those matters are still under investigation. However, the remainder did not disclose a case to answer or did not have a reasonable prospect of securing a conviction. This is due in part to the reluctance of potential witnesses, many of whom are in the country illegally, to testify. There are mechanisms to enable witnesses who are in Australia illegally to remain here to give evidence.

The AFP is currently assessing a strategy to initiate joint programs with state and territory police services, the department of immigration and other agencies to identify problem areas and obtain intelligence and evidence to prosecute those involved in trafficking and sexual servitude offences. The AFP's international network, of course, continues to foster strong links with overseas law enforcement in this regard. In relation to penalties overseas and how they compare with Australia, I will take that on notice and provide the information to the committee.

CHAIR—Thank you, Minister. That is very helpful to the committee's deliberations.

Senator KIRK—I have some questions in relation to subclass 456 visas. I refer to the incident that occurred in October last year at Lake Cargelligo when a water tower collapsed, killing two men and seriously injuring others working on the site. I understand that one of the injured men was a black South African in Australia on a temporary short stay subclass 456 business visa. I want to ask some questions about this individual. Could you explain to the committee how this gentleman, who speaks no English and has an employment background only as a petrol station attendant, was able to obtain a subclass 456 visa?

Mr Rizvi—The gentleman you refer to is Mr Malothane. He applied for a 456 short-stay temporary business visa—that was a visa for up to three-months stay in Australia—at our High Commission in Pretoria. On the basis of the evidence that was provided to the High Commission in Pretoria, the decision maker at that time was satisfied that Mr Malothane met the requirements for such a visa. That visa application did not, in fact, reveal that Mr Malothane may have worked as a petrol station attendant. It was indicated in the application that he was an engineer and it was on that basis that the visa was granted.

Senator KIRK—So who makes the application? Is it the employer who makes the application on behalf of persons such as Mr Malothane?

Mr Rizvi—It can be the employer on behalf of the applicant or it can be the applicant themselves or it may even be a migration agent.

Senator KIRK—In this case was it the employer or Mr Malothane who made the application for the visa?

Mr Rizvi—I think in this instance it was the employer who lodged the application.

Senator KIRK—Obviously there has been some misinformation. I wonder to what extent the department checks the bona fides and the information contained in these sorts of visa applications.

Mr Rizvi—The extent to which a decision maker will make those checks will be based on an assessment of risk, an assessment of the local circumstances and the extent to which, for example, caseloads from a particular source country may or may not lead to higher or lower levels of noncompliance. As a general rule, short-stay business visas issued to South African nationals reveal a relatively low level of noncompliance. For that reason, the level of checking that takes place in respect of those visas, up until recent times, has not been as extensive as in other places. Obviously, since this particular event where we were misled as to the background of the individual, the level of checking of short-stay business visas out of our High Commission in Pretoria has been increased.

Senator KIRK—When you have a situation where an employer makes an application essentially on behalf of an employee, are any questions asked of the employee as to the validity of the information that has been provided? For example, in the case of Mr Malothane, it was said that he was an engineer when in fact it turned out that his background was as a petrol station attendant. Are any crosschecks made? Are any interviews done with the person concerned in those circumstances, either now or before?

Mr Rizvi—Certainly there have been extensive investigations of the case following it. I assume your question really relates to the process leading up to the granting of the visa?

Senator KIRK—Yes.

Mr Rizvi—As I said, that will vary from case to case. It will depend on the decision maker's assessment of the bona fides of the information that is presented to them. They may well decide in certain circumstances to undertake further investigations and that may include site visits, interviews or crosschecks with other agencies. In this particular instance, that sort of crosschecking did not take place.

Senator KIRK—Essentially, what the employer said was taken at face value?

Mr Rizvi—No, there were some other checks done, but nothing extensive in this instance.

Senator KIRK—And are you saying that that has changed since this incident—at least at that embassy?

Mr Rizvi—Yes, the level of checking associated with business visas out of our High Commission in Pretoria has been increased.

Senator KIRK—Can you confirm that the government does not have the power to prosecute an employer under the Migration Act in these sorts of circumstances—where obviously false information has been given about an employee? Are there no powers under the act to prosecute such persons who have made these applications with false information contained in them?

Mr Rizvi—I think we are now straying into a slightly different area of visas. I think you may well be going into what are known as our subclass 457, so I might answer in those circumstances. In the subclass 456 visas there is no actual sponsor involved. The person is applying essentially on their own behalf and there are no sponsorship undertakings associated

with a 456 visa. I think you are probably referring to a 457 visa where there is a sponsorship undertaking involved that is given by the sponsoring employer.

Senator KIRK—And that sponsor is in Australia?

Mr Rizvi—Where the sponsor is in Australia, that is right.

Senator KIRK—In either circumstance, is there any prosecution—for 457 or—

Mr Rizvi—It would depend on the nature of the offences that took place. There is a range of things that Immigration can do, and there is a range of things that other agencies would be able to do under their own legislation. Essentially, in the context of the 457 visa with the sponsor, at the moment there are two things we can do. We can cancel the visa of the employee that has been sponsored into Australia, or we can cancel the sponsorship provisions for the employer. The sponsorship in that visa lasts for 12 months. In many instances we find that the sponsorship has expired and, hence, there is nothing that you can actually cancel.

The other thing that can be done is that, where an employer has been found to have either misled us or breached one of their undertakings, we are able to record that information in terms of considering future applications from that employer that might be provided. That would be taken into account in any sponsorship application that employer might make. Further, where we come across information that suggests a possible breach of the legislation of other agencies, we will refer those instances to the relevant agencies.

Senator KIRK—Going back to the 456 business visas, could you confirm how many of these visas were issued last financial year?

Mr Rizvi—To South African nationals?

Senator KIRK—Across the board.

Mr Rizvi—The total number of subclass 456 business short-stay visas issued last program year—that is, 2001-02—was 133,890, and the number issued to date—that is, to the end of December this program year—is 70,632. I should highlight that that relates to the 456 visa, which is a labelled visa. There is an equivalent electronic visa, which is the subclass 956 visa. Sorry, there is the 956 long-validity visa, and there were 31,709 of those issued last year. There is a short-validity visa and an equivalent electronic visa, and there were 85,683 of those issued last program year.

Senator KIRK—Thank you for those figures. Just going back to the 134,000 subclass 456 visas that were issued, you have said that in relation to the South African embassy in Pretoria procedures for interviewing and the like have been tightened up somewhat. I wonder whether the tightening up of those procedures has extended across the other embassies for other visas that are being issued. Obviously there are thousands of them and I am wondering whether there is now a face-to-face interview before such a visa is issued.

Mr Rizvi—The circumstances for the processing of 456 visas in different posts varies according to the local circumstances. In some of our posts there will be more extensive checking, including the possibility of interviews and site visits. The changes that were announced in terms of tightening up in respect of 456 visas related only to the High Commission in Pretoria.

Senator KIRK—In the case of this South African man, I understand he did not even sign the application. Has that now changed? Is there a requirement that the person sign the application?

Mr Rizvi—The application did include a signature.

Senator KIRK—A signature?

Mr Rizvi—There was a signature on the application. We have, subsequent to the case, interviewed Mr Malothane twice. In the first interview he indicated to us that he had signed some papers relating to this matter; in the second interview he indicated that he did not. Whether the signature that appears on this particular application is Mr Malothane's or not we have not yet been able to establish.

Senator KIRK—Obviously the signature was not done in front of a departmental officer, otherwise the departmental officer would be able to confirm whether or not it was Mr Malothane who signed it.

Mr Rizvi—That is right. Most of these applications we receive in the High Commission in Pretoria come through the mail.

Senator KIRK—I will move on to subclass 457 visas, which have already been touched on. Can you confirm how many 457 visas were issued for each year since they have been in existence? I am not quite sure when they came into existence.

Mr Rizvi—The current version of the 457 came into existence in 1995-96 or 1996-97—I would have to check that. I do not have the data that far back. Could I take it on notice?

Senator KIRK—Yes, that would be good. Do you have a state-by-state breakdown of the places from which they are issued?

Mr Waters—A state-by-state breakdown would not be possible.

Senator KIRK—What about an industry sector breakdown?

Mr Waters—We can provide some information by industry sector. We will try and be as helpful as we can.

Senator KIRK—That would be good. Could you give me some idea from which countries the holders of these 457 visas come?

Mr Waters—The largest single source is the UK, followed by India and the United States.

Senator KIRK—Would that information be contained in what you will provide to us?

Mr Waters—Yes, it will—we can provide a country breakdown.

Senator KIRK—That would be good.

CHAIR—Senator Kirk, we were going to complete 1.3 but we are a long way out of 1.3 in a lot of these questions.

Senator KIRK—This is outside of 1.3, is it?

CHAIR—Do you have any further questions that actually pertain to 1.3?

Senator KIRK—I am sorry, I understood this was under 1.3.

CHAIR—It is a bit all over the place, really. I want to make sure there are no other senators with questions that do pertain to 1.3. I have checked with Senator Allison; Senator Bartlett?

Senator BARTLETT—On 1.3, on detention.

CHAIR—I know Senator Harradine has questions on 1.2. If you want to take the next few minutes, Senator Kirk, to conclude the questions you are pursuing, when we resume after lunch we will come back to 1.2.

Senator Ellison—Before we do, Madam Chair, I undertook to get back to the committee in relation to the signing of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

CHAIR—You are providing the committee with a great deal of information, Minister, for which we are very grateful.

Senator Ellison—Just trying to be helpful.

CHAIR—As ever, Minister.

Senator Ellison—The optional protocol was developed to protect children from the worst forms of commercial sexual exploitation. Australia was an active participant in the development and negotiation of the text of the optional protocol, and Australia signed the optional protocol in New York on 18 December 2001. Once ratified, the optional protocol requires countries to criminalise child prostitution, including offering or obtaining a child for prostitution; and child pornography, including producing, selling or possessing child pornography. The optional protocol also requires countries to ensure that the sale of a child for sexual exploitation is prohibited by its criminal law. In addition to these acts, the optional protocol also outlaws the transfer of organs from children for profit and the sale of children for forced labour. In effect, the optional protocol spells out in greater detail some of the important protections for children contained in the Convention on the Rights of the Child.

In line with the government's consultative approach on international instruments, the views of the Joint Standing Committee on Treaties and the states and territories will be sought prior to consideration of the ratification of the optional protocol. Many of the matters covered by the optional protocol are matters for states and territories, rather than the Commonwealth. The Commonwealth will seek support at the state and territory level for Australia to be able to implement the optional protocol.

Senator KIRK—I have general questions about the numbers of visas issued in particular trades, such as the building trade and the like, but from what you have said, Mr Waters, that information will most probably be provided. Is that right? Can you provide some breakdown by sector?

Mr Waters—Yes, we can provide that information on notice.

Mr Rizvi—In respect of the building trade, the proportion of subclass 457 visas that go to the building and construction industry is actually very small.

Senator HARRADINE—Is the department aware of reports that a Colombian detainee who was forcibly deported in 2002 was murdered within sight of his mother's home when he got back to Bogota?

Mr Illingworth—We are aware of a number of media reports relating to a Colombian. However, they were in relation to a Colombian who departed voluntarily from Australia at a time of and to a destination of his choosing. But I believe, from the other details you have provided in relation to the person's alleged death close to his home, that we are talking about the same set of media reporting.

Senator HARRADINE—It is Alvaro Moralez whom we are talking about. That gentleman was denied asylum. You say that he went voluntarily, but in fact he was denied asylum. Hadn't he expressed a genuine fear of persecution by the paramilitary on his return? Why was his claim dismissed? Clearly he had a well-founded fear.

Mr Illingworth—I do not think it is clear that he had a well-founded fear, and in particular I do not think it is clear that he had a well-founded fear of persecution on a convention

ground. The claims that the individual advanced both to the departmental decision makers and then some time later to the Refugee Review Tribunal were assessed rigorously. The Refugee Review Tribunal concluded that the person did not have a well-founded fear of persecution on a convention ground. There have been a number of allegations about the circumstances relating to this person's return to Colombia, the circumstances which he experienced upon return and even about the possible motivations for what befell him. The department takes these allegations very seriously indeed and an extensive effort has been put into this particular case to try to substantiate some of the allegations that have been made and to get a clear picture of what it is that actually occurred in terms of this person. That investigation and those inquiries are still proceeding. At this stage, to my knowledge we have been unable to substantiate many of the elements that have received quite wide media reporting.

Senator HARRADINE—Is the department aware of any other asylum seekers that have been deported from Australia and who have suffered death, disappearance, jail or torture on return to their country of origin?

Mr Illingworth—Failed asylum seekers who have been forcibly removed?

Senator HARRADINE—Yes.

Mr Illingworth—I am not aware of any but I am certainly aware that there are allegations made from time to time of cases where this has occurred. As I mentioned a few moments ago, these issues are ones which we take very seriously indeed. Wherever we find allegations of this nature raised we put every effort we can into trying to find out what actually happened and attempting to validate or substantiate the allegations that are made.

Senator HARRADINE—So you have no instances at all? Nothing has been reported to you about any other asylum seekers who have faced—

Mr Illingworth—Certainly, allegations are made in the media. In recent times there has been some community group publication of instances where they believe these sorts of events have occurred. We take these allegations very seriously and we look into these sorts of issues vigorously. But I am aware of no instance where the scenario that you have mentioned has occurred. I am aware of instances where people have claimed that it has occurred but which, notwithstanding considerable effort by the department, have to date not been substantiated.

Senator HARRADINE—Does the department have any form of monitoring or surveillance to determine what happens to failed asylum seekers who claim a well-founded fear of persecution on their return? What is the procedure?

Mr Illingworth—The department does not routinely follow people's lives after they depart Australia. The emphasis in the processing of Australian refugee claims is to get the decision right to start with so that people who need protection receive it. The corollary is that the issues of people departing Australia only arise when either (a) they choose to depart voluntarily, in which case there is an assumption of responsibility for consequences by themselves or (b) where we have found that we do not owe protection obligations to the individual.

Senator HARRADINE—But when there are allegations, since you do not have a monitoring system, what steps do you take to assess the accuracy or otherwise of those allegations?

Mr Illingworth—We adopt all the steps that we can adopt realistically to obtain the information that we need. The strategy might differ from case to case, depending on where the alleged or claimed events have happened or, particularly, on what sort of event happened. For example, we would almost inevitably contact the Department of Foreign Affairs and Trade. We would make inquiries with our own staff and with other Australian staff overseas. We

would check our country information and seek updates of country information to try to substantiate whether the claimed events fit into what is known about the circumstances on the ground in a particular country or whether the alleged motivation is consistent with what we know about the country. So a lot of activity happens at a lot of levels. Depending on the particularities of the case, there might be contact through specialised agencies as well.

Senator HARRADINE—Do you give information to the delegate of the minister or to the RRT when you receive it? That is to say, if decisions are made by the delegate or the RRT about particular asylum seekers where there is a claim that they have suffered persecution on their return, is that information then provided by you to these other two groups?

Mr Illingworth—We liaise with the tribunal to ensure that they are aware of what we are doing when we explore these claims that emerge from time to time, and on the outcomes of those inquiries. As I mentioned, a number of allegations are being explored at the moment.

CHAIR—Senator Harradine—

Senator HARRADINE—Madam Chair, I would be happy to come back after lunch. I can assure you that I have trimmed down immensely the questions, and some of them have already been asked.

CHAIR—I understand that. I think it is best that we come back after lunch, though.

Proceedings suspended from 1.02 p.m. to 2.04 p.m.

Senator HARRADINE—To finish on that question of returnees, was there a case of an Iranian in 2002 who was killed in front of an ACM officer? Is the department aware of that?

Mr Illingworth—I am not aware of such an incident. Are you referring to an Iranian being removed?

Senator HARRADINE—Yes. A returnee.

Mr Illingworth—I do recall that there was a case of an Iranian being removed from Australia by boat. There were some allegations floating around in the media at the time but as far as I am aware they were unfounded.

Senator HARRADINE—There is no ACM officer who is receiving counselling at the moment?

Mr Farmer—Are you talking about an allegation that this happened in a detention centre?

Senator HARRADINE—I am not sure whether it was in a detention centre, but there was a returnee who apparently was killed. I think it might have been the one that was referred to by Mr Illingworth. There was some media comment about it. If there is something there you would no doubt have followed it up.

Mr Farmer—Would it be helpful if we attempt to identify that case and make information available to the committee?

Senator HARRADINE—Thank you, Mr Farmer. How does the department respond to the *Age* report of 4 February, in which there are claims of violation of religious freedom and abuse by some Muslim detainees against other religious groups in the detention centre? I think it was Baxter, wasn't it? I will read the first couple of sentences:

Mandaeans who fled persecution in Iran say life in Australia's detention centres is filled with religious hatred against non-Muslims.

An Iranian family who fled to Australia after their eight-year-old daughter was raped suffered such religious persecution at the Woomera detention centre that all four were admitted to hospital with psychiatric problems.

What is the department doing about this? Has the department investigated those claims? If so, who carried out those investigations?

Mr Davis—There are a range of claims associated with both allegations of criminality and allegations associated with intimidation or other things. Where those matters come to our attention, we do refer them to relevant authorities, such as the police. Many of these matters have also come to the attention of the Human Rights Commissioner or the Ombudsman and, indeed, Amnesty International and others who have brought matters to our attention, which are appropriately responded to as and when they are drawn to our attention. There are a range of these sort of complaints about which detainees go directly to those external authorities and of which we are unaware until the complaint is lodged with them. Without having the specific details of the ones you wish us to follow up, it is generally true that when they come to our attention, we do notify the relevant authorities. In many of these cases, the independent bodies, such as the Ombudsman or others, have indeed undertaken investigations and we have responded to them.

Senator HARRADINE—Let me quote to you what Amnesty thinks about these authorities. Amnesty states:

The authorities are basically indifferent to religion ... They regard it as a nuisance, and there is also an overall view that, within limits, detainees can do what they like to each other. They hope that if they do nothing, it may persuade individual Mandeans, Tamils and Christians to go home.

You are talking about reference to ‘authorities’. Surely you are the authority. You are responsible for what happens in the detention centres. What I have asked is: has there been any investigation of this *Age* report of 4 February, who is undertaking that investigation and when are we likely to have a result of the investigation?

Mr Farmer—May I start by saying that it might be helpful to focus on some of those general points that you quoted Amnesty as commenting on. I do not think that that is at all an accurate picture of the attitude towards practice of religion in the detention centres. Indeed, the guidelines for the operation of the centres contain quite clear references to religious practice. If it would be helpful we could provide copies of those to the committee, or we could go into them now if we have the information here. On the general point, I would not like to leave the Amnesty comments unanswered.

Senator HARRADINE—All right, leave them aside for the moment.

CHAIR—One moment, Senator Harradine. Mr Farmer, I think the committee would be very interested in receiving the material that you have offered. I do not know whether it is available now; notwithstanding that, if we could have written copies of the guidelines you refer to, that would certainly assist the committee in this area. I now ask Senator Harradine to continue with his questions.

Senator HARRADINE—Thank you, Chair. To be specific, who is undertaking any examination of the *Age* report of 4 February? When are we likely to have a response? I asked you a direct question from the *Age* report, which said:

An Iranian family who fled to Australia after their eight-year-old daughter was raped suffered such religious persecution at the Woomera detention centre that all four were admitted to hospital with psychiatric problems.

Is that the case or not?

Ms Godwin—There are a couple of things to be said. First of all, as to the reference to the *Age* article on 4 February, I am advised that there is no specific investigation being undertaken into that article as such. However, the issues raised in that article are issues that have been raised in the past in different ways. When they have been raised they have been examined fairly carefully, but our experience when we have looked at these things has been that there has not been systematic discrimination or abuse based on religious affiliation in the way that is being alleged. In fact, in many instances, considerable lengths have been gone to in different centres to accommodate different religious requirements.

With respect to the reference that Amnesty has a view that detainees can do anything they like to one another, that may well be their opinion but it is not our view, nor is it our practice. If we are aware of incidents of abuse or, indeed, assault or anything of that nature, those matters are investigated, regardless of whether they are between detainees or perpetrated by anybody else.

We are aware of the family to which you refer. Obviously, I do not want to say too much in detail about the family for privacy reasons, except to say that that is a family who have experienced particular difficulties which required extensive medical and psychological intervention—but that was not because of issues to do with discrimination because of their religion. As I say, that is a family who have had very extensive support provided to them, including transfer to a centre where they could get more intensive medical and other support as they required.

Senator HARRADINE—Are you investigating the *Age* report?

Ms Godwin—Not specifically, because it really raised issues that had been raised previously and which had already been examined in a variety of ways.

Senator HARRADINE—I will not take this any further at the moment, Chair, because I believe this matter is being dealt with by a higher authority.

CHAIR—Thank you.

Senator HARRADINE—In relation to the group of detainees at the smaller of the two detention centres in Nauru, does this group include seven women, most of whom are accompanied by children whose husbands have been granted temporary protection visas in Australia? Why have the women been rejected as asylum seekers when their husbands have been granted TPVs? Why can't they join their spouses in Australia?

Mr Illingworth—There are seven such women. They were assessed against the refugee convention in order to reach a judgment about whether they were refugees or not, and it was concluded that they were not refugees. Subsequently, they sought a review of that decision which was conducted and the same outcome was reached. There is no provision in the refugee convention for providing refugee status to an individual solely on the basis of a family relationship with somebody else who is a refugee. That appears to have been an intentional drafting position in the convention because issues of family reunion and family unity are mentioned in nonbinding documentation relating to the convention that was produced at the same time.

The Australian legislation provides for the maintenance of family unity in most cases, even to the extent that a protection visa onshore can be granted to a person who is not a refugee solely on the basis of a family relationship with somebody who is, provided that we are talking about the maintenance of a family unit. In the individual circumstances involved, it

was not a situation of maintaining a family unit—the family unit was already sundered. The individuals in Nauru were assessed on their merits against the convention.

Senator HARRADINE—What happened?

Mr Illingworth—They have been found not to be refugees.

Senator HARRADINE—What happens from here on for them and their spouses?

Mr Illingworth—The individuals on Nauru are free to return to their homeland or any other country they may wish to travel to.

Senator HARRADINE—They just want to be reunited with their spouses and have the matter go on from there—wherever that is.

Mr Illingworth—The spouses, as I understand it, have all lodged further applications for protection visas, and those applications, along with all other such applications, will be assessed. Depending on the circumstances of the individual case, if they are found to be still owed protection, they may be able to access permanent residence. If that were the case, they would be in the same position as any other refugee permanent resident in Australia in terms of their capacity to seek to sponsor relatives to Australia.

Senator HARRADINE—So the spouses on Nauru will not be forcibly removed until their spouses in Australia have lodged the necessary applications and those applications have been finalised?

Mr Illingworth—The spouses on Nauru and their dependants are free to depart Nauru to return home at any time.

Senator HARRADINE—I heard you say that.

Mr Illingworth—Australian action in relation to involuntary removals would not be constrained by the existence of an application onshore. There is no impediment in the Migration Act which would prevent a person from being removed.

Senator HARRADINE—I have raised the matter, so we will keep an eye on it. Is the department aware of any young girls being sent back to their country of origin to undergo genital mutilation?

Mr Farmer—Do you mean people who have been in detention?

Senator HARRADINE—No, anybody who has been here. Are you aware of any girls being sent back to their country of origin to undergo genital mutilation?

Mr Farmer—I am not—I do not know whether any of my colleagues are—nor do I immediately perceive how we would be aware of that. I am not aware that it exists but I do not think that we have a function of trying to monitor that sort of thing. If my colleagues have a different view, I do not see it. I think what I have said is the case.

Senator HARRADINE—So you are not aware of any person who has been sent back to their country of origin to undergo genital mutilation. What would happen if that were the case? It is the case in certain countries that I am aware of.

Mr Farmer—Yes.

Senator HARRADINE—And action is taken by the immigration authorities against those who require the girls to go back and undergo genital mutilation.

Mr Farmer—Yes.

Senator HARRADINE—What is the situation? Who does monitor it? Who would be responsible, for example? Does the department have any program to discourage the practice? I am probably asking you a legal question. Does the department have a mandate to undertake any punishments for—

Mr Farmer—I am not trying to be unhelpful; I just do not believe that this matter is in our purview. It is really about people leaving the country, not to—

Senator HARRADINE—Persons who have come in and been accepted either as immigrants or refugees.

Mr Farmer—If they have been accepted and they wish to leave Australia for a temporary or permanent reason, we might be involved in issuing them with a resident return visa if they are permanent residents. However, I do not believe that we would be involved in ascertaining why they want to leave the other country.

CHAIR—I was going to seek the guidance of the committee on where we go next, but I suspect that means I am going to seek the guidance of Senator Sherry.

Senator SHERRY—I have some questions on TPVs which relate to output 1.2. I think Senator Bartlett also has questions on that area.

CHAIR—He definitely has questions on TPVs. So output 1.2 is where we had intended to go. That puts us in great danger of being in the strict order we were planning to pursue, Senator Sherry, for which I am ever grateful.

Senator SHERRY—How many TPV holders have held a TPV for 30 months or more?

Mr Illingworth—Some 877 temporary protection visas have been held for 30 months or more.

Senator SHERRY—How many of these 877 have lodged a further protection visa application with DIMIA and are thus eligible for assessment of this further application?

Mr Illingworth—I do not have that figure with me, but we can provide it to you.

Senator SHERRY—Will you take it on notice?

Mr Illingworth—Yes.

Senator SHERRY—I suspect you may not have the next figure. How many have held a TPV for three years or more?

Mr Illingworth—Approximately 180.

Senator SHERRY—Are you able to provide for each month of 2002-03 the breakdowns of numbers in each month and the countries of origin?

Mr Illingworth—I can do that for the two primary nationalities, Afghans and Iraqis.

Senator SHERRY—Could you give me that information now and perhaps answer the rest on notice?

Mr Illingworth—For Afghans reaching the 30-month point from August, there were 264 in February 2003; 62 in March 2003; 83 in April; 47 in May and 86 in June.

Senator SHERRY—That is Afghans?

Mr Illingworth—Yes. That is the total number who would be reaching their 30-month point this financial year. For Iraqis, the figures are 588 in February; 475 in March; 307 in April; 103 in May and 194 in June.

Senator SHERRY—Has DIMIA made any decision in respect of further protection visa applications by TPV holders?

Mr Illingworth—Yes.

Senator SHERRY—If so, how many and what are the applicants' countries of origin?

Mr Illingworth—There have been about 38 decisions. I do not have the countries of origin but they can be provided to you.

Senator SHERRY—Are there any exceptional circumstances which led or contributed to those decisions being made?

Mr Illingworth—In some cases. In one case, for example, I am aware that there were some personal issues relating to suffering, torture and trauma, which led to an earlier decision. In other cases I am aware that decisions were made when it became apparent that the individual did not wish to pursue their application any further and they had, for example, departed Australia. Essentially, there are a number of different reasons.

Senator SHERRY—You might be able to point me to a list of the decisions or you could take that on notice. Is anything publicly available?

Mr Illingworth—We are normally very cautious about publishing information about decisions, nationalities and the like, and outcomes, particularly in small numbers because it becomes easier for people to identify individuals. But if there is some way that we can produce information on this that avoids that—

Senator SHERRY—You can have a look at it, take it on notice and see if there is a way of conveying the information such that an individual cannot readily be identified. The law in relation to TPVs came into operation in October 1999. Was any consideration given or any legal advice sought concerning the appropriate legal tests to be applied to the determination for further PV applications?

Mr Illingworth—A wide range of legal advice was sought at the time that the whole temporary protection visa regime was developed and introduced.

Senator SHERRY—What was the context of the advice?

Mr Illingworth—It essentially covered all aspects of the proposal.

Senator SHERRY—Can you make that legal advice available to the committee?

Mr Farmer—I would like to think about that because it may well have included advice to the minister. It was some time ago, so I just do not have it in my head as to whether or not that was the case.

Senator SHERRY—Obviously, you could not make it available if it is direct advice to the minister, but there may have been separate advice. Could you take that on notice?

Mr Farmer—We will see what we can do.

Senator SHERRY—What consideration was given to resources required to ensure the efficient, fair and proper processing of further PV applications?

Mr Illingworth—The resource implications of the temporary protection regime have been part of our planning from the time of the introduction of the legislation.

Senator SHERRY—Precisely what part of the plan?

Mr Illingworth—Our work force planning and the budgetary projections.

Senator SHERRY—Yes, I am sure that is the case, but precisely what part of the work force and budget—numbers, staff?

Mr Illingworth—In terms of making forward judgments about how many trained officers one needs to have available to process the work and projections of the related funding that needs to be sought to sustain and train those officers.

Mr Farmer—In general, we have worked very closely with the Department of Finance and Administration to ensure that our funding arrangement—that is, the purchasing agreement that we have—enables us to obtain and to use sufficient resources to get through the case load. As you may recall, because of the very large influx of unauthorised arrivals at the end of 1999, we faced a quite severe challenge at the beginning of the year 2000 in basically having enough trained decision makers on hand to get through the case load. That is what Mr Illingworth was referring to, in terms of our work force planning. We now have a quite well-established surge capacity to enable us to handle decisions in greater volumes than we get now. We remain in contact with the department of finance to make sure that our resourcing is adequate to enable us to process the case load.

Senator SHERRY—I understand that, but I am looking for the detail—approximate staff numbers, approximate budgetary dollar amounts.

Mr Illingworth—I can give you the staff numbers, historically, that we have had available over the last three years, if you would like.

Senator SHERRY—This is on the PV applications?

Mr Illingworth—This is to process protection visa applications, yes. They have ranged generally between 119 and 138, with the more recent figure including a large component of case officers who have been recently deployed out of the onshore protection area into other areas of the department as part of a scaling down of our staffing to match the lower workloads that we have been experiencing with the cessation of boat arrivals on the mainland. The figures in detail, for June, are 37 full-time case managers in 1999, 89 in 2000, 100 in 2001, 68 in 2002 and, as at December last year, 69 full-time officers. There were additional trained staff available, particularly in the later years, to handle the boat arrival case load. There are approximately 69 of those officers off line at the moment in other areas of the department.

Senator SHERRY—So you have the capacity to bring in people from other areas of the department. Was there a total increase in the staff of the department?

Mr Illingworth—During the years of the high numbers of boat arrivals?

Senator SHERRY—Yes.

Mr Farmer—Yes, Senator, there was.

Senator SHERRY—Was there a strategic plan set out to handle the increase in the workload? Presumably there must have been some point where you said, ‘We are going to have to have additional resources in this area. We need to plan how we staff, budget, the particular peak in demand that we are going to have.’ What was the process there?

Mr Illingworth—This is during the years 1999 onwards?

Senator SHERRY—Yes, 2000 and 2001.

Mr Illingworth—We have been constantly managing our projections about likely workloads and resources, but the situation with boat arrivals, historically, has been extremely

volatile. It is one where it is very difficult to make firm projections and develop detailed strategic plans. In some senses, a detailed plan can in some cases lock one into one scenario, when what is of more benefit is a more flexible approach to changing circumstances. Essentially, the response to the massive influx of boat arrivals in the onshore protection area was to undertake a major series of recruitment exercises, with a view to managing, as circumstances developed, whether further recruitment needed to be undertaken or whether staff needed to be shed from that particular area and placed in other areas of the department, for example, if the workloads declined. As a result of that strategy we have had sufficient officers available to handle what was an unpredictable and major influx of work with the boat arrivals. Since the cessation of boat arrivals onto mainland Australia and the winding up of the processing on Nauru and Manus Island we have been focusing more on tailoring our staffing levels to match a lower level of workload.

Mr Farmer—I will add something that I assume will be of interest. At the end of 1999 and the beginning of 2000 we faced, as we have said, a very large influx of cases that required processing, so we very closely supervised a process of re-engineering our procedures. That revolutionised our capacity to handle the case load. I think the best measure of that is that we very significantly brought down the average processing time in the 2000 calendar year for the delivery of primary decisions. That remains a feature of what we have done in the years since then. There was a very significant challenge presented to the department and I think the figures show that we rose to that. In fact, there was the capacity for us to build into our purchasing agreement—this was done in the budget a couple of years back—funding for the department that was predicated on our processing the large majority of applications in 14 weeks or less.

Senator SHERRY—To step back for a moment, Mr Illingworth, you referred to recruitment. Was that recruitment internal, external or both?

Mr Illingworth—It was both internal and external. We engaged in a number of strategies. Some state offices used contract employees from outside the agency. There were formal public recruitment processes undertaken to get the widest possible level of interest from the work force. There was also targeted recruitment inasmuch as we identified within our organisation people with the right skill sets or background, and arrangements were made to have those officers as an additional surge capacity available for redeployment within the department. There was permanent recruitment open to application from the broader work force, there was internal identification of officers as a redeployment surge capacity, and there was also the very flexible use of temporary employment and contractors.

Senator SHERRY—So there are some temporary employment contractors?

Mr Illingworth—There are no longer, Senator.

Senator SHERRY—That is what I was going to ask next. Do you have an approximate number?

Mr Illingworth—At the moment we have 69 people who are full time in the organisation. I am not aware that any of those are contractors. My understanding is that they are all DIMIA officers.

Senator SHERRY—I mean the details of the numbers who were temporary employees, specifically on a short-term or contract basis for a period of time.

Mr Illingworth—I do not have those numbers but they will be obtained on notice.

Senator SHERRY—It was not my intention to ask this, but there have been some problems in other departments. You might check if they were paid their superannuation guarantee contributions.

CHAIR—Are you putting on your superannuation hat, Senator Sherry?

Senator SHERRY—Yes, I had to mention it because one department was not paying contractors their obligations in that area, but that is not an issue that I intend to raise.

Mr Killesteyn—A good example is that we took staff from other departments on a beg, borrow and steal basis. As the workload came down they just returned to the department and we just continue to pay—

Senator SHERRY—Was that the case of all those who were temporarily recruited into the department?

Mr Killesteyn—Not necessarily, but a good example was in Western Australia, where there was a recruitment issue and we took some staff from other departments. We needed staff who were good decision makers, because this was fairly serious work and they needed some experience in the way they approached these cases. We could not just take anybody off the street.

Senator SHERRY—Okay. That was not clear to me from the earlier answer—and that is not a criticism. So there was a mixture of people from other departments and also from non-Commonwealth employment?

Mr Illingworth—The recruitment processes were open to all. They were the normal Public Service recruitment processes.

Senator SHERRY—I understand they would be open to all; I was just interested to find out what the mix was. In January this year a spokesperson for the minister for immigration was reported in the *Sunday Age*—it was an article by Mr Larry Schwartz—confirming there would be further delays, potentially of months, before decisions on further applications were made. The reason cited for this delay was: awaiting legal advice and a decision on the appropriate legal test to apply to these cases. Is this a reason for delays?

Mr Farmer—There are a couple of introductory things to say here. In looking at the second round of processing of temporary protection visa applications the minister has been very concerned to ensure the efficacy of the process. He has done that against the background of a number of developments that I think are well known. A very important one is the emergence of fraud in the caseload. It has become clear that the incidence of fraud was greater than we had thought likely at the beginning of the process, so he has been understandably concerned that we have processes in place to deal very vigorously with that aspect of the caseload.

In a more general sense, he has certainly been very concerned to make sure that, overall, the integrity of the process is assured and that we are taking the decisions on a basis which is both defensible and rigorous. We have provided quite a bit of advice to the minister. We are still in a process of consultation with him. He has asked for some further advice. I believe that that process of providing all of the advice that the minister needs will be completed quite soon.

Senator SHERRY—That involves legal advice?

Mr Farmer—Yes, it includes legal advice.

Senator SHERRY—Before I go into that in more detail I want to ask about the issue of fraud. You said there was an emergence in the caseload of fraud ‘greater than we had thought

likely'. What sort of fraud and how did you detect it? How did it emerge as a significant problem that you ultimately identified?

Mr Killesteyn—The sort of fraud is typically identity fraud. At this point it is primarily related to the caseload of those people claiming to be from Afghanistan. Generally it has arisen because of information that we have been provided by members of the community. Essentially, a number of allegations started to emerge about people who were claiming to be Afghans and claiming persecution from the Taliban, but yet, based on the community's own views about these people, there were suggestions that they were really Pakistani. That is a fairly typical profile: claim Afghan, but really be of Pakistan nationality.

Once we started to get those sorts of allegations and the weight of the allegations started to emerge, it became a matter for investigation by the department. We put in place a significant number of steps to try and chase down all of the allegations possible. It is clear that at least in some cases those allegations are true. We have now in the department, across Western Australia, New South Wales and Victoria, established what are called integrity units, for want of a better name. Essentially, their role is to take the allegations and pursue the identity of the individual. As I said, that involves getting information from the community, but it may also involve getting information from other sources, such as what we can find from the source countries themselves such as Pakistan or Afghanistan.

Senator SHERRY—You mentioned the issue of documentation. What sort of documentation are we talking about—passports?

Mr Killesteyn—That is part of the difficulty, because invariably these people arrive without any form of documentation whatsoever, so, essentially, you have to go on a range of other indicators. Indicators can be things such as dialect or language. They can be information from the community. In a number of cases we can check with records that are held in Pakistan, in the typical profile that I have explained.

Senator SHERRY—I understand that. We have touched on fraud and documentation. I am interested to know what sort of documentation they would have. Do they have documentation and is it fraudulently produced?

Mr Killesteyn—No. The typical profile of an asylum seeker that has come out of the last few years is that there is no documentation.

Senator SHERRY—That is what I understand.

Mr Killesteyn—You rely on the claims that the person makes. You take those claims and assess them against whatever information you have about the claims. You check as far as possible the veracity of those claims by asking a series of questions which might go to where they have come from, what sort of geography they understand and what sorts of crops are grown in the area. All of those secondary types of indicators are used to check the integrity of the story.

Senator SHERRY—I want to be clear on this: when we were talking about fraud earlier and you mentioned documentation. We were not talking about people who have some sort of fraudulent documentation like a passport that has been fraudulently manufactured, which they have bought.

Mr Killesteyn—Typically not. It is a claimed identity.

Senator SHERRY—Okay. I think you mentioned, Mr Farmer, that fraud emerged more than you thought was likely. Have you gone back through the cases that were completed and reviewed them on the basis that fraud emerged more than you thought was likely?

Mr Killesteyn—We tried to sense that the review of the temporary protection visa decision was coming up. As Mr Illingworth has already described, we have a full work force program which looks at the timing of how those decisions come up. At the same time, we have been working to ensure that the identity issues that we have been increasingly made aware of are dealt with so that they are part of the process of reviewing the decision on the temporary protection visa. We have a range of some 700-odd cases under review. It is a significant number. The program of reviewing the issues around claimed identity for those cases is aligned with the timing of when the temporary protection visa comes up. So that process is going on. I mentioned the three TPV integrity units. They are working through those cases. All of that is being coordinated through our central office.

Senator SHERRY—Has the department had occasion to go back and review cases that were already completed, in respect of possible fraud?

Mr Killesteyn—The question of the person's identity would be an element of the decision on the temporary protection visa.

Senator SHERRY—I understand that. But having said, 'You can have a TPV,' have you then had occasion to go back because you have further information that may lead to a possible review, because of fraud?

Mr Killesteyn—There have been a number of instances, yes, where we have reviewed the original decision on the TPV and taken other action.

Senator SHERRY—Mr Farmer, regarding the issue of legal advice, what legal tests and uncertainties have been identified that are currently being investigated in this area?

Mr Illingworth—The issues being explored at the moment have their genesis in some submissions which were put to the department by some legal and advocacy groups, setting out their views about what should be the appropriate tests. While the department has arrangements in place to process protection visa applications, nonetheless on receipt of those submissions it was felt prudent to obtain legal advice about their content. The general thrust of the submission is that a person, having been found to be a refugee, should essentially be given another protection visa unless the explicit grounds mentioned in article 1C of the refugees convention apply. There is some argument also that in that process there is a form of reverse onus applied or that should be applied. Those are the two broad propositions that have been put to the department.

Senator SHERRY—What is the approximate number of people that fall into these categories at the present time?

Mr Illingworth—In total, there are just over 8,500 temporary protection visa holders, but the vast majority of those have quite a considerable time still to run on their temporary protection visas. As I mentioned in one of my earlier answers, approximately 180 people have reached the face expiry term of their temporary protection visas, although arrangements have been in place for some time now to continue the temporary protection visa status of a person whose first term of visa is expiring—provided they have an unfinalised further application for a protection visa on foot. So the legal framework essentially reflects the fact that there is no obligation on the department to finalise the further application within any given period.

Senator SHERRY—The laws were introduced in 1999. Why have you not been able to resolve the legal issue of the appropriate tests yet?

Mr Illingworth—The issue is to explore the arguments which have been raised in submissions put to the department in very recent times, not for the department to reach a decision on what it believes is the appropriate course of action for processing.

Senator SHERRY—What do you mean by ‘very recent times’?

Mr Illingworth—In the last weeks or months.

Senator SHERRY—At the end of last year?

Mr Illingworth—Well within the last year to my recollection. It is more likely that it was within the last six months or so that the issue was put to the department with vigour by various advocacy groups.

Senator SHERRY—Were these issues of appropriate tests, which they have raised with the department in approximately the last six months, considered back in 1999?

Mr Illingworth—I cannot recall.

Senator SHERRY—Can anyone help me?

Mr Farmer—It is just a question of fact as to whether they were or not. I do not recall. We may have, in looking at the construction of the legislation, which obviously included the second stage, but I do not recall this particular question—the one that has been raised with us more recently—being addressed in detail then.

Senator SHERRY—With respect to the tests that Mr Illingworth has raised that have been queried, could you check to see whether those issues were raised at that time back in 1999?

Mr Farmer—Yes.

Senator SHERRY—In December 2001 the minister admitted that Afghans awaiting primary decisions on applications for TPVs had had processing of their applications frozen. Is that correct?

Mr Illingworth—There was a period in late 2001 and into very early 2002 when decision making on some Afghan cases was suspended. This approach has been historically applied in other instances where there is a rapidly changing country situation and/or there is very considerable uncertainty about what is happening on the ground and the availability of information about what is on the ground. In this particular case, decision making on Afghan cases which went unaffected by that volatility and by the absence of reliable current country information continued. But where there were cases which had to rely on a decision maker knowing what the country’s situation was now, rather than perhaps two weeks or three weeks earlier when it was quite a different situation, those cases could not be reliably decided and decision making ceased while the research effort went on to try to get clarifying information to enable a reliable decision to be made.

Senator SHERRY—But was that also in anticipation of changing circumstances?

Mr Illingworth—It was a reflection of the fact that the circumstances had changed and continued to change. You would appreciate that by then we had been processing a lot of Afghan cases; we had a huge raft of information about the fine detail of country circumstances in Afghanistan which almost overnight became totally out of date, and it was very difficult—

Senator SHERRY—Sorry, in what sense did it become out of date overnight?

Mr Illingworth—When the Northern Alliance, with American backing, advanced against the Taliban, over a period of days you had a shift from a country which was de facto predominantly under the control of a fundamentalist theological regime to a country that was very much different.

Senator SHERRY—Under the control of a new regime.

Mr Illingworth—It was a country about which we felt we did not have reliable information that would enable us to make decisions on cases where people were saying, ‘I can’t go back home because X will happen to me.’

Senator SHERRY—So could a TPV applicant request the government to freeze its consideration of their TPV because the situation may shift back again? Is that the logic that an applicant could follow? So the government puts them on hold while the circumstances are changing and there is a change of regime, and the applicant says to the department, ‘Please put my application on hold. The circumstances might change in my favour a bit later on.’ Is that possible?

Mr Illingworth—That was not the type of consideration that went on in deciding to cease decision making for some of the Afghan cases. The issue really relates to the requirement of the decision maker to be satisfied that the criteria for granting the visa are met. The problem where you have an uncertain circumstance is that it becomes almost impossible for a decision maker to be satisfied. At the micro level—looking at an individual case—decision makers grapple with this issue all the time. An applicant will say such and such is the case. If the decision maker has just heard that for the first time, they will have no real idea of whether or not to believe that or rely on that. They will then undertake some checking, sometimes going back to our post overseas to get some checking done on the ground in the country of origin, and then form a view about the reliability or otherwise of the claims being put. This is just a case where a whole number of applications were caught up with essentially the same problem: people were making claims for protection but our information was not reliable.

Senator SHERRY—You did not answer the question I posed: is it possible for an applicant to freeze their application because of changed circumstances next month or next year? I think Afghanistan could be described as being in a state of flux even though there has been a regime change.

Mr Illingworth—When somebody applies for a visa, it is presumed that they want a decision. As I mentioned, the determining issue is whether the decision maker is in a position to either grant the visa or is obliged under the act to refuse it. So, it is at the decision maker’s satisfaction. If the country information is reliable, then the applicant cannot request the decision maker to defer—

Senator SHERRY—I was interested in whether they could do the reverse. We have had the decision put on hold for some Afghans because of the circumstances on the ground, but what has happened with Iraqi applications? Have any Iraqi applications been put on hold?

Mr Illingworth—There are very few Iraqi applications to put on hold. At the moment, our country information is current and reliable.

Senator SHERRY—In the event of a change in circumstances—an attack on Iraq—it seems likely, given what has happened with Afghanistan, that those applications, albeit small in number, would be put on hold, would they not? That seems to be the logic.

Mr Illingworth—That may be the case, but that is an issue that would have to be resolved depending on the circumstances at the time.

Senator SHERRY—You accept that that is the logic of what happened in Afghanistan and that may well be the logic of what happens in Iraq.

Mr Illingworth—That may well be the case.

Senator SHERRY—If we assume that there is a war on Iraq—

CHAIR—Senator Sherry, Mr Illingworth has been as helpful as he can in answering those hypothetical questions. I am not sure how much further you can take that particular line.

Senator SHERRY—I think it is a pretty strong hypothetical.

CHAIR—If you have any insight into the matter, Senator Sherry, by all means please share it with us but, in terms of answering questions in these estimates, I am not sure we can take the hypothetical a great deal further.

Senator SHERRY—Has the department taken any legal advice about the lawfulness of ceasing processing of applications in the circumstances relating to Afghanistan?

Mr Illingworth—Processing did not cease; processing continued. Decisions in some cases were not made while further—

Senator SHERRY—The file was put at the bottom of the pile?

Mr Illingworth—No, action was undertaken on the file but that action was not necessarily taken by the case manager. It was taken in the context of finding out what was actually happening in a country that was in a considerable state of flux where it was quite apparent that there had been some dramatic changes, but we did not know precisely what that meant, to enable the decision makers to make a reliable decision. Processing continues when, for example—to use my earlier example of a single case—a case officer asks our country information service to research and find out whether a certain circumstance is happening on the ground to validate a claim. The case is being processed; processing is continuing. Somebody is trying to find a piece of information to give to that decision maker. It does not mean that the file is open on the decision maker's desk for that whole period while they wait for our post to get back to us with the relevant information. This involves a large number of people caught up in the same earth-changing circumstances.

Senator SHERRY—The need to get further information does lengthen the time of consideration.

Mr Illingworth—It can do, particularly when there is a massive change in a country's circumstances.

Senator SHERRY—In these circumstances, a person who is a member of the Taliban who is in Australia claiming refugee status prior to the intervention and the fighting in the war in Afghanistan—however we describe it—would have been unsuccessful. Now, given the new circumstances, they could be successful.

Mr Illingworth—That is the case. The reason for suspending decision making goes to ensuring that there is reliable information to make a correct decision on the current circumstances. After that information is obtained, different people might be approved and other people might not be approved.

Senator SHERRY—So the oppressors become the oppressed, and we have a different class of individuals on different grounds.

Mr Illingworth—It is not quite that black and white because there are very strong provisions in the convention which prevent a person from being a refugee and receiving protection if, for example, they have committed crimes against humanity, war crimes or torture. But, theoretically, somebody who was claiming that maybe the community associated them with a group that they were not really a member of, like the Taliban—

Senator SHERRY—You could be a member of a political organisation, such as the Taliban, without having taken part individually in physical oppression. It is quite possible, I would have thought.

Mr Illingworth—It is conceivable of a situation where somebody who was not a refugee before such a massive event is a refugee afterwards, and the people who may have been refugees beforehand have ceased to be.

Senator SHERRY—So conceivably we could have people in Australia claiming refugee status if Hussein, in Iraq's regime, is removed. The oppressors become the oppressed.

Mr Farmer—Again, I think we are going down a hypothetical path.

Senator SHERRY—I understand that there was a case in the United Kingdom of a member of the Taliban being granted refugee status recently. Are you aware of that?

Mr Illingworth—No.

CHAIR—There may or may not have been, Senator Sherry, but I am not sure how it fits into the additional estimates consideration by the Australian Senate.

Senator SHERRY—Is the department aware of the Federal Court decision of Justice Gray: *VHAF v. Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1243 (8 October 2002)? Are you aware of that decision?

Mr Farmer—Absolutely, Senator!

Senator SHERRY—His Honour expressed serious doubts as to whether a delegate with the duty to consider and determine an application can be directed to defer doing so by his or her departmental superiors or, indeed, anyone else. Have officers been made aware of their duties and obligations concerning a need to consider and determine applications for PVs?

Mr Illingworth—There are explicit powers, as I recall, in the act which enable the profiling of priorities within the case load. I think that where a decision maker is looking at their case load it is essentially administrative decisions that they make every day about which cases they will work on. There is no obligation to decide a particular case at a particular time, as far as I am aware. The decision maker must reach a state of satisfaction and, if they are not satisfied and proceed to a decision, they have to refuse the visa application.

Senator SHERRY—Has there been written advice issued to officers as a result of the decision of Justice Gray?

Mr Illingworth—Advice and training on the law in relation to their obligations under the Migration Act as delegates of the minister is given to all of our officers. I am not aware of any specific advice in relation to that particular judgment.

Senator SHERRY—I am surprised. This is a question for the minister. Could we go back to that previous discussion about a person who was a member of the Taliban, having been the controlling regime in Afghanistan and it being removed from power, being able to apply for refugee status. With the situation in Iraq, can you rule out any member of the current regime in Iraq ever being able to apply for refugee status in Australia? Can you rule that out?

Senator Ellison—At the outset, you have to remember the character test. In respect of all people who have come here in an unauthorised fashion, checks have been made of their backgrounds for obvious reasons. I am sure all Australians would not want to give sanctuary to a known terrorist or to someone who had been party to violations of human rights on a grand scale. That is always a relevant consideration. However, I cannot predict what is going to happen in Iraq. That is a hypothetical question and everybody is still working towards what will hopefully be a peaceful solution. Of course, that may not be the case and that is something neither I nor anyone else can predict. Certainly when you look at the assessment of anyone claiming asylum in Australia, you have to look to their background.

Senator SHERRY—I understand that we would look at their background, but you cannot rule out a member or members of Hussein's regime claiming asylum in Australia if they were removed from power.

Senator Ellison—They might claim all sorts of things, but that is a matter that would have to be dealt with at the time. I cannot predict what members of Saddam Hussein's regime would do. As the secretary has pointed out, they would have to get here first.

Senator SHERRY—We have had a few Iraqis get here in the past.

Senator Ellison—We have had a very successful record of no-one getting in for a long time and we aim to keep it that way.

Senator SHERRY—But what I want from you, Minister, is an assurance that no member of Saddam Hussein's regime would be permitted to settle in Australia on the basis of a refugee claim. Can you give us an assurance that that would not be allowed?

Senator Ellison—For anyone to give you that assurance in relation to anyone—for a minister to give you that assurance in relation to anyone—is not due process. If an application is made, it is received and assessed. We have a process in relation to the assessment for applications for asylum in Australia and that has to be made. However, I stress that the person's behaviour in the past is relevant. I would strongly suspect that anyone involved in Saddam Hussein's regime would be closely scrutinised in relation to his or her past activities and that would be—

Senator SHERRY—There is a large army in Iraq. As I understand it, it is about 400,000 strong. What about the soldiers of Hussein's regime who flee Iraq and who may have been involved in conflict with American or possibly Australian troops? Would they be permitted to apply for refugee status in Australia? Would that be tolerated?

Senator Ellison—You say 'permitted to apply'. If someone arrives in Australia and then invokes the relevant provisions of the Migration Act, unless it is an excised place, the law has application.

Senator SHERRY—It is possible?

Senator Ellison—We do not say whether a person can apply or not; there is a law which deals with all that.

Senator SHERRY—You may not be able to prevent it.

Senator Ellison—As the secretary says, the person would have to be here. I think you are jumping the gun a bit there when you say that.

Senator SHERRY—I am actually interested in who is firing the gun, not jumping the gun.

Senator Ellison—I can tell you that, if anyone has been firing a gun, that would be highly relevant to their application.

Senator SHERRY—So you would rule that out? There would be no circumstances in which we would tolerate or allow in any way, shape or form any application by any individual in the Iraqi armed forces or in the current Iraqi regime to be accepted within this country on the basis of a refugee application?

Mr Farmer—I do not think that you can rule out an application. You might have very different views—

Senator SHERRY—You can. Why can't you rule it out? Here we are: we might be heading off to war with them to get rid of them, but you cannot rule out the fact that some of them might apply at some future date for refugee status. Just say, 'No. We won't accept it.'

Mr Farmer—I think we have the law to filter through these hypotheticals.

Senator SHERRY—But you can change the law. Minister, has any consideration been given to change the law to ensure that Australia will not be in a position where it may have to accept members of the Iraqi armed forces or members of the Iraqi regime in the event of a war?

Senator Ellison—Chair, we have to clear up two things. One is that there is a law in Australia which allows for a process and that process is there for the assessment of applications for asylum. No-one is above the law in Australia, least of all the government. It is wrong for a minister to pre-empt the law or rule out its application in any shape or form. It would be wrong. The second thing is: are these laws adequate? We have rigorous migration laws in place, which have been reformed even recently, and they serve Australia well. We believe that the laws that we have in place will enable appropriate decisions to be made and therefore there is no need to change the law.

Mr Farmer—Chair, would it be helpful if Mr Hughes talked a bit about the exclusion provisions because those are things that would clearly be relevant if there ever were an application. They are relevant in any applications.

CHAIR—Thank you.

Senator Ellison—That would be useful.

Mr Hughes—The ability to ensure that no-one who does not deserve the protection of the convention gets it in Australia is derived partly from the exclusion provisions in the convention, article 1F, which was part of the convention process to ensure, as I said before, that only people deserving of protection were able to get it under the convention, and partly from our own character provisions in the Migration Act. Whilst somebody under the law can ask for and be considered for protection on the merits of their case, there are quite a number of safeguards both in the convention and in the Migration Act to see that those who are not deserving of protection—if you like, the oppressors—would not get it. But each case would have to be considered on its merits.

Senator SHERRY—I always get a little bit concerned when I hear that. Does it specifically rule out a person who has been in the armed forces of a country?

Mr Hughes—I have not got the convention with me.

Senator SHERRY—I thought you were going to give us a bit more detail.

Mr Hughes—One of my colleagues might be able to produce it.

CHAIR—I am sure someone is carrying the refugee convention with them.

Mr Hughes—Article 1F says:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to

his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Senator SHERRY—Does that preclude a person who has served in the armed forces and participated in a war?

Mr Hughes—I would have to look at the circumstances.

Senator SHERRY—In all circumstances?

Mr Hughes—I would have to look at the circumstances of each case. It precludes what it says it precludes. You are asking me to apply it in individual cases when I do not know the circumstances.

Senator SHERRY—My listening to that indicates that it does not preclude all 400,000 of the Iraqi armed forces automatically—case by case consideration.

Mr Farmer—We have not given consideration case by case to any of those people, so I do not think we are in a position to give you an opinion on that question.

Senator SHERRY—I was just a bit intrigued about the case in the United Kingdom where a member of the Taliban was granted refugee status. It seems to me that we could be in that situation in Australia. We could be in a situation where we may be considering applications from former members of the Hussein regime and/or the Iraqi armed forces, should it be removed from power. That would be an extraordinary circumstance, which is why I ask the minister whether he would rule it out.

Senator Ellison—Chair, Senator Sherry is getting dangerously close to suggesting racially based amendments to a piece of legislation.

Senator SHERRY—No, regime based. It has nothing to do with race.

Senator Ellison—What you are saying is that you would have to amend the Migration Act so that anyone of Iraqi origin who has served in the Iraqi army would be excluded from applying. Certainly I do not think that would be good law, when you consider what else we have on the statute books in this country which goes against discrimination—

Senator SHERRY—They could have shot at Australian troops.

Senator Ellison—That will all be considered when the application is made. Under Australian law as it is, it is rigorously scrutinised. Senator Sherry, you do not mean to say that you would be seeking an amendment to a piece of legislation saying that any Iraqi need not apply?

Senator SHERRY—No, I did not say that.

Senator Ellison—Good.

Senator SHERRY—I said members of the Hussein regime and members of the Hussein armed forces, who may shoot against Australian troops. It seems that we could be in a rather intriguing situation should we have applicants from those types of people.

Mr Farmer—They would have to be here first.

Senator SHERRY—Sure.

Mr Farmer—And we would have to give them a visa first, in which process we would assess their bona fides and take into account—

Senator SHERRY—But we have had a case of a successful application by a member of the Taliban in the United Kingdom who was able to stay in the United Kingdom.

Mr Farmer—I happen to think our border processes are more robust than those in the United Kingdom.

CHAIR—Senator Sherry, you have helpfully pointed out that we, in fact, have not had that case.

Senator Ellison—We are certainly tougher than the United Kingdom. The United Kingdom is following us. Just look at what Blair is saying.

CHAIR—I return to the point I made some time ago, notwithstanding the fact that the conversation has continued for some time. This is a hypothetical discussion; it is not advancing the consideration of additional estimates at all. Senator Sherry, I suggest we return to output 1.2 or perhaps move on to Senator Bartlett who does have questions about output 1.2.

Senator SHERRY—I think we have been there all the time. I have a question on the impact of regulation 866.215, which sought to bar TPV holders eligible for permanent protection from accessing this visa and sought to impose a further TPV regime for those who had applied for a further PV before 27 September 2001. Does it intend to repeal the retrospective impact of this regulation? If so, when?

Mr Illingworth—Those issues, I think, are matters for the government rather than for the department.

Senator SHERRY—Ministers here?

Senator Ellison—Madam Chair, that is not a matter that I have been involved in. I will take that on notice and I will take it up with Minister Ruddock.

Senator SHERRY—Has the minister for immigration exercised his discretion to allow for the determination of a further PV application in a time shorter than 30 months? If so, explain the exceptional circumstances which justified the intervention.

Mr Illingworth—Senator, I believe you are referring to the time limit which allows potential access to a further permanent protection visa in a period shorter than 30 months. I understand the minister has used that power.

Senator SHERRY—Are you aware of how many requests have been made and how many have been granted?

Mr Illingworth—Not a large number of requests have been made. I think one has been granted.

Senator SHERRY—One only?

Mr Illingworth—That is correct.

Senator SHERRY—That is one application and it was granted?

Mr Illingworth—One request has been acceded to by the minister. In fact, from memory, I am not clear whether it was actually a request by the individual or whether it was a matter initiated from within the department.

Senator SHERRY—Have there been other requests?

Mr Illingworth—I think there have been a small number of requests. I will locate the number.

Senator SHERRY—You can take that on notice. Has any consideration been given to or steps taken in relation to delays in processing for unaccompanied minors?

Mr Illingworth—I am not sure of your reference to delays, Senator.

Senator SHERRY—What is the position with the processing of unaccompanied minors?

Mr Illingworth—Who have lodged further applications for protection?

Senator SHERRY—Yes.

Mr Illingworth—Essentially, in terms of timing they will be handled on the same basis as any other protection visa applicant, but obviously special arrangements are in place to deal with applications per se from unaccompanied minors and those arrangements which will be applied in assessing their further applications. They have to meet the same refugee test, but there are administrative approaches to ensure that the assessment is as low stress as possible and that appropriate care is taken to elucidate claims, recognising the age of the individual and their capacity to advance those claims. We have also made arrangements to provide unaccompanied minors who have made further applications for protection with funded immigration application assistance through the IAAAS scheme, which is run by the department. So although they are in the community and, as such, if they were just treated as normal protection visa applicants in the community they would need to compete for the available funds under the IAAAS scheme on a relative needs basis with other applicants, we have made special arrangements just to fund application assistance for those unaccompanied minors.

Senator SHERRY—Do you have the number of unaccompanied minors in this position?

Mr Illingworth—I will need to take that on notice, but it is a small number. From memory, around 40 individuals will be unaccompanied minors by the time they reach their 30-month period.

Senator SHERRY—The Sawari family in Launceston: were they on a TPV? There was some publicity, certainly in my state, on this matter.

Mr Illingworth—Yes, I believe they were.

Senator SHERRY—On their departure from Launceston: can you tell me the number of officials that were involved in collecting Mrs Sawari from their home? To give you a bit more detail, I would like the number of officials who collected her from her home and then—I assume, but I stand to be corrected—the number of officials who went to the child-care centre and the school to collect the three children and who then took them to her husband's work at Longford, collected him and then sent them on what I understand was a charter flight to South Australia and the Baxter detention centre?

Mr Moorhouse—I do not have the precise number, so I will take it on notice; but, broadly, I think there were two departmental officers involved.

Senator SHERRY—Two?

Mr Moorhouse—Two escorts and possibly another person. We will give you the precise number on notice.

Senator SHERRY—Okay. Is that the normal number in these sorts of circumstances: two plus a possible one—three?

Mr Moorhouse—In terms of a normal number, it depends on the circumstances of the family. If there are children involved, depending on the sexes involved, it may be necessary

for us to put together a team of people who are able to handle the family circumstances appropriately.

Senator SHERRY—Was a charter flight used?

Mr Moorhouse—I am sorry, I was not involved in that. I need to check with my colleagues. Yes, it was.

Senator SHERRY—Because of the time and because I know one of my colleagues still has a number of questions in this area, I will put a number of questions on notice on this matter. Thank you.

CHAIR—We will go to Senator Bartlett. We are still on 1.2, TPVs.

Senator BARTLETT—Whilst the questioning of Senator Sherry has been fascinating, I have had one or two other things distracting me. If I am repeating what he said, just let me know and I will read what he has asked previously. I know that one of you was talking earlier about the processes as some of the TPVs are coming up for expiry. I was in Perth at the weekend, when some of the community groups were working with some of the TPV holders to help them with providing more information and so on. Is there any particular assistance that the department is providing to TPV holders, or to those that work with them, to get together those claims—or additional or new information? In effect, it is a new claim for a protection visa, I suppose. Is any specific assistance being provided in relation to that?

Mr Illingworth—The department has been taking a number of steps to inform the community and the relevant support networks about the implications of the processing arrangements, and the mechanics of it, and is writing to each of the temporary protection visa holders when they reach their 30-month point, to set out—personally, at an individual level—the information they need to know, in particular encouraging them to remain in contact with the department. Apart from that, there is not a huge investment being put into specialised support for these individuals, recognising that they are one component within the broader community application case load. The general expectation is that an asylum seeker in the Australian community should be able to pursue their claims for protection without the need for professional assistance. It is on that basis that the existing IAAA Scheme provides a fixed allocation of money to a range of service providers around Australia, who then vet demand for support, to identify those cases in the greatest need, to whom they will then provide assistance. So the IAAAS is available to TPV holders, but essentially on the same basis as to other asylum seekers—with the exception that the unaccompanied minors are receiving some targeted support.

Senator BARTLETT—I know that you went through this also, to some extent, earlier on. I am not wanting to get into hypotheticals of future directions of any particular country, including our own, but I have a question about those that are from Iraq and are putting in new applications. I know the numbers are not that large yet. Obviously there is potential for a significant shift in conditions in that country in the not too distant future. Are their applications just being processed as normally, or is there some holding pattern for any of those?

Mr Illingworth—The question of a holding pattern for decision making on Iraqis has not been contemplated. The current situation is that we have a small number of cases that have reached the notional end of their visa term and are on further temporary protection visas while

they have an application outstanding. We have not made a decision about whether there are case loads that cannot be reliably decided at the moment. The current country information is clear and reliable.

Senator BARTLETT—But you are able to make that at any stage, if you think the situation is too unclear and you have to wait for sufficient information to make it clear?

Mr Illingworth—That is possibly the case. As I mentioned before, an individual case officer can make that sort of judgment at the case level because there is a particular piece of information that they feel they need to make a decision; and there can be major changes in world events that mean that for a whole case load, or for large parts of a case load, the same circumstances apply.

Senator BARTLETT—I do not know whether it is appropriate for you or anyone else here to give a detailed extrapolation, but I know you get regular updates on the situation in a whole range of countries. Given that there will be a significant number of Afghanis coming up for reapplication in the near future, it seems to me that Afghanistan is still in a fair degree of instability, particularly when you break it down into individual regions. How does that fit into the need to make a decision on a visa on any particular day for those people?

Mr Illingworth—We keep a close eye on the situation in Afghanistan and in particular liaise closely with other major refugee assessing countries which have a similar need to keep up-to-date information and maybe have different networks from ours so that we can share information on the country's circumstances. We also pay close attention to material that is produced quite regularly by bodies such as the UNHCR, and to the comments, for example, that they have made in relation to Afghanistan and return and reintegration and the like, which are relevant. But there is always the need to look at the individual case, because there can always be a person who is a refugee of a country which on the surface looks like a paradise. As for a country such as Afghanistan, there are groups that are identified by, for example, the UNHCR, and care would need to be taken in relation to the groups and profiles of people in particular places in the country.

Senator BARTLETT—Have there been some initial decisions on the first wave of TPV holders who have reapplied—not many but a few?

Mr Illingworth—Not very many, but there have been some.

Senator BARTLETT—There are two aspects. One group I am particularly interested in would probably be fairly small at the moment but, as I understand it at this stage, in most cases Iraqis who have had favourable decisions would get a permanent protection visa which would then entitle them to family reunion. Is there any specific uniqueness regarding that situation—Iraqis getting permanent visas wanting to get family out here? Is there a reasonable prospect of such families, if they are still in Iraq and are stuck in the middle of a war, getting fast-tracking or special consideration?

Mr Illingworth—The normal provisions for split family reunion through the humanitarian program recognise that, where a refugee obtains permanent residence in Australia, understandably their first thoughts will quite often be to sponsor their family to come here with them. From that perspective I do not necessarily see that the Iraqi scenario you paint is unique. Whatever nationality the person gaining permanent residence has, if they have family and they have the opportunity to sponsor them then you could see that they would be interested in doing that. The legislation provides the mechanism for them to do that and the

considerations that we have to apply in deciding those applications. But we do not have an administrative process which somehow prioritises the processing.

Senator BARTLETT—So there is unlikely to be for Iraqis, by the sound of it.

Mr Illingworth—I would not know.

Senator BARTLETT—‘No’ will suffice. The other group is those who have been rejected, with the special circumstances that they find themselves in. Some attention was given to a suicide a week or so ago. I do not want to play on that in drawing direct links, but people might not unreasonably at least suspect some component of those sorts of links.

More broadly, in my experience the reality is that there is a fair degree of stress and anxiety amongst the TPV population in general, particularly as the three years come up. For those who are knocked back, is there any particular assistance given—apart from advice on how to get on a plane—to help people deal with the psychological aspects, I suppose: special counselling, special case workers or just some form of special assistance to help people deal with that potentially traumatic news?

Mr Illingworth—We have been working very closely on a comprehensive communications strategy to try and minimise the understandable stresses and anxieties that individuals might have as applicants for protection. Working our way through the processes by which people get to that point, that issue is one we would need to address within that context. As I mentioned, part of the communications strategy involved writing to individuals at the initiation of the processing of their further applications to set out what is going on and what we expect of them. But that may not be the last time we write to them. We may need to look down the track at ensuring that people get appropriate messages which set up their options clearly and encourage a positive reaction to those choices.

Senator BARTLETT—Is there more likely to be more one-on-one personal contact than extra correspondence?

Mr Illingworth—It is hard for me to speculate at the moment, but I would note that one-on-one contact is very time consuming and costly. I suppose it also depends on precisely what it is that one is trying to achieve. If it is communicating somebody’s immigration status and their immigration options, then Immigration has a strong role to play. But once issues start moving into counselling and providing psychological or professional support, this department would not be comfortable with delivering that. That is getting into the realms of people being able to access professional counselling and support.

Senator BARTLETT—The thread I am following, which I would have thought would be in the department’s interest, is the preventative aspects of the next part of the task, which is the removal of people from Australia—particularly if you are talking about Iraqis and the like, with whom I gather we have some difficulty in achieving that voluntarily. Ensuring people’s psychological wellbeing might assist the department in its long-term or short-term goal of encouraging people to depart. People are far more likely to resist if they are convinced they are going back to a nasty fate.

Ms Godwin—Without wishing to comment on the last part of your remarks, the fact is that people who are currently TPV holders have to go through a primary process and will then have access to the merits review of that decision. They can actively consider return at any time voluntarily but, if they wish to pursue their application through all of the appropriate stages available to them, that is some considerable period off. We talked earlier in the afternoon about some of these things being hypothetical and I think yours is also a hypothetical question: what their considerations might be or what generally might be the

considerations surrounding that at that time. For all of them, not just Iraqis, that is a hypothetical question.

Senator BARTLETT—I understand that, although the stress that people are going through at the moment is certainly not hypothetical. I imagine that it is only going to increase.

Mr Illingworth—As holders of the temporary protection visa, the individuals would have access to the early health intervention services funded by the department and provided to all refugees in Australia. They include counselling for torture and trauma sufferers. That would be one mechanism through which somebody who needs professional assistance could obtain it.

Senator BARTLETT—As I understand it, those who wish to pursue the option of voluntary return, whether they are current TPV holders or others in detention, and those who choose to return are required to formally withdraw any action they have with UN treaty bodies or committees prior to departing. Is that right?

Ms Godwin—It would be normal practice for them to withdraw outstanding applications, yes.

Senator BARTLETT—So is that a normal condition of voluntary repatriation? Is it in accordance with the advice of UN bodies in relation to these sorts of circumstances that any actions or issues that they have before UN bodies be withdrawn?

Mr Farmer—We are talking of two things, one a condition and one a practice. I would just like to make sure that we are on the right premise here. We can do that now or later if you would not mind just going back to it.

Senator BARTLETT—I guess it goes to whether it is a condition of voluntary return that they say, ‘Yes, I hereby withdraw all actions.’

Mr Davis—As a matter of practice, I think it is normal practice for that to occur. Whether it is a precondition would be something that we would probably need to double check before getting back to you within any qualifiers that we might have. But as a matter of practice it is certainly our approach.

Senator BARTLETT—It would be handy if you could confirm that and also say how that stacks up against any advice from UN bodies about that stuff and whether there are any legal grounds to it and those sorts of things. The only other thing that I want to mention in this section is the issue that I raised before of the detainees in Woomera. I am told both Iraqis have had waits of a couple of years for a primary decision after first interview.

Mr Farmer—I will ask the officials to give you an indication first-off of how many people are waiting for a primary decision.

Senator BARTLETT—I think they are about it, possibly.

Mr Farmer—It is a handful or less.

Mr Illingworth—There are four people who have been unauthorised arrivals to Australia and who are awaiting a primary decision. Would you like me to give you a general briefing on the reasons for the decision not being made?

Senator BARTLETT—If there are only four, that is fine; I would not make you do it for 200.

Mr Illingworth—Yes, there are four. I will make some general comments. A couple of them involve article 1F considerations. One of them involves an issue of information from a country of previous residence in relation to possible criminal activity. Another one is a very

recent application, notwithstanding that the person has been in detention for some time. They have progressed through the system as a dependant and, having reached the point of judicial review, have decided to lodge an application in their own right, which is a consequence of some court finding a year or two ago. They are able to do so if they have made no claims for protection in their own right the first time.

Senator BARTLETT—So with respect to the couple I mentioned, who I believe are both in Woomera again at the moment, it is about two years from the first interview. I recognise the importance of security, character, history and those sorts of things. I know you will not put a specific time limit on these matters, but in a practical sense how long is it tenable to keep people at that stage over that long a period, even from a management point of view?

Mr Illingworth—These cases are being managed individually at a very high level within the department in terms of our scrutiny of the processes to make sure that every opportunity is taken to try to minimise the period in detention. The two cases which I think you are referring to are ones where a considerable amount of work has already been undertaken and what has been the sticking point—reliance on another country to provide information—has very recently been overcome. I expect that decisions will proceed on those cases very quickly.

CHAIR—There being no further questions on output 1.2, we will move to output 1.4. Are there any questions?

Senator SHERRY—Madam Chair, I was going to ask a question under output 1.5 about the Senate return to order response from the department regarding departmental contracts. I wanted to ask about the \$50,070,000 for the International Organisation for Migration, so we will deal with that under output 1.5. But I had a couple of queries about some of the other contracts. I will indicate what they are. There was a contract for American Express International for \$550,000. It says, 'Provision of American Express merchant.' What was that for?

Mr McMahon—Is this under output 1.5, Senator?

Senator SHERRY—That is what I am clarifying.

CHAIR—In terms of where to direct this question, I would have thought—

Mr Farmer—Madam Chair, could I suggest that, having had an indication of the senator's interest, we will find someone who can give an answer to that question and we will bring that person to the table at a time convenient to the committee.

CHAIR—That would be helpful, thank you. We will turn now to output 1.4, Safe haven.
[3.59 p.m.]

Senator KIRK—In 1999 a group of Albanians from Kosovo were granted a visa—two sets of people, some from Kosovo and some from East Timor. Is that correct?

Mr Hughes—That is correct.

Senator KIRK—My questions were in relation to the Albanians from Kosovo. How many Kosovars remain in Australia?

Mr Hughes—158.

Senator KIRK—What sort of visas do these people hold?

Mr Hughes—They have the subclass 786 temporary humanitarian concern visas.

Senator KIRK—Have any of them been granted permanent residency or been given the opportunity to apply for a protection visa?

Mr Hughes—I do not believe any have been granted permanent residency, but I would like to take that on notice, to be absolutely certain.

Senator KIRK—Please take it on notice. What plans or timetables are there in existence for the return of those Kosovars who are on temporary visas and who have not received any sort of permanent residency? Is that something you would need to take on notice?

Mr Hughes—I think the visas of that group of people expire in August this year. Between now and well before that time, obviously, the minister has to consider what further options there are for that group of people.

Senator KIRK—Is there any indication as to what is going to happen to them, come August 2003?

Mr Hughes—I cannot give you any at this stage, Senator.

Senator SHERRY—Presumably some of them face the prospect of being required to be returned to Kosovo.

Mr Hughes—That is one of the range of possibilities.

Senator BARTLETT—You have probably answered that as far as you can, but between April and August, I understand, is when those various visas come up. Have the people been notified of what they are being asked to provide? Are you going to seek particular material from them, and is that just going to relate to their health, or are you going to consider other issues?

Mr Hughes—The visas all expire in August, I understand, so there is a little bit of time for some decisions to be made, and communication with the people about their future.

Senator BARTLETT—And the department is still working through how it is going to deal with that?

Mr Hughes—We are.

Senator BARTLETT—On another safe haven issue, more specifically: we have got some detail in the past on the Ambonese who were here, but I do not know if anything has changed in relation to that. It is possible that it has, and I have not heard. Are they still here?

Mr Hughes—There are 23 persons still here, in Western Australia.

Senator BARTLETT—I know you did provide this in answer to a previous question, but I cannot remember it. I know they have been renewed a number of times. When does the next rollover happen?

Mr Hughes—I will just slightly qualify my answer, Senator. There are 23 persons on the subclass 449 visa, of whom 14 are Ambonese. Their visas are valid until the end of March, so advice will have to be given to them in the near future.

Senator BARTLETT—About whether it is rolled over or terminated. Have there been any representations to the department or to the minister to eventually make their status a little bit more permanent? I understand there is a discretionary power of the minister to enable applications for other visas at some stage.

Mr Hughes—I am not aware of any representations in recent times, but I need to take that on notice to be absolutely certain.

Senator BARTLETT—May I make a representation now so that you know there is at least one. I am sure it would make your life easier if their status were solidified, so you would not keep getting asked about them each time. There are another nine on other forms of safe haven visas. Is that right?

Mr Hughes—Yes.

Senator BARTLETT—Can you give me the details of those, maybe on notice—where they are from, how long they have been here, how often it has been renewed, when they expire, and that sort of stuff?

Mr Hughes—Yes.

[4.04 p.m.]

ACTING CHAIR (Senator Scullion)—We will now go on to output 1.5.

Senator SHERRY—In relation to the rejected Iraqi case load in Australian detention and on Manus Island and Nauru, can the department advise how many of these Iraqis have residency rights in a third country?

Mr McMahon—We will take that on notice.

Ms Godwin—In relation to onshore detention, I am advised that we would need to take those matters on notice as well.

Senator SHERRY—Is it correct to say there would be some who would not have a right to stay in a country other than Iraq?

Ms Godwin—Perhaps I could make a comment about the onshore detention group. Without wishing to be difficult, it is not quite as simple as that. It is really a question of whether they have the lawful right of entry to another country. In some instances, they may well have that; in other instances, it may not have been tested, but they may have it if it were to be tested. We have had numbers of Iraqis depart from mainland detention centres to other countries regardless of whether or not they had formal residence rights there.

Senator SHERRY—But we have had some who have not.

Ms Godwin—Yes, but we believe that in a number of instances, if they were prepared to work cooperatively with the department, we may in fact be able to identify another country to which they have the right of entry.

Senator SHERRY—What is the department proposing to do with those Iraqis who do not have residency rights in a third country?

Ms Godwin—As I said, it is not quite as simple as formal residency rights. They may well have the right of entry to another country, if they were prepared to test that. The other issue is that, in some instances, they may have a capacity to return to Iraq via a third country.

Senator SHERRY—I assume from what you are saying that they are not prepared to go to a third country. What is going to happen to them?

Ms Godwin—We will continue to work with them to achieve their removal?

Senator SHERRY—How? Where?

Ms Godwin—By doing what we have done in numbers of other cases—that is, by continuing to counsel them on their options.

Senator SHERRY—But they are not taking any notice of the counselling.

Ms Godwin—They have not so far, but numbers of people have changed their minds over time.

Senator SHERRY—They want to stay here, so what is going to happen to them?

Mr Farmer—The minister has made it quite clear that he is not going to set a time limit beyond which, if they have not agreed to go, he will agree to their staying. That, of course, would be an exercise in futility and a self-fulfilling prophecy because no-one would go.

Senator SHERRY—They are not going anyway; they are here.

Mr Farmer—At the moment, from our point of view, the situation is quite clear: they are liable for removal, they can go at any time they like and we will continue to explore options for their departure as happens with a number of other countries facing similar circumstances.

Senator SHERRY—How is the department proposing to return them to Iraq? There is no agreement with Iraq, is there?

Mr Farmer—The individuals can return to Iraq under a number of circumstances. They can go to a country like Jordan and cross the border, for example.

Senator SHERRY—I think the border is closed, is it not?

Mr Farmer—It may be at the moment, I just do not know the answer to that. There is entry to Iraq via Turkey. Iraq has a number of neighbours. It is possible for people to enter Iraq from another country.

Senator SHERRY—We do not have an agreement with the Iraqi government regime to remove them from Australia to Iraq, do we?

Mr Farmer—That is correct.

Senator SHERRY—We are dependent on them voluntarily going to another country and then perhaps going to Iraq via a third country, if they wanted to.

Mr Farmer—There are a couple of questions conflated in there. The possibilities are that someone would leave voluntarily because they not only perceive that they have reached the end of the road in Australia but they also perceive that it is futile to remain. That is one possibility. A second possibility is that we can work with other countries to facilitate the return of Iraqis via a transit country.

Senator SHERRY—It is futile to remain; nevertheless, they are still here, aren't they?

Ms Godwin—Some are and some have left. Some continue to consider their options and continue to work with—

Senator SHERRY—I know some have left. What is the number here at the moment?

Ms Godwin—Is the number who are here at the moment available?

Senator SHERRY—The number for whom we have said, 'No, they should be going back to Iraq,' but we have no agreement with Iraq, so they cannot go back to Iraq.

Mr Baker—Senator, we will get the numbers on how many are here. To inform the discussion, the number of claimed Iraqi nationality removed year to date in the current financial year was eight. We had 12 last year and four the year before. So it is true that they are leaving in small numbers, but there is some movement of Iraqi nationals. They are boat arrivals. We are getting the numbers of Iraqis who are still in our detention centres.

Senator SHERRY—Have those who have gone to wherever they have gone other than Iraq been paid any money?

Mr Baker—Under our normal removal arrangements, if someone is destitute or has some immediate living allowance needs, we have a standard process of providing a small amount for immediate needs. That has been a longstanding practice in our removal processes and is considered on a case by case basis. For each individual who is removed from Australia, if they do not have their own resources available to them, we look at that issue. We have some guidelines, which have been in place for a long time, which support our process of providing a small amount of financial support if that is required.

Senator SHERRY—What is ‘a small amount’?

Mr Baker—Our guidelines currently read that incidental amounts of up to \$250 can be looked at on a case by case basis. If there are additional support requirements, particularly for those potentially going to a third country rather than to their home country, there is a delegation held in central office to go up to \$700 in individual cases. But that is tested against the means and resources that the detainee has available to them prior to us accessing these moneys. As I said, this has been a longstanding practice in the area of removals.

Senator SHERRY—I am sure you will need to take this on notice. What amounts of money have been paid to each of these 24 people?

Mr Baker—I will have to take on notice whether they received any assistance and how much.

Senator SHERRY—Do you have a figure on the number of Iraqis here and on Manus and Nauru?

Mr Baker—I will start with the onshore detention centres. Christmas Island is included in these figures. As at 31 January, we had a total of 1,175 detainees in onshore centres and on Christmas Island. There are 47 claimed Iraqis in that 1,175. That would include boat arrivals, air arrivals and any compliance case load associated with people breaching their visa conditions. I do not have here the breakdown by nationality of how many of those are boat arrivals and so forth, but if that is needed I can also provide it.

Senator SHERRY—Okay. Has there been anyone from the *Tampa* who has settled in or is currently residing in Australia?

Ms Daniels—Yes. One person from the *Tampa* has been resettled in Australia.

Senator SHERRY—Why?

Ms Daniels—I do not know the circumstances. Perhaps my colleague can address that one.

Mr McMahon—As I recall it, it was a UNHCR case load and it was recommended by UNHCR because of family links.

Senator SHERRY—I thought we were not going to let any of these people into Australia. Why do we have one here?

Mr Farmer—I am sorry, I do not know the basis of your assumption.

Senator SHERRY—The Prime Minister’s declaration was that not one person from the *Tampa* was going to set foot in Australia. Why do we have one here?

Mr Farmer—Indeed, in the context in which that sort of statement was made, it came to pass because they all went to the offshore processing centre.

Senator SHERRY—And we have one in Australia now. Why is he here? Is it he or she?

Mr Farmer—It is a he.

Senator SHERRY—Why is this person from the *Tampa* in Australia?

Mr Farmer—There has never been any exclusion of the possibility of resettlement of those found to be refugees.

Senator Ellison—The Prime Minister never made a declaration that no-one from the *Tampa* would set foot in Australia. He never said that at all.

Senator SHERRY—Come off it!

Senator Ellison—Find me the transcript or *Hansard*. He never said it. He said, ‘We determine who comes to Australia and the conditions.’ In this case, the conditions have been met.

Senator SHERRY—And we have one here. Are any of the persons from the infamous children overboard boat in Australia?

Mr McMahan—Yes, there are 100 of them in Australia. Some 89 went to New Zealand and two are still on Manus. There are about another 25 who were determined not to be refugees and they are mainly on Nauru.

Senator SHERRY—Is that figure of 100 approximate or is it exactly 100?

Mr McMahan—It is exactly 100.

Senator SHERRY—There was a death of a 28-year-old, Mr Mohammad Sawar, on Nauru in August. Are you familiar with this case?

Mr McMahan—Yes, we are.

Senator SHERRY—Have there been any inquests held into the death of Mr Sawar?

Mr McMahan—There was a coronial inquiry on the island of Nauru at that time. That concluded that he had died from natural circumstances. However, IOM asked that additional testing be done and, in consultation with us, a pathologist from Australia went to Nauru. The body had deliberately not been buried at that time because of that possibility. Relevant body parts were taken. A full forensic test was done in Australia, and there was no clear cause of death. The conclusion remained that the person died from natural circumstances. A series of things were ruled out. There were toxicology reports which basically said that there was no poisoning, and a number of other reports were done. I think the broad conclusion was that, in all likelihood, it was probably a cardiac related problem.

Senator SHERRY—So when you say it was natural causes, did they indicate what the natural causes were?

Mr McMahan—No, they were not able to establish them, but they certainly ruled out a range of unnatural causes. I mean, poisoning was the obvious one.

Senator SHERRY—I understand that.

Mr McMahan—The person went to bed. Essentially there were no real issues in respect of his behaviour in the past. He was with friends. He had played a game of football the previous day. He was regarded as quite a happy personality. He went to bed and he woke up screaming in the morning. His friends raced off and the IOM doctor attended immediately, but it was basically too late.

Senator SHERRY—Have any refugees on Nauru been settled in Australia?

Mr McMahan—Yes, there has been a reasonably significant number.

Ms Daniels—Senator, 198 refugees have come from Nauru to Australia.

Mr McMahan—Australia has taken 318 people to date, of which 198 were from Nauru.

Senator SHERRY—Where were the others from?

Mr McMahon—Manus.

Senator SHERRY—That answers another question I had. What is the length of the current agreement between Australia and PNG with respect to Manus? When does it expire?

Ms Daniels—It ceases in October 2003.

Senator SHERRY—Is there any provision for it to be extended?

Mr McMahon—There does not need to be a provision for it to be extended. In effect, it is an agreement and therefore you reach an agreement at the time at which the agreement comes to an end.

Senator SHERRY—Are there negotiations taking place on extending it?

Mr McMahon—No, there are no current negotiations taking place.

Senator SHERRY—Why is that?

Mr McMahon—The government has to make a decision closer to the time as to whether it would want to.

Senator SHERRY—When you say ‘the government’: PNG or Australia or both?

Mr McMahon—The Australian government would need to form a position, and it has not come to that point yet.

Mr Killesteyn—Bear in mind, Senator, the agreement has already been extended. The original agreement lapsed in October last year.

Senator SHERRY—Yes.

Senator KIRK—I have a question in relation to the extension which occurred in October last year. Is that correct, and was it for another 12 months?

Mr Killesteyn—The original agreement lapsed and it took some time for the government of Papua New Guinea to consider that. You would of course recall that they were in the middle of an election, with their own political issues to work through, and ultimately the decision was made by the new government to extend.

Senator KIRK—Is it the case that there is an arrangement that no new arrivals will be taken to Manus?

Mr McMahon—No, that is not correct. There were statements that there were going to be no new arrivals. That was clarified to there being no arrivals taken there which would exceed the number of 1,000 which was set in the agreement. But it is quite clear under the renegotiated agreement that we can bring people there, subject to the normal processes under the agreement, up to a total of 1,000.

Mr Killesteyn—That applies to both agreements—with Nauru and with PNG. It is a ceiling on the actual number, but not in terms of bringing new people there as the requirements come forth.

Senator SHERRY—What have been the payments so far, with respect to Manus, to the operators of the facility and/or the PNG government?

Mr Killesteyn—Both the facilities are operated by IOM. Essentially they provide services which are funded by the Australian government. Those services relate to the good care and order of both centres. In relation to PNG in particular, there have been no specific payments to the PNG government. There is a trust fund, which has been established under the arrangement

with the PNG government. That trust fund has a rolling base of roughly \$1 million, but essentially that amount is to cover the direct and indirect expenses that are incurred by officials of the PNG government in facilitating the operation of the centre in Manus. Mr McMahon may have the detail of what payments have been made under that trust fund.

Mr McMahon—The trust fund was set up as \$1 million, and I do not think we have got anywhere near the original \$1 million. But in terms of the total cost of Manus, for 2001-02 it was \$29.4 million. For this year we are simply running with a progressive total—we will not know what the total end of year costs are until the end of the year, but I suspect they will be of the same magnitude, possibly a little bit smaller.

Senator SHERRY—For what purposes have drawings been made to date on that trust fund?

Mr McMahon—There is a range of relatively small items for which payments have been made. When I say ‘small’, it is small in the scheme of things. The largest payment that I can recall was for the purchase of a vehicle. I think there is a ministry of foreign affairs or its equivalent on the island. We pay for office expenses, such as telephones. I know we have brought in some computer equipment at times. Essentially it was to give life to the undertaking that we would not impose costs on the PNG government in respect of their role. So the moneys involved in trust fund payments have been very small.

Senator SHERRY—Who are the trustees?

Mr McMahon—There is a Manus task force which was set up by the PNG government. They have a representative on it. The Australian High Commissioner to PNG is another, and a private accounting firm is the third trustee. Essentially, as I recall, it requires all three signatures before a payment can be made.

Senator SHERRY—There is no rental paid for the use of the island?

Mr McMahon—No, there is no payment made for rent. Within the \$29.4 million we made some undertakings that, to the extent that we were drawing on island infrastructure, we would do some legacy work. This legacy work is really for the benefit of both the centre and the Manus province. An example would be that we rely substantially on the power grid at times. We have made some undertakings in respect of ensuring continuity of supply. When that supply became in doubt, we brought in a generator.

Senator SHERRY—This is supply to the whole island?

Mr McMahon—Yes.

Senator SHERRY—As distinct from supply to the centre?

Mr McMahon—But linked, obviously, to the operations of the centre in the sense that we are reliant on the island power grid. We have undertaken a range of work in that regard which is reflected in the amounts I have already given you.

Senator SHERRY—What other infrastructure is covered?

Mr McMahon—More directly, in respect of the operation of that facility, we wanted to ensure that while we were there—as well as being able to leave some legacy—we improved the water supply. When we were there the sewerage facility had broken down to a large degree. There was a lot of raw effluent or effluent with very minimal treatment going into the bay. We remedied that. We have done some work around the base—for example, the supply of kitchen facilities for staff, which are also used by members of the PNG armed forces on the base. In other words, they are common infrastructure requirements. That is broadly the pattern of it to date.

Senator SHERRY—So some of the items in the \$29.4 million in 2001-02 and the approximately similar figure for 2002-03 are effectively for capital expenditure as well as ongoing recurrent costs.

Mr McMahan—It is of the nature of capital expenditure but it has actually been expended—in other words, we have no continuing interest in it from a financial point of view.

Senator SHERRY—With respect to the purchase of things like food supplies, is that done locally?

Mr McMahan—It varies between, say, Manus and Nauru. IOM is responsible for the provision of food. In Nauru it is all imported, as is the case for everyone on the island. IOM tries to source locally. Around 70 per cent of food used at the centre is produced within PNG and some of it is produced within the province.

Senator SHERRY—With respect to Manus, have there been any actions taken to eliminate malaria?

Mr McMahan—Quite extensive action was taken from quite early times. Malaria, as you know, is quite prolific in the Manus province. It is a particularly dangerous form of malaria but is subject to control like everything else. Essentially there is a regime with respect to malaria control put in place by IOM. That starts off with things like fogging and larvicide in respect of local waterways et cetera to reduce the impact of the mosquito itself. The units were all supplied with sprays et cetera and most of them can be sealed. If they cannot be sealed, there is netting. A drug regime was set up for all people at the centre and, of considerable importance, an educational program was put in place by IOM to ensure that people understood the seriousness of malaria. I think that is reflected in the fact that there were so few people and so few residents at the centre who contracted malaria. By the way, they also established a laboratory so that they could analyse people's blood as soon as they showed any signs so that they could pick it up very rapidly and treat it. There were very few people in the end who did catch it.

Senator SHERRY—Do you know the precise number of both the staff and detainees?

Mr McMahan—We would have to ask about that number. We were monitoring that number for a period of time but we gave up because there was so few. Initially, there were more staff than residents of the centre, simply because the staff seemed to believe more fully in their ability to avoid a mosquito than the residents. Consequently, the emphasis was put on staff as well to make sure they were taking medication.

Senator SHERRY—Mosquitoes do not discriminate.

Mr McMahan—They do not.

Senator SHERRY—Have there been any attempted escapes from the centre?

Mr McMahan—I would not characterise what has happened in either centre as attempted escapes. There have been a number of times where people have essentially walked a very small distance outside the gates in both centres. In Nauru, they have been pushed back—

Senator SHERRY—I am sorry, I was not going to go to Nauru—just Manus. My colleague was going to go to Nauru.

Mr McMahan—Okay. In respect of Manus, I think the answer is no. No-one has sought to leave the broad premises. No-one has gone outside the wire netting, which is single strand without anything on top of it. Anyone could scale the wire netting at any time they wished.

Senator SHERRY—So no-one has attempted to swim away from the island?

Mr McMahan—People have certainly wanted to go outside the wire netting to go swimming, and that is now permitted. There is a gate out the back.

Senator SHERRY—Aside from the danger of mosquitoes in and around the water, what about crocodiles?

Mr McMahan—There is no safety issue with respect to crocodiles.

Senator SHERRY—I have some questions about Christmas Island before my colleague moves to questions on Nauru. What stage is the construction of the permanent facility up to?

Mr McMahan—Essentially, in terms of a program, the groundworks are nearly complete. More broadly in respect of the infrastructure, the staff housing, which can be used for both a temporary facility and a permanent facility, is basically complete. A construction camp at Phosphate Hill has been put in place and commissioned in respect of workers for the centre. Essentially, the government is currently considering a number of planning and other issues.

Senator SHERRY—Has the construction that has occurred to date been on schedule with the construction program that has been laid out?

Mr McMahan—No, it has not.

Senator SHERRY—In what way hasn't it been?

Mr McMahan—Essentially, to put it bluntly, the government has reviewed the planning of this. It is continuing to look at planning issues because there have been no boat arrivals. It was put forward at the time when we had nearly 1,600 arrivals, in August 2001. There was a determination that we very rapidly put in place a centre offshore. To some extent that has been very helpful because we have been able to do the groundworks ahead of significant rain, which leaves us with greater flexibility for where we go now. But the government is now in a position where it has an opportunity to review what happened in December in respect of the fires. It is continuing to look at what the planning schedule and the requirements of the centre will be in the light of significantly changed time and parameters.

Mr Farmer—I think an important consideration is that there is a trade-off between time and money. In order to do things very quickly on Christmas Island you increase the cost. The fact that we have not had unauthorised arrivals has in effect bought time, so we are preparing advice about what now seems the right balance between time and cost.

Senator SHERRY—So does that mean that the proposed size of the centre itself cannot be achieved?

Mr Farmer—I think that what we will find, because of the changed circumstances, is that we have an opportunity, as Mr McMahan said, to look at a number of things. For example, from the fires that we had in detention centres in the last couple of months we are drawing some lessons which, as appropriate, we will build into the design for the centre.

Senator SHERRY—So there are design changes and a slowdown in construction because it is not quite as urgent as it was in the past to complete it by the scheduled date. Have there been any other factors on the slower construction?

Mr Farmer—The disturbances and the results of those—the quite disgraceful damage that was done to the centres—have in our minds made us determined to get it right, and we have the time to do that. The literal answer to your question is that we are preparing advice to the government. The government has not decided on the balance of amenity, time, money, and so on, but that work is going on right now and we expect advice to go to government shortly.

Senator SHERRY—When was the original completion date?

Mr McMahan—Early 2003.

Senator SHERRY—Clearly, that is not going to be met. Is it six months behind, nine months, a year?

Mr Farmer—Until we have put the options to government, we are not going to be able to say that. One of the things that was always in our minds was that any timing about developments on Christmas Island would be related to industry's capacity to deliver. Of course, that is very much affected by things like the climate on Christmas Island.

Senator SHERRY—Has that been a factor—the ability of the construction firm contracted to do it? Has that been a problem?

Mr Farmer—Mr McMahan would have to answer that in detail, but it is really the factor that I am talking about that is the main game in town—namely, the right balance between amenity, time and budget.

Senator SHERRY—Mr McMahan, have there been issues directly relating to construction that have impacted on that?

Mr McMahan—There have been some. There were some delays in getting access to the site. That took a month or so. The site was certainly a much more difficult one than we had originally anticipated. Quite clearly, we had seen the site but, bearing in mind that it was not a Commonwealth site in the sense that we had to go through a resumption process, there could not be a detailed analysis of the site. We had issues such as voids, caverns et cetera that had to be dealt with.

Senator SHERRY—Did you say 'voids'?

Mr McMahan—Yes.

Senator SHERRY—Holes in the ground?

Mr McMahan—Exactly. There has been more work in the preparation of the base than we originally anticipated. But, broadly speaking, the issues do go in the end to getting the design right and the balances that Mr Farmer talked about.

Senator SHERRY—I understand the reasons that Mr Farmer has advanced, but I would have thought it would be fundamental that, before you decide to build a facility on a particular site, you check to make sure that it will not fall into a cave or a void as you call it.

Mr McMahan—I think the simple answer to that question is that the government made a decision that it would build on Christmas Island and it did that because that is probably the best and most logical place to put it. There are extraordinary limitations around the way in which you can pick a site on Christmas Island. I do not remember the exact figure but 70 to 80 per cent of the island is national park. The only land which is available is basically used mining land, once the decision was made that the centre would be built away from the community areas. So there was a choice of three sites. I think it is fair to say that the site that was picked was the most suitable site for building.

Senator SHERRY—Subject to the voids and the caves?

Mr McMahan—Irrespective of the voids and the little chasms et cetera, it still remains the best site. The amount of work that had to be done in respect of the other sites greatly outweighed the work on this site. So if the choice had to be made all over again, exactly the same site would be chosen.

Senator SHERRY—Are you filling in these caves and voids?

Mr McMahon—It is pretty well done.

Senator SHERRY—So that is what has actually happened?

Mr McMahon—Essentially the groundworks have been on the way since before Christmas. We would expect the groundworks to be completed next month.

Senator SHERRY—I am just a bit puzzled as to why you would not check on that sort of issue prior to picking the site.

Mr McMahon—Because there are limitations on the Commonwealth's access to the site.

Senator SHERRY—I can understand that argument but if you have to fill in voids and caves and do these sorts of checks to make sure the ground is suitable to build on, you would have to factor it into the cost, wouldn't you?

Mr McMahon—It is now factored into the cost.

Senator SHERRY—Yes, after the event.

Mr McMahon—In the overall scheme of things, we are talking about a couple of million dollars difference in respect of the total construction cost. It does delay matters and it requires more work to be done, but it is not a major consideration in respect of the total production cost of that facility.

Mr Farmer—Senator, if you are making the point that building something on Christmas Island is a very complicated task that will throw up issues of a range of sorts, then I would agree absolutely with you. We face a number of those, not only the site but things like the weather, access to the port and so on. They are quite well known to those who had to undertake work on Christmas Island.

Senator SHERRY—I understand the weather issue, but if it was believed the site was difficult to build on because of voids and caves, I am surprised that that issue was not looked at in more detail in order to determine what the cost would be of filling in the voids and the caves and the chasms and all the other bits and pieces. That does impinge on the total cost of the project, for which we have to approve the estimates here at the estimates committee.

Mr Farmer—I think we have been saying that, if we had to look at that issue again of which site to choose, the same decision would be taken.

Senator SHERRY—I am not disputing that. What I am saying is that that will add to the cost, because you have to fill in these caves, voids, chasms and whatever else is there that was not looked at at the time. That will add to the costs.

Mr Farmer—We had officials from the department of territories who were involved in the process that led to the advice to government. They had quite extensive knowledge, obviously, of Christmas Island and the terrain, and their advice was that there was no *tabula rasa*, there was no flat site there, that would enable you to move in and do something easy. No matter where we went, we would be facing very substantial earthworks.

Mr McMahon—I made that comment in respect of the question which related to timing. The costs in this are not all that significant. Quite clearly, once you actually discover that there is a void, it is not a huge issue in respect of either cost or your technical capability to deal with it, but it does go to two issues. One of them is that it then requires you to do more survey work, and then it may alter the way in which you do your design of the centre. I just

want to make it clear that those comments are in respect of issues about delay. In respect of costs, they are basically quite trivial in relation to the total project cost.

Senator SHERRY—Doesn't it depend to some extent, at least, on the size of these caves, voids and chasms that you have discovered after you have decided to build there?

Mr McMahan—Yes, it does. But they were surveyed and dealt with, and we know that they did not add significantly to cost.

Senator SHERRY—How much did they add?

Mr McMahan—My recollection was around \$2.5 million, but I would have to take that on notice.

Senator SHERRY—That is still a pretty big cost we have got to scrutinise here before the estimates committee because we did not discover the voids, caves and chasms till after you decided to build there.

Mr McMahan—I have to make it clear that the Commonwealth, while it could pick the most suitable site, did not have the legal authority to go on and to undertake the detailed analysis of the land, the detailed survey, that would be required for that to be conclusively established.

Senator SHERRY—Is this private land?

Mr McMahan—This is Commonwealth land, for which there is a mining lease which involved resumption. Could I just make the very obvious—

Senator SHERRY—Why could the Commonwealth not go onto its own land to survey for the caves, the voids and the chasms?

Mr McMahan—It is a mining lease, and the Commonwealth, like any private sector group, has to abide by the conditions of the mining lease. While it allows the right of entry for inspection, it does not allow a right of entry for the sort of work that we had to do. But I do need to add that it was already recognised as a difficult site. Essentially, it has got pinnacles on it—

Senator SHERRY—So we have got pinnacles now. How big were these pinnacles?

Mr McMahan—The pinnacles were always obvious for everyone to see, and they were taken into account when we actually got it. Are we shocked that there are some problems with the site that we were not fully aware of at the time? No. Essentially, we simply made estimates on a basis of a difficult site and the nature of the site caused some delays.

Senator SHERRY—Did the Commonwealth seek the agreement of the mining lessee to carry out a site inspection prior to picking the site?

Mr McMahan—It had extended negotiations on the sort of survey work that we needed to do. That was done by the Department of Territories and Regional Services.

Senator SHERRY—Does that mean yes or no?

Mr McMahan—The answer is yes. We had the discussions.

Senator SHERRY—Did you get their agreement? Apparently you did not.

Mr McMahan—We did not get their agreement.

Senator SHERRY—So we have chasms, caves, voids, pinnacles—

Mr McMahon—I don't think I ever said caves.

Senator SHERRY—Are there any other geographic landmarks—

Mr McMahon—I think the caves are your addition to this.

Mr Farmer—One important landmark I would mention is the advice that went to government. That advice properly included advice about the difficult nature of the terrain that we would encounter anywhere on Christmas Island. I do not think anyone in the government is falling back in surprise saying, 'There are caves, chasms, pinnacles and what have you.' As you would expect, this was part of the advice from officials.

Senator SHERRY—And it cost \$2½ million to fix the site.

Mr Farmer—Yes, that is what Mr McMahon said.

Senator SHERRY—Presumably the pinnacles were knocked down and put in the caves, chasms and voids to fill them in.

CHAIR—Perhaps you could explore this in greater detail at the next estimates hearings, Senator Sherry.

Senator SHERRY—How big were these caves, voids, chasms and pinnacles?

Mr McMahon—I must say that 'caves' is your invention, Senator.

CHAIR—'Voids' Senator Sherry.

Senator SHERRY—No, I thought you used the word 'caves.' What is the difference between a void and a cave?

CHAIR—Don't start!

Mr Farmer—The difference is that we are trying to avoid the caves.

Senator SHERRY—I don't know; you might have been trying to avoid the questions.

Mr Farmer—Never.

Senator SHERRY—How many tonnes of material had to be put in these various geographic sites? I mean, \$2½ million is a lot of money; it must have been a lot of—

Mr McMahon—They were bigger than the kitchen scales—

Senator SHERRY—Pardon?

Mr McMahon—If you really want an answer to that question—

Senator SHERRY—Yes, I do.

Mr McMahon—I will take it on notice.

Senator SHERRY—Thank you. Could you also give us a breakdown of what this \$2½ million extra was used for? That's it for me. I hope you did not find any of these things on Nauru.

Mr Farmer—Nauru is full of pinnacles.

Senator KIRK—I want to move to questions on Nauru. I understand that a new agreement has been concluded between President Harris and the Minister for Foreign Affairs, Mr Downer, in relation to Nauru. Is that correct?

Mr McMahon—Yes, that was signed and we have an agreement that runs until the end of June this year.

Senator KIRK—Could you give me a few more details about the terms of that agreement? For example, what was the amount of money and infrastructure involved—the quid pro quo, I suppose you would call it?

Mr McMahan—The agreement is relatively simple really. Essentially, it just talks about the total number of people that we can put into the centre, which is 1,500. It talks about some of the processes that you need to go through in respect of any new arrivals. It refers to not imposing cost on the government of Nauru. I think there are some broader aid issues which fall within the DFAT portfolio.

Senator KIRK—Is the agreement available for us to look at?

Mr McMahan—That would be a matter to put to the Department of Foreign Affairs and Trade.

Mr Killesteyn—We have tabled the agreement in the past. It was made available as part of the children overboard inquiry.

Senator KIRK—What about other matters like infrastructure and the types of things we were discussing in the context of Manus Island? Are those things being provided?

Mr McMahan—In terms of immigration operations, essentially IOM has put in place necessary infrastructure for the accommodation of the people. We have done very little outside the centre. We have, for example, purchased some parts et cetera for the operation of the desalinator. That was a decision that we took in the interest of ensuring continuity of water supplies. In effect, in respect of immigration operations, it is essentially aimed at the operations of the centre.

Mr Killesteyn—There is a clear difference between Manus and Nauru. Essentially, the site in Manus is an operating naval base. It has personnel from the PNG defence forces who live and work on the base. So the work that we were doing in improvements to the base was part and parcel not only of providing an ongoing processing centre but as a by-product, if you like. It provided legacy improvements for the PNG defence force. The two sites at Nauru are greenfield sites. There was nothing on them. One was a football field. The other is called the state house. It is where the original state house of the President of Nauru used to be. But there was nothing there. Essentially, the notion of the processing centres in Nauru is of establishing facilities which provide for the care of the residents.

Senator KIRK—Do we have details of the contracts between Australia and IOM in relation to the management of Nauru?

Mr McMahan—As a result of a request from a previous committee, we asked about the contracts. Those contracts are regarded as commercial-in-confidence.

Senator KIRK—I now move to the recent events in Nauru following the riot that occurred in the state house compound. Has control now been restored at the state house compound?

Mr McMahan—If you are asking whether IOM has resumed full operational control of it, the answer is no. There remain 54 people in the state house. About 21 of them are going to be charged—most of them have already. Criminal charges will be brought against them on a number of fronts. The current situation is that the Nauruan police and the APS are on the outside of the centre. They do not go into the centre. You could call it a self-managed centre. IOM does provide—

Senator SHERRY—Did you say it is a self-managed centre?

Mr McMahan—That is precisely what it is. Essentially, they are organising the internal operations of the centre. IOM provides food at the barrier, if you like, and the residents take

that food and water for the operation of the centre. A police search of the centre was conducted over the last 24 hours because of concerns about weapons. People complied with that search and an extensive amount of weaponry was removed from the centre. Nineteen people have appeared before the court and have agreed to comply with bail conditions. Those bail conditions include cooperation with authorities in respect of entry into the centre. Things have progressed significantly.

Mr Killestyn—We are concerned about the way in which this whole incident has been portrayed in the media, particularly in some recent current affairs programs. I think it needs to be said that the centre has not been abandoned, no-one is going thirsty, no-one is going hungry and the situation is not out of control. The situation is calm. There have been no further incidents arising in the centre. Due process under Nauruan law is being pursued for those individuals who were involved in the incident on Christmas Eve. That is a matter that we have to rely on the Nauruan authorities to pursue; it is their sovereignty issues—their law—that they are dealing with.

We continue to work with both IOM and the Nauruan authorities to make sure that the centre returns to normal operation. Normal operation is simply that IOM work inside the centre. At this point, all of the services are continuing to be provided essentially at the perimeter of the centre. Until IOM are of the view that it is safe for their staff to return inside the centre and operate as they did before, the matter will continue in that way. But we are working through a deliberate, proper, due process in this particular case without trying to precipitate any further incidents or events by the residents themselves.

Senator KIRK—You describe the centre as being self-managed. Is that correct?

Mr Killestyn—Well, you see even that description—

Senator KIRK—That is the description given.

Mr Killestyn—I understand that, but what we are describing is a situation where the residents themselves are essentially doing their cooking, their washing and those sorts of things, whereas in the past the normal operation would be that, for instance, some of that food would be provided by the contractor—in this case, Eurest. But in terms of services, food is provided, water is provided and medical services are still provided. If a person needs medical attention, they can present themselves at the perimeter of the centre. If that person requires some sort of attention at hospital, arrangements are made for that person to be transported from the State House site to the Nauruan hospital.

Senator KIRK—You say they are doing their own cooking. Are they doing all of their own cooking or are you suggesting that some raw food supplies are taken to the perimeter and then used by them?

Mr Killestyn—That is right.

Senator KIRK—Obviously they are still able to use the stoves, ovens and cooking facilities within the centre, so they have free rein. Is that correct?

Mr McMahan—There are quite extensive cooking facilities within the centre and they have always been available to them. Right from the outset there were significant supplies of food there. When they actually refused to allow the entry of IOM, there were four days supply of fresh fruit and vegetables for the 150 people who were there at the time and there was almost a month's supply of other food. Despite that, food has continued to be supplied.

Senator KIRK—I am sorry, I might not have heard you properly. So this food was made available as soon as IOM left the centre. There was food left there—is that what you were saying?

Mr McMahon—There was an operational centre which had large freezers et cetera. There was a month's supply of food there and there were fresh vegetables for four days for 150 people. After the disturbance, roughly two-thirds of the centre residents decided that they would prefer to remain under IOM care and they moved out of the centre, so there was a group of the 54 who remain there now.

Senator KIRK—So what of these claims of milk that was past its use-by date having to be boiled in order to be consumed?

Mr McMahon—There is no doubt that the level of amenity which they have in that centre is very high. As for the level of amenity without IOM there, IOM did not necessarily supply all the same food but there was plenty of food in terms of people being able to maintain a normal diet. I have no doubt that some would have been unhappy with the loss of quality of food.

Senator KIRK—Are fresh milk and the like now being provided to the perimeter of the centre?

Mr McMahon—I do not know about milk but there are certainly fresh foods being supplied.

Mr Farmer—I am not sure, Senator, that fresh milk is an item on Nauru.

Senator KIRK—Sorry?

Mr Farmer—In other words, there might not be fresh milk available in the country. That is the case with a number of South Pacific countries, so the only milk is long life. I do not know the case in Nauru but I would not be surprised if that were so.

Mr McMahon—Milk is being supplied but, as the secretary says, it certainly would not be fresh.

Senator KIRK—How long is this going to go on for?

Mr Farmer—The approach we are adopting is essentially calm, strategic and proportionate. We think that what we are doing is best calculated to preserve the reasonable amenities that should be provided to people and to encourage a return to proper operations. So we are not setting deadlines, and those three words—calm, strategic and proportionate—will continue to guide what we do.

Senator KIRK—I am just trying to work out what is the strategy for dealing with this. Are discussions going on? How is it being dealt with?

Mr Killesteyn—Behind the question is some sort of notion of control. Essentially, in Nauru we have a centre which is operating quite normally. The residents are being looked after; they are attending to their own needs, as was the case prior to that; there are no incidents going on; and proper Nauruan law is being followed in relation to those who were involved in the incident. In terms of those sorts of indicators, it seems to me that that is better than seeking some sort of intervention which precipitates a further issue with the residents. They have some concerns about the way in which the centre is being managed. Obviously, we have concerns about the action that they took, as do the Nauru authorities, and we are working that through in a proper way—in a calm way, as the secretary said.

Senator KIRK—Is any dialogue going on between IOM, APS and the detainees who are still within the centre?

Mr Killesteyn—There is dialogue every day about resolving this issue and, importantly, the longstanding IOM centre manager has just returned after a period of leave here in Australia. I think that is a very good sign that the situation will now move much more quickly than it has. Importantly as well, the individuals involved in the incident need to go through the proper process of law. They have been charged, their case needs to come before the court and, whatever the court decides, that action needs to be taken.

Senator SHERRY—I did not see the program, so I am not aware of the details other than the responses to the questions. Are we still paying IOM for managing the facility?

Mr Killesteyn—Yes, we are.

Senator SHERRY—Hang on—we are still paying them. Why do we pay them if we have got into the self-manage concept that you appear to be quite relaxed about?

Mr McMahon—Because 90 per cent of them are at the other facility.

Senator SHERRY—I mean IOM services to this particular facility. We are still paying them, I assume.

Mr McMahon—We basically have an undertaking to meet IOM costs. They are looking after 90 per cent of the people in the other facility and they are performing a valuable service in respect of this facility.

Senator SHERRY—I am not arguing with that, but they are not fulfilling their contractual obligation which is to manage 100 per cent, not 90 per cent and to allow 10 per cent of the detainees to self-manage. That was never part of the original contractual agreement.

Mr McMahon—I think it is fairly clear that they have quite legitimate concerns about the safety of their staff. I do not think anyone would reasonably expect people who were threatened in the way that they were to go back into that facility until they can get the level of reassurance that they require.

Senator SHERRY—I understand that. But, so far at least, you appear to be quite relaxed and unconcerned about the entire situation.

Mr Killesteyn—No, Senator, I am not relaxed. We want to move this as quickly as possible. My concern is that this notion that there has to be some sort of deadline would simply precipitate a further event which might cause more harm either to DIMIA personnel who are there all the time or to the residents themselves. We have a duty of care to all of the residents or IOM staff or the Nauruan police. The process that is being conducted is one of discussion, negotiation and working through the issues. As far as IOM is concerned, I do not think it is as black and white as you paint it, that they are not fulfilling their contract. Their contract provides for services to manage the centres. All of those things are happening, in a sense, but at the perimeter, if you like, of the centre. Food is still being provided—it is brought in, they bring it in, they acquire it, they deliver it—medical services are still being provided.

Senator SHERRY—But that was never envisaged. It was Mr McMahon, who used what I think must be the euphemism of all time: self-management of a centre. It was never envisaged that it would operate in that way, was it—surely?

Mr Killesteyn—I have tried to explain what the concept of self-management is in terms of people looking after their own cooking, washing and those sorts of things.

Senator KIRK—But this cannot go on indefinitely, you would agree, so you must have some sort of time frame as to how long this is going to be tolerable—for the next six months, 12 months?

Mr Killesteyn—I think the time frame is as soon as possible.

Senator KIRK—When you say ‘as soon as possible’ do you mean as soon as these police matters are resolved?

Mr Killesteyn—I think that is one of the important elements of resolving the issue, yes. Again, the department has no control over the timing of that. That is a Nauru process, properly, and they have to work it through in accordance with their own practice.

Senator KIRK—They have given you no indication as to how long it is likely to take in order to resolve these police matters?

Mr McMahon—No, we do not have a time frame for that. It is a question of progressive reassurance, I think, in respect of the operation of that facility. Initially you have the event; then it is important that the law operate, that charges be laid. The charges have been laid quite expeditiously. There were concerns about reports in the centre that weapons had been accumulated in there and that would endanger staff. That search has been carried out and those weapons have been removed from the centre. The court case is progressing. The asylum seekers of greatest concern have bail conditions. So it is progressively establishing the confidence that there will be cooperation and that there will not be any serious safety concern about people going into the centre on a day-to-day basis. Quite clearly, it is quite calm and people are going into the centre.

Senator SHERRY—On the issue of the charges: I think you said some people had appeared in court.

Mr McMahon—Nineteen have.

Senator SHERRY—Are these people part of the self-management program? These are actually people in the centre?

Mr McMahon—These are people who were involved in the disturbances on 24 December.

Senator SHERRY—But are they people that are still in the centre?

Mr McMahon—They are still in the centre.

Senator SHERRY—If IOM are concerned about safety—and I accept that is a legitimate concern—did these people who have been charged and have appeared in court allow the authorities to go into the centre so they could be interviewed voluntarily and charged voluntarily and then go to court?

Mr McMahon—Like anywhere else, the people were required to attend the court, they attended the court and were charged and they were given bail.

Mr Killesteyn—I know the issue about self-management and I think we are hanging too much on that particular concept. As I said, there is not a security issue at this point. People are still within the centre. The Nauru police move in and out of that centre as they are dealing with particular individuals, taking witness statements, interviewing people and talking to them about the Nauruan process. One of the issues, for example, has been that the residents themselves do not necessarily understand what the Nauruan law is and what the Nauruan approach is. So an important part of managing this particular issue is for the Nauru police to go in, talk to the individuals and explain what the process is—and that has been happening. That process of explanation has led to the ability of the Nauru police to calmly and

professionally take the witness statements, do what they have to do to be able to lay charges and bring the people to court to have the charges laid and for the subsequent hearings to happen.

The alternative, of course, which people seem to be advocating, is you just waltz in there and you start, by force, doing something different. That, to me, does not seem like a terribly sensible alternative.

Senator SHERRY—Okay. But you have a position where a number of people in the centre, running it, effectively—

Mr Killesteyn—Not necessarily running it, with respect. What I am saying is that in terms of the services—

Senator SHERRY—What is IOM doing then? They are not running it. Someone has got to be running it.

Mr Killesteyn—In terms of the services that are going on inside the centre, it is primarily looking after themselves as far as cooking, washing and those sorts of things.

Senator SHERRY—But we have got a situation where a number of people have been charged and have appeared in court. The Nauru authorities, the police, have been in there, with no suggestion of any danger to them, and yet IOM believe that there is a dangerous situation for their personnel. Why is there a different attitude to danger here?

Mr Farmer—This is developing as we speak. I think Mr McMahon made the point that the Nauru police had gone in in the last day to check for weapons. We have the IOM representative returning to Nauru this week, I believe. We are talking about a situation that is developing as we speak.

Senator SHERRY—What were the weapons that were discovered?

Mr McMahon—There were a range of weapons: bush knives—machetes, in other words—some knives, bottles of urine, spent fire extinguishers, a few saws, star pickets, hammers and a miscellaneous range of makeshift tools.

Senator SHERRY—Presumably these were obtained on the site after IOM vacated it?

Mr McMahon—No. It is very hard in the circumstances to stop someone, say, pulling up or finding a bit of star picket or something like that.

Senator SHERRY—I understand that, but hammers, saws and those sorts of tools or weapons—

Mr McMahon—I do not know the answer to that question, but I think Eures, which is one of the providers, had previously reported a hammer being stolen et cetera. I think some of it had been pilfered over time.

Senator SHERRY—I have a couple of questions on the contract matter that I referred to earlier.

CHAIR—Mr Farmer has some information for you also, Senator Sherry. I was waiting until there was a break in the questions. We are finishing in output 1.5?

Senator SHERRY—Yes, I have this contract material and then we have finished output 1.5, unless there is anything else.

Mr O’Callaghan—You asked a question about American Express International. It may be that you identified that contract from the DIMIA Internet site. We have a contract with American Express; we have had it since 1996 and it is ongoing. It is to provide a credit card

facility to our clients for paying visa charges for various migration applications. The value since 1996 to August 2002, which is the last reporting period for the Murray motion, was \$555,000.

Senator SHERRY—Thank you for clarifying that. What was the payment of \$50,070,00 to the International Organisation for Migration for?

Mr McMahan—That is broadly for the services they provide in respect of the asylum seekers. It covers some of the quasi-capital costs, if you like, of putting the centres together. It covers the ongoing costs of food and medical services.

Senator SHERRY—The issues we went through earlier.

Mr McMahan—Yes, transportation costs and all those sorts of things.

Senator SHERRY—I assumed that was what it was for. Is that the only payment in this period? I think it is from 19 August 2001 to 18 August 2002. Is there anything else paid to IOM under another title or description?

Mr McMahan—I did not recognise the amount that you gave. What was that in respect of?

Mr Farmer—We do make a variety of uses of IOM. For example, in our refugee and humanitarian program they provide a number of services to us on a fee-for-service basis in terms of preparing people who are coming to Australia for the journey. We also work with IOM in Indonesia, Cambodia and a number of places. Of course, we make a contribution to the costs of the IOM headquarters in Geneva. There are a number of contributions that we make to IOM. You have the Murray report list.

Senator SHERRY—I have the document that Senator Murray requested by order through the Senate.

Mr Farmer—The contribution to IOM, for example, would not seem to be a Murray report matter. But I do not have the information in front of me.

Mr O’Callaghan—I might just confirm that the Murray motion requires agencies to report twice a year. The period I think you are referring to is August 2001 to August 2002. There are over 700 contracts listed on the DIMIA Internet site, so that covers all the contracts current at that time. As I understand it, it would not cover grants to international organisations, and we make a number of those—UN bodies as well.

Mr Killestyn—Senator, are you seeking some sort of total payment to IOM?

Senator SHERRY—No, I just wanted clarification of the payment of just over \$50 million to the International Organisation for Migration. The assumption was that it was payment for the provision of the services to the centres they were operating.

Mr McMahan—I am sorry, I do not have the numbers with me; but we have provided them before and we are quite happy to do so again. Payments for the third country processing are readily available if you wish.

Senator SHERRY—Are the actual contract provisions available to the committee?

Mr McMahan—I believe it has been tabled. The contract, as you call it, is an exchange of letters essentially asking them to provide certain services.

CHAIR—I think we have seen that before, haven’t we?

Mr McMahan—Yes, I believe so.

Senator SHERRY—That would be before my time on this committee. Thank you. We do not have the Migration Review Tribunal and the Refugee Review Tribunal here, do we?

CHAIR—No, they were not called.

Senator SHERRY—There is one other point: does the department have any input into the pay of migration and refugee tribunal members? I know the Remuneration Tribunal sets the rates but does the department make any submissions in this area?

Mr Storer—In terms of submissions to the Remuneration Tribunal, we give advice to the government—the minister—about those but we do not make any direct submissions ourselves as a department.

Senator SHERRY—You give advice; the government may or may not make a recommendation to the Remuneration Tribunal.

Mr Storer—It may make a submission.

Senator SHERRY—Thank you.

[5.24 p.m.]

CHAIR—We will now move to outcome 2, A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably.

Senator Ellison—It is 25 past five. Does the committee anticipate going to the dinner break at 6.30 p.m. and then coming back again?

CHAIR—It will consider that just before 6.30 p.m. I know that is not hugely helpful, but we will see how far we get through this area with Senator Sherry's and Senator Kirk's questions. If we can finish in another hour then we will work through the appointed dinner break and finish at that point. If it looks like it is going to take longer than that, we will take the dinner break and continue afterwards.

Senator Ellison—I foreshadow that I will have to be absent at 6.30 for a meeting with the department, which I cannot avoid.

CHAIR—I understand that, Minister. If we decide to work through, I am sure the committee will be happy to cooperate with your commitments.

Senator SHERRY—It is understood.

CHAIR—We will start with output 2.1, Settlement services. Senator Sherry, would you begin in that area.

Senator SHERRY—Thank you. I think this question comes under output 2.1.1—Planning and information. On 6 August, Minister Hardgrave announced a review of migrant settlement services. The review is being conducted by DIMIA and the minister's office. A DIMIA discussion paper was released on 19 September. Written submissions closed on 31 October. I understand that, by invitation, consultation meetings have been held in a number of centres. How many formal submissions for the settlement services review were received by the closing date of 31 October?

Mr Vardos—We have received 140 submissions. Some came in after the closing date, but we accepted them. Sorry, there were 142; I stand corrected.

Senator SHERRY—Is it proposed to fund services with feedback on the most common issues raised in the written submissions and/or at the consultation meetings?

Mr Vardos—It is not appropriate for me to speculate as to how the government might choose to run settlement services in the future. Certainly, all the input that we have garnered

from the 140 submissions, the 13 ministerial consultations and the 26 supplementary consultations is feeding into the process. Until the government considers the report and decides the design and structure of future settlement services, it would not be appropriate to speculate on how that might be put together.

Senator SHERRY—Let us go back a step: who in the department is coordinating this?

Mr Vardos—My colleague Jennifer Bryant is head of the project team, and her branch is running the settlement services review.

Senator SHERRY—Mr Vardos, you mentioned a number of meetings that the minister was directly involved in. Who conducted the other meetings?

Mr Vardos—Departmental officers. Ms Bryant will give the details.

Ms Bryant—The other consultations were chaired by departmental officers—often the state director or the settlement manager in particular locations. It varied from location to location, but senior departmental officers were involved.

Senator SHERRY—Could you take on notice the dates of those meetings.

Ms Bryant—We do in fact have them with us.

Senator SHERRY—Just provide them to us. I would not expect you to read them out. And provide the locations. I might assume from what Mr Vardos has said that at this point in time there is no process of feedback to those who have submitted either written or verbal information at the meetings that took place.

Ms Bryant—The report is still being finalised, for provision to the minister and to government. They will then make a decision on the appropriate method for the dissemination of feedback.

Senator SHERRY—So there is a draft report, but it is dependent on a ministerial decision as to whether it goes back to the submitters and the people involved in the consultations.

Ms Bryant—Correct, and the form of that feedback.

Senator SHERRY—In addition to you, Ms Bryant, who else is involved in the working group?

Ms Bryant—Within my branch, I have a particular section which is dedicated to the preparation of the review report, but more widely we are receiving input across the division. For example, the AMEP section, within my colleague Mr Doherty's branch, is having input into the AMEP considerations. Similarly, colleagues dealing with the translating and interpreting services are having input. There is a dedicated cell of around eight to 10 people with input coming from a variety of areas.

Senator SHERRY—You have used the description 'cell'.

Ms Bryant—It means section.

Mr Farmer—It is more like a padded room.

Senator SHERRY—The word 'cell' reminds more of the Soviet era type operative. I have never heard that used by a public servant at estimates, so it took me a little by surprise. Have there been any consultancies or marketing research commissioned as a part of this review?

Ms Bryant—There has been no particular marketing research other than the written submissions that we have sought from interested parties. We have commissioned one consultancy to do a particular piece of research as part of the work of the review.

Senator SHERRY—Who was the consultant and what was the research about?

Ms Bryant—The research looked at people who moved from the AMEP, the Adult Migrant English Program, to the Language Literacy and Numeracy Program, which is operated by the Department of Education, Science and Training. It was intended to basically look at what level of movement there was between the particular programs and what levels of improvement in English language outcomes people achieved in light of the further training they received under the LLNP. The research is being undertaken by AMES in Victoria, the Adult Migrant English Service.

Senator SHERRY—I assume that that consultancy would be listed at the end of the annual report?

Ms Bryant—Yes, it would be.

Mr Vardos—For the sake of comprehensiveness, we need to say that we had commissioned a pilot client satisfaction survey with clients of migrant resource centres before the settlement services review had started. Although they were separate exercises, the results of that client satisfaction survey have usefully fed into the broader consideration of the review. That consultancy was undertaken by Urbis Keys Young, and that is also listed.

Senator SHERRY—Thank you for bringing that to my attention. I am not familiar with this area but is there an ongoing overview assessment of the outcomes carried out by government or is there some sort of independent organisation that reports to government on the outcomes in the language area?

Mr Doherty—Within the AMEP we have a contractor who does look at the range of inputs to the delivery of the AMEP. It looks at, for example, teacher qualifications, classroom standards and curriculum standards and reports back to us on a routine basis on that level of inputs to the program.

Senator SHERRY—That is on inputs, what about outputs? I do not like the use of that term in respect of humans and their take-up of English or otherwise.

Mr Doherty—We actually report AMEP language outcomes on an annual basis in the annual report, and we do that from within the program rather than have an external body examine it.

Senator SHERRY—Am I correct, Ms Bryant, that there is no timetable yet for the completion of the review, its release or further consultation?

Ms Bryant—There is a timetable for completion of the review. We anticipate having it with the minister after his return from overseas, which will be in the next couple of weeks. In terms of its release and dissemination, the ministers and the government have not made a decision on that as yet. So, there is no firm timetable.

Senator SHERRY—Will the CSSS funding for 2003 proceed without change for the remainder of this financial year?

Ms Bryant—The 2003 grants round has been advertised in the press in the last week or so. The grants round will proceed on basically the same conditions with the same priorities that existed in 2002. There are a couple of areas in which there are changes. The first is that the funding year currently operates from October to September, but from 1 July 2004 it will be aligned with the financial year. As a consequence of that alignment there will be a foreshortened grant year this year, which will run from October to 30 June, so it will be a nine-month funding year. It will then operate on a 12-monthly basis thereafter. Funding has been advertised for either a nine-month period or a 21-month period. The second area is that

funds will be available for one or two years or nine months—or as close to two years as possible, given the alignment with the financial year—rather than for three years. That is simply because, if there are outcomes from the review that would influence directions, we do not want to delay implementation of those too far into the future, so we are limiting it to two years into the future.

Senator SHERRY—Is the funding in the forward estimates for what will be the nine-month period in the transition year pro rata—that is, approximately three-quarters of the previous year?

Ms Bryant—Yes, approximately.

Senator SHERRY—In a media release on 18 October last year, the minister, Mr Hardgrave, launched the state settlement plan for Queensland for 2002-05. Are the department's state and territory settlement plans publicly available?

Ms Bryant—Yes, Senator, they are.

Senator SHERRY—Are they on the web site?

Ms Bryant—I would have to check that. I am not certain that all of them are on the web site but certainly they are publicly available.

Mr Vardos—I would add that each state settlement plan is not the exclusive work of DIMIA; they are collaborative efforts between DIMIA and state authorities.

Senator SHERRY—I understand that there has been a launch of the state settlement plan for Queensland. Has there been a launch in any other state?

Ms Bryant—There have been a number. I would have to check for you the dates and the circumstances of individual launches but, yes, several have been publicly launched.

Senator SHERRY—My understanding is that neither Queensland nor the others are on the web site.

Ms Bryant—I will take your advice on that, Senator.

Senator SHERRY—Well, that is what I am advised. Can we be provided with the most recent settlement plan for each state and territory?

Ms Bryant—Certainly.

Senator SHERRY—Is it your understanding that they are available?

Ms Bryant—Yes.

Mr Vardos—Yes.

Senator SHERRY—I have questions on 2.1.2—Humanitarian settlement services. On 6 July DIMIA issued a request for tender for a consultancy to evaluate the Integrated Humanitarian Settlement Strategy, which I am advised provides an immediate on-arrival service for refugees and Commonwealth funded torture and trauma support services. Has there been an announcement by DIMIA as to who the successful tenderer is?

Ms Bryant—Yes, Senator. The successful tenderer was Urbis Keys Young.

Senator SHERRY—When was that announcement? How was that announcement made?

Ms Bryant—I would have to check the date and how it was announced, but reference groups are established as part of the evaluation and review process. The organisation has consulted widely within the sector with service providers, clients and other stakeholders. The

knowledge of its existence and the involvement of the sector are extensive. But I will confirm for you the date and method of announcement.

Senator SHERRY—How was the tender evaluation carried out?

Ms Bryant—In the reasonably usual way. The tenders received were considered by a small panel of officers within the department, the bids were compared against the evaluation criteria and, on the basis of price and understanding of the requirements of the tender, a judgment was reached on a comparative basis.

Senator SHERRY—Who is on the steering committee for this evaluation?

Ms Bryant—There are in fact two reference groups. I would have to get you the names of all the individuals who are involved. Could I take that on notice?

Senator SHERRY—Yes.

Ms Bryant—There is a group to do with the torture and trauma services in particular, and more broadly.

Senator SHERRY—What was the agreed fee?

Ms Bryant—The evaluation is being funded jointly by DIMIA and by the Department of Health and Ageing. The proportion funded by DIMIA is \$140,000 and the Department of Health and Ageing is contributing \$60,000.

Senator SHERRY—What is the period for the tender?

Ms Bryant—The actual work on the evaluation began in September 2002. The report will be finalised by around mid-April 2003.

Senator SHERRY—So they commenced work in September last year?

Ms Bryant—Yes, and conducted consultations and fieldwork in October-November.

Senator SHERRY—Does the evaluation that is being carried out by Urbis Keys Young involve liaison with officers of either of the two departments?

Ms Bryant—I think the answer to that is yes. They have provided us, for example, with a preliminary report and in December a progress report, and obviously in the context of that sort of reporting we have ongoing liaison with them.

Senator SHERRY—Are they providing regular reports? Is there a stipulated period for regular, ongoing reporting?

Ms Bryant—A progress report was part of the stipulated requirements and that was provided in December. As I said, there is a requirement for the final report in April. If memory serves me correctly, there is another reporting contact point, which will be in late February-early March.

Senator SHERRY—That is this year?

Ms Bryant—That is correct.

Senator SHERRY—How will the results of the evaluation feed into the parallel settlement services review?

Ms Bryant—The progress report that was provided in December did identify a number of emerging issues. We have basically tried to operate the two processes in parallel. So written submissions that contain detailed commentary on the Integrated Humanitarian Settlement Strategy were made available to the consultants so that they would be aware of comments being made in the context of the review. We have also asked their advice as to whether there

are different or similar issues emerging in their own consultation process. There is a very large degree of consistency between the two activities and they have provided us, obviously, with written advice in the form of their progress report, which we are currently taking into account in finalising the discussion in the settlement services review.

Senator SHERRY—Is there any difficulty in the level and flow of cases referred to the IHSS service providers for the agencies involved?

Ms Bryant—The sector has reported to us difficulties with the flow of clients. I can give you some context: under the humanitarian program, people come in as refugees on class 200 visas. They are people we know about and we select. We know their date of arrival and we make the arrangements for their travel et cetera, so there is a degree of predictability about their arrival points. People who are sponsored by relatives, community members or others, on the other hand, are the ones about whom we have relatively less certainty and knowledge. Whilst we issue them with a visa, they have a period of time in which to make their own travel arrangements and to arrive in Australia. We do not have any certain knowledge of those arrival dates.

Senator SHERRY—There is a fluctuation in demand.

Ms Bryant—Yes. There is only a proportion of the clientele about which we have certainty, and that is the refugee caseload.

Senator SHERRY—Does receiving lower than expected numbers at certain times impact on some of the service providers?

Ms Bryant—It may have impacted on service providers in 2001-02. I think it is impacting to a significantly lesser degree this financial year.

Senator SHERRY—So there is a more even case referral?

Ms Bryant—Yes. In 2001-02, there were uncertainties with the size of the offshore component which, at that stage, was still being impacted by the number of unauthorised boat arrivals. That influenced the size of the onshore program and that in turn had an impact on the size of the offshore program. The uncertainties surrounding that did affect program numbers offshore, but this year we have not seen those impacts, and numbers are much steadier and more certain.

Senator SHERRY—Do you try to indicate to the service providers in advance some sort of number of expected clients?

Ms Bryant—We do try to provide service providers with an expected business level. It is an indication of what, other things being equal, we anticipate the business levels would be. In addition, we provide them with a minimum guaranteed business level, which is different. The minimum guaranteed business level is basically a proportion of the offshore refugee visas—not the sponsored humanitarian visas. It is a conservative projection of the number of offshore refugee visas we expect to issue. Then there is a guaranteed business level based on that.

Senator SHERRY—Has the average level of people who will go through in the 2002-03 financial year increased from 2001-02?

Ms Bryant—In 2001-02 and flowing into the start of this year, the estimated activity level was 5,297. In the additional estimates process that estimated activity level was raised to 6,000—based on performance in the first quarter of the year only.

Senator SHERRY—Approximately 6,000, I assume.

Ms Bryant—Yes, approximately. It is merely an estimate based on performance in the first quarter.

Senator SHERRY—The increase is approximately 700. Is there any additional extra funding for this increase?

Ms Bryant—Yes, we are funded on a per client basis so the funding flows in line with whatever the number increases to, under the department's purchasing agreement with Finance.

Senator SHERRY—I am advised there is no additional funding for the extra 700.

Ms Bryant—As I say, the funding for the program is on a per client basis so it flows in line with whatever the increase in numbers is. If it happened to increase to 8,000 the funding would flow per client for whatever that increase was.

Senator SHERRY—I understand that, but if you are projecting 6,000 for the year wouldn't you have projected an increase in the allocation? I understand that extra moneys will flow, but wouldn't you have projected that increase in additional cost?

Ms Bryant—I had understood that we had projected an increased expenditure.

Senator SHERRY—I am taking this on advice. Can you check that for me?

Ms Bryant—Yes, I will.

Senator SHERRY—Is there a standard fee per client?

Ms Bryant—There is. Finance pays the department \$2,612.08 for each person assisted in 2002-03.

Senator SHERRY—I do not want to get finicky, but why the eight cents? It is an extraordinarily precise figure.

Ms Bryant—I would have to take that on notice. I suspect the explanation is that it is the indexation of a past figure.

Mr Vardos—It is formula based.

CHAIR—Precision is very important in these things.

Senator SHERRY—It is certainly precision. Has there been any concern from service providers as to their level of viability as a result of the 2001-02 years?

Ms Bryant—I believe that a number did express concerns in 2001-02 and that did lead to the decision to provide a minimum guaranteed business level in an effort to provide them with some greater measure of certainty.

Senator SHERRY—Was there any per capita adjustment in the fee that is paid, from one financial year to the next?

Ms Bryant—I would have to check that. That would depend on the terms of the individual contracts with service providers, which normally would contain an indexation factor within the contracts, but it would vary from individual contract to contract.

Senator SHERRY—I took it that there was a standard fee in each contract. It varies, does it?

Ms Bryant—No, there is a total amount of money provided by the Department of Finance and Administration to DIMIA from which it purchases services, but the amounts provided to the different contractors vary because they are providing different services et cetera.

Mr Vardos—Those contracts were concluded through a competitive tender process. Whatever price is thrown up through that process determines what we pay them.

Ms Bryant—And I believe the amounts that are funded through the purchasing agreement at the time it was set reflected the outcomes of the tender process.

Senator SHERRY—Please take on notice the question about the adjustment factor, if any, from one year to the next. Have there been any providers who have ceased providing their service, either this financial year or in the previous financial year?

Ms Bryant—Under the Integrated Humanitarian Settlement Strategy?

Senator SHERRY—Yes.

Ms Bryant—Not to my knowledge but I will confirm that for you.

Senator SHERRY—Is there a list of providers available?

Ms Bryant—Yes, I do not have it with me but I could certainly provide it. I probably do have it with me.

Senator SHERRY—You can pass it to the committee. I do not need to look at it now.

Senator KIRK—I have some questions in relation to output 2.1.3. I understand that over the past year the minister has withdrawn core funding from the three migrant resource centres of inner west in Sydney, Central Australia in Alice Springs and northern metropolitan at Glenroy. Is that correct?

Ms Bryant—I think that is broadly correct, yes.

Senator KIRK—What was the reason for the withdrawal of that funding?

Ms Bryant—The reasons varied from case to case. In the case of Central Australia, the centre had low and declining client numbers. Core funding to any migrant resource centre is based on performance, continued settlement need in the area and value for money. The level of settlement need in Central Australia was low and declining. Our settlement database showed only 54 potential clients who were refugee or humanitarian entrants, or family migrants with lower levels of English ability, who had settled in the Alice Springs area over the past five years.

Senator KIRK—Is it the case that it still has temporary funding until 30 September? Is that my understanding?

Ms Bryant—The centre was given core funding until the end of January as an MRC, and it was then awarded a grant of \$40,000 for the delivery of settlement services from the period February to September. That is approximately equivalent to a normal CSSS grant of \$60,000 on an annual basis. Beyond September, the centre will be eligible to apply for funding in the normal way under the CSSS program.

Senator KIRK—It will need to apply for further funding under CSSS.

Ms Bryant—That is correct.

Senator KIRK—What about the other centres?

Ms Bryant—In the case of northern metropolitan, the centre had experienced persistent management and accountability problems, and it was unable to liaise effectively with stakeholders representing their client base or meet the needs of newly arrived migrants in the area. The department had invested considerable effort in trying to help the centre improve, but the problems proved impossible to resolve. The minister decided to cease core funding from the end of February 2003 and to put in alternative service delivery arrangements, which will

involve the north east MRC and the north west MRC receiving additional funding to provide services to the area until September 2003 when, again, CSSS funding arrangements can apply from thereon.

Senator KIRK—Finally, the inner west at Ashfield?

Ms Bryant—Again, it consistently failed to meet performance targets and had had ongoing performance problems in that area. The minister decided not to provide further core funding in the 2002-03 financial year. On 22 July, Minister Hardgrave launched a new service delivery arrangement, which includes funding to Anglicare, the Auburn MRC and the Chinese Australian Services Society. Again, long-term funding for the inner west will be provided through a variety of grants over the longer term, in all probability.

Senator KIRK—You mentioned those three temporary replacement services. Whereabouts are they located?

Ms Bryant—Broadly, they are around that inner west area. I think Auburn is in located in Auburn, and I would have to check the addresses of Anglicare and the Chinese Australian Services Society.

Senator KIRK—Perhaps you could provide that to us.

Mr Vardos—I would add that they are in what we would call the catchment area of the clients for the MRC that had funding withdrawn.

Senator KIRK—Perhaps you could take on notice the exact location for us. In relation to the inner west, and the Ashfield centre, what progress has the department made in developing a long-term strategy for settlement services in the region? Given that you have the three temporary locations, what are you doing about a long-term strategy there?

Ms Bryant—I think I need to take that on notice and check with our New South Wales office what detailed progress they have made in that area.

Senator KIRK—I was mainly interested in whether or not there has been consultation with local councils, migrant welfare agencies and the like, so perhaps you could take those on notice.

Ms Bryant—Yes, Senator.

Senator KIRK—I was also wondering about the sort of time frame you have there and whether you expect a replacement by 1 July or whether you are expecting to extend the interim funding to the three temporary agencies.

Ms Bryant—I think our expectation at this point would be that funding may be extended under the interim arrangements from July to September and that longer term arrangements are likely to involve CSSS funding. The grant year commences from October.

Senator KIRK—And applications can be made from September, did you say?

Ms Bryant—The application round is open now for those, too, but I will get back to you on consultations and the detailed local issues.

Senator KIRK—I also had a couple of questions in relation to the two other MRCs—first, the Central Australia one in Alice Springs. Where is the temporary funding provided to the centre until 30 September being sourced from? Is it from the MRC budget or the CSSS budget?

Ms Bryant—Essentially, in both cases it is being provided from the MRC budget. The funding that would otherwise have continued to apply was quarantined and made available for the ongoing provision of services via alternative means.

Senator KIRK—But post 30 September there will need to be the application at CSSS.

Ms Bryant—Yes.

Senator KIRK—Have there been any sorts of guarantees or the like from the department to the centre in relation to its receipt of CSSS funding from 1 October or will it need to make an application?

Ms Bryant—Are you asking in relation to Alice Springs?

Senator KIRK—Yes.

Ms Bryant—I think there has been no guarantee provided. Indeed, that would probably be inappropriate in the context of a competitive grants round. However, the organisation has a strong history of service provision in the area and I would have thought it would be a strong contender in any competitive process.

Senator KIRK—Going on to the northern metropolitan at Glenroy, has the department reached an agreement with the two adjacent MRCs regarding the provision of temporary replacement services?

Ms Bryant—It is my understanding that we have reached agreement with the two alternative providers.

Senator KIRK—What is the expected duration of that agreement?

Ms Bryant—Initially, it is until 30 September 2003.

Senator KIRK—And then the same thing applies—application for CSSS?

Ms Bryant—That is what we anticipate at this stage.

Senator KIRK—My next questions are in relation to the Community Settlement Services Scheme, the CSSS. As I understand it, DIMIA is seeking additional appropriations for the scheme of \$575,000 in 2002-03 and \$192,000 in 2003-04. Does that seem accurate?

Ms Bryant—That sounds accurate.

Senator KIRK—I understand that the additional funding is to enable DIMIA to continue funding to established community groups because existing funding has been diverted to new and emerging community groups. Is that correct?

Ms Bryant—As I think the additional estimates documentation shows, the funding was to provide grants to established community groups given the demand for funding for new and emerging groups. It was to allow those needs to be met whilst maintaining funding to established communities.

Senator KIRK—Could you explain what is meant by ‘established community groups’? What do they include?

Ms Bryant—By ‘established community groups’ we mean organisations that represent migrant groups that arrived in Australia many years ago and which have been established in the Australian community for a reasonably long period of time. For example, they include the Greeks, Italians, Polish people et cetera—the earlier waves of migration.

Senator KIRK—What do the new and emerging community groups take in?

Ms Bryant—I would have to check our precise definition of that, but they go to groups which are currently arriving, prominently African communities, and we use the term to refer to groups whose arrival numbers and existing communities in Australia are small.

Senator KIRK—I understand that the minister called for CSSS grant applications on 3 February 2003.

Ms Bryant—That sounds correct, Senator.

Senator KIRK—He said that funding would be available for either nine or 21 months in order to align the scheme with the financial year and that a third year of funding would not be available to allow outcomes of the settlement services review to be advised to the sector in 2003.

Ms Bryant—Correct.

Senator KIRK—Which established community groups in each state have had their funding temporarily transferred to this additional appropriation? How much CSSS funding does each agency receive?

Ms Bryant—I can certainly provide that information. If I could take it on notice we could give you a list.

Senator KIRK—Given that breakdown I have described, you may need to take on notice whether DIMIA has effectively decided to cease funding to some of the agencies some time in 2003 or early in 2004. Is that the inference to be drawn?

Ms Bryant—I think no decision has been made about the continuation or cessation of grants to any individual organisations. Applications have not yet closed for the funding round and clearly decisions of that sort would be contingent on the applications received.

Senator KIRK—Sure. When do the applications close?

Ms Bryant—Again, I would have to check that. I think it is about the third week of March.

Senator KIRK—So it is too early to say what sort of decisions are going to be made?

Ms Bryant—Yes.

Senator KIRK—Page 100 of the DIMIA annual report refers to one breach of a CSSS service agreement that required formal dispute resolution. Is that correct?

Ms Bryant—Yes. I believe that data was accurate in the annual report.

Senator KIRK—Is it the case that payments were delayed to 18 other grants because of unsatisfactory delivery of milestones and other related issues?

Ms Bryant—I believe that is correct as reported in the annual report.

Senator KIRK—Can you describe the nature of the unsatisfactory performance that caused DIMIA to delay payments?

Ms Bryant—I would have to check the circumstances in each of the 18 cases—or 19 cases if you count the formal dispute resolution case—but in general it is because of the unsatisfactory meeting of requirements under the service agreement. They vary from case to case but may include, for example, a failure to submit financial reports, or audited accounts at the end of the previous financial year may still be outstanding. They may include a failure to provide what we call milestone reports—the quarterly reports against the work program—or they may have provided reports but have failed to deliver on outcomes that they had committed to as part of their work program. Generally that type of issue would result in a delayed payment.

Senator KIRK—Could you provide us with details of each of those 18 or 19 cases—however you want to look at it—and state the reasons for their failure or their unsatisfactory performance?

Ms Bryant—Yes.

Senator KIRK—Have any of these grants been terminated by DIMIA since publication of the annual report? If so, what are the names and locations of the projects?

Ms Bryant—Again, I will have to take that on notice.

Senator KIRK—How many of the remaining projects still have their funding suspended at present? Again, you will probably need to take that on notice.

Ms Bryant—Very few. Most issues that result in delayed payment tend to be resolved in the following quarter, and payments are then resumed. Usually, those sorts of things are a point-in-time issue but we will look at whether any of the 18 still are a problem.

Senator KIRK—Are you saying that suspension is usually only for a short period?

Ms Bryant—Generally, subject to the issue being resolved, the department works fairly hard at resolving issues with the organisation.

Mr Vardos—We have staff in each of our state offices who are dedicated to the task of liaising with each organisation or agency that has received grant funding, and their objective is to make sure that milestones are met and that agreements are delivered and, where there are disputes, to resolve such disputes as quickly as possible.

Senator KIRK—So there is constant contact and follow-up?

Mr Vardos—Yes.

[6.12 p.m.]

Senator KIRK—I now move on to output 2.1.4, which relates to the administration of the Adult Migrant English Program. I have some questions in relation to the AMEP tenders. I understand that a request for tender for five-year contracts to provide AMEP tuition from 1 July was released in July last year. Is that correct?

Mr Doherty—That is correct.

Senator KIRK—The estimated total value was in excess of \$500 million over the five years.

Mr Doherty—It would be in that order, yes.

Senator KIRK—I understand that the outcome of the tender was announced in January.

Mr Doherty—Yes, 17 January.

Senator KIRK—I understand that two preferred tenderers for Western Australia were named—both TAFE colleges.

Mr Doherty—That is true: the central metropolitan TAFE and the West Coast College of TAFE.

Senator KIRK—Are they existing service providers?

Mr Doherty—They are existing service providers.

Senator KIRK—I understand that in the press release there was a suggestion that, because of some issues relating to technical aspects and the pricing of each tender, parallel negotiations will be entered into with the tenderers to enable the department to decide the

final outcome. So there is some suggestion that the final outcome is not yet reached. Is that correct?

Mr Doherty—In the tender responses of both agencies there were some technical issues that we were not 100 per cent sure of, so we concluded that the best way to do that was to discuss that during the contract negotiating phase.

Senator KIRK—So the two tenderers have been selected but you are going to work through those issues in the process of negotiation of the final contract. Is that what you are saying?

Mr Doherty—We will be working through those negotiations beginning next week, with a view to coming to final contracts, yes.

Senator KIRK—So there are two successful tenderers for the project; is that right?

Mr Doherty—There are two contracts in Western Australia: a contract which just focuses on metropolitan Perth and another contract that focuses on metropolitan Perth plus the rest of Western Australia.

Senator KIRK—When will we expect to have the final outcome?

Mr Doherty—They are preferred tenderers at the present time. We begin contract negotiations next week. We expect very quickly to sort out the technical difficulties that we had in the evaluation phase and we would expect contracts to be negotiated and a final announcement within a very short time.

Senator KIRK—What sort of time frame are you looking at?

Mr Doherty—I would say a month to six weeks from now—that sort of time frame.

Senator KIRK—How many AMEP service providers do you imagine that department will end up with at the end of this process? I suppose it will be two in Western Australia.

Mr Doherty—In Western Australia, two.

Senator KIRK—And in the other states?

Mr Doherty—I will run through them. In the Northern Territory, one: the preferred tenderer is the Northern Territory university. In Queensland there are two: the Queensland TAFE holds all of Queensland and there is a small contract in the middle of Brisbane that Hilton International College is the preferred tenderer for. In New South Wales there are five contracts: for three of those contracts the preferred tenderer is the Department of Education and Training and for two of those contracts it is the Australian Centre for Languages. In the Australian Capital Territory it is Canberra TAFE. In Melbourne there are four contracts: three have gone to the Victorian Adult Multicultural Education Service and one to a consortium composed of the Northern Metropolitan Institute of TAFE and the Royal Melbourne Institute of Technology.

Senator KIRK—Is that fourth one you mentioned a new service provider?

Mr Doherty—They are a new service provider in this contract round; they did hold a contract under the arrangements prior to the beginning of the current contract round. In Tasmania it is the Tasmanian TAFE. In South Australia it is the English language service of the TAFE in Adelaide for all of South Australia and a small private company called LM Training for a contract in Adelaide CBD itself.

Senator KIRK—In relation to the Melbourne providers, you said one of them was a new service provider. Is it the case that one of the existing providers was not successful in obtaining a further contract?

Mr Doherty—That is right. The Adult Multicultural Education Service were not successful.

Senator KIRK—Going back to the nature of the existing contracts, I understand that the Auditor-General had come criticisms about the variable nature of the existing contracts. Is that correct?

Mr Doherty—That is true.

Senator KIRK—In the light of that, is it the case that DIMIA will ensure that all future contracts will contain common performance requirements?

Mr Doherty—Yes, they do have common performance requirements.

Senator KIRK—How do they come about? Are they linked to DIMIA's own key performance indicators?

Mr Doherty—What we did in the design of the new tender arrangements was to deal with the issue that the Australian National Audit Office raised. We moved the funding arrangement from an average number of hours per client to an actual number of hours per client. That is the first key change. In terms of performance, we have set a set of common performance indicators across every contractor. I do not have them handy; I can provide them to you.

Senator KIRK—That would be good, thank you. Are they based on DIMIA's own performance indicators?

Mr Doherty—They are based on performance indicators related to English language outcomes for the AMEP.

Senator KIRK—I notice also that the Auditor-General criticised the department's conduct of the first round of AMEP tenders for producing no real change in the nature of service provision at a higher cost to the taxpayer. Is that your recollection?

Mr Doherty—No, the Auditor-General actually concluded that the costs of the tender arrangements were comparable to the costs of the earlier arrangements. I think that is on page 39 of the report.

Senator KIRK—I understand that the minister's answer to a recent question on notice confirmed that overall client numbers continue to fall because of changes to the migration program. Is that correct?

Mr Doherty—The client numbers have continued to fall since 1996. In 1996 they were 40,366 and by 2001 they were 32,486, but they are on their way back up.

Senator KIRK—Isn't it the case that the average cost per student has continued to rise since 1996-97? I understand that in 1996-97 it was about \$1,500 per student, increasing to \$2,720 in 2001.

Mr Doherty—Those are the numbers that we put into the answer to the question on notice, so that is right. In terms of the background to that set of numbers, the first issue is that, as the Commonwealth has moved from a cash based accounting system to an accrual based accounting system, that has had the effect of not giving you necessarily the exact comparatives over the 1996-97 to 2001-02 provisions. Then there is a range of issues. For example, in 1996-97 we were dealing with a very large number of migrants from the People's Republic of China. A surge of clients rolled through from the mid-nineties, and there were

some significant adjustments to estimates in the 1997 year. That gave rise to that number of 1,500.

Senator KIRK—So you are saying that this almost doubling of the average cost per student is related to changing the accounting system and also to the upsurge in particular types of clients?

Mr Doherty—Yes, it is more the upsurge in the particular system. The accrual accounting has an effect but the issue is more about the client numbers and the adjustment of funding in 1997.

[6.25 p.m.]

Senator KIRK—I will move to output 2.1.5—Fee-free translating and interpreting services. I understand that from 30 April last year all identity documents of newly arrived migrants that are to be translated into English free of charge by the Translating and Interpreting Service have to be lodged at AMEP outlets. Is that correct?

Mr Doherty—That is correct.

Senator KIRK—So it is the case that they cannot be lodged at migrant resource centres or DIMIA offices?

Mr Doherty—That is correct.

Senator KIRK—Is that a change that has been brought about, and, if so, why has that happened?

Mr Doherty—The change was part of a range of business reforms to the Translating and Interpreting Service to try to get better value for money outcomes from the operation of the service.

Senator KIRK—Was there any tender process conducted for the implementation of the new arrangement?

Mr Doherty—No, there was not.

Senator KIRK—Why was that?

Mr Doherty—There is an existing contract with the Adult Migrant English Program service providers that allows us to ask them to do additional tasks for us.

Senator KIRK—So it was an existing contract; it was not a variation to that contract?

Mr Doherty—It was a variation to that contract. Under the AMEP contracts we can ask them to perform a specific range of services for us. It becomes a quick and efficient way of bringing services on quickly.

Senator KIRK—Are AMEP outlets paid on a per client basis for providing the service?

Mr Doherty—They are paid on a per document basis.

Senator KIRK—What is the cost?

Mr Doherty—It is \$20.

Senator KIRK—Is that a flat fee per document?

Mr Doherty—It is a flat fee per translation request, yes.

Senator KIRK—Regardless of the length of the document?

Mr Doherty—Regardless of that, yes. It is a flat fee.

Senator KIRK—I am wondering why the department ruled out the use of migrant resource centres as an option for receiving the documents. They would be able to then forward them to TIS for translation. What was the reason for excluding migrant resource centres?

Mr Doherty—There were a couple of reasons. The first reason was that predominantly the people who need the documents translated fee free turn out to be the same people who are in AMEP centres and who have a requirement for English language tuition under the AMEP. These people enrol at an AMEP centre soon after arrival in Australia. By receiving the documents at an AMEP centre, we can ensure that their immediate documents get the very earliest attention. That is the key reason. It also gives us an opportunity to make sure that we attract the client to the AMEP centre if they are reluctant to come in to enrol for English classes. If they need documents translated for other purposes, it gives us an opportunity to extol the benefits of English language tuition to them when they come in to get their documents translated.

Senator KIRK—Through the AMEP outlets?

Mr Doherty—That is right.

[6.29 p.m.]

Senator KIRK—I will move on now, Chair, to output 2.2. I want to ask some questions in relation to the National Accreditation Authority for Translators and Interpreters, NAATI. I understand that NAATI is a registered company owned jointly by the Commonwealth, states and territories.

Mr Doherty—That is correct.

Senator KIRK—Is it the case that this body does not report directly to the parliament?

Mr Vardos—It reports to the members through its annual general meeting process.

Senator KIRK—Who are the members?

Mr Vardos—The Commonwealth, as you just mentioned, and each state and territory jurisdiction.

Senator KIRK—Who are the representatives of each of those bodies who attend the AGM?

Mr Vardos—I can name all of the people who attended the last AGM.

Senator KIRK—Perhaps you can just give me some guide as to the departments they are from.

Mr Vardos—They are generally from the relevant state multicultural affairs agency or a like agency.

Senator KIRK—Could you take it on notice to provide the list of those persons? On the question of the Commonwealth's representative: is it DIMIA representatives who exercise the vote of the Commonwealth on that NAATI board?

Mr Vardos—That is me, Senator.

Senator KIRK—Are you the only person?

Mr Vardos—Yes. It changes from time to time but at the moment I am the Commonwealth representative as a NAATI member.

Senator KIRK—Is no other Commonwealth department represented?

Mr Vardos—No.

Senator KIRK—I understand that there was a review commissioned by the ministerial council into the operation of NAATI.

Mr Vardos—That is right.

Senator KIRK—Was that last year sometime?

Mr Vardos—The working party reported to ministers in the last calendar year at the MIMA meeting.

Senator KIRK—From the point of view of the Commonwealth, what were the circumstances that prompted this review into NAATI?

Mr Vardos—I think it was just a question of having a look at NAATI and making sure that it met the current needs of the translating and interpreting industry in Australia. It is a very fluid and dynamic environment. NAATI has been around since 1973 as an organisation, and ministers viewed that it was timely to conduct a review into objectives, constitution, structure, reporting requirements and financial arrangements—that raft of issues.

Senator KIRK—What were the main conclusions of the review?

Mr Vardos—I have a concise summary of the outcomes of the review, which it probably would be best that I table in total.

Senator KIRK—Perhaps you can just give us a broad guide as to some of the outcomes of the review.

Mr Vardos—The objectives of NAATI were reviewed to make them more contemporary and to meet the needs of modern multicultural Australia. There was a new constitution developed, which took effect on 1 July. The constitution sets out a much clearer management structure for NAATI and clarifies the powers of the members, the board of directors and the chief executive officer. The outcomes of the review were made publicly available through a range of mechanisms, including lodging the new constitution with the Australian Securities and Investments Commission.

Senator KIRK—You said that the outcome of the review has been made available. Is it publicly available?

Mr Vardos—By lodging it with ASIC it has become a publicly available document.

Senator KIRK—Has it been released on a web site or anything like that?

Mr Vardos—The new constitution and the newly appointed directors are on NAATI's web site.

Senator KIRK—What about the outcomes of the NAATI AGM in November of last year? Are they available?

Mr Vardos—I happen to have a set of minutes from the meeting, which I am happy to table.

Senator KIRK—That would be good. Is it the case that a new board of NAATI was put into place in September of last year?

Mr Vardos—Yes.

Senator KIRK—Was there a completely new board appointed?

Mr Vardos—There was one carryover member from the previous board. I can name the board that was appointed at the time.

Senator KIRK—Perhaps you can provide us with the list of the board members at the time.

Mr Vardos—There has been one change since then. The new chairman of the board subsequently resigned for health reasons and there is currently an acting chair. There is one vacancy but the remaining members are as were appointed last year.

Senator KIRK—I was going to ask about the resignation of Dr Frick, but you say it was for health reasons that he resigned.

Mr Vardos—Yes.

Senator KIRK—Is the department now satisfied that NAATI is operating effectively and efficiently?

Mr Vardos—That is the sort of judgement that can be made over an extended period of time. From my point of view, as a Commonwealth representative, I am happy that the structures are in place for NAATI to deliver what the client base expects. Time will tell. But certainly the members, all of us, are very keen to observe the way NAATI operates in the new environment.

Senator KIRK—Is the department satisfied with the relations that NAATI has with its key stakeholders at present?

Mr Vardos—Yes. I do not have any cause for concern. From time to time, there are hiccups, as there would be in any business relationship, but NAATI is involved with a range of stakeholders—examiners and language institutes—and generally it operates at a satisfactory level. There are the occasional clients who are not happy with the way NAATI conducts its testing arrangements—that is probably the biggest source of complaint. It is reasonable to say that, in that sort of environment, they have standards to meet and, if you do not meet the standards, you are not accredited or appointed as a translator or interpreter. That can often lead to disappointment, anger and complaint.

Senator KIRK—You have been talking about the fact that relations with key stakeholders are good at the moment in your view. Is that since September 2002?

Mr Vardos—I first became involved with NAATI in about May 2001. My view of NAATI's relationship with its stakeholders is that it has been fairly consistent since that time. That predates the appointment of the new board.

Senator SHERRY—How is the remuneration of the board members set?

Mr Vardos—We take Remuneration Tribunal guidelines as our parameters.

Senator SHERRY—Does the Remuneration Tribunal make recommendations as to the pay of the board members?

Mr Vardos—As the Commonwealth member, we obtained the guidelines from the tribunal and we put them on the table for discussion amongst the members. They were accepted as being appropriate for the board members.

Senator SHERRY—Are these specific recommendations of the Remuneration Tribunal to this board?

Mr Vardos—No, it is the tabulated remuneration levels for like-minded organisations.

Senator SHERRY—Such as?

Mr Vardos—I cannot think of one at the moment. We took the standard published rates that were put out by the tribunal.

Senator SHERRY—Could you take that on notice and provide us with a copy of what those rates are.

Mr Vardos—Yes.

Senator SHERRY—Is there a list available of the stakeholders providing the translating and interpreting services that are currently contracted to the board?

Mr Vardos—I can approach NAATI. They do keep a register. Obviously, the register is a very dynamic list and some individuals for their own reasons choose not to be listed on the register, so it may not be the most comprehensive list available. But I will ask NAATI for a list of their accredited translators and interpreters. Is that what you are asking for?

Senator SHERRY—Yes, thank you.

[6.39 p.m.]

CHAIR—We have concluded output 2.2 and we will now move to output 2.3.1.

Senator SHERRY—Can the department confirm that its current IT system for citizenship does not allow it to provide the parliament or this committee with a range of data? There is a range of data that I would seek your advice on. How many applicants have been granted a waiver from the usual resident requirements on compassionate grounds, under subsection 13(9) of the act?

Mr Doherty—The IT system for Australian citizenship contains a range of information—names, addresses, residency requirements and that sort of thing. It does not go down to that level of detail on the system itself. The material that you are talking about there is contained on the paper files of each applicant.

Senator SHERRY—Just to be clear: what does the IT system contain—name, address, date of citizenship being issued and what else?

Mr Doherty—There are something like 42 pieces of information on an application form for grant of Australian citizenship, which is contained on the system. It starts with name, address, date of birth, gender and date of visa.

Senator SHERRY—Are the 42 pieces of data that are contained on the form the only questions? Are there additional questions for which there is not data on the IT system?

Mr Doherty—To be absolutely accurate I will have to take that on notice.

Senator SHERRY—So we cannot get data on the first point I raised about compassionate grounds under subsection 13(9) of the act because it is not on the form?

Mr Doherty—It would be on the form in the notes of the interviewing officer.

Senator SHERRY—As assessed at their interview, do we know the number of applicants who are not able to speak and understand basic English?

Mr Doherty—The information would be contained on the papers. We have some more recent information on the reasons for people being unsuccessful, but it aggregates English language and responsibilities and privileges information—so I cannot give you the system's answer on the English language question.

Senator SHERRY—You have mentioned character, language and residence as specific grounds. I understand that over 10,000 applications have been rejected since June 1996. What sort of specific data can you give on that?

Mr Doherty—I have some material here on the reasons for refusal of citizenship applications for 1997-98.

Senator SHERRY—For just that one year?

Mr Doherty—No, until 2001-02. In terms of not meeting the residential requirements it is about 74 per cent; not meeting the English and/or responsibilities and privileges requirement, five per cent; not meeting the character requirement, five per cent; or did not attend the interview or provide the required documentation, 15 per cent.

Senator SHERRY—Does a person who is rejected for citizenship have any rights of appeal?

Mr Doherty—Yes, they can appeal to the Administrative Appeals Tribunal.

Senator SHERRY—Do you have any data on how many appeals there have been? I am happy for you to take it on notice.

Mr Doherty—Okay. We have got the material, but not here.

Senator SHERRY—The number of people who have renounced their Australian citizenship and who have subsequently reacquired it by their other citizenship?

Mr Doherty—I will have to take on notice the number of renunciations. I cannot give you the second part of the answer, which is those who then reacquired it, because it is an issue of timing as to when they might have renounced it and when they might have chosen to resume Australian citizenship.

Senator SHERRY—But if a person renounces I assume there is some record kept of that.

Mr Doherty—If they formally renounce it, yes, that is right.

Senator SHERRY—Then why, if they subsequently reacquire it, wouldn't that record be kept?

Mr Doherty—There are records, both paper and systems records, but it is a question of timing. I could not give you, for example, the number of people who renounced their Australian citizenship in 1999 and have since reacquired it. I would have to do a specific search of the records to find who all the people were—

Senator SHERRY—IT records or paper based records?

Mr Doherty—Our IT records would tell us the people who renounced their Australian citizenship.

Senator SHERRY—But not who subsequently reacquired it?

Mr Doherty—The information would be on the system that they have reacquired it because the IT record is the core citizenship register, the formal record of a person's citizenship. So, yes, we would have the reacquiring on the IT system.

Senator SHERRY—Do we charge people to renounce their citizenship?

Mr Doherty—Yes, we introduced a fee of \$260 in the last 12 or 18 months.

Senator SHERRY—Has that had any impact on the number of renunciations?

Mr Doherty—It has had a salutary effect on the numbers.

Senator SHERRY—If a person renounces their Australian citizenship can they, of their own volition, pick it back up again?

Mr Doherty—They cannot do it within 12 months. They can resume it, but there is a character test.

Senator SHERRY—I understand a number of countries of nationality have triggered the loss by almost 3,000 Australians of their Australian citizenship from 1994 to April 2002, when the law was changed. Can you give me an indication of the situation here?

Mr Doherty—It would not be a country that causes the person to lose their Australian citizenship; it would be the laws of that country saying that you cannot hold another citizenship. So it is the individual who would make a decision—

Senator SHERRY—But based on what—what has happened in the country?

Mr Doherty—Based on the law of the particular country that they are in, yes.

Senator SHERRY—So, effectively, they may be forced to make a choice?

Mr Doherty—Obviously if they want to acquire the citizenship of that other country the answer is yes.

Senator SHERRY—Do we know what these countries are?

Mr Doherty—There are a range of them. I could give you a more detailed list.

Senator SHERRY—Yes, take it on notice. Is there any review of the information that is to be kept, any improvement in the level of information to be kept, with regard to the IT system for citizenship?

Mr Doherty—There is not a formal review in place as such, but we constantly review the role the IT system has in citizenship processing. For example, in recent times we have introduced a range of changes to the IT system, to pick up where a discretion is exercised on residency grounds where a concession is given to an applicant to meet other than the standard requirement for residence.

Mr Vardos—Can I add that we who run the citizenship program cannot unilaterally make changes to the IT system. It has cross-departmental impacts and we have to be given an appropriate priority and fit in with the overall IT improvements that are happening within the department.

Senator SHERRY—Where does it cross over?

Mr Vardos—It is an integrated client system that we operate in the department. Every program area has IT needs to run their activities; every area wants to make improvements and enhancements, and every request has to be queued and prioritised.

Senator SHERRY—Are there any current proposals to extend the IT record-keeping in this area?

Mr Doherty—As I indicated before, we are routinely looking at ways of increasing the level of information in the IT system. The one that is currently under development is an additional question that we are putting on the application form about whether a person has been involved in acts of treason or terrorism. That is an example of a change we are making to the application form and the IT system change will flow from there.

Senator SHERRY—Who is carrying out this change? Who is overseeing this proposal?

Mr Doherty—It is overseen by my branch, but it is done by the department's IT provider and the department's IT environment itself.

Senator SHERRY—What is the time frame for this change?

Mr Doherty—The forms change is the first phase of it, and the next forms will be in about September. We are in the process of lodging the request to change the system. That work request will go to the management group who look after ICSE, the integrated client service

environment, and it will get a rating. That rating will determine at what point the change will get the resources allocated to it.

Senator SHERRY—Would this be for future applicants? What about previous applicants?

Mr Doherty—What we did on 14 January was to introduce a manual system so that all applicants who were interviewed on or after 15 January had to sign a piece of paper that asked that question. That information is stored on the papers.

Senator SHERRY—So this was an additional bit of paper on top of the current form?

Mr Doherty—That is right.

Senator SHERRY—What about for people who received citizenship prior to the introduction of this new question?

Mr Doherty—No.

Senator SHERRY—There is no intention to go back?

Mr Doherty—I think that would be a question of changing legislation, and that is a matter for government.

Senator SHERRY—Does the new question on treason/terrorism require legislation?

Mr Doherty—No, it does not.

Senator SHERRY—So why does it require legislation to go back and ask that question of people who have already been granted citizenship?

Mr Doherty—It is to do with the operation of the deprivation provisions of the Australian Citizenship Legislation Act. The way the deprivation arrangements under the act operate is that if they answer the question untruthfully at the particular point that question is asked then we can go back under the legislation and seek to prosecute them under section 50 of the Citizenship Act and if that is successful then we can move to deprivation provisions.

Senator SHERRY—Are these definitions of treason and terrorism within Australia or are they possible convictions as defined in the country from which they have come, or both?

Mr Doherty—They derive from the definitions in the Crimes Act.

Senator SHERRY—The Australian Crimes Act?

Mr Doherty—Yes.

Senator SHERRY—I could envisage a possibility of someone being convicted of treason in a country overseas, but we would not consider it to be treason, in terms of defining it within our criminal justice system. We are not going with the overseas definitions?

Mr Doherty—We are going with the definitions in the Crimes Act. If I am going down to that level of detail I would really have to take it on notice.

Mr Storer—It relates to the Crimes Act and the recent terrorism act that was passed in parliament last year—to be consistent with that; certainly not for overseas.

Senator SHERRY—There would be very few convictions of treason and terrorism under the Australian Crimes Act, wouldn't there?

Mr Storer—I do not think there has been any, to my knowledge.

Senator SHERRY—I do not know, but I would have thought it would have been a remarkably small number. Rather than ask that question, would it not be simpler to simply

require notification by federal authorities of any conviction for treason or terrorism, so you have a record automatically, or just cross-check? Why ask the question?

Mr Doherty—It relates to the structure of the deprivation provision in the Citizenship Act as it currently is. If the person answers untruthfully it can lead to a conviction for a false and misleading statement under the Citizenship Act. That then enlivens a deprivation provision, and that is why the question is being asked where it is being asked.

Senator SHERRY—That is why you need to ask the question as distinct from simply relying on notification from the courts?

Mr Doherty—That is right.

Senator SHERRY—Or are you going to check a person's application in the court system to see whether they have been convicted of treason or terrorism?

Mr Doherty—Under the operation of the Citizenship Act the deprivation provisions require us to get a conviction and that is why we are asking the question now, on the papers.

Senator SHERRY—Is the register of people who are granted Australian citizenship a public register? Can a citizen access the register to find out whether someone has acquired Australian citizenship?

Mr Doherty—No.

Senator SHERRY—Why is that?

Mr Doherty—I would speculate that it is related to the act and privacy provisions—to those two issues. But that is speculation at this point.

Senator SHERRY—Can you check on that—whether it is precluded under the act or the regulations?

Mr Doherty—Yes.

[7.00 p.m.]

CHAIR—Are there any comments on output 2.4, Cultural diversity and appreciation thereof.

Senator SHERRY—In a media release of 18 February 2002 the Chairman of the Council for Multicultural Australia, Mr Chow, said that the council was in the processes of completing its mid-term report, which would be presented to the Prime Minister and to the ministers—Mr Ruddock and Mr Hardgrave. When did the Council for Multicultural Australia submit its mid-term report to the government?

Dr Nguyen-Hoan—We asked them to send it to the department of multicultural affairs, and I do not remember the exact date. It would have been around that time. I think it may have been in May 2002.

Senator SHERRY—In May or June?

Dr Nguyen-Hoan—It might have been June or May. I would need to check that.

CHAIR—In 2002?

Dr Nguyen-Hoan—Yes.

Senator SHERRY—Who received copies of the report?

Dr Nguyen-Hoan—We sent it to the ministers—Mr Hardgrave and Mr Ruddock. We asked Minister Hardgrave's office to send it to the Prime Minister's office.

Senator SHERRY—What is the nature of the report?

Dr Nguyen-Hoan—It is really an account of what the council had been doing from the time of appointment in mid-2000 until that time.

Senator SHERRY—Is the report publicly available?

Dr Nguyen-Hoan—Yes.

Senator SHERRY—Could a copy of that be made available to the committee?

Dr Nguyen-Hoan—Yes.

Senator SHERRY—Thank you. Has there been any evaluation of the work of the council to the present time?

Dr Nguyen-Hoan—It has been done, and the report is currently with the ministers.

Senator SHERRY—Who is carrying out the evaluation of the council?

Dr Nguyen-Hoan—It was an internal departmental evaluation.

Senator SHERRY—Who was involved in that?

Dr Nguyen-Hoan—I was the chair of the steering committee, which included three colleagues of mine from the department. I can provide you with their names.

Senator SHERRY—When did this evaluation commence, approximately?

Dr Nguyen-Hoan—I think it commenced about a year ago, and we have just completed it.

Senator SHERRY—Who decided to carry out the evaluation?

Dr Nguyen-Hoan—It was the requirement of the New Agenda for Multicultural Australia. The new agenda said that the council would be appointed for three years and that, towards the end of its term, an evaluation of the council should be conducted.

Senator SHERRY—So it would have been the minister's decision effectively?

Dr Nguyen-Hoan—You could say that.

Senator SHERRY—I know I can say it, but do you agree that it was the minister's decision?

Dr Nguyen-Hoan—It was in the new agenda.

Senator SHERRY—Which is a ministerial document—government policy.

Dr Nguyen-Hoan—Yes. It was approved by the government, so you can say that the minister decided that an evaluation should be conducted.

Senator SHERRY—Well, I hope he did! Was any announcement made by the minister of the commencement of the review?

Dr Nguyen-Hoan—I cannot recall if there was any public announcement, but certainly we have sent out a questionnaire to a number of organisations. So the review is public knowledge.

Senator SHERRY—I want to explore that briefly. We had the notice of the intention to conduct a review when the New Agenda for Multicultural Australia was originally launched.

Dr Nguyen-Hoan—Yes.

Senator SHERRY—From what you are saying, there were then submissions invited from a range of organisations when the review was conducted.

Dr Nguyen-Hoan—Yes.

Senator SHERRY—But it was not a public placement advertisement?

Dr Nguyen-Hoan—No, that is right. We thought that we would have a limit and call for submissions from organisations that may have been aware of the work of the council and the implementation of the new agenda. For example, state and territory bodies that may have some multicultural interests, FECCA, which is an organisation that the Council for Multicultural Australia might have had some contact with, our product diversity partners, our Living in Harmony grantees, our partners through the Living in Harmony initiative and people like that. We thought that they would have some idea or understanding of what the council has been doing.

Senator SHERRY—I can appreciate that, but it seems to me that, when there is a review taking place, the norm is that there is direct correspondence with a range of organisations and a public advertisement.

Dr Nguyen-Hoan—It was because the thinking at the time was that the new agenda was relatively new—it was released at the end of 1999—and there was a significant review of multicultural policy by the National Multicultural Advisory Council for the two years from 1997 to 1999. We thought that, since the new agenda had been in operation for only about 2½ years and the council for about the same time, maybe a limited review would be appropriate.

Senator SHERRY—Was the decision not to advertise taken at the ministerial level?

Dr Nguyen-Hoan—Yes. We provided the minister with a submission seeking his agreement to do that.

Senator SHERRY—To advertise?

Dr Nguyen-Hoan—No; to have a limited internal review.

Senator SHERRY—So there is not an annual report of the Council for Multicultural Australia as such?

Dr Nguyen-Hoan—No. The council was supposed to provide an annual report to the ministers. There was a delay, so we prepared a mid-term report instead. We knew that the council would finish its term in June of this year.

Senator SHERRY—Why was there a delay?

Dr Nguyen-Hoan—There were other priorities. The chairman was not available to look at the report, so the delay was a few months only. Instead of having an annual report it seemed appropriate at the time that we have two reports: one is the mid-term report and one we are preparing now for the council to submit by the end of its term in June this year.

Senator SHERRY—So you are saying there was an annual report prepared but, because the chair was not available, it was not issued?

Dr Nguyen-Hoan—We were planning to have the first report at the end of the council's first year, but there were some delays. So, instead of releasing it and then having another report soon after which did not represent the whole year, it seemed quite reasonable and appropriate to have a mid-term report.

Senator SHERRY—But you referred to the chair not being available. What was that in relation to?

Dr Nguyen-Hoan—It may just have been my recollection of why an annual report became a mid-term report.

Senator SHERRY—Why was the chair not available?

Dr Nguyen-Hoan—He may have been busy and unable to look at the report when we wished him to look at it. That is what I was going to say.

Senator SHERRY—The chair was Mr Chow?

Dr Nguyen-Hoan—At the time I think the chair might not have been Mr Chow.

Senator SHERRY—Could you check on that and take it on notice for me?

Dr Nguyen-Hoan—I can do that.

Senator SHERRY—Are any of the officers of the council paid?

Dr Nguyen-Hoan—I think it may be about \$410 per day, but I can check that and let you know.

Senator SHERRY—So it is a sitting fee?

Dr Nguyen-Hoan—Yes.

Senator SHERRY—How is that set?

Dr Nguyen-Hoan—In connection with the tribunal, we thought that was an appropriate rate for such a council.

Senator SHERRY—Could you take that on notice and check the rate? I queried this with Mr Vardos on another matter earlier.

Dr Nguyen-Hoan—Yes.

Senator SHERRY—DIMIA says that one of its priorities for 2002-03 is to proactively encourage community harmony. It says that it does that by supporting the Council for Multicultural Australia, which we have just been discussing; by working proactively with community groups on issues affecting community harmony; by implementing the living in harmony initiative and by working with business to promote productive diversity. Since September 2001, has DIMIA issued or prepared any situation reports on threats to community harmony resulting from international events?

Mr Farmer—We have provided quite a lot of advice to ministers during that time, yes.

Senator SHERRY—Would you describe them as situation reports?

Mr Farmer—They do incorporate quite a lot of information from our community relations officers around Australia. To give you a flavour, they are reports of the sentiments within the community that are being reflected to our officers.

Senator SHERRY—From officers—

Mr Farmer—In our state and territory offices.

Senator SHERRY—Do these situation reports go only to the minister or are they distributed more broadly?

Mr Farmer—Let me make one other general point: this is of course a long-standing function of the department to advise our ministers and, on occasions other ministers, of this sort of information.

Senator SHERRY—What about the Council for Multicultural Australia, states and territories or external stakeholders? Are they provided with copies of situation reports on occasions?

Dr Nguyen-Hoan—Not regularly and only when there may have been issues of interest to them.

Senator SHERRY—So some would be provided to the Council for Multicultural Australia. What about state and territory governments?

Dr Nguyen-Hoan—We do not as a matter of course provide them with our internal departmental situation reports, but we have had some correspondence with them in the context of September 11 and October 12 to exchange information with them about activities by jurisdictions.

Senator SHERRY—So if a concern is raised in a particular state or territory they may be informed about that but not necessarily?

Dr Nguyen-Hoan—That is right, yes.

Senator SHERRY—Do the reports contain specific recommendations for action on a specific issue?

Dr Nguyen-Hoan—It depends on the case. If it were only to report on community feedback on certain issues then it would just be information—a situation report—but if there were some actions that we thought that it would be quite useful for ministers then there would be some recommendations.

Senator SHERRY—That may include passing on that recommendation to the council and/or to state governments and territories?

Dr Nguyen-Hoan—We may inform them if the recommendation is of interest to them.

Senator SHERRY—At page 97, the department's 2001-02 annual report states that the department 'successfully managed' the community issues of crime and ethnicity, post September 11 reaction and an escalation in the Israeli-Palestinian conflict. What measure of success was used in reaching that conclusion?

Mr Vardos—It has to do with the extent to which you are able to contain any conflict between groups by maintaining a level of dialogue at ministerial level—even at prime ministerial level, if necessary—and certainly at departmental level. In summary, basically it is to contain anxieties and to keep the dialogue going and not let it turn into anything more serious.

Senator SHERRY—Has the department or its agencies in the last two years done any focus group research on attitudes in this area?

Mr Vardos—Not that I am aware of.

Senator SHERRY—As we are discussing the 'successfully managed' comments in the department's annual report of 2001-02, has the department sought to measure, for example, the incidence of media vilification of particular ethnic groups; religious prejudices; attacks on mosques, synagogues and other places of worship; or hate-related attacks on individuals?

Mr Vardos—Our state and territory officers keep tabs on and a record of incidents that occur—certainly when they are reported, and many are not. The state and territory governments have their own mechanisms to do exactly the same thing. The monitoring of press coverage, radio talkback and press clippings happens on a daily basis.

Senator SHERRY—What conclusions have been reached on the basis of the monitoring of the criteria that I have just outlined?

Mr Farmer—That is a very broad issue that you were talking about.

Senator SHERRY—I think I have been reasonably specific. You are monitoring media vilification of particular ethnic groups. Is it greater or less than it was five or 10 years ago?

Mr Vardos—I do not think we could say that we have an analysis that monitors trends over that sort of time frame but, for example, we can say that in general terms the community fallout post the Bali incident was less than the post September 11 fallout. Fewer incidents were reported, and this has been confirmed by state government colleagues. I cannot make a judgment on the level of media coverage.

Senator SHERRY—So it is a general observation—that there were 10 incidents five years or three years ago; there were 15 incidents after September 11—

Mr Vardos—It is not that scientific. It is a general observation by us and colleagues in other agencies and state governments.

Senator SHERRY—So what precisely does the department claim is an action it has taken that successfully managed these community issues?

Mr Vardos—Let me give you an example: we would have a list of organisations or community leaders in every jurisdiction which we would make available to ministers and say, ‘Given this particular incident,’ whatever it may be, ‘we think you should perhaps make contact with this community leader and provide some reassurance from a government level.’ That is the type of action that is taken. It is a level of reassurance and an expression of concern for any issues that particular communities may be facing at particular times. In many instances, that is what those communities are looking for—a level of reassurance from those in government, in authority, that they are aware of and concerned about their plight.

Senator SHERRY—What about perpetrators of media vilification, for example? Is there contact with those individuals or groups?

Mr Vardos—Generally I would say that there is no methodical response to each letter writer or journalist who writes a particularly inflammatory article, but ministers have certainly been active in engaging members of the media to get points of view across on the issues of community harmony and the undesirability of targeting particular groups at particular times for adverse comments.

Senator SHERRY—But there is a certain objectivity there because there is not necessarily a breach of the law, is there?

Mr Vardos—No, and if there is a breach of the law it is a different issue which would not necessarily be this department’s responsibility to take forward.

Senator SHERRY—As an example, I recall a case in Launceston in Tasmania of a woman who has been carrying out a campaign against the Jewish community. She was successfully prosecuted. Does the department play any role in respect of that type of individual?

Mr Vardos—Generally, no. In that instance I think it was a state government authority that pursued the matter. It may well have been the Human Rights Commissioner or the equivalent in the Tasmanian government.

Mr Farmer—We do not administer law in this area.

Senator SHERRY—I understand that you do not administer law, but I am interested to see whether there is some sort of informal contact with individuals who are prosecuted and, in the case I have referred to, prosecuted successfully. So you do not have a scientific methodology for tracking incidents that reflect community harmony or levels of disharmony in particular areas, it is just a general observation you have been making.

Mr Vardos—And reporting by our community liaison officers. From time to time, they will say, for example, that the New South Wales government recorded X number of incidents amongst the Muslim community in Sydney. That is the sort of reporting we get.

Senator SHERRY—So based on the discussion we have been having, is it considered that community harmony increased or decreased in 2001-02 compared to earlier years?

Mr Vardos—I do not think you can judge it in that way. I think the measure of success can be judged by the lack of outbreak of any form of community violence in Australia because of the dialogue and encouragement of various communities. Despite the complexity of the Australian population with so many cultures, religions and ethnicities, we have managed to contain concerns that are perhaps brought in from overseas activities, and we have not allowed them to break out into violence in the streets.

Senator SHERRY—I was going to ask what you meant by ‘violence’. Are you talking about group or one-to-one violence against individuals?

Mr Vardos—It could be either, yes.

Senator SHERRY—As distinct from violence against a church or place of worship?

Mr Vardos—Certainly, there have been attacks on synagogues and mosques. They are matters for police to prosecute in each state and territory where the perpetrators can be found. What I am talking about is open violence between ethnic communities that dislike each other for some particular reason. We have not seen that in Australia.

Mr Farmer—There is another dimension to this, and that is a long-term dimension which builds on the extraordinarily successful multicultural society we have in Australia and seeks to expand the dimensions of that successful multiculturalism. Things like, for example, the partnerships we have with business and community groups and the Living in Harmony campaign are extremely important means of trying to engage a much broader cross-section of Australia in an understanding of multiculturalism and in activities which are designed not only to promote it but also to extend the success of what we have built up in this country over 50 years. I encourage it, not only in terms of incidents and reactions to them but also an ongoing program which is designed to build on an already successful Australian story for the future.

Senator SHERRY—I am looking at a statement from the New South Wales Commissioner of Police of Monday, 28 October. In New South Wales a series of racial attacks following the Bali bombing were condemned by the state’s police commissioner and Australian of the Year, Mr Pat Rafter. It gives some details of the comments by the commissioner, Mr Moroney, and then comments by Pat Rafter. I do not want to go through all the details. Are you confident that the level of harmony in Australia, despite the sorts of incidents that are outlined by those two, is at the same level as it was, say, five years ago?

Mr Farmer—In a macro sense, just building on my last comment, we now have a much broader involvement of Australians in this process of promoting community harmony. It is very difficult, obviously, to give a specific answer to your question but, in terms of the spread of people who are working actively to promote community harmony—and that is reflected in the Harmony Days that are celebrated in many states and territories each March—we have certainly seen a broader representation than we would have seen five years ago before the Living in Harmony campaign.

Senator SHERRY—Is there any attempt to carry out any evaluation of Australia versus other countries, such as the US, Canada or the UK?

Mr Vardos—No, we have not undertaken anything like that. It would be very difficult because the circumstances are very different in Canada, the UK and Australia. You would not be comparing like with like; the environments are very different. However, Mr Hardgrave is going overseas and he will be visiting Canada and the UK. They are the sorts of issues that he is interested in discussing with ministerial colleagues.

Mr Farmer—A couple of years ago, Mr Ruddock spent quite a bit of time in the UK talking with his interlocutors there—both ministers and their commission for racial equality—about this sort of issue. That was actually quite instructive because the UK practice through the commission had a forthright focus on combating racism and that contrasted with the focus here, which was on promoting community harmony. The commission there was actually not regarded as a success; it was regarded as having polarised opinion very much rather than having brought opinion together around the positives. So there was, and still is, a lot of interest in the UK in these sorts of community harmony policies and, for that matter, in the settlement policies and programs that we have.

I think the same is true of a number of emerging new migration countries which are looking at the Australian experience and how we have, through our multicultural and settlement policies, tried to integrate new settlers, not only making it easy for them to participate in society but also trying to create an atmosphere in our society where there is a sense of unity and diversity and where people are made to feel part of their new society. Countries like Germany and the UK, which are looking at the possibility of migration programs and how you make a success of them, are looking at our experience not only in migration management but also in settlement and community relations issues.

CHAIR—Thank you very much Mr Vardos, Mr Doherty and Ms Nguyen-Hoan.

[7.34 p.m.]

CHAIR—Good evening, ladies and gentlemen. Thank you very much for being so patient with the committee. I know that Senator Sherry has some questions for the authority.

Senator SHERRY—Is the executive officer here?

Ms Moser—No, he is away on leave at the moment.

Senator SHERRY—I understand that there is an external reference group review of statutory self-regulation of the migration advice industry. That was chaired by Mr Spicer and it was completed in July 2002. Minister Hardgrave subsequently released the report after the government had agreed to continue MARA beyond 23 March 2003—the sunset clause. Subsequently legislation to remove the sunset clause was passed by parliament on 6 February—noncontroversial legislation—and the government is to introduce further legislation to implement the Spicer recommendations.

Mr Spicer made some observations about MARA's administrative procedures. For example, the review noted concerns regarding the lack of client friendliness of MARA's processes and a perception in some quarters of an overly bureaucratic and risk-averse approach to public and client contact, administration and decision making. That is contained in paragraph 1.3.6 on page 3 of the report. The recommendations are dealt with in greater detail in decision making—6.3, client services—6.4, and the efficiency of MARA—6.5.

What action, if any, has MARA specifically taken to address the following concerns raised in the Spicer report: the criticism of tardy decision making—paragraph 6.3.4; the need for the MARA board to authorise MARA staff to take routine decisions and to recommend a course of action on complex decisions—paragraph 6.3.5; the fact that DIMIA has received many complaints from agents and visa applicants that it was difficult to contact MARA—paragraph

6.4.1; the secretariat was seen to be inaccessible—paragraph 6.4.9; MARA's correspondence sometimes being unnecessary, repetitive and bureaucratic—paragraph 6.4.2; and MARA's failure to fully implement the Ernst and Young recommendations about its complaints handling procedures—paragraph 6.4.5. Ms Moser, could you indicate to me whether you and the executive officer, who is not able to be here, have been executive officers for the period of time for which this critique was made.

Ms Moser—Yes, we were.

Senator SHERRY—Could I have a response to those concerns?

Ms Moser—Could I clarify that: when the review came out I was not the deputy executive officer but the executive officer was the executive officer. I was appointed subsequently, as a result of one of the recommendations of the review.

CHAIR—Mr Brown, are you intending to respond, or will Ms Moser respond?

Mr Brown—I am happy for Ms Moser to take the questions regarding her role.

Senator SHERRY—My questions are not specifically to Ms Moser, although I am sure she would be one who would respond. What is your role, Ms Moser? What is the delineation of duties between yourself and the executive officer?

Ms Moser—My role is as the deputy executive officer for the administrative functions within the secretariat, so I manage the staff and I look after some of the delegated responsibilities in registration and a very few in the area of complaints.

Senator SHERRY—Who looks after those?

Ms Moser—The executive officer.

Senator SHERRY—I take it that these responsibilities are contained in written form.

Ms Moser—Yes, they are.

Senator SHERRY—Do you attend board meetings?

Ms Moser—Some of them.

Senator SHERRY—Okay. Thanks.

Mr Brown—If we come back to the broad question, the MARA, certainly the board and all of us here would recognise that there is a basis in the criticisms that were contained in the Spicer report. We do not shy away from that, and we are looking to address those. We are looking at it from a number of angles. One is a resourcing issue: we are looking at how we can improve our efficiencies and better utilise our resources, both from the top down and the bottom up. So we are looking at processes from the board, at the way we operate and whether we can improve those processes and save resources there; and, from the bottom up, we are looking at administrative processes at the bottom and at greater utilisation of technology to improve our processes there.

We have invested, over the last 12 months, quite substantial amounts of money into our computer systems. We have invested in streamlining the registration process, to the extent of redesigning forms so that repeat registrants receive a precompleted form, which is also much easier when it comes back to the MARA for us to process. We are looking to save bits in all our processes so that we can invest that back into our accessibility and in providing additional services along the lines identified in the Spicer report. We are not there, by any means; we have a lot further to go, but we are working in that area.

Senator SHERRY—In response to the Spicer report, has a set of goals been set to respond to the criticisms? Is there an ongoing assessment of goals, if they have been set, to deal with these particular criticisms?

Mr Brown—The board in fact is going through a major goal-setting exercise at this very moment. We have been doing that both in terms of this and other areas we have identified where we want to focus on improvements in our efficiencies. So we are in that process at the moment.

Senator SHERRY—Looking through the specific points that I raised: the tardy decision making—how has that been improved?

Mr Brown—I am not sure exactly which they are referring to in terms of tardy decision making. Decision making takes too long, in anybody's view, but we have worked quite diligently over the last 12 to 18 months improving the times. For example, in complaint processing, our output in complaints finalised has gone up in the order of 50 per cent in the 12 months of the last report. We are progressively looking at our processes and re-evaluating all of them to see where we can improve the time frames.

Senator SHERRY—But do you have any in-house measuring of the time it takes to respond, for example, to make decisions?

Mr Brown—Yes, we do.

Senator SHERRY—What is happening?

Mr Brown—In the complaints area the time was coming down. Complaints have gone up substantially, though, in the last seven months and that has brought us back, so we can see the time graphing back up a little bit again now.

Senator SHERRY—Those are complaints from whom?

Mr Brown—It is a combination of complaints from applicants, from external authorities. Their total complaint numbers have gone up. I think in the last annual report they were—was it 50 per cent, Venie Ann? I have not got the figures in front of me but it was something of that order.

Ms Moser—The complaints?

Mr Brown—Yes.

Ms Moser—Off the top of my head, no, I cannot answer that question.

Senator SHERRY—I have a note here which says that 362 new complaints were received in 2001-02, compared to 164 the year before. There would not be figures for 2002-03. There were 362 in 2001-02, compared to 164 the year before—that is a very big rise in complaints. What is the response time?

Mr Brown—The average response time?

Senator SHERRY—Yes.

Mr Brown—I do not have that in front of me.

Ms Moser—Do you mean response in terms of us acknowledging receipt of the complaint or response time in terms of making a final decision?

Senator SHERRY—Both.

Ms Moser—In terms of our response time on receiving the complaint, our process is now to send a letter to the complainant advising that we have received the complaint. In terms of

decision making, our decision making times have increased, mainly as a result of a large increase in the number of complaints that we were receiving.

Senator SHERRY—I do not know your internal operations well and I am new to this committee, so some of the information to some extent is background for me. When you receive a complaint, what is involved in following up a complaint?

Ms Moser—The full process?

Senator SHERRY—Yes, what is the process?

Ms Moser—We receipt the complaint into our system. How detailed do you want me to be?

Senator SHERRY—How is it then investigated?

Ms Moser—The complaint is received. It is then assessed and it is determined whether it is vexatious or whether it is something that should be investigated. If it is determined that it should go further then, if authority to publish is listed on the complaint, we publish it to the agent. The agent is given the opportunity to respond and then the response is sent back to us. We then send that to the complainant for them to give further responses. Those responses are then considered and a decision is made. We may need extra information. We may have to go to the department and get the file; we may have to get the file from the agent. It depends on the nature of the complaint.

Senator SHERRY—So there are presumably designated investigative officers within the organisation?

Ms Moser—They are complaints officers and they are responsible for managing that process. They would normally appoint someone specifically, if there were an interview situation, to handle that.

Senator SHERRY—How many complaints officers do you have?

Ms Moser—Three.

Senator SHERRY—And has that increased on 2000-01?

Ms Moser—Yes, there is one extra staff member.

Senator SHERRY—So it has gone from two to three. Is that in response to the rise in the number of complaints or the criticisms made or both?

Mr Brown—I would suggest it is both, not only because of the criticisms but also because of our own acknowledgment of how times were going and that the numbers were increasing. It was something that we believed simply had to be addressed. As part of that process some other internal arrangements were introduced, including the obligation of individual board members to follow up, supervise and monitor the progress on individual complaints as well. So there was a double watch, I suppose, going on in terms of making sure they keep moving.

Senator SHERRY—Was the criticism about the need for the board to authorise MARA staff to make routine decisions, and to recommend a course of action on complex decisions, made in relation to the handling of complaints?

Ms Moser—Complaints and registration.

Senator SHERRY—How has that changed?

Mr Brown—There are procedures in place to authorise staff to take decisions through the process. Directives have been introduced.

Senator SHERRY—Is that with respect to registration? If prima face it appears clear, fine. Would that go to the board or would the staff be authorised?

Mr Brown—The process, say, with repeat registrations is that they would come to the board on a notice basis only, and only if there is a matter which raises the interest of a board member would they respond and acknowledge it; otherwise, the process goes through. So there does not need to be direct involvement by a board member in those straightforward repeat registration matters.

Mr Cope—That is the subject of an authorisation process. That summary of material about each registered agent seeking repeat registration would not be so authorised until a full assessment had been done by that officer. So the authorisation is for the registration officer to finalise the registration subject to a final vetting, whereas previous to that the communication had to actually go to the board and the board had to get together by phone hook-up to get a quorum every day.

Senator SHERRY—Every day?

Mr Cope—Because you must register an agent as soon as the legislation requires that to occur, and if a person's registration were to expire that day, we would have to do that. So sometimes meetings were scheduled at very short notice. That caused quite a significant expenses to the authority in all ways, including inconvenience and disruption. The need to create a comprehensive process of certainty took a number of years to put in place. The repeat registration process only began in 1999, a year after the authority came into being in March 1998. That is a clear example of a fairly successful and quick turnaround and relatively inexpensive process, compared to a slow and tardy process before.

Senator SHERRY—So on how many occasions has the board met this financial year and the previous financial year?

Mr Cope—There are four scheduled meetings face to face, and outside of that there are considerable numbers of telephone meetings where a quorum of the board is organised. How many meetings would occur a week, Ms Moser?

Ms Moser—We have one scheduled meeting every week; previously it was one a fortnight. However, we have unscheduled meetings to discuss other areas of policy within the board as well.

Senator SHERRY—It seems an extraordinary number of meetings. Why the need to meet so regularly, if only by phone hook-up?

Mr Brown—Part of it was a response to splitting the board effectively into subgroups and looking at different areas of responsibility—for example, registrations or complaint matters. The aim was in fact to reduce the workload on individual board members so that it will not be the whole board meeting, it will be a quorum. It will meet, say, this Monday on registration matters and then in a fortnight's time it will meet again. The intervening week will have another board or another quorum—

Senator SHERRY—subcommittee.

Mr Brown—Yes, as you might say.

Senator SHERRY—I might say that, but do you have formally structured subcommittees?

Mr Brown—Yes, we do—looking at the complaint matters.

Senator SHERRY—So is the primary workload complaints and new registrations?

Mr Brown—In terms of those meetings they are primarily complaints and registrations, but there are a lot of other functions. I suppose the processes of the board would come up more often in the face-to-face board meetings, in that we look to devote those board meetings to our processes: the procedures, where we are going, et cetera. But those matters can also come into the teleconferences as well.

Senator SHERRY—Has the number of these meetings declined in the last year?

Ms Moser—The number of meetings has declined since the mention that Andrew Cope made of having to meet at short notice. That was a definite problem that we had, and part of the legislative change that came through with deemed registration has assisted in that process. The authorised officer process has significantly reduced the number of meetings that were required as a result of that.

Senator SHERRY—Is it the view that these frequent meetings were because of legislation and regulation requirements, so there was no way around having this frequency of meetings?

Mr Brown—That was basically the view.

Mr Waters—That said, Senator, it was an interpretation of legislation, and there has not been a change to legislation requiring that. However, the department has provided specific advice to the board, which they have accepted, as not requiring the board to meet on a daily basis.

Senator SHERRY—I take it that none of you are full-time board members.

Mr Brown—No, we are not, and we appreciate any reduction in the workload.

Senator SHERRY—You all have other jobs, I am sure. I am just surprised at the frequency of the board meetings, but we will deal with that perhaps in a legislative way at some other time. Are there any other responses to those five concerns that I have highlighted from the Spicer report? The first was the tardy decision making and the second was the need for the MARA board to authorise MARA staff to take routine decisions. What sorts of routine decisions have the staff been authorised to take since the Spicer review?

Ms Moser—The authorised officer processes such things as repeat registration applications that meet certain requirements—the board has authorised the authorised officer to approve those applications; situations of automatic 309 notices going out to applicants where they have failed to do certain things in their application and they need to make a submission; ‘no further action’ decisions on complaints where they meet certain requirements; and 308 notices going out to applicants for certain things and to individuals making complaints.

Mr Brown—Some other things would be where agents seek extensions of time to provide responses. There is a wide range. I would not be able to tick them off for you at the moment, Senator, but the basic brief to the secretariat is recommendations to us in those areas where they can identify things. We will go to them as well with areas where we have identified that we can look to reduce the process.

Senator SHERRY—What about the criticism that correspondence was sometimes unnecessary, repetitive and bureaucratic?

Mr Cope—With respect, Senator, it is possible that that might refer to the quotation of provisions in the legislation in some of the correspondence. Correspondence on issues under consideration by the authority might list the entire legislation for the convenience of the recipient of the communications, rather than just make a reference to a section. That may have the appearance to somebody of being unfriendly and overly formal. This is a compliance function in some respects—whether a person is able to be registered or repeat registered or

whether the complaint is founded or unfounded. Nonetheless, we take the points and the criticisms and the observations by Mr Spicer, and indeed any other well-founded comments by other parties. We welcome those constructive remarks.

CHAIR—To some degree you might suggest it is in the eye of the beholder.

Mr Brown—It is, although we acknowledge the observations. Everybody comes from a different level in these matters, as you say. Within the board we will have debates. Sometimes we are looking at correspondence and one of us might say, ‘Can’t we find a more user-friendly way of saying that?’ Very often, though, once we come to the equation, how else do we draft it? We start from a point of criticism of the letter and find ourselves back saying, ‘Okay, we can’t really think of any other way of saying of it because it does cover the legislation.’ But it is something we are conscious of—certainly from a personal point of view I am always conscious of it. It comes up regularly at meetings where we are approving, say, a section 309 letter where comments will come from one or another of the board members saying, ‘Can’t we change this? Can’t we simplify this? Can’t we put this a different way?’ It is very much in the minds of all of us when we are going through the process and looking at them. I do not say by any means that they are the best letters.

Mr Cope—This is not so much in the strict form of a communication by letter, but many of the processes in which a registered agent or a person seeking registration will interact is through a form. So the authority has spent quite a considerable amount of time and expense engaging a forms consultant to make things more user friendly, to enable a simpler degree of interaction and to minimise processing times as a result. Some of those processes are still coming through. Certainly that is an indirect aspect of the criticism, but nonetheless it is an attempt to be more user friendly which, I think, is the nature of the issues you are raising.

Mr Brown—Coming back to the form letters as such, we have been through a process where the executive officer has sat down—again externally—to talk with the department to get comments and suggestions back from them in terms of redrafting. We have been going through that process, which has been as a direct response to Spicer as well.

Senator SHERRY—Does the board have an in-house lawyer or do you contract out for legal advice?

Mr Brown—They contract out.

Senator SHERRY—When I say the board, employees of the board?

Ms Moser—The department handles the litigation side of things.

Senator SHERRY—So, if you need to consult for legal advice, you go to the department?

Ms Moser—Generally, yes.

Mr Brown—On processes and that, we also utilise commercial firms in some instances.

Senator SHERRY—How are you funded? Are you funded by the registered agents?

Mr Brown—Yes.

Senator SHERRY—Via some sort of levy?

Mr Brown—Registration fees. It is a very circuitous way. But it is a registration fee which funds us.

Mr Waters—It is a rather complex arrangement. Essentially there is a registration fee which is paid to the Commonwealth. That goes into consolidated revenue and an equivalent amount is then appropriated and passed to the MARA. In effect, the MARA is wholly funded

by the registration and other fees which it charges even if it does cycle through the budget process as both an in and an out.

Senator SHERRY—I note that there were two agents who were cautioned, eight who were suspended and 10 who had their registration cancelled in 2001-02. Were all of those disciplinary cases dealt with by a full board meeting?

Mr Brown—No, they would not have been. It is not necessary; there is no instruction that it has to be a full board.

Senator SHERRY—What is the appeal process?

Mr Brown—The AAT.

Senator SHERRY—Have there been any successful appeals against board decisions?

Mr Brown—Yes, there have.

Mr Cope—Statistically we welcome the merits review process, because it gives another perspective on the facts in issue, and good and strong reasoning from an AAT member if it proceeds to decisions. Sometimes there are decisions of the board or the authority which are subsequently set aside, maybe by mutual consent, but many of those do proceed to decision. Some of those decisions have then helped the board to focus its views more on issues such as a fit and proper test—whether a person is fit and proper or is without integrity—and on some of the terms that are in the legislation that are undefined. Those issues in the AAT have been very helpful. I could not give you specific numbers but I think Venie Ann Moser may be able to give you some. Is there a particular question?

Senator SHERRY—I do not want to overload you with work, given what I think is a pretty hard workload anyway, but could you provide an overview of the decisions in the last two years and the successful appeals against cautioning, suspension and/or registration cancelling?

Mr Waters—Perhaps the easiest thing for me to do is to simply say that, in the period that the MARA has been in existence, they have taken 52 sanction decisions, 26 of which were appealed to the AAT or the Federal Court, with the result that eight were overturned.

Senator SHERRY—How is the remuneration of the board set?

Mr Brown—It is on a per diem basis for sitting time.

Senator SHERRY—But who sets the fee for the sitting time?

Mr Cope—In 1998, I think it was, the board was concerned about this issue, particularly when it was totally unaware of what the extent of the revenue would be, since it is based totally on the vagaries of an agent applying or reapplying. With that in mind, as I recall, the board went to an external organisation—I think it was called PRO:NED, which is a recognised organisation—in the context of the organisation having a relatively high workload but seeking a relatively low remuneration based on the expected revenue that the authority was going to receive. On that and a range of other factors that were provided to that organisation, they came back with some recommendations.

Senator SHERRY—So you did not go to the rem tribunal?

Mr Cope—No.

Senator SHERRY—Can you provide on notice the details of board payments? And how are the pay and conditions of staff determined?

Ms Moser—The staff are all on contracts. There are part-time, casual and full-time staff on contracts. Contracts are linked to the appointment of the Migration Institute of Australia Ltd as the authority. They are all employed by the Migration Institute of Australia, a private company. The pays are determined depending on what level the staff member is. We pay above-award wages for the staff that are in administrative functions and the other staff are on salaries.

Senator SHERRY—You say you pay above-award wages—by comparison to which award?

Ms Moser—The clerical workers award for the clerical workers in the office in New South Wales.

Senator SHERRY—Has the board come to a view as to whether it should continue or not? I am not talking about in terms of the Spicer review but in terms of the general continued regulation of this sector.

Mr Brown—It is an issue which comes up, I guess. It comes up and is re-put, generally speaking, every year after a new board comes in after elections. It was reaffirmed—I cannot tell you the date and which meeting it would have been, but it was probably in December. The issue was canvassed amongst all the board members again and there was a reaffirmation unanimously by the board members that, yes, we should continue.

Senator SHERRY—Why was that conclusion reached?

Mr Brown—Maybe it sounds a little bit self-serving in one way, but part of it is that we believe we do a reasonable job in what we are doing. We have a strong commitment to it. We look at the industry and say, ‘Who else may be a suitable body to do this?’ I am not aware of any that you could readily appoint with the current legislative framework.

Senator SHERRY—The issue I am getting to quite directly is self-regulation by the industry under some sort of code of conduct, it looking after itself, versus whoever it is—the current board or some other statutory organisation or whatever—regulating it. What is the attitude of the board to self-regulation versus a regulatory authority of some kind?

Mr Brown—Going back again to what I was saying at the start, part of the commitment is because we can bring something to it and an aspiration for this industry in raising the standards. I think we all have a view or a vision of self-regulation at some stage, but I think equally we acknowledge that now is not the time and it may be many years off, given the make-up and the structure of the migration advice industry. But, as an industry that is going to take control of itself, that is going to impose or implement professional standards and raise those standards, I think we have got to take a sense of responsibility for that. The ultimate outcome of that would be self-regulation. But one of the issues that burns at the back of that is that, if it is self-regulation, in my personal view there has to be some statutory base because I feel a lot of people would fall out of the system.

Mr Cope—If I may interrupt for a moment, one of the things I was canvassing is whether, as part of the Spicer review, the Migration Institute of Australia and the Migration Agents Registration Authority made a very extensive submission or submissions to that review. Unless there is a reason why we cannot disclose them, we could offer to submit them in the appropriate form for your consideration. That will contain not only some of the machinery elements of our view of how the registration scheme is operating, but also some recommendations for changes which would include some of the issues for the board as a board, and not as a set of individuals, as an agreed position in respect of our view as at about

this time last year, whenever the submissions closed. The submissions were quite extensive, possibly comprising 50 or 60 pages.

Senator SHERRY—But, in summary, the board is not supporting a position of self-regulation by the industry at this point in time?

Mr Cope—Not at this time.

Senator SHERRY—In other words, disband the whole show and the industry looks after itself.

Mr Cope—No.

Senator SHERRY—That is not the position?

Mr Cope—Correct.

Senator BARTLETT—I think it is nearly five years since you adopted the role of MARA. In some respects my question is the other end of Senator Sherry's question. Prior to the establishment of MARA, how was the system for registering agents, skilling them up and investigating complaints structured? How did you follow up complaints?

Mr Waters—Immediately prior to the appointment of the MIA as MARA, there was a registration scheme which was managed entirely within the department. In terms of their thrust, the overall arrangements were not dramatically different from the arrangements currently in place. There have been a couple of schemes within the department since the early nineties. Prior to that, in the eighties and earlier, there was no regulation or control of the industry.

Senator BARTLETT—Apart from registration and complaints, the other key issue is the ongoing skilling of agents and the professional development side of things. That seems to have expanded in relation to what occurred previously.

Mr Brown—That was introduced as part of the current scheme. It coincided with our appointment and it was based on a recommendation from the MIA—if I may say so.

Senator BARTLETT—I am just trying to get an impression of this. Five years is not that short a period of time, but in many senses the process is still in its developmental stage when you look at an industry of this size. Is that a reasonable impression?

Mr Waters—I suggest that the continuing professional development area has received most work over that period. MARA is currently taking initiatives with regard to initial entry with a common exam for the arrangements on the horizon. It is demonstrating that the system is working.

Senator BARTLETT—It is illegal to offer advice without being registered; is that right?

Mr Waters—That is correct, in Australia. It is possible for a person overseas to give migration assistance without being registered but it is not in Australia.

Mr Cope—There are a few isolated statutory exemptions but in the main that is the case.

Senator BARTLETT—One thing that always focuses my mind—it probably focuses yours as well—in relation to MARA is how you do your job with the income that you have, given that it is almost entirely based on registration fees. You can increase your income by increasing the number of people who are registered, but that also increases the number of people you have to oversee and the likelihood of complaints et cetera. It seems that you are unavoidably forever chasing your tail, trying to do an increasing amount of oversight with not necessarily a complementary increase in resources. From what I can derive from the annual

report, you got an increase of about half a million dollars from registration renewals but, as you have said, complaints more than doubled. I have not been able to ascertain the total number of registered agents or how much the amount went up. There are 2,773 agents. I do not know how big an increase that is on the previous year.

Mr Cope—It is about 230.

Senator BARTLETT—It is 230 down?

Mr Cope—No, up—about 10 per cent.

Mr Brown—It is now 2,956, so it is continuing to go up.

Mr Cope—In 2001-02 it was 2,429 to 2,773, but in February 2003 it is 2,956.

Senator BARTLETT—Do registration fees and the amount you get as the number of registrations increase about match what you need in extra income to do the extra work involved, whether through overseeing professional development, the number of complaints and those sorts of things? In your report you say that you try to do more to encourage the general public to register complaints because they are often fairly powerless or in difficult positions, but you do not get extra money if you get more complaints, do you?

Mr Brown—I am not sure whether this answers the question but, first and foremost, when we are looking at a registration or complaint matter, the focus is the merit of that individual matter. The cost does not particularly come into it at that time. It may come into it when we look at investigation processes and how far we go with those investigations. As for the total budget and our ability to work within it, like anybody else we would always say that we could do with more, that we would like more and that we could do more if we had more. But I think it is about right. I think we can continue to manage but, as our functions continue to expand and we are expected to do more and different things, that puts a strain on our financial and human resources. We are at the stage, within the budget that we have at the moment or the revenue that we had last year, of really stretching it.

Senator BARTLETT—How do you prioritise complaints? Is it in order of receipt or severity of allegation, or do repeat offenders set off extra alarm bells?

Mr Brown—It is a combination. The complaints staff are briefed to look out for matters which may strike immediately as being particularly serious or more serious than others. We would flag matters which may be of particular interest to, say, the AAT or a member of parliament. It does not necessarily mean that they get priority but somebody can see what the severity of the matter is. It is primarily the severity of the complaint.

Mr Cope—If the complaint is of a financial nature, we would endeavour to get as quick a response as possible, using the mediation process—a formal mediator or an informal mediation using some of the staff in the secretariat. If it is an issue of financial redress, the faster that is resolved, the more likely it is that a successful outcome for the complainant will be achieved. So even though the nature of the complaint may not be one relating to competence or integrity, it would be a high priority to try to get the complainant's moneys back if that was an issue.

Ms Moser—There is also a complaints management system which was part of the improvements that we looked at implementing as a result of the Ernst and Young review. Part of that was to implement a tracking system for each complaint as to what step it was up to and to have reports come out to the staff advising them of whether a step was due or overdue. Those steps are also in priority order, so there is an overlay system as well.

Senator BARTLETT—You say that when you get complaints submitted in a language other than English you have it translated. I notice in the expenses outlined at the back of your annual report that your translation costs went up nearly fourfold, which is larger than the increase in the number of complaints you have received. Obviously any increase in costs is an issue for you, but why has there been that dramatic increase in translation costs?

Mr Brown—I do not know specifically but I think it represents the complaints coming in in another language. I looked at the cost earlier; it has gone up substantially. I do not think it is a big cost in terms of the overall budget.

Senator BARTLETT—If it keeps quadrupling every year it will be.

Mr Brown—Yes, I agree with that.

CHAIR—In terms of the detail, Mr Brown, would you like to take that question on notice?

Mr Brown—We could do.

Mr Young—We have received 470 complaints in the last 12 months compared to 332 in the previous 12 months. That affects the other offshoots such as interpreting.

Senator BARTLETT—It may be to do with inflation and translation costs, too. I note it has gone up from \$6½ thousand to \$23½ thousand, which is almost a fourfold increase.

Mr Brown—We will take that on notice.

Senator BARTLETT—The other question I had related to the amounts outlined for CPD and pro bono work. I get the sense from the tone of your report that you are disappointed that there is not a bigger take-up of people participating in pro bono work. I do not know whether that is a comment on behalf of MARA or a comment by practising migration agents lamenting the lack of enthusiasm amongst the broader profession for such activities. Firstly, can I check whether my perception of your lamentation is correct and, secondly, can anything be done to increase the take-up of pro bono work as part of agents' professional development? Is it possible to make it compulsory? It is always useful in their professional development to have alternative experiences.

Mr Brown—It is a two-edged sword, Senator, in that when the pro bono provisions were first promoted or set out by MARA, some of the non-fee charging agencies—the logical place where the pro bono work would be done—raised objections, to our surprise, because of the administrative and training burdens, as they saw it, imposed on them, in terms of familiarising people with their processes. I do not know the full details but they felt it would add another cost to them in bringing people into the fold to do that pro bono work. We have trod fairly lightly in that we did not want to impose an obligation on those non-fee charging agencies. We wanted to support them, which was the whole basis of the proposal in the first place. But if it was going to impose a burden on them, we did not want to make it compulsory or pursue it other than by way of encouraging them. We have introduced measures to try to help them alleviate those costs.

CHAIR—Did you have anything you wished to add, Ms Moser?

Ms Moser—One of the things we run, which we started last year, is a meeting with the larger non-commercial agencies that employ migration agents. They are generally the ones involved in a large capacity with having the voluntary pro bono advice provided with them. At the meeting last year they talked amongst themselves about some of the problems that they have and some of the things they do that work for them. The meeting is sponsored by the authority to assist those organisations. Definitely the feedback we get from them is that they are finding it difficult to manage large numbers of volunteers, especially when they have to

train them, so it would be difficult if they were required to do something. But obviously we would like people to demonstrate that commitment to the profession by volunteering their services.

Senator BARTLETT—That is something to put into the government's volunteer policy as it evolves following the International Year of the Volunteer. I am sure they will continue to focus on those matters.

Senator Ellison—I will certainly take that on board.

CHAIR—Thank you, Minister.

Senator Ellison—I might add that there is always a role there for your member of parliament, who can do a very constructive job there.

CHAIR—Indeed there is.

Senator BARTLETT—Offering pro bono advice?

Senator Ellison—Just writing to the minister—you will always get assistance from the minister when you write to him.

Senator BARTLETT—Always.

CHAIR—Anything further, Senator Bartlett?

Senator BARTLETT—No, thank you.

CHAIR—I thank the representatives of the MARA for attending this evening and assisting the committee. As Senator Sherry indicated, we do not have that much interaction, so it is a very valuable opportunity for us. We appreciate a number of you attending this evening and assisting us with our deliberations in these additional estimates.

I thank you, Minister, for your assistance over the last two days. I also thank Mr Farmer, in his absence, and his officers for their assistance today. It was quite an intense day in terms of information accumulated by the committee, so we are very grateful for the assistance of the department. I thank Hansard and Broadcasting, the attendants, the secretariat and my colleagues.

Committee adjourned at 8.27 p.m.