



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

ESTIMATES

**(Additional Estimates)**

TUESDAY, 24 FEBRUARY 2009

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE STANDING COMMITTEE ON  
LEGAL AND CONSTITUTIONAL AFFAIRS**

**Tuesday, 24 February 2009**

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

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

**Senators in attendance:** Senators Barnett, Crossin, Farrell, Fierravanti-Wells, Fisher, Hanson-Young, Humphries, Marshall and Trood

**Committee met at 9.01 am**

**IMMIGRATION AND CITIZENSHIP PORTFOLIO**

**In Attendance**

Senator the Hon. Chris Evans, Minister for Immigration and Citizenship

**Department of Immigration and Citizenship**

**Executive**

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Peter Hughes PSM, Deputy Secretary

Ms Alison Larkins, Acting Deputy Secretary

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

Ms Marilyn Prothero, First Assistant Secretary, Financial Strategy and Services Division

Mr Craig Farrell, Acting First Assistant Secretary, People and Governance, Division

Mr Peter McKeon, First Assistant Secretary, Systems Division

Mr James Fox, First Assistant Secretary, Client Services and Network Performance Division

Mr Sandi Logan, Manager, National Communications Branch

Ms Rebecca Irwin, First Assistant Secretary, Policy Innovation and Research Unit

Ms Jackie Davis, Assistant Secretary, Litigation Branch

Mr Simon Schiwy, Assistant Secretary, Ministerial and Executive Services Branch

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

**Output 1.1—Migration and temporary entry**

Mr Peter Vardos PSM, First Assistant Secretary, Migration and Visa Policy Division

Mr Kruno Kukoc, Principal Advisor, Migration Strategies Branch

**Output 1.2—Refugee and humanitarian entry and stay**

Ms Kathleen Dunham, Acting Assistant Secretary, Onshore Protection Branch

**Output 1.3—Border security**

Mr Todd Frew, First Assistant Secretary, Border Security Division

Mr Stephen Allen, Assistant Secretary, Border Operations Branch

**Output 1.4—Compliance**

Ms Lynne Gillam, Assistant Secretary, Compliance Resolution Branch

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

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

Mr Dermot Casey PSM, Assistant Secretary, Case Management Branch

**Output 1.5—Detention**

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

Ms Lucy Bitmead, National Manager, Operations Branch

Ms Fiona Lynch-Magor, Assistant Secretary, Services Management Branch

**Output 1.6—Offshore asylum seeker management**

Ms Jackie Wilson, First Assistant Secretary, Community and Detention Services Division

**Output 1.7—Systems for people**

Mr Nico Padovan, Acting First Assistant Secretary, Business Transformation Services Division

**Outcome 2—A society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably****Output 2.1—Settlement services**

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

Mr Peter Templeton, Assistant Secretary, Settlement Branch

**Output 2.2—Translating and interpreting services**

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

Mr Peter Templeton, Assistant Secretary, Settlement Branch

**Output 2.3—Australian citizenship**

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

Ms Renelle Forster, Assistant Secretary, Citizenship Branch

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

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

**Output 2.5—Systems for people**

Mr Nico Padovan, Acting First Assistant Secretary, Business Transformation Services Division

**Migration Agents Registration Authority**

Ms Maurene Horder, Chief Executive Officer

Mr Brian Jones, President, Migration Institute of Australia

**Migration Review Tribunal and Refugee Review Tribunal**

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

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

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

**CHAIR (Senator Crossin)**—I declare open this public meeting of the Senate Standing Committee on Legal and Constitutional Affairs. The Senate has referred to the committee the particulars of proposed additional expenditure for 2008-09 and related documents for the Immigration and Citizenship portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is required to report to the Senate on 17 March 2009 and has fixed the date of 14 April 2009 as the date for the return of answers to questions taken on notice.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I want to remind witnesses here that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committee unless the parliament has expressly provided otherwise. The Senate has also resolved 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 of the officer about opinions to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claim. Any claim that it would be contrary to the public interest to answer a question must be made by the minister and should be accompanied by a statement setting out the basis for the claim.

I now welcome Senator Evans, the Minister for Immigration and Citizenship and Mr Andrew Metcalfe, the secretary of the Department of Immigration and Citizenship. Senator Evans, do you wish to make an opening statement?

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

**CHAIR**—Does Mr Metcalfe?

**Mr Metcalfe**—No, I do not have an opening statement.

[9.05 am]

### **Migration Agents Registration Authority**

**CHAIR**—I now welcome representatives from the Migration Agents Registration Authority. Ms Horder and Mr Jones, good morning. To begin with, did you want to make an opening statement at all?

**Mr B Jones**—Yes, please. Under the items of the act and an associated deed of agreement, the Migration Institute is tasked with the regulation and management of the Migration Agents Registration Authority. Since we last addressed your committee, we have tabled, through the minister late last year, the 2007-08 annual report. This report showed the major reforms instituted in the complaint handling processes following the Ombudsman's report. It highlighted the increasing maturity of the profession, with a reduction in the number of complaints, and continuing improvements in the funds paid to it from migration agent registration fees and from professional development providers.

There are significant retained profits in the accounts. During the previous year we were subject to a MARA audit by PC Williams, chartered accountant, and a further independent, five-year audit instituted by the Department of Immigration and Citizenship and conducted by WalterTurnbull accountants. I believe the financial conduct of the MARA has conformed with all the requirements. We are now continuing to explore the feasibility of creating a fidelity fund from the retained earnings as a means of protecting consumers against future default by any agent against their clients.

We recorded the highest ever number of approved registration applications, with a current figure of 3,800, during the last year. During the period there were 424 students who completed the graduate certificate courses in Australia migration law and practice at one of the four universities approved to offer them.

Last year was the 10th anniversary of the MARA and the institute. It is proof of the development and growth of the migration advice profession in that period. The Migration Institute has an excellent record in the financial management of the MARA. The institute believes we have endeavoured to act and serve in the best interests of the profession and our clients since being entrusted with regulatory responsibility for the MARA. We are concerned that recent announcements by the government to put this responsibility with the department will not be in the best interests of their stakeholders. I would like to ask the committee's permission for our Chief Executive Officer to elaborate further on this matter.

**CHAIR**—That is fine, Mr Jones. Ms Horder.

**Ms Horder**—Thank you, Madam Chair, senators, for allowing me to also address the committee. I would like to comment on the proposals in respect of the future statutory operations of the MARA, which, as our chair has just indicated, is currently being administered by the Migration Institute of Australia. As the committee will know, we agree and, in this case, the MIA and I and many other stakeholders do not agree with some of the proposals that are on the table for future operation.

But may I just go, for a moment, to the broad question of the term 'migration agent'. It is a term that is sanctioned in many official documents and reports. It is identified in the

Migration Act 1958 and the constitutional rules of our association. The term ‘migration agent’ has been used in Australia for several decades and, certainly in the last 10 years, serious efforts have been made to regulate and professionalise this practice. These efforts have been largely successful, but it appears there has been such an accumulated history of negative press coverage over such a long period of time that there is scant prospect—dare I say, no prospect—that, while they remain labelled ‘migration agents’, reputable practitioners in this field who are duly registered and provide professional and ethical services to the community will have any deserved improved public recognition.

Madam Chair, as you know, I have been in this role only a short period of time, so in a sense I can come a little unencumbered and without a history, but it has been of great interest to me to look at the history and look at the past decades and some of the press reports, for example, that have been out there, addressing questions to do with registered agents and unregistered agents. Often the press makes a distinction, but not always.

On reflection, when one looks at the use of this term, even in this place, it is concerning that there is a lot of confusion and misuse in where that label is applied. It can be applied to practitioners who meet the high standards that are set down under the regulations, but it can equally be applied to people who are totally unregulated both onshore and offshore. They may be acting as recruitment agents, they may be acting as education agents or they may be just acting as migration agents, self-labelled. This is a concern that we have and believe needs to be addressed. From our point of view, the profession is anxious to set itself apart from the unethical and incompetent practices that are taking place in the community for which they are not responsible.

The government recently announced its intention from 1 July this year to move MARA into the Department of Immigration and Citizenship. Whilst we totally respect the minister and his right to make this decision, we are concerned that there will be a total conflict of interest present if it is actually vested in the department to take on the role of MARA. We believe this is not the best option in the interest of the profession nor, indeed, in the interest of its clients.

**Senator Chris Evans**—Is this MARA or MIA talking? I just want to remind you, Ms Horder, that you are here representing MARA, not MIA. I am not sure whether you were making a submission to the estimates representing MARA or a statement from MIA.

**Ms Horder**—Minister, I am sorry if I have confused those roles, but at the moment MARA does act as the regulator of MIA.

**Senator Chris Evans**—I just want to be clear that this process is designed to allow senators to examine the role of MARA.

**Ms Horder**—I am happy to conclude my comments.

**CHAIR**—This is a statement on behalf of the Migration Agents Registration Authority?

**Ms Horder**—Yes. The statement about the preference of not going to the department is a statement I make in my capacity as the CEO of the Migration Institute of Australia.

**CHAIR**—I see. So you are seeking to clarify that?

**Ms Horder**—Yes, if I can clarify the question the minister has addressed to me.

**CHAIR**—That is quite a separate issue then, because the Migration Institute of Australia is not represented here this morning as an agency.

**Senator BARNETT**—Madam Chair, I take a point of order.

**CHAIR**—Senator Barnett, let us just clarify this.

**Senator BARNETT**—I am taking a point of order.

**Senator MARSHALL**—Let the chair finish saying what she is saying before you take a point of order.

**CHAIR**—Senator Barnett, I have heard you; I said I want to finish what I was saying first. Just so that people listening understand, and to get this accurate for our records, the agency before us is the Migration Agents Registration Authority, of whom the CEO is Ms Horder. But Ms Horder is also, as I understand it, involved with the Migration Institute. Are your comments this morning attributed to both the agency and the institute, Ms Horder?

**Ms Horder**—Yes. It is a slightly confusing point, Madam Chair, as to where that demarcation is. The Migration Institute is a company limited by guarantee, which has been authorised to run under the statutes of the Migration Agents Registration Agency. So, to some degree, it is often difficult to separate those two. I apologise if there is confusion, but that is the way we are constituted. Our intent in making a statement before this committee is simply to clarify our position about matters that have been publicly announced that do affect the operation of MARA.

**CHAIR**—Senator Barnett, do you still have a point of order?

**Senator BARNETT**—Yes, thank you, Chair. I just wanted to confirm my understanding that Ms Horder is entitled to speak her mind and to present an opening statement, as she has done properly and correctly. There has been and there is an overlap regarding the issues that are relevant to MARA and the issues that are relevant to MIA. Ms Horder is entitled to express her views and opinions. She will be questioned accordingly and will no doubt respond accordingly. So any attempt to put a wet towel or to stop Ms Horder from speaking her mind, I think, should stop.

**CHAIR**—Senator Barnett, there was no attempt to not give Ms Horder the opportunity to provide an opening statement or comment. What we were simply seeking to do was to clarify the record, as I said, so there was quite a clear understanding about the demarcation between the agencies and the institute. Minister, do you want to add something?

**Senator Chris Evans**—I just want to be clear that there is a dual role and I just wanted to be sure that she was speaking on behalf of the MARA and not the MIA. The MARA is before us today; the MIA is not. The MARA is the authority that is before the estimates committee; the MIA is not before the estimates committee. I thought that it was important that we were clear on what evidence and opinions were being led and to be clear that they are on behalf of the MARA and I think that Ms Horder seems to have indicated that some of it was on behalf of the MIA. But I am not trying to stop her speaking at all. I am happy to have any debate around the issue, but it is important over the estimates to understand that MARA is represented as an agency before the estimates committee; MIA is not.

**Senator FIERRAVANTI-WELLS**—In your press release, Minister, of 9 February you stated that—

**Senator Chris Evans**—Sorry, Senator, again, the MARA is before the committee. Under 1.1 the department will answer questions about my activities et cetera. The MARA have been brought on to answer questions on behalf of the MARA.

**Senator FIERRAVANTI-WELLS**—Okay. So you would prefer that my questions regarding your intentions, Minister, vis-a-vis MARA, be included as part of the department?

**Senator Chris Evans**—As I understand it, the MARA have been called to answer questions about the MARA and then they will be allowed to go and we will go on to more questions—

**Senator FIERRAVANTI-WELLS**—All right, thank you.

**CHAIR**—That is right. So we need to have questions about the operation of the authority not about the future intent, which would be better channelled to the department—

**Senator Chris Evans**—I am happy to answer questions about it at the appropriate time.

**Senator FIERRAVANTI-WELLS**—I take your point, Minister. You are aware of the minister's comments when he said:

Unprofessional, incompetent or unethical behaviour by migration agents affects the lives of consumers, challenges the integrity of Australia's visa program and brings the entire profession of more than 3700 migration agents into disrepute.

And this behaviour is a 'breach of the migration regulation conditions'. Could you explain to this committee your concerns in relation to the proposed changes that have been put on the table in relation to MARA, noting that in previous reviews of MARA each of those has actually led to increases of standards?

**Ms Horder**—The personnel and the board responsible for the operations of the MARA have no interest in protecting or defending anything that is indefensible. It does concern me though when statements as broadly sweeping as the one you just quoted are talking generally about professional and incompetent behaviour. It is the very thing that I was trying to address before: it does confuse a broad group of people who are not necessarily registered migration agents that the MARA is responsible for.

But the concern of the MARA is that there would be an appropriate and independent statutory governance arrangement that would be in the interests of both the clients—that is, the prospective visa holders—and the profession itself in terms of how in this country we manage orderly practice and good professional practice. We would accord with your views, Senator, that there have been progressively over the last decade significant improvements in the professionalism. Probably it is fair to say that ministers over the last 15 to 17 years have been committed in the arrangements that were put in place to trying to improve and encourage high levels of professionalism. I think we are well on the way and that is now something that we would want to see maintained in whatever future arrangements are put in place.

**Senator FIERRAVANTI-WELLS**—I would like your views about any potential conflict of interest that you perceive could arise if these responsibilities were taken away and put under a departmental umbrella. Do you perceive that there would be a conflict of interest?

**Ms Horder**—I believe that there would be. This is not based on my personal supposition alone; it was previously the responsibility of the immigration department and it was a former joint parliamentary committee that identified that very conflict. I can refer you to a report, *Protecting the vulnerable?: the Migration Agents Registration Scheme*, that was produced in the mid-nineties and was the forerunner to the current MARA, and it was because there were conflicts between the responsibilities of the department and the responsibilities and duties of a migration agent. I think that clarifies what the concern would be about us repeating a similar model. We think there are other models that would better serve everyone's interest.

**Senator FIERRAVANTI-WELLS**—Would you like to elaborate on those?

**Ms Horder**—Only to suggest a separate statutory authority, as was identified in the 2007-08 review of statutory self-regulation of the profession. This review was undertaken by the government and, amongst quite a wide range of recommendations, there is a key one, recommendation 3, which suggests that the government consider addressing potential and perceived conflicts of interest by establishing a new board of an independent regulatory body separate from MIA, as it is now. I would think it ought to be equally separate from a government agency such as the department.

**Senator FIERRAVANTI-WELLS**—There are a couple of perceived problem areas: the overseas based agents and, secondarily, the educational course providers. Do you see that a separate, independent agency would be in a better position to deal with those areas?

**Ms Horder**—I think potentially, yes. That is a personal view. I think what we probably need to do is address the broad range of persons and organisations that are providing migration advice offshore as well as onshore and that are not covered by MARA. It is that group that has never been under the auspices of MARA but has sat under various Commonwealth government agencies where the responsibility has been vested. I do not think we have been able to attend to unlawful practice on their part in many situations. There is also a conflict where those agents are endorsed by our governments to act. For example, we have a situation at the moment where you can be offshore and call yourself a migration agent and you do not have to have any qualifications. You certainly do not have to meet the rigorous requirements you do as a registered migration agent under the Migration Act. You can submit yourself to the department as an authorised officer and represent people. That is the kind of situation where, I believe, we have some real confusion of roles. It is why I am saying we would like to see those who are true professionals and trained practitioners separated from those who are not but who are acting in the same broad marketplace.

**Senator FIERRAVANTI-WELLS**—You obviously also have some concerns about lawyers potentially being allowed out of the system. Do you want to comment about that?

**Ms Horder**—I think whether they should be in or out has been a debate over the last decade as well. About one-third of our membership are lawyers, so there are many lawyers who see this as the key area of their practice; therefore, they identify with MARA as the registering body and are happy to be subject to its jurisdiction. There are some lawyers who would prefer to be outside because they feel that they are having to register twice. I think that is a continuing debate. I do not think it is a major problem at large for the profession. I think we could, with a bit of creativity, work through some of those arrangements a little better by

more cooperation between the registering bodies, to be honest, but I do not believe that it is a major problem for the profession.

**Senator FIERRAVANTI-WELLS**—In the years that I worked in this area I did observe, and it is clear, that the various reviews over the years have led to changes in standards. But I think you would agree that there is still work to be done because, regrettably, this is an area, whether in the practice of law or amongst agents themselves, which has not only received prominence but also unfavourable comment. I think that one only has to look at the globality of this area of practice to understand that there has been some unscrupulous behaviour and unscrupulous exploitation of people's expectations which, regrettably, has still not been overcome.

**Ms Horder**—That is irrespective of whether they are a lawyer or not—

**Senator FIERRAVANTI-WELLS**—I agree.

**Ms Horder**—and I think that complaints come about evenly whether people are legally trained or trained by the other pathway.

**Senator BARNETT**—When you express your concerns about the department not being in the best interests of the stakeholders can you elaborate on that, please. You have obviously got concerns about the proposals in terms of the department having responsibility.

**Mr B Jones**—The Department of Immigration has a great number of responsibilities and obligations. You have only to look at the list of things you will be looking at in the next day or two. Primarily, that is about the implementation of government policy and government intent. A migration agent's role in life is to represent his client about their intentions and to their benefit. We could go on in quite a bit of detail about how that might play out but effectively the agent is representing and acting on behalf of the client, in many cases the applicant or the subject of the departmental action. For the department to be, in effect, in the position of judging the behaviour of the agent in that situation raises a number of issues of conflict.

**Senator BARNETT**—Do you think they have done it because they want to get better control over the quality and credibility of the agents concerned, because there have been some what you would call 'rogue agents' out there doing the wrong thing and they are spoiling it for everybody?

**Mr B Jones**—I think that is an answer better left to the decision-maker in the matter. For me to be offering opinion there would be speculative and not productive.

**Senator BARNETT**—In terms of the independent authority, do you think the approach that has been outlined by Ms Horder is the best way to go, or are there other alternatives that could be considered?

**Mr B Jones**—There are other alternatives. I would say from my understanding of the situation from those people I have spoken to that generally the consensus is that an independent body would be the least resisted of all options by those involved in the profession and their clients.

**Senator BARNETT**—Who would appoint the members of that independent body and how would it be structured?

**Mr B Jones**—It would very much depend upon the nature of it. If it were an independent statutory body, it would be controlled by the parliament as to who made those decisions. An independent body under some other arrangement would be a matter of discussion amongst the profession and ultimately under the current legislation, as I understand it, it would be in the minister's hands. But I could be wrong on that matter.

**Senator BARNETT**—We have to look at the different options and the merits or otherwise of the options available, but an independent authority obviously has some cogency and argument in its favour. You raised the issue of the fidelity fund. What progress has been made in the establishment of a fidelity fund, how far away is it and how important is it to the profession?

**Mr B. Jones**—I will ask the CEO to answer that question, if I may.

**Ms Horder**—The MARA has engaged a firm of actuaries to look at the feasibility of using some of the surplus funds that we currently hold towards that end. I would expect that the feasibility study would be completed within the next few weeks, so we would be able to provide further advice to interested parties after that. This would not be a fund quite the same as that which applies in the legal profession; it would be much more constrained than that.

**Senator BARNETT**—As in being smaller? Having been a lawyer I am fully aware of the high cost of contributing to that type of fund each year.

**Ms Horder**—Yes, and I think that concern would be shared by many. We would not want to have it as expansive as that, and certainly it would not need to be, because the level of liability is far less than is ever likely to be taken on by a wider ranging practitioner. The level of funds that are held at any one time by a migration practitioner are usually of a much lower order than some legal practices.

**Senator BARNETT**—So it is a work progress, and we will monitor that.

**Ms Horder**—It is a work in progress.

**Senator BARNETT**—The two other areas relate to the number of approved agents. Can you give us the current number of agents in Australia and any changes in the last 12 months.

**Ms Horder**—As at the end of last month there were 3,866 registered practitioners.

**Senator BARNETT**—And as at 30 June last year?

**Ms Horder**—In the previous year the figure was 3,790, so there has been a steady increase. If you go back a decade, you can see that the number has not quite doubled. There were about 2,500 when we took over the responsibility.

**Senator BARNETT**—Finally, with regard to the complaints area, you said in your opening statement that there had been a decrease. Can you provide further details about the number of complaints and the most recent figures you have? When you say there has been a decrease, what is the level of decrease?

**Ms Horder**—At the end of the previous financial year we had received some 310 complaints, which is 20 fewer than the previous year and which is some 60 fewer than the year previous to that. So there has been a steady reduction in the number of complaints; at the

same time there has been improved management in the processing of complaints so that they are being handled more quickly.

**Senator BARNETT**—Can you advise the committee whether there have there been any specific changes to the complaints-handling system.

**Ms Horder**—There have been some streamlined practices, I am advised, over the past two years. These were separately commented on by the Ombudsman, who had a look at some of our processes and indeed acknowledged that there were improvements in the complaints-handling procedures.

**Senator BARNETT**—That is in the Ombudsman's report?

**Ms Horder**—Yes. It is partly due, Sir, to an increase in the number of staff being dedicated to that but also to internal procedures.

**Senator BARNETT**—Thank you.

**CHAIR**—As there are no further questions, Ms Horder and Mr Jones, thank you very much. That concludes our questioning of the Migration Agents Registration Authority. I now ask officers from the Migration Review Tribunal and the Refugee Review Tribunal to come forward.

[9.35 am]

### **Migration Review Tribunal**

### **Refugee Review Tribunal**

**CHAIR**—Good morning, Mr O'Brien, Mr Lynch and Mr Rhys Jones. Welcome. Would you like to begin with an opening statement at all?

**Mr O'Brien**—Madam Chair, we do have a brief opening statement.

**CHAIR**—Okay. That would be terrific. Please go ahead.

**Mr O'Brien**—Madam Chair and members of the committee, my colleagues and I are very pleased to appear before you today. We last appeared before the committee in October of last year, and it might be appropriate to mention a couple of developments since then, for the information of the committee.

Our annual report for 2007-08 was tabled in the parliament on 7 November. That report mentioned that we had had a six per cent reduction in the number of RRT cases on hand at the end of 2007-08 compared with 2006-07. The report also mentioned that there had been an improvement in the timeliness of deciding MRT cases, with the average time taken falling to 35 weeks from lodgement, compared with the average of 37 weeks during the previous financial year. However, I should say our MRT backlog has been increasing, and it was up 17 per cent at the end of last month compared with the end of January 2008. Also, RRT lodgements for this year are 22 per cent higher than they were for the same period in 2007-08.

A guideline I issued to members in October 2008 on better work practices has assisted members to deal with cases as efficiently and effectively as possible. At the end of January, the percentage of RRT cases decided within the statutory period of 90 days was 76 per cent, which was a modest increase from the previous period, when it was 75 per cent.

I might mention too that we have made some major recent advances in enhancing our accessibility and openness, those advances being the publication of country-of-origin research information on our website and our decision to seek to publish 40 per cent of our decisions, which is a 100 per cent increase on the number published previously.

Madam Chair, I think that was about all I wanted to say by way of opening. Could I just apologise that Mrs Urquhart, the RRT Deputy Principal Member, is unable to be with us today; she is presently indisposed.

**CHAIR**—Thank you very much. Mr Lynch or Mr Jones, did you want to add anything to that?

**Mr Lynch**—No, thank you.

**CHAIR**—Let us go to questions then. Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS**—With regard to that MRT backlog, could you give us a bit of a breakdown on some of the trends, rather than going into the specifics—the sorts of cases, the nature of the cases, that constitute that 17 per cent increase in the backlog.

**Mr O'Brien**—They are across the range, but we have had an increase in skill linked refusal decisions, so the whole skilled visa category has been a growing category for us. There are partner cases in that backlog. We have a priority system in the tribunal for getting cases out to members, and partner cases are priority 2 cases, not priority 1, so there are a significant proportion of those that sit there among the backlog too. But it does cover the whole range. There would be some student cases. There are a whole range of cases in that active case load on hand.

**Senator BARNETT**—You said there had been a significant increase in the backlog with the skill linked refusal. Can you explain the reasons for that?

**Mr O'Brien**—Our skill linked lodgements for the—

**Senator FIERRAVANTI-WELLS**—Are you referring to your report?

**Mr O'Brien**—I am looking at the caseload summary as at 31 January 2009, so it is not really in our report, although there probably are some details which Mr Jones may be able to find in our report. It might be helpful to run through the lodgements in the tribunal as at 31 January 2009—that is, the cases that are sitting there. Skill linked refusal cases amount to 27 per cent, partner refusal cases to 19 per cent, temporary business refusal to 10 per cent, student refusal to nine per cent and family refusal to eight per cent. That is the snapshot of the numbers that are there.

**Senator BARNETT**—In summary, what is the reason for the very large increase in the backlog? You have 17 per cent and 22 per cent increases. Those are very substantial increases.

**Mr O'Brien**—On the RRT, one of the contributors is that we have had 90-odd cases that are World Youth Day related. That is one component of that increase. As to what the reason is for the rest on the RRT, it is a little hard to say. There does seem to be an increase in the number of appeals coming to us on the RRT, but World Youth Day is the only one I can specifically put my finger on. I do not know if the registrar might want to say something about the MRT.

**Mr Lynch**—MRT lodgements during the last financial year were nine per cent higher than the previous year. There were, as the Principal Member said, proportionately fewer partner, family and student cancellation lodgements and an increased proportion of visitor, skilled, temporary business, permanent business and student refusal lodgements. That is from page 28 of the tribunal's last annual report. As far as the case-on-hand increase is concerned, that is a fluctuating figure, and the percentage that the Principal Member gave you was a percentage compared with the percentage change from this time last year. That figure is a fluctuating figure, but there is an increase in the cases on hand in the MRT. We have a number of strategies in place to deal with that growth as far as member resources, batching and allocating of cases to members are concerned. It is a constant feature of the tribunal's resource allocation that we examine case lodgements, the age of cases in the compactus and member performance before constitution or allocation to a member to ensure that members with appropriate proficiencies in particular visa subclasses are getting the right sorts of cases to maintain efficiency and effectiveness in performance.

**Senator Chris Evans**—To add an obvious point from the point of view of the portfolio: given the increased number of student and work visas issued in the last couple of years, you would expect a rise in the flow-through of the MRT. As you know, we have had huge growth in student numbers over recent years and large activity in work visas. Therefore, there is a range of decisions that flow from non-renewals, which would see a natural increase. I am just adding that as, hopefully, helpful advice. We have issued a lot more visas in those classes; therefore, there would have been much more activity in continuation refusals, which would flow through the MRT.

**Mr Lynch**—If I could also add to that, just to clarify the fluctuating nature of our statistics: on the MRT, we have made 3,482 decisions as at the end of last month compared with 2,900 decisions for the same period last year. So there is a 20 per cent increase in decision numbers as at the end of January 2009. Equally, for the RRT, there was a five per cent increase for this period on the previous year's figures at this time.

**Senator TROOD**—In light of that, could you explain to me the reference on page 3 of the portfolio additional estimates to \$2.3 million of savings from a reduction of case load and adjustment of the efficiency dividend—which I assume is money being returned, is it?

**Mr Lynch**—Yes, that is correct.

**Senator TROOD**—We seem to be going that way in relation to the case load, and perhaps you are doing it more efficiently, but the minister has just said there has been an increase as a result of skilled activities and things of that kind, yet you are returning \$2.3 million to the department. They seem to be going in the wrong direction.

**Mr Lynch**—We are returning it to the Department of Finance and Deregulation.

**Senator TROOD**—Returning it to he who has it.

**Mr Lynch**—We were planning on an estimated 8,100 MRT decisions and 3,050 RRT decisions, as at page 26 of the annual report. In the result, we performed under that figure for the year, which means the appropriation given to us has to be returned as we did not achieve the estimated finalisation target.

**Senator TROOD**—Are you now going to need that money back in light of the increased responsibilities or the increased role?

**Mr Lynch**—As I say, we have a number of strategies in place. One is to change the status of a number of our part-time members. We have a high proportion of part-time members in the tribunal—86 per cent of our member resources are part time at the moment. We are looking to adjust that with the current member recruitment round. Hopefully, from 1 July next year, we may be in a position to have a greater proportion of our membership as full-time members instead of part time. That gives us a greater capacity to deal with cases. Members are able to develop a specialisation, particularly in visa subclasses, and great expertise. They build momentum and can produce more decisions of a higher quality, of course.

**Senator TROOD**—I suppose it comes down to using the available resources rather more efficiently without any increase in funding. Is that what we can take from this?

**Mr O'Brien**—Yes, that is right. Our funding model with the Department of Finance and Deregulation is still under discussion. We have had some discussions with them and we think that it needs some adjustment around the margins. There is a formula which gives us a fixed component and then a formula which is based on our number of cases. We have been saying to the Department of Finance and Deregulation for some time that that variable component does need a bit of change. But what we have been trying to do, faced with the increased volume of work, is to look at our own work practices. I mentioned in my opening statement that we have produced a guideline to guide members on how to more efficiently and effectively deal with cases. That guideline was developed out of an analysis we did through our CaseMate system, our IT system for handling cases, which focused on best practices of those members who seem to be dealing with cases more rapidly than others. A few possible actions came out of that analysis, which we then went and discussed with the broader membership. Out of that discussion we produced a guideline, which says to members things like, 'Look, when you get a case you should be looking to set it down for hearing within X days or you should be sending off a letter requesting further information within Y days,' just to articulate some of those things. Indeed, the process of discussion has helped us to deal with what is a growing backlog for us in the MRT and pressure on us in the RRT to keep up to date with the lodgements coming in.

**Senator TROOD**—Mr O'Brien, when you say that you have been discussing the funding model around the margins, I assume you are making a case for trying to increase the funding that is available rather than cause it to decline.

**Mr Lynch**—We certainly are looking for a better price for our decisions. At the moment we have two prices under our funding agreement with the department of finance—one roughly \$500-plus for MRT decisions and the other \$1,000 for RRT decisions—on the basis of complexity, essentially, and time taken in conducting these particular reviews. As we have amalgamated administratively and as members are, essentially, cross-appointed, it makes a lot of sense to not try and distinguish and to disassemble the work effort each member puts into their files on their desk. They have a range of files from both tribunals on their desks every day and their effort is co-mingled. So it is hard to separate out the cost. We are looking to get a unit price that will allow for the volatility of our case load, not only the lodgements but also the performance in disposing of decisions. That is very much a factor that is outside our

control with court decisions; changes in case law in particular; some legislative change, which may impact on our capacity to get on top of things quickly initially; and the length of time it takes a new inducted member to get up to speed. All of these things we are estimating, forecasting as best we can, to try and keep ourselves on top of the case load. Frankly, the fluctuations we are experiencing at the moment we have been through several times before on both tribunals, and we are looking to build a period of stability with our membership base, ensure they are all proficient in the visa subclasses we currently have and be in a position to get to a happy point with the RRT in particular, as we are at the moment, where we have reduced the backlog to below 1,000. We have now held that position for some few years.

**Senator TROOD**—Are you anticipating that these discussions will be concluded soon and will be reflected in the next budget?

**Mr Lynch**—We are hoping by the end of this financial year we will have a completed review of our funding agreement, which we agreed with the department of finance in 2004. We have been in active discussions with them during this financial year to try and reach some accommodation on these issues. We are very optimistic that we will get a position which recognises our fixed costs. We have been reducing our fixed costs in recent years. We have reduced by six per cent and eight per cent for the years 2005-06 and 2006-07 respectively. So we are very efficient in reducing fixed costs. It is the variable part of our funding agreement that is really outside of our control that goes to our lodgement rate and disposition of cases rate.

**Senator FIERRAVANTI-WELLS**—Can I just note, if I have a look at this, that the appeal levels, your statistics in terms of judicial review, seem to be going down. That seems to be the trend. Is it the case that fewer of your decisions are being appealed or going upstairs to the Federal Court?

**Mr O'Brien**—That is so.

**Senator FIERRAVANTI-WELLS**—Page 36 of the annual report.

**Mr O'Brien**—It is true that there has been over about the last four years a steady decline in the percentage of our decisions that go on appeal. In this current year, if you look at the RRT, which is the most significant, in the period from 1 July to 31 January—just to update those figures in our annual report—about 40 per cent of the 1,334 RRT decisions made have been the subject of an application for judicial review, but that is a lower percentage than has been over the previous years. Interestingly, if you then go on and see what the result was, in 83 per cent of cases the judicial review application was dismissed and, if you look at the total number of cases that were remitted to us following a finding that there had been some legal error by us in the decision or the process, the remittal cases ran at 3.8 per cent of all decisions made. So, although the level of judicial scrutiny was of continuing concern to us and of concern to the members, in fact the figures are not too bad.

**Senator FIERRAVANTI-WELLS**—It is a declining trend.

**CHAIR**—Thank you, gentlemen, for your time this morning.

[9.57 am]

**Department of Immigration and Citizenship**

**CHAIR**—Welcome. I think it is customary that we have cross-portfolio questions first before we go to outcome 1.

**Senator FIERRAVANTI-WELLS**—Madam Chair, by way of housekeeping, if I may, right at the beginning: Minister, is this the appropriate time to ask the questions that I was going to ask in relation to MARA and the proposed system or would you prefer them at a later time?

**Senator Chris Evans**—In the program it appears at 1.1, so if you are happy with that we will do it at 1.1.

**Senator FIERRAVANTI-WELLS**—That is fine. I have some questions on the Multicultural Advisory Council. Where would you prefer those to be asked?

**Senator Chris Evans**—At 2.4.

**Senator HANSON-YOUNG**—Minister, if you prefer to deal with this in another area just let me know. I could not figure out exactly where it fitted. It is in relation to reports that were on *AM* this morning about Douglas Wood. The report suggested that two of the soldiers that rescued Douglas Wood in Iraq have sought asylum and protection in Australia and have been denied. I guess the background is that seven of the other men who were also involved in rescuing Douglas Wood have subsequently been targeted and killed or their family members have been abducted. Can you enlighten the committee as to what is going on there and whether these reports are correct?

**Senator Chris Evans**—I am happy to deal with that now. I received an email yesterday in relation to this matter—I think it was addressed to the Prime Minister but I received a copy yesterday. As you know, Mr Wood was rescued by Iraqi soldiers in 2005 in what was a tremendous result and a fascinating story, in a sense, in terms of his survival under terrible conditions. I know that he has made claims in the past that he would like to see some of those involved in his rescue be resettled in Australia. In terms of the press reports yesterday, there is a suggestion that two or three of these people who were involved in his rescue had applied for protection in Australia. We have got no record that we can find of any such application. I want to be clear: I am not saying that there has not been an application, but we can find no record at this stage of there having been an application seeking protection.

I understand that one of the gentlemen has been granted residency in the United States. He has permanent residency in the United States, so he clearly would not be an applicant for protection in Australia. But the others, as far as we can tell at the moment, have not applied for protection. Given circumstances in the Middle East and their records et cetera, I do not want to go out on a limb and say it is 100 per cent certain that they have not applied, but, according to research we have done so far, we do not think they have. I have asked this morning for my officers to seek to meet with Mr Wood and those supporting these claims to see if we just cannot get to the bottom of it. I think the best thing is if we can get an urgent meeting with them, examine their documentation and claims and get to the bottom of the matter.

As I said, it obviously is possible for people in Iraq to seek Australia's protection. As you know, we take a large number of refugees from Iraq and settle them in Australia. We have also recently taken a sizeable number of people who were assisting Australian forces in Iraq, under a special resettlement of interpreters and the like who have assisted us. As I said, at the moment I have no information that these people have applied for protection, but I am keen to see what we can do. We will seek to meet with them as soon as possible to get to the bottom of those reports. I lived through Mr Woods's story. His niece was working for me at the time. I know the family went through a tremendous ordeal, as of course Mr Wood did. We are very keen to help in any way we can, but at the moment we have no record of any applications for protection from these soldiers or evidence about the other claims about those people being targeted. As I said, we are happy to meet with them and see if we cannot get to the bottom of the situation.

**Senator HANSON-YOUNG**—Is it relatively commonplace that applications go missing?

**Senator Chris Evans**—I think the answer to that is no, but perhaps Mr Hughes can take us through the process that would apply.

**Mr Hughes**—It is not commonplace that applications go missing. Nor do I think there is any reason to believe that applications have gone missing on this occasion. However, there have been occasions in the past where someone says they have applied for something and without a specific name and details it might be hard to link that person's claim with that name. In other words, people say they have applied for something. They also say they have certain connections with Australia that may not have been identified in an application, so it can take a couple of days to link up a media story about a person with an actual application. I think that is really what the minister is saying that we will do. We will talk to Douglas Wood and get some more details so that we can see whether the people have actually applied or whether they merely inquired somewhere, so that we get to the facts.

**Senator HANSON-YOUNG**—So in terms of reports that have suggested that two of these men have sought assistance in the Australian Embassy in Malaysia, for example, at this stage we have had no information back from that particular embassy that these men walked through the door?

**Mr Hughes**—That is right. That is what we are seeking to clarify. For example, let us say somebody made a telephone inquiry about a visa and did not identify that connection. They might have been given some advice, broadly speaking, about policy which they have taken as a rejection, but in fact they did not identify the connection and no actual application has been made. It could, for example, be that kind of scenario.

**Senator Chris Evans**—The claim, as you say, is that they might have attended the Malaysian high commission, but that is not the same thing as having lodged an application for protection. We just need to get to the bottom of what has occurred. Apart from the general claim in the email, we do not have the detailed information. We do not have two protection applications that have been dealt with properly and refused—if that is the question—that we can find, so we need to sit down with them.

**Senator HANSON-YOUNG**—That was going to be my next question. The man who has been given protection—I was not exactly sure where it was; you are saying the United

States—has claimed that he did apply and was refused. So I am just wondering whether you can enlighten us on that. That would be the colonel who was involved in leading the operation of the rescue.

**Senator Chris Evans**—Again, I think we need to get better information. Mr Hughes can take you through the situation but not all applicants from Iraq—people living in Iraq—are accepted for protection in Australia. We take a large number but—

**Senator HANSON-YOUNG**—You cannot tell me whether he did apply and whether he was refused? That is what I am asking.

**Senator Chris Evans**—I think it is fair to say that, as with the other two, we have not located a record at this stage. Again, there is sometimes confusion in names and those sorts of things. I do not want to absolutely say that we have not had one. The best thing is that we can sit down with them and get full names, locations, birth date and those sorts of things, which are not contained in the email.

**Senator HANSON-YOUNG**—Have you got any idea in terms of time frames? Have you contacted Mr Wood? Have you contacted him back and said, 'I'd like to talk about this'? Have you contacted the Malaysian embassy?

**Senator Chris Evans**—I asked the department, this morning, to contact Mr Wood and the other supporters and seek to meet with their members and get to a common understanding of what has occurred and the full details of the persons involved. As I say, the email came in yesterday afternoon and it was not shown to me until this morning. I think the best thing to do in these cases is to have a face-to-face discussion and the department will take it from there.

**Senator HANSON-YOUNG**—Minister, can you let me know of any outcomes?

**Senator Chris Evans**—I suspect that you and I will read about it in the papers first but I am happy to provide any outcomes publicly. There is obviously a lot of public interest.

**Senator HANSON-YOUNG**—Okay.

**Senator FIERRAVANTI-WELLS**—As at 30 June, according to your annual report, you had 8,106 staff. What is the current total number of personnel employed by the department, including overseas staff?

**Mr Metcalfe**—I will call the relevant officer to the table. If we do not have the precise figure with us we can come back to you over the course of the day.

**Senator FIERRAVANTI-WELLS**—That leads to a question about increases or decreases in particular areas.

**Mr Metcalfe**—I will have to get some checking done. So if there are any other questions it would be helpful if you could ask them now and I will undertake to come back to you.

**Senator FIERRAVANTI-WELLS**—I will ask a series of questions of the department. Answer the ones you can and those that you cannot you can come back to me over the course of the day. Have you conducted an internal review which considered cuts to departmental personnel? Could you provide a comprehensive breakdown of job cuts within the department and from which divisions those cuts have occurred? What is the average length of service for an employee at DIAC? What I mean is this: are you having attrition? How does this compare

with previous years? How many additionally locally engaged employees have been engaged by DIAC overseas? How many migration and other DIAC officials have now been removed from overseas posts, where have these removals taken place and what roles were these people undertaking? They are the general questions.

**Mr Metcalfe**—We should be able to get that information and come back to you after lunch.

**Senator FIERRAVANTI-WELLS**—The rest of my questions, including questions in relation to some of the issues around skilled migration, I will ask in the specific portfolio areas.

**Senator BARNETT**—Does the department have any involvement in the formulation of the \$42 billion stimulus package?

**Mr Metcalfe**—No.

**Senator BARNETT**—With regard to FOI, has the department received any advice on how to respond to FOI requests?

**Mr Metcalfe**—We probably receive advice from time to time in relation to recent court decisions and that sort of thing. Is that what you are referring to?

**Senator BARNETT**—No. I am asking whether you have received any advice, instructions or briefs from your minister or another minister via your minister with respect to how to respond to FOI requests.

**Mr Metcalfe**—I certainly do not recall any instruction from our minister, but I will need to check on whether we have received any more general advice from another minister.

**Senator BARNETT**—If so, could you please advise the details of that advice, if possible.

**Mr Metcalfe**—I will check on that and try to come back to you.

**Senator Chris Evans**—Senator Barnett, to the best of my knowledge the only advice I have given is to encourage the department to clear what was an enormous backlog in their treatment of FOI requests. They have done a very successful job on clearing what was an enormous backlog of requests. I assume that it is now maintained at an acceptable level.

**Mr Metcalfe**—We certainly had a very large backlog and I think our own reporting and the Ombudsman's reporting would have shown that we have now substantially reduced the backlog through a number of measures. We have quite an interesting FOI case load. The majority relate to what we regard as normal access to information from clients who are after material relating to decisions relating to themselves. Like any other department, we receive a small number of inquiries about what you would regard as policy matters from journalists and from others.

But a very substantial part of our case load is involved in another aspect of the FOI Act, and that is where people are seeking to amend records. It is possible using the FOI Act to seek that the department amend its record. We, as the department that is responsible for citizenship records, details or other material which may go to some core aspects of people's identity, such as their date of birth or their name, quite often receive requests—for example, if a person has become known by a particular identity and then seeks to change the details of that in

association with a passport application. So those applications necessarily can be quite complex given that we have to establish whether amendments to our records, which then may have implications for other agencies and departments, should in fact occur. In saying that we have a substantial FOI case load, I thought it was useful to say that it is not just what you would regard as an FOI matter. An element of our work is quite complex, with significant implications for individuals.

**Senator BARNETT**—In light of that, can you advise how many FOI requests the department has received since 1 July last year?

**Mr Metcalfe**—I will take that on notice and try to come back to you today—perhaps with figures to 31 December. I will also, if it is possible, get details of how many of those related to requests for information and how many related to requests for altering records.

**Senator BARNETT**—Thank you. In your review could you also provide how many have been granted or denied? Finally, how many conclusive certificates have been issued in relation to FOI requests?

**Mr Metcalfe**—Almost certainly, the answer to the last question is zero. I never recall having used a conclusive certificate in the portfolio but I will of course check on that along with the other matter and come back to you.

**Senator BARNETT**—To another area: reviews and consultancies. Could you please advise how many reviews and consultancies have been undertaken or are under way since November 2007? I am happy for you to take that on notice.

**Mr Metcalfe**—Will take that on notice. There would be a large number.

**Senator BARNETT**—I am sure there are. Please identify the name of the consultant, the subject matter of the consultancy, the duration and cost of the consultancy and the method of procurement—whether it was an open tender or direct source, et cetera. Also, please include a total value for all reviews and consultancies since this time. Can you advise how many consultancies or reviews are planned for this financial year? Have all these been published in your annual procurement plan? Have all these been published on the AusTender website, tenders.gov.au?

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

**Senator BARNETT**—And if not why not? In each case please identify the subject matter, the duration, cost and method of procurement as above and the name of the consultant or reviewer, if known.

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

**Senator BARNETT**—Thank you. The government has passed the Federal Financial Relations Bill, which appropriates money to Treasury to pass on to the states. Does your department or agency receive any appropriations that will be transferred to the Treasury Department?

**Mr Metcalfe**—I think the answer is almost definitely no but I will check and let you know if I am incorrect.

**Senator BARNETT**—Thank you.

[10.15 am]

**CHAIR**—That seems like the end of general questions. Let us move to outcome 1 and output 1.1, Migration and temporary entry.

**Mr Metcalfe**—Senator, we are just checking whether in moving to 1.1 that we have dealt with the internal product aspect. I think we possibly have, given the questions about FOI, consultancies and those sorts of things.

**Senator Chris Evans**—This is just in terms of management of staff.

**CHAIR**—Are there any more questions on internal product and FOI?

**Senator FIERRAVANTI-WELLS**—Only those questions subject to answers from Mr Metcalfe.

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—‘Internal product’ is a broader description. We just want to check this before we send officers home. We thought it would be dealt with prior to 1.1. I am just trying to make sure that we do not send someone home and then find later that we need them.

**Senator BARNETT**—What is your definition of ‘internal product’?

**Mr Metcalfe**—Internal products are essentially internal services within the department, such as the matters that you and Senator Fierravanti-Wells have mentioned as opposed to outputs, which are providing services to the public or the government in terms of policy, visas or citizenship and those sorts of things.

**Senator FIERRAVANTI-WELLS**—If I do have any further questions, I will put them on notice. I might start with some questions on the special visas for Iraqis. Minister, in a press release back in April 2008—

**Mr Metcalfe**—We would probably put those under 1.2.

**Senator FIERRAVANTI-WELLS**—I am just trying to be—

**Senator Chris Evans**—I have a lot of sympathy. I did that for 11 years, and I could never get the right output.

**Mr Metcalfe**—Output 1.1 normally deals with the migration program temporary workers and those sorts of issues. Output 1.2 is on the humanitarian entry side.

**Senator FIERRAVANTI-WELLS**—Thank you for the indulgence. I, too, am finding my way around.

**Senator Chris Evans**—I am sure you want to ask about the Pacific seasonal workers scheme.

**Senator FIERRAVANTI-WELLS**—After my last episode, I think I will go to DEWR. It did not seem to be the appropriate time then.

**Senator Chris Evans**—That was what I was going to tell you when you asked.

**Senator BARNETT**—When would the best time—and I thought it might possibly be now—to ask about the overall migration numbers, the research and the rationale for it?

**Senator FIERRAVANTI-WELLS**—I was going to do 1.16 in this area.

**Senator BARNETT**—Why don't you lead off.

**Senator FIERRAVANTI-WELLS**—I was going to start with some questions on MARA and the commentary that we heard this morning. Is this an appropriate time to deal with that?

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—Minister, in a press release of 9 February, you made reference to—I will not repeat the quote that I gave previously—unprofessional, incompetent, or unethical behaviour by migration agents. In your view, what are the rates of unethical, unprofessional or incompetent behaviour of agents that you feel have now given rise to your proposal to effectively return oversight of agents to the department?

**Senator Chris Evans**—It is certainly not possible for me to talk about the number of instances of inappropriate behaviour by migration agents, but there is no doubt that, as in any other profession or calling, one has issues with those who do not play the game appropriately or with proper ethical behaviour. As you know, that has been an issue for migration agents, like other professions.

The policy debate has been around how one deals with those complaints and how one regulates the industry. As you know, this has been a subject for governments to consider over a number of years. There have been a series of reports into the regulatory requirements or arrangements. In 2007, the former minister, Mr Andrews, commissioned the *2007-08 Review of statutory self-regulation of the migration advice profession*. That report was headed by Mr John Hodges, a former Liberal immigration minister. I think we have discussed this before. You raised his comments with me at last estimates.

**Senator FIERRAVANTI-WELLS**—Minister Evans, you never know, but in a future life you may be doing reviews as well.

**Senator Chris Evans**—I am just saying that the credentials of those on the review were impeccable. There were also experienced agents, I think it is fair to say, on the review. That review found overwhelming opposition to the profession moving to self-regulation and that the current arrangement whereby the MIA operates the MARA has created perceived and potential conflicts of interest, resulting in a lack of consumer confidence. That was the major finding in the report. To be frank, I think we saw that this morning when MARA had difficulty expressing its views as separate from those of MIA. I am not critical of them in that sense, but they have had this sort of dual personality and, as a result, I have consulted with them and decided to allow the deed of agreement with MIA to operate the MARA to lapse and for us to make new arrangements, including the establishment of an advisory board. I can get Mr Vardos to take you through those new arrangements. Based on that review of self-regulation and the profession initiated by the former government, I moved to act on its major recommendations.

**Senator FIERRAVANTI-WELLS**—Have you given some thought to the logistics of this in terms of where it will be located?

**Senator Chris Evans**—I think if Mr Vardos gives you an overview that might help, and then you can follow up with specific questions. The buck stops with him.

**Mr Vardos**—The Office of the MARA, as it will be called, will be within the department's structure; however, the concession that we have made or offered in our negotiations with MARA is that they will physically remain in their current premises and they will not be brought within the DIAC footprint in any of the three locations in Sydney so as to maintain that separateness between what they do and what the department does. However, I have to say that one of the issues that is under discussion at the moment is that the MIA is in the same building and on the same floor as the MARA, with a common receptionist with two different nameplates. So we do have to deal with that issue. We have offered to minimise disruption both to the MARA staff, to the organisation itself and to the clients whom they serve and to maintain continuity by leaving them where they are. But there has to be some compromise on this issue. While we will deal with the conflict of interest issue with DIAC, we would expect the MIA to come to the party as well.

**Senator FIERRAVANTI-WELLS**—Have you the number of staff who will be in this new authority? Have you given some thought to that?

**Mr Vardos**—Yes. The proposal is that we have least disruption to the current structure as possible. The department itself will clearly be providing some sort of corporate services and maintenance of systems. So there will be some rationalisation in the corporate support services, but in terms of the client service delivery function the offer on the table is that as many of the MARA staff who wish to come across to the new office of the MARA will be considered. There has to be a process. We cannot just appoint them. Under Public Service requirements there has to be a merit process for them to become permanent officers. So, in the first instance, those who are assessed as filling appropriate positions will come across as non-ongoing. There will be a probation period and then, through a merit selection process, permanent appointment.

**Senator FIERRAVANTI-WELLS**—Will this require some sort of legislative change?

**Mr Vardos**—No.

**Senator FIERRAVANTI-WELLS**—It will be done under?

**Mr Vardos**—Under current authority. It is doable under the current Public Service structure.

**Mr Metcalfe**—In legal terms, I understand the Migration Agents Registration Authority within the Migration Act is actually vested in the minister. The minister has chosen for some years to delegate that authority—

**Senator FIERRAVANTI-WELLS**—And that is the deed.

**Mr Metcalfe**—Precisely.

**Senator FIERRAVANTI-WELLS**—The deed is the effect of that delegation. So with the lapsing of the deed the authority reverts in the minister to then delegate as he or she thinks fit.

**Mr Metcalfe**—Precisely. And I imagine that, in establishing the new arrangement, the minister would in fact delegate me to appoint a chief executive officer of the Office of the MARA as a separate division or part within my overall responsibilities.

**Senator FIERRAVANTI-WELLS**—With a series of delineated functions—

**Mr Metcalfe**—That is correct.

**Senator FIERRAVANTI-WELLS**—that may or may not necessarily reflect the current terms of the deed. I have not seen the deed but I assume the deed sets out what your functions are et cetera.

**Mr Metcalfe**—Precisely.

**Senator FIERRAVANTI-WELLS**—So your delegation to the chief executive officer will contain a series of functions, and some may be different or in addition to the current functions.

**Mr Metcalfe**—That is absolutely correct.

**Senator FIERRAVANTI-WELLS**—In relation to the education agents currently recruiting international students for courses in Australian colleges, we have talked about the difficulties in this in the past but will this be covered with the terms of the authority? Do you envisage a form of regulation there?

**Mr Metcalfe**—As Mr Vardos says, there is no intention to change the existing regulation in relation to migration agents, whose roles and activities are defined. I think by education agents you are largely referring to people who may be operating overseas.

**Senator FIERRAVANTI-WELLS**—Yes.

**Mr Metcalfe**—Advice available to the government over many years has been that it would be extremely difficult and indeed probably beyond the power, beyond the competence, of the Australian government to seek to regulate in that way the business activities of foreign entities operating offshore. However, my understanding is that there is legislation now in place that would at least allow us to require that agents in that sector are subject to a code of behaviour and for us to make it clear that we would not deal with people who did not subscribe to that code of behaviour. So it is not the form of regulation that would be applicable to Australian migration agents, but it would provide some safeguards in relation to the activities of foreign agents who are lodging applications in relation to student visas overseas.

**Senator Chris Evans**—Can I just say, too, Senator, that I have raised this issue with a number of ambassadors. Part of my agenda this year is to focus on our relations with China and India in particular, who are becoming big sources of migration and student numbers. I think you raise a really important issue. I have already raised with the Chinese ambassador how we get better cooperation to make sure that, quite frankly, we do not have the crooks and exploiters engaged in the industry in those countries and to ensure that people get quality advice and also that people get a quality experience when they come to Australia.

**Senator FIERRAVANTI-WELLS**—Yes. So there is nothing to preclude an overseas agent being registered with DIAC—if you have somebody operating in, say, India or China, is there anything to conclude them?

**Mr Vardos**—If they meet the professional competency standards and the other requirements, they can be registered in Australia and practise offshore. In fact, there may well be some agents in that capacity at the moment.

**Senator FIERRAVANTI-WELLS**—Is that something that is envisaged? I gather the object of this is to broaden the umbrella for people who potentially come under some form of scrutiny, if I can put it that way.

**Mr Metcalfe**—Yes. What I described before is probably the slightly different arrangements for people who are fully registered as migration agents. There are legislative requirements as to in what circumstances it is prohibited to give migration advice or visa advice unless you are an accredited migration agent. Because of the issues around extraterritoriality of that legislation applying to overseas based agents who only work overseas, the approach is more to identify people who do at least subscribe to a code of proper behaviour, of proper practice, and to make it clear that those people will be people we will deal with on a preferential basis.

It would be very difficult for us to refuse to deal with any person. Under the principles of administrative law, if a person seeks to make an application we are obliged to consider it. The fact that it comes through an agent or third party overseas that we do not have a relationship with, given the extraterritorial nature of the issue, is why there are different sorts of approaches being taken.

**Mr Vardos**—Could I add something to my previous answer, for completeness?

**Senator FIERRAVANTI-WELLS**—Certainly.

**Mr Vardos**—To practise overseas as a registered migration agent, that person must be an Australian citizen or permanent resident or a New Zealand citizen with a special-purpose visa.

**Senator FIERRAVANTI-WELLS**—So at the moment you can have a set of guidelines and that is probably it.

**Mr Metcalfe**—As the minister said, this is an area where we can look to some substantial change and substantial improvement to safeguard the interests of visa applicants, as well as to reduce the amount of fraud and other issues we have to deal with in some of our key markets. We have had some years of experience now relating to tourism coming from China under the so-called Approved Destination Status scheme, whereby we make it clear that agents who lodge applications with us and who are seen as having a preferred relationship with us are able to benefit from that relationship. But we very carefully monitor whether or not visa applicants who have come through that process in fact overstay or do not comply with their visa, with a regular review and the potential to deregister that particular travel agent as a preferred agent. That has been the key to the Approved Destination Status scheme, which has seen us manage a massive growth in tourism numbers from China with a very, very small overstay or non-compliance rate associated with it. That is the sort of thinking that can go into some of the other visa categories.

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

**Proceedings suspended from 10.32 am to 11.01 am**

**CHAIR**—We are dealing with output 1.1, migration and temporary entry.

**Senator FIERRAVANTI-WELLS**—I would like to just finish some questions on MARA that I was asking before the break. Minister, you heard the comments that were made earlier particularly about the conflicts of interest, and I guess that is one about perceptions of conflict

of interest. Can you comment on whether you think those views are unfounded or what you will be putting in place to ensure that there is no such perception?

**Senator Chris Evans**—The first thing to say of course is that that is why we made the change—because of perceived conflicts of interest with the current arrangements. That is what the review found and, quite frankly, it was certainly my view that having the agents self-regulate, effectively, or represent or comprise the MARA was just untenable, and I think it put them in an impossible position. Certainly we are concerned to make sure under the new arrangements that there is as much independence as possible. We have decided not to go down the secretary-statutory authority route because of the proliferation of such things and in terms of the cost to the public purse. But I am very keen to get as much separation and independence as possible to deal with those issues. That involves a very strong independent advisory body which has a separate appointment to head the office with an arrangement to try and get as much separation as we can between them and the department. We will be consulting with people about how we best manage that but, as the secretary said, there are certain arrangements that we can put in place. Do you want to take us through some of those plans?

**Mr Metcalfe**—I can take you through a number of the things that we are planning. For example, as the minister indicated, we expect that there would be a key governance or protocol document requiring me to appoint a chief executive of the office of MARA. Certainly it is our intention that there would be physical separation from the department's officers. I think that Mr Vardos indicated before that the current arrangement is that the Migration Institute and MARA occupy the same premises and share a receptionist. So clearly there is a potential perception of their being the same organisation, whereas of course they are not. We would certainly be working for physical separation from any departmental office so that you would not physically go into the immigration department in relation to a MARA issue; you would go to some other place. Access to that office space would be controlled so that it was not possible for non-MARA staff or other departmental staff to simply wander in. We would maintain separate business systems, so it would not be possible for DIAC staff to access MARA systems. The function would report directly to me, not through any existing divisional or group structure, and through me to the minister, who is the source of the authority—the minister is in fact MARA. There would be separate financial arrangements and the expectation, subject to the minister's agreement, is that there be a further review of the arrangements in due course. So we do take seriously the concern, which is very legitimately raised, about needing to deal with the department in relation to applications on the one hand and MARA in relation to accreditation as an agent on the other. We will do everything we can to ensure that that does not occur and is not seen to occur in any way and that there is a very strong sense of separateness between the arrangements.

**Senator FIERRAVANTI-WELLS**—And still retaining a right to lodge complaints against agents?

**Mr Metcalfe**—Yes, certainly, the MARA would continue to have those functions. It has those functions relating to complaint handling and management and, ultimately, if necessary, the application of sanctions, including a decision not to register or to deregister an agent. But the role of the department in that would be as it currently is, in that if the department has a

view or experience it can notify that to MARA but would not be involved in determining the outcome or managing it. That would be done by the separate office of MARA.

**Senator FIERRAVANTI-WELLS**—Thank you, Madam Chair, that concludes my questions.

**CHAIR**—Output 1.1.

**Senator FIERRAVANTI-WELLS**—Has DIAC been consulted by any other Commonwealth department or minister over concerns that temporary or permanent migrants may fall into jobs created under the government's \$42 billion spending package?

**Senator Chris Evans**—Not specifically in that context, but there is ongoing engagement between my department and DEEWR on employment issues. We work very closely with them on a range of matters. We take advice from them on things like skill vacancies. So they provide advice about employment markets et cetera and we respond in our immigration role. But, as I made clear yesterday when asked about this, we are in a situation where the economic circumstances have changed quite dramatically. The immigration program in the skills area is largely run to meet the skills needs of the economy and I have been keen to change the focus of the program to a demand driven economy—that we actually bring in the people whom we need to fill the skill shortages that exist in the Australian economy.

It is anticipated, I think quite obviously, that the demand for skills in the economy in certain skill areas and regions will diminish just by the reduction in economic activity. So one would look to reduce the number of people we might bring in to fill what might be vacancies that are no longer there or may not be there in coming times. But, having said that of course, it is not that simple. A process worker laid off in a car plant in Adelaide is not going to fill the needs for Queensland to have doctors in country towns. It is about skill matching. We will continue, as under the previous government, to run a migration program that brings in the skills we need. The policy parameter, though, is that we want to ensure Australians have the first job opportunities, that our skilled persons have access to those job opportunities first, and that migration continues to meet the shortfalls in the skills areas where we need them. That has been the policy of successive governments and that will continue to be ours.

I see the overall program being lower. Clearly the priority is on creating jobs and job opportunities for Australians, but, nevertheless, there will still be skills that we are looking to bring into the country. Long term, we will continue to have to bring migrants in to meet various labour and skills shortages. In the short term, Western Australia, Queensland, country Victoria and country New South Wales still have needs for health professionals which we will not be able to fill locally. There will be other skills areas that will continue to be in short supply. But there will equally be other areas where you can see that the drop in demand in the mining industry will allow tradespeople and others to flow back into other industries. It is not our intention to bring in people in competition with those jobs. It is self-evident that you would not do that.

We will be working closely with DEEWR on employment projections. As you know, this has been moving pretty fast. I did a round of consultations with industry in October and November last year and they were still pretty upbeat and saying, 'Don't make any adjustments to the program.' I have been speaking to them since early this year and they are now much

more pessimistic. I met with ACCI yesterday and they said that the order books are looking such that they will see a downturn in employment. Obviously we have to adjust the migration program accordingly.

**Senator FIERRAVANTI-WELLS**—Minister, you have probably seen the comments in the *Financial Review* on some research released by Professor Birrell warning that the package would not save jobs because new permanent and temporary migrant workers would soak up available employment. Obviously you have made comments in relation to revisiting and looking at reviewing the skilled migration targets, yet there seem to be comments attributed to the Deputy Prime Minister rejecting these sorts of calls. Is that a difference of opinion or a media interpretation?

**Senator Chris Evans**—I think it is confusing two things. The Deputy Prime Minister was asked, in relation to the report by Mr Birrell and others, whether she accepted some of their claims about migration and she said no. I reject them too. I think that piece of work includes some proper analysis of immigration statistics and trends and then has some giant leaps in logic, not supported by facts, which seek to make what I think is an ideological point. It has at its base a conspiracy theory about employers—that they are going to act in a way that is prejudicial to Australian workers and that is based on exploiting foreign labour. If you follow the argument in the paper, you will find giant leaps in logic that are not supported by the otherwise perfectly good analysis of current trends.

**Senator FIERRAVANTI-WELLS**—Minister, can I say that, having sat through the hearing in relation to the review of 457 visas, it seems to be an argument very akin to that which was being run by Mr Sutton and some of his acolytes in the union movement. So perhaps they will find some synergy there. But I do not want to deviate from the point.

Can I perhaps look at it from a global perspective. What percentage of total migration does skilled entry represent? How do you see this projection into the future, compared to previous years? In December you made the announcement that you are going to review skilled migration targets, based on the changing economic circumstances. You have had some discussions, I gather, with business communities since then. What will be your target over the coming year?

**Senator Chris Evans**—First of all, to be clear, the decision about the 2009-10 migration program size and composition is a decision for cabinet, as part of the budget process, as has been the tradition for many years in Australia. That decision has not been taken as yet. What I have made clear, and I think other spokespeople for the government have made clear, is that the logic of the economic situation is that we would run a smaller program. Last year we had huge demand for labour, huge growth in the economy and very severe skills shortages, which everyone was aware of. The program was set to try and meet the needs of industry in filling those skills shortages. This year we will be confronting a different economic situation, so we will make a different set of calculations based on the needs.

I want to make the point, though—as I tried to do earlier—that there will still be occupations and regions in need of labour. Employers have been very keen to stress to me that we ought not overreact; that we have a long-term commitment to migration, we have a long-term need for migration and we ought not pull the levers too hard and damage Australia's

longer term interests as an attractive place for migration. They have stressed that they will potentially need people quickly to deal with any upturn in the economy, particularly in certain skills. If you look at what is happening in infrastructure, for instance, if we have a massive expenditure in infrastructure there will be skill sets that we will not be able to fill locally. When that will occur is not yet clear, but clearly we will want to be able to respond. That is where we take advice from DEEWR and industry about those things.

So I think it is about running a smaller program but keeping it responsive to the needs of the economy, and not so dismantling the program as to create problems longer term or, as a number of industries have said to me, not so as to ruin Australia's brand. We are out there in a global market for skills, and they are very anxious that we do not take any action that affects the Australian brand in the global economy.

**Senator FIERRAVANTI-WELLS**—What are the skilled areas you are targeting with new arrivals? Has this focus changed—is that implicit in what you are saying—or are you still going to look at the sorts of areas you were looking at in the past?

**Senator Chris Evans**—In December I announced a retargeting of the program. I think it is fair to say we ran a very general program in the past, and I was not convinced that we were necessarily bringing in the people we needed. The reality of the way the system worked was that if we had a hairdresser and a cardiologist in the queue but the hairdresser had applied first and was in front in the queue, then the hairdresser got brought in first and the cardiologist waiting in the queue. That seemed to me to be an absurd set of priorities. Although getting a haircut is sometimes important, there is always the home option—and I think Mr Metcalfe is a classic example of that!

**Mr Metcalfe**—That was very uncalled for, Minister!

**Senator Chris Evans**—Yes. So we changed the way we prioritised applications. We gave priority to employer nominations, because the thing about an employer nomination is that they say: 'I'm going to employ this person. I have got a job ready for them and I can't find local labour.' So you are bringing in someone who is going directly into employment, often at high salary, with an employer who has said: 'I can't find them locally. It's going to cost me more to bring them in, but I need them.' It seems to me that is a really good migration outcome.

The other group we prioritised are state nominations—states trying to get people particularly into regional areas. So states can nominate persons. The other thing we have done is prioritise a critical skills list which picks up some of the critical skills that are needed, so they are prioritised as well and, if you like, the rest of the applications go to the back of the queue. That is not to say they would not be good migrants, but we are prioritising the high-skills needs. Those changes were made in December and we are starting to see the flow from that.

The other point I would make and that people have to remember about permanent migration is that it is the granting of a permanent visa. Dr Moeller, the country doctor from Germany who was the famous case recently, is included in the permanent visa category but he was already in Australia in a job. Close on 50 per cent of people who are granted permanent visas in this country are already here and in jobs. They are not people queued up at Australia

House in London waiting to get on the boat. They are people already here in employment and we are, if you like, changing their status inside the country.

**Senator FIERRAVANTI-WELLS**—That was certainly the gist of the evidence in the hearing we had around the 457s and the legislation dealing with that. Mr Metcalfe, as a consequence of what the minister was saying, I wonder if you have some of those statistics on the arrivals and the trends, where they are going and those sorts of things, and if they could be made available.

**Mr Metcalfe**—We publish statistics quite regularly. In fact just in the last week or so we have published a document called *Population flows: immigration aspects* that provides a lot of information about movements of people in and out of Australia, the categories and countries. If there are any very precise questions we could obviously undertake to get those answers for you. I will see if we have a copy of that document, which might be helpful. It should be up on the website by now.

**Senator FIERRAVANTI-WELLS**—That would be useful, thank you. I will move specifically now to 457 visas. We went through the hearing in relation to the legislation. Are we any closer to the regulations coming into force?

**Senator Chris Evans**—I sent the opposition's spokesperson a copy of the draft yesterday or the day before, I think.

**Senator FIERRAVANTI-WELLS**—There you go. It has not filtered down to me in my lonely capacity—

**Senator Chris Evans**—I think that it went out only yesterday. I presented it to the consultative committee last week and I had forgotten to sign off on the letters which were ready to go to Senator Hanson-Young, Dr Stone, Senator Xenophon and Senator Fielding. I undertook to make those available during the period that they were open for public comment and we will be getting feedback from anyone interested before finalising the regulations. I have had a couple of discussions with ACCI and AIG about these issues in the last couple of days.

**Senator FIERRAVANTI-WELLS**—This is a new set of regulations and, following on from the hearing, I envisage that there will need to be officers monitoring sponsorship obligations associated with 457 visas. Are we looking at current officers in the department or are we looking at additional officers needing to be brought in to monitor this program and in particular monitor the sponsorship obligations given the status that they will now take on?

**Mr Metcalfe**—We are looking at existing staff being trained to undertake that role. There were some resources given to the department in the past couple of years in view of that increased monitoring role.

**Senator Chris Evans**—The obvious thing to say is that the 457 program is starting to see already a drop-off in applications so we will probably have less requirement for people-processing in coming months than we had before—

**Senator FIERRAVANTI-WELLS**—So the monitoring of the obligations will offset the number of visas that—

**Senator Chris Evans**—We will certainly see, I think, fewer staff required for processing. But there were allocations made in last year's budget for this function to fund that increased activity.

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, when were the figures relating to skilled migration last published?

**Mr Metcalfe**—The general skilled migration list of occupations in demand is published by the Department of Education, Employment and Workplace Relations, and if other officers at the table have that information they can advise me. But the other key—

**Senator FIERRAVANTI-WELLS**—I guess 457s in particular—

**Mr Metcalfe**—Concerning 457s, there is no list of occupations, as such. The occupation shortages lists are primarily in relation to permanent migration. With the 457 visa, there are basically requirements as to the nature of the occupation in terms of the ASCO code, the Australian Standard Classification of Occupations code, together with the minimum salary level, those being the key determinants of whether or not foreign workers would be brought in to a particular situation, and there are other requirements in relation to the sponsorship obligations of employers.

**Senator FIERRAVANTI-WELLS**—How many 457 visas were granted in 2007-08?

**Mr Kukoc**—In 2007-08 we granted 58,050 457 visas to primary applicants, and total visa grants were 110,570.

**Senator Chris Evans**—That is including the family members.

**Senator FIERRAVANTI-WELLS**—Yes. It would be interesting to compare some of those figures with the evidence given by the tribunals, where some of them obviously are applying to change their status and are being rejected.

**Senator Chris Evans**—As I say, we saw enormous growth in the 457s in the last five or six years, from a very small base when it was introduced by the Howard government to large numbers. But, as I say, Mr Kukoc tells me economic theory is that that will fall as the economic demand falls. There will be a slight lag, and we are already starting to see that demand is starting to fall from what were record levels last year.

**Mr Metcalfe**—Senator, the annual report has quite a lot of material about this; pages 63 through to 70 of the annual report provide a lot of detail in relation to that particular category.

**Senator FIERRAVANTI-WELLS**—Okay. I will have a look at that and, if there is anything else, I will ask. I think Senator Barnett wants to jump in while I collect my thoughts here.

**Senator BARNETT**—If you could just go back, Minister, to the Dr Moeller case you referred to a few moments ago, could you advise the committee of your reasons for your decision.

**Senator Chris Evans**—The minister is not required to publish reasons or to articulate them in any way, which I think is one of the weaknesses in the system because there is a lack of accountability and transparency in the decision making, which is why I argue for those

decisions to be made by the tribunals and reviewable by courts rather than made by the minister. Effectively, I want to be a bit careful here; I do not want to set precedents.

Clearly, Dr Moeller was providing an essential service in the community. We have a shortage of doctors and a shortage of doctors prepared to work in regional Australia. He had strong community support and the reason he had been refused by the department was that they had no option but to refuse him under the current guidelines in assessing medical costs and the cost of the potential care of his son who had a disability. I have tried to put some arrangements in place with the state governments to deal with this disability issue and I have also asked the Joint Standing Committee on Migration to look at those questions of how we treat disability under the Migration Act and the health waiver, and those terms of reference are almost finalised.

**Senator BARNETT**—Sorry, the terms of reference to who?

**Senator Chris Evans**—The Joint Standing Committee on Migration. I will just double-check that I asked them to inquire more broadly into the use of that health waiver because it has been an issue for a long time and, quite frankly, some of the provisions are very outdated and reflect very outdated views about disability, in my view.

As you would understand, Senator, there is a really difficult public policy issue here in that persons with health conditions, be it disability or any other health related matter, are potential costs to the Australian taxpayer for the care and/or treatment of that person. There is that balancing of cost versus contribution they are going to make. We handle this in a certain way currently in the Migration Act. I think it is time for that to be reviewed, and that is effectively what I have tasked the committee to do. We have not finalised the terms of reference. I saw what is supposed to be the final draft late last week. I had some concerns and some amendments to make to it. That will address the broader question.

In terms of your original question about Dr Moeller, given the contribution he was making, the fact that his child was unlikely to be a major drain on Commonwealth health costs—but there will of course be some—and the reaction of the Victorian government, which was very supportive of his application in that they will bear some of the costs associated with Dr Moeller's son, I took the view that I ought to use my intervention powers and grant him a visa.

**Mr Metcalfe**—I would like to add to what the minister has said. Dr Moeller never made this point but certainly in the media commentary round this case mention was made about officers of my department being heartless or insensitive, or not understanding that community's need to have a doctor. As the minister has said, my officers were precluded by law, by regulations enacted by this parliament, once the issues had arisen about the health costs of Dr Moeller's son. There was no discretion; there was no ability to take into account the wider circumstances and the community benefits that would come from Dr Moeller being able to work in that particular country town.

**Senator BARNETT**—But how did they assess those costs?

**Mr Metcalfe**—They were assessed by a Commonwealth medical officer, who took into account the likely care needs associated with a young person with that disability.

**Senator BARNETT**—Do you think the officer got it right or wrong?

**Mr Metcalfe**—I am not a doctor, Senator. The point I am trying to make is that once the doctor, who is a medical professional, had made that assessment, under arrangements put in place by the parliament we the department had no option. It would have been unlawful for a visa to have been granted in those circumstances. The same point obviously applied to the Migration Review Tribunal, which had a similar constraint applicable to it. It was only when the minister's powers were enlivened following the review decision that the minister was able to take into account the full set of circumstances, which he has just described. I just want to put on the record that suggestions about heartless or ignorant bureaucrats or people not understanding the nature of the condition, while I can understand the passion that may come, did not reflect an understanding of the law and the constraints under why my officers were operating. In my view, they did a professional job and were able to help the family through the process in a very careful and expedited manner to ensure that the family was able to be sure as to their future.

**Senator BARNETT**—Can you advise the committee as to the medical costs determined by the medical officer?

**Senator Chris Evans**—My understanding is that they are almost required to assess the maximum cost possible rather than the individual's needs. That is one of the problems. We can take it on notice to provide you the figure, but Mr Vardos may be able to explain further. I think they basically have to come to the most negative view of the costs.

**Mr Vardos**—It is not just direct medical costs; it is whole-of-life costs associated with whatever the issue is at hand, and community care is an issue that I think came into the equation on this occasion.

**Senator BARNETT**—Do you have those figures?

**Mr Vardos**—I do not have them to hand. I can only give you aggregate figures over the 2006, 2007 and 2008 program years, but not case by case.

**Senator Chris Evans**—We can take that on notice. There should not be a privacy problem, but I would like to check.

**Mr Metcalfe**—As the minister said, I think ordinarily the doctor is required to give a conservative cost estimate—that is, a higher rather than lower cost. The case of Dr Moeller and his son is not unique. We deal with quite a significant number of cases that are refused on health grounds.

*Due to technical difficulties, the sound became inaudible.*

**Proceedings suspended from 11.33 am to 11.42 am**

**CHAIR**—The wonderfully efficient people in DPS have resolved the problem, as they always do. Senator Fierravanti-Wells, do you need to ask your couple of questions again?

**Senator FIERRAVANTI-WELLS**—I will go back to one answer.

**Mr Metcalfe**—Chair, I think we were discussing Dr Moeller's case with Senator Barnett, and I was seeking to put a point on the record about the department's role in relation to the matter. I am not sure whether we lost Hansard at that stage.

**CHAIR**—Mr Metcalfe, perhaps you can reiterate. They are fantastic, too, and they will sort it out.

**Mr Metcalfe**—Further to the comments that the minister made about his reasons for granting a permanent visa to Dr Moeller and his family, I think it is an appropriate time for me to place on the record the decision-making arrangements in relation to that sort of visa. Under regulations enacted by the parliament, if a medical officer of the Commonwealth assesses a visa applicant as failing to meet the migration health requirement—including in this particular case Dr Moeller's son, where it was assessed that there was a potential long-term cost to the taxpayer—that decision has to be accepted by the department. That situation means that we must refuse the visa application. We do not have the power to waive the health requirement and the health finding. As a result, the department refused the visa application and the matter was able to proceed to the Migration Review Tribunal. The Migration Review Tribunal is similarly bound by the same regulations. Arrangements were made for the tribunal to quickly consider the matter and, because of the relatively straightforward nature of the issue, it was able to reach a conclusion quickly that it also was unable to waive the health requirement and, thus, must refuse the application on review.

It is only at that time, under the provisions in the Migration Act, that the minister's power to intervene is enlivened and the minister in his personal capacity is not bound by the regulations. For the reasons the minister outlined, he, therefore, was able to take into account not only the health issues associated with Dr Moeller's son but the broader contribution that Dr Moeller was making to the community, the community support for him, the shortage of medical practitioners in country areas.

I just want to take the opportunity to put on the record that the comments that appeared in the media not from Dr Moeller, I hasten to add, but from some commentators that the department was insensitive, was somehow prejudiced against Down syndrome children were simply quite wrong. My officers undertook their duties professionally. They had no option to do other than what they did. They were unable to take into account the broader considerations. Certainly, I reject any suggestion that they acted insensitively or improperly. They did their job professionally in the circumstances. As the minister has outlined, the family now have permanent visas, and it is pleasing that they are able to pursue their lives in Australia.

There are wider issues that this case has highlighted. There are in any given year quite a few decisions made in relation to refusal of visa applications on health grounds. As the minister has indicated, he has been in contact with the state governments as to whether or not they will support waiving the health requirements in cases like these given that the costs will primarily fall on health state systems and a reference to the Joint Standing Committee on Migration to look into the issue of people with a disability in the context of the migration health requirements.

**Senator TROOD**—Is it a test about a person having a medical condition, or is it a test about the costs of treating that medical condition or something else?

**Mr Metcalfe**—It is the latter. A person will fail to meet the health requirement in relation to a condition, but at the moment—and I stand to be corrected—the only condition that is of particular concern to our health authorities is active tuberculosis. In some other diseases there

may need to be restrictions placed upon people if they are in a teaching situation or in a hospital situation or whatever. In this particular case, it is the cost to the community of providing disability services or other medical services to an individual that is the assessed cost. That cost is assessed by a medical officer of the Commonwealth.

**Senator TROOD**—Is there a threshold or is it just that there will be costs?

**Mr Metcalfe**—No. There is a threshold, which I think is \$21,000 over the lifetime of that person. No doubt those sorts of issues—

**Senator TROOD**—It is a pretty low threshold, isn't it?

**Senator Chris Evans**—Basically anyone with a serious condition is above the threshold.

**Mr Metcalfe**—And, therefore, that is obviously where the minister is seeking the views of the parliamentary committee on that range of matters.

**Senator TROOD**—Minister, you are seeking views from the state government on that particular question. But do I take it that you are seeking the views of the parliament on this whole matter of—

**Senator Chris Evans**—Yes, I have done two things, and one of this was to talk to the states. There were efforts made under the previous government to work with the states to deal with the waiver question in special circumstances on a select number of visas and that never came to a conclusion in the normal manner of Commonwealth-state relations. This case brought to my notice for the first time that this issue was around. So I have written to the states indicating that I would like their cooperation. I have suggested a way forward. We have had positive discussions with I think all of them; but, again, it is dragging a bit. My view is that I will move the regulations for those states who have signed up rather than wait for everyone to come on board. I think that message is going to be conveyed in the next few days. These things can just end up slipping away, so I am keen to put those regulation changes in place.

The broader issue about how the health requirement operates in terms of disability and other health costs is, I think, something that has not been looked at for a long time and it needs to be looked at. I do not pretend that the answers to this will be simple, because they will not be. There is that balance between the contribution of the migrant and perhaps their family and the costs to the Commonwealth. One of the things that we have seen in a recent years, which we were talking about earlier, is an increasingly large number of people who come in on temporary visas who then seek to become permanent. These are people whom we encourage in on work, student or business skills visas. But the conditions under which they come in temporarily are not the same as those required for permanent visas. So you have people in the country who can meet the conditions for a temporary visa but who cannot meet the conditions for a permanent visa.

This was a classic case of where the grant of permanency involves the right to access healthcare and other services. I had actually been alerted to it a few months before, and I had started to make some inquiries. I had dealt with a similar case involving a nurse in Western Australia and also another case involving, I think, an engineer up in Queensland who had

children with disabilities who had come to me on ministerial appeal because there was no other way through the system.

**Senator TROOD**—Has that matter gone to the committee?

**Senator Chris Evans**—Mr Shorten and I are just finalising the terms of reference. I was also going to consult with the chair of the committee to make sure that we were all happy with the terms of reference. I made that public at the end of last year. The committee have a big terms of reference at the moment, and I want them to get on with that. I am encouraging Senator Boyce from your state to also become engaged in this because she has a longstanding interest in these issues, as has Senator Barnett. There are many people with an interest and some expertise in this issue around the parliament. It is going to be a complex and tough public policy decision, but I think it is worth tackling.

**Senator BARNETT**—Just on that point, we were discussing those matters and answering questions regarding them before the break. You have indicated that you will take on notice the costs of the medical assessment that has been undertaken. Thank you for that. In terms of the case overall, is there a report or a brief on the views and the engagements that took place between the department and the family? Have you prepared a report on that matter and, if so, can we have it?

**Mr Metcalfe**—I do not think we would have prepared a report after the event, but certainly there would have been records kept of the engagement between the family and the department concerning the contact that we had with Dr Moeller in relation to the advice that was provided to him about his options.

**Senator BARNETT**—I am not so much interested in the communications, but I am interested in the criteria that was used by the government and then, ultimately, by the minister in making his discretionary decision.

**Senator Chris Evans**—Senator, I think I have explained to you that there is no discretion for the department and so there is no criteria.

**Senator BARNETT**—I understand that.

**Senator Chris Evans**—Basically, once the costs are assessed by the health officer, the department and the MRT have no options. The criteria for the minister are in the public interest broadly, but there are no published or established criteria. It is the ministerial intervention powers. I have described them before as God-like. I am uncomfortable with some of them but this was a classic case of where perhaps the ministerial power was the only way of resolving what I think was broadly accepted as being a compelling case.

**Senator BARNETT**—Minister, would you consider the merit of preparing a draft statement outlining the reasons for your decision and then tabling that? This morning, you kindly outlined to us some of the reasons or the rationale behind your discretionary decision. In terms of alleviating some of the concerns in the community, particularly for families with Down syndrome children, you highlighted this morning how the department takes a conservative view of those costs, as in it looks at the maximum costs. I think that is useful information.

**Senator Chris Evans**—The department do not, Senator. It was done by the health officer.

**Senator BARNETT**—The health officer?

**Senator Chris Evans**—Yes, and the department then takes that advice.

**Senator BARNETT**—That is right. I do empathise with families of people with disabilities. I have a special interest in that area, and particularly in the families of children or people with Down syndrome. So I am just asking you to consider the merit of putting that on the public record.

**Senator Chris Evans**—Senator, the simple answer is that I do put a tabling statement down in the parliament when I use a ministerial intervention and grant a visa, and that tabling would have been done. But I think you will find that tabling statement unsatisfactory in terms of the detail you are looking for.

**Senator BARNETT**—It does not provide the detail in terms of the rationale for the decision you made.

**Senator Chris Evans**—No. I will take that on notice, but I am not sure we will get into the question of the minister having to provide a rationale for every decision they take. That is a big step in the process. What I want to be careful of is that what I do for one I will have to do for all.

**Senator BARNETT**—I know, but it does seem to be consistent with Labor's approach—that you try to avoid using a discretion but where you do use a discretion you support an open and transparent approach. That is what Labor have said publicly. I am saying that, consistent with that, I would like you to be consistent and make it public.

**Senator Chris Evans**—I will take it on notice, but I think I have indicated to you I am a bit reluctant to go down the path you have indicated because of the nature of the power. Both at the time and today I have given you, on the public record, my reasoning behind Dr Moeller's case. It would be a very big step if we were to go to the position of the minister having to provide detailed reasons for the thousands of ministerial intervention requests I deal with every year.

**Senator BARNETT**—Okay. Moving on, I know Senator Fierravanti-Wells has touched on the migration program and numbers and you have indicated that you will consider that in the budget context. I seem to recall that was exactly your response at the last estimates, that you would consider it in the budget context.

**Senator Chris Evans**—That is because it is the truth and government process, the same process followed by the Howard government when it increased the migration program in 11 successive years, Senator. That is why—

**Senator BARNETT**—Minister, I have not finished my question, so if you would let me finish.

**Senator Chris Evans**—The implication was that I was not doing anything about it. I am just being clear to you what the government process is, and that is in the budget context.

**Senator BARNETT**—Thank you, Minister, I am aware of that. That is why I am asking the question. You indicated you were doing it in the budget process at the last estimates. You are saying that again at this estimates. You have announced publicly the largest migration

intake in Australian history; that is my understanding, and the figures are on the public record. I ask you to advise the committee as to whether you have done any modelling or reviews or appointed any consultants to assist you in your deliberations regarding the budget context. Noting that the government has responded with a \$42 billion spending package, it is clear the change in economic circumstances in Australia and around the globe would cause many to reconsider their priorities and policies. Some might think that you should have acted perhaps sooner rather than leaving it to the budget to make that decision. Could you respond to that?

**Senator Chris Evans**—Yes. I think it shows a complete misunderstanding of how the system works, Senator. I have taken you through this twice now. The budget context is for the setting of next year's program—2009-10—so we are discussing how one goes about setting next year's program. As I have indicated to you, that is done in the budget process, as it was done in the 11 budgets of the Howard government—and, I might add for the record, they increased migration in every budget. Next year's program will be determined in the normal way on the basis of coordinating comments and advice from other departments such as Treasury and Finance. I have indicated publicly that it is my view that the government will fix on a lower level of overall migration as a result of responding to the economic circumstances.

**Senator BARNETT**—But you will not say how much lower.

**Senator Chris Evans**—Senator, I do not know that I should have to explain to you how cabinet government works, but the cabinet will make the decision. I have told you that a number of times. I cannot be any clearer. The cabinet, in the context of next year's budget, will make the decision. Until they make that decision, no, I cannot tell you, because the decision has not been made.

**Senator BARNETT**—Right. So what we do know, Minister, is that in this financial year there has been no change to the decision you made at the last budget. That is what we do know.

**Senator Chris Evans**—No, that is not right. Again, if you have followed the debate, we discussed this earlier. I made an announcement in December about changing the priorities of the program and providing for a floating cap dependent on employer nominations and the critical skills list. I can provide you with a copy of that press release and policy—

**Senator BARNETT**—Yes, we know that. We know that.

**Senator Chris Evans**—You just said there been no change, which is wrong.

**Senator BARNETT**—Significant change or substantive change.

**Senator Chris Evans**—It is significant; it is substantive. You have really got to get with the program. I will provide you with this information again, but there was an announcement made by me in December that sought to respond to the changed economic conditions.

**Senator BARNETT**—All right. Minister, can you answer the first part of the question, which was: have you undertaken any consultancies, any reviews or any modelling through the department or elsewhere to assist you in making your assessment?

**Senator Chris Evans**—Of next year's program or this year's program?

**Senator BARNETT**—Both.

**Senator Chris Evans**—I think I took you through, at the last estimates or the ones before that, the modelling that was done by Access Economics for last year's program which was designed to provide much better information—

**Senator BARNETT**—We know. Yes, you have; we are aware of that one.

**Senator Chris Evans**—You asked me the question, so I am giving you the answer.

**Senator BARNETT**—We know about the Access Economics report. Are there any other reports, consultancies or reviews?

**Senator Chris Evans**—Let me just finish the answer, because we seem to be having difficulties remembering. That Access Economics report provided up-to-date information on the economic impact of migration to this country by category of visa, whether they were skilled migrant, humanitarian et cetera. I have not sought to have that information updated for this year's program because effectively it was benchmarking economic impact. But, in formulating next year's program, we will be doing work—and have commenced that in terms of the budget process—with departments like Treasury, who will provide economic forecasting and advice, and DEEWR, who provide employment advice as to likely skills or labour shortages, labour demand et cetera.

Also, in terms of developing the December changes, I consulted with all the state and territory governments and with industry and trade unions in shaping the critical skills list, and that was agreed by the state governments. Some of them wanted more than I put on the list, I might say. They did not necessarily agree with the whole list, but there was a process with them that identified skills that were critical to them. I also made changes that gave them a greater capacity to exercise their discretion to bring in particular skills, because I recognised that the skills demand in Tasmania might be quite different from the skills demand in Western Australia, and state governments had been looking for some years to get greater flexibility to meet their local needs—and I provided that in those changes as well.

**Senator BARNETT**—So it is fair to say that you will be consulting with the states and territories, key stakeholder groups, DEEWR, Treasury and perhaps other government departments in the lead-up to the budget decision—

**Senator Chris Evans**—Most of that has already occurred, Senator. I have had formal consultations; the department has had them. I think I went to three states, but they have occurred in all the states and territories. I continually meet with industry groups: I discussed migration with ACCI and AiG in the last couple of days. But there was a formal consultation process, and submissions from states et cetera, and all that has been used in the build-up to the budget decision.

**Senator BARNETT**—Is there a formal consultation process with the key stakeholder groups?

**Senator Chris Evans**—Yes. As I say, there were public consultations, by invitation. At the one I went to in Perth we had 60 or 80 there, I think.

**Senator BARNETT**—How many consultations have been undertaken, and can you—

**Senator Chris Evans**—We can get that for you.

**Senator BARNETT**—Take it on notice to provide information on where they were, who attended, how many attended and the dates.

**Senator Chris Evans**—We can take it on notice or the officers can give you some broad information now if you want it.

**Mr Kukoc**—Every year a consultation has been undertaken in all the states. We had a meeting with key business groups, unions and state representatives in each of the states in each state capital during January. We also had consultation with a consultative panel that was established to help their review of skilled migration. The consultative panel meeting happened early in February this year.

**Senator BARNETT**—That is okay. You can take on notice the questions I asked specifically about who, when and where—the dates for those. That would be appreciated.

**Mr Kukoc**—Certainly, Senator.

**Senator BARNETT**—Do you want to add anything, Minister?

**Senator Chris Evans**—No. As I say, there is a full consultation process, which I probably expanded upon in developing the critical skills list. I have been at pains to stay in close contact with stakeholders as economic circumstances have changed and, quite frankly, that is just normal, rational behaviour, looking to make sure that we attune the migration program to our economic needs. I have been very keen to make it a much more demand-driven program rather than a supply-driven program. Under the old program, effectively, people chose themselves and we are trying to move to a program where we choose them, as it were.

**Senator BARNETT**—You may have touched on this earlier, but with the current figures, are you on track to meet the budget expectations in terms of numbers?

**Mr Metcalfe**—Yes, Senator. Obviously we have devoted a fair degree of resources into managing the program given that it is sourced from all over the world. We have regular work done to see how we are progressing and we are progressing along the lines of meeting the program.

**Senator Chris Evans**—To add to that—and this is probably more the direction of your question—as a result of the December changes I made I would expect us to bring the program in under the figures that were originally budgeted for. We focused on the critical skills list and employer nominations, and I am getting an update and we are monitoring that and—

**Senator BARNETT**—What is your estimate?

**Senator Chris Evans**—I would have to take that on notice. I got one of my staff to ask for this advice yesterday. The December changes prioritise the skills and the employer nominations. We indicated then that the cap would be a floating cap in the sense of seeing how that went when bringing in the final numbers. I expect it to be lower. I will take on notice the figure because at this stage a couple of decisions are still to be made. One of the things, for instance, is that we have had an increase in the spouse applications and we are tracking above the target on the spouse applications. I have had a request from the department to look at whether we take those numbers this year. Spouses have generally been uncapped.

**Senator BARNETT**—Thanks for taking that on notice, Minister. We are sitting here in mid-February—have you got the latest figures? Can you provide those figures to the committee in terms of meeting your budget announcement in May last year for this financial year?

**Senator Chris Evans**—I said I would take that on notice, Senator. As I say, the final number will not be known until the end of June.

**Senator BARNETT**—We do not have a six-monthly figure?

**Senator Chris Evans**—We could probably find you one on notice about the processing. The change I made allowed for a floating cap to respond to—

**Senator BARNETT**—That change was made in December, Minister. I am asking for the figures for the six months to 31 December.

**Senator Chris Evans**—I said that we could probably get that for you on notice. The change took effect on 1 January.

**Senator BARNETT**—I just thought that you might have the figures here.

**Senator Chris Evans**—We will get them for you during the day.

**Senator BARNETT**—Thank you.

**Senator FIERRAVANTI-WELLS**—How many 457 visa holders became permanent residents in 2007-08 or changed their status?

**Senator Chris Evans**—I think you will find that in Mr Birrell's report, Senator. You were reading that the other day. I think it is there. That was accurate; they were departmental figures. But I will get it for you.

**Mr Vardos**—The figures that we have at hand, which would require to be updated, are that, in the period 1 July 2008 to 31 December 2008, 18,380 457 visa holders and their families converted to permanent residents.

**Senator Chris Evans**—I think she was after 2007-08 figures, Peter.

**Mr Vardos**—I do not have them on hand.

**Senator FIERRAVANTI-WELLS**—Could you get them, thank you.

**Senator Chris Evans**—We will get those for you. They are available.

**Senator FIERRAVANTI-WELLS**—Can I just move to a couple of questions regarding the Deegan review. The review recommended the abolition of a minimum salary level in favour of market rates of pay for all temporary visa holders on salaries less than \$100,000. Minister, there is a quote in the *West Australian* from 15 November of you endorsing this recommendation. Will it be implemented, and when do you envisage that it will be implemented?

**Senator Chris Evans**—Senator, the draft regulations we talked about earlier contain have some of that information. I think, as you know, I have had a consultative committee of employers, state governments and unions who have done a lot of good work on this. It has worked really well and I think it is fair to say there is broad agreement on market rates. The difficulty you get is when you get to define what a market rate is. So it is a bit like

motherhood or world peace: everyone agrees with the general principle but, when you get down to it, there are a lot of wars going on.

We have had some pretty good engagement from the stakeholders on that and, effectively, the idea of market rates is to reinforce the philosophy that the previous government had when it introduced the scheme, which is that the foreign worker ought to be more expensive than the local worker. That is, if they are on the market rate and receiving the same salary and conditions then the cost of bringing them in and the related costs means they are more expensive. We do not want to make them so expensive that this prevents employers being able to access labour from overseas when they need it. But the principle is that if you are paying the market rate then you are paying the overseas worker at least the same as the local worker and therefore the on-costs or added costs of the overseas worker should make them more expensive. The concern we have had about the minimum salary level is that it is possible for the overseas worker to be paid less than the Australian worker, which might make the overseas worker more attractive. That has been the concern about the way the system is currently working. So that is why the market rate argument is being seen as the answer to that problem.

**Senator FIERRAVANTI-WELLS**—Certainly, the evidence that was given at that hearing did not quite seem to show those—but I do not want to get into all of that. I guess, to some extent, what you are saying is that you have evidence to show and which would suggest that requirement needs to be introduced, and you are introducing it as a part of the regulations.

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—One piece of evidence at that hearing seemed to be that in most of the classes of the 457 visas we are starting to see slippage down. There is the professional level, and that was the bulk of the 457s. There were issues raised about a \$75,000 level being that cut between—if I can put it in blunt terms—skilled and unskilled. Basically, you are putting it at \$100,000—is that what you are saying?

**Senator Chris Evans**—The draft regulations are out for comment. One of the things I have been keen to do, and I think this has been broadly supported, is to make the 457 wages and conditions framework the same as that under the industrial relations legislation. What we do not want is the immigration department trying to be industrial inspectors and enforcers.

If you have got a market rate, fundamentally that says, if you have got two nurses working in the same hospital, they are getting paid the same wages and conditions. The overseas workers are not undercutting and they can expect to be paid exactly the same as the Australian worker. The cost to the employer is having to pay to bring them in et cetera. So it will mean there is still a financial incentive for the employer to employ local labour first. We want to be able to say to employers that it is much simpler for them: employ workers at the market rate—what you are paying your other people—and therefore meet all the immigration rules by doing that. At the moment employers are sometimes unclear as we have got a separate set of regulations regarding minimum salary level and what applies with overtime. There are a whole range of complexities, whereas if you say to them, ‘If you’ve got an enterprise agreement, just pay them on the enterprise agreement,’ then that has some simplicity and has been, I think it is fair to say, broadly supported by those on the consultative group.

**Senator FIERRAVANTI-WELLS**—We will have a look at that. These matters will come up, in any case, when we go through and have a look at the regulations and any passage. I would envisage that those regulations may well have some sort of scrutiny.

**Senator Chris Evans**—There is lots of interest in it and they are widely available.

**Senator FIERRAVANTI-WELLS**—This is probably covered in the regulations, but how does the department intend to administer and/or enforce such an obligation? Are you setting out a framework in the regulations? Is that how you intend to do it?

**Senator Chris Evans**—That is the \$64 million question, Senator. You have nailed it on the head and I defer to the officer but, effectively, that is where the negotiation is. How do you make the market rate work? Mr Kukoc, do you want to give a bit of background?

**Mr Kukoc**—Essentially, the current undertakings have administrative sanctions attached, as you know, Senator. The new sponsorship obligations will have both administrative sanctions and civil penalties attached to them.

**Senator FIERRAVANTI-WELLS**—Yes, we laboured this at the hearing.

**Mr Kukoc**—In addition to the sponsorship obligations and paying a minimum rate of salary, which is likely to be defined as market rate and which will be part of that sponsorship obligation, it will be enforced both by administrative sanctions and, if necessary, through civil sanctions. There are some other circumstances in which sponsorships may be partly cancelled, so they are just applying administrative sanctions to those. When you read the draft regulations and how they are structured, you will see that sponsorship obligations have much stronger sanction powers attached to them. There is a lower level of other circumstances and other requirements that sponsors need to meet, and these will be enforced just through administrative sanctions.

**Senator FIERRAVANTI-WELLS**—The Deegan review recommended that the name of sponsors with 20 or more subclass visa holders be published on the DIAC website. Are you going to do that or does this system that you will put in place not need that to happen?

**Senator Chris Evans**—I did not catch the question.

**Senator FIERRAVANTI-WELLS**—The question was: in the Deegan review there was a recommendation made that the name of sponsors with 20 or more subclass visa holders be published on the DIAC website. Will you be doing that or do your new administrative—

**Senator Chris Evans**—I do not think there has been any decision in relation to that, Senator.

**Senator FIERRAVANTI-WELLS**—All right. I might just move to the Pacific guest work scheme. I am sure the minister will be thrilled to be asked questions on that.

**Senator Chris Evans**—I am happy to refer you to DEEWR.

**Senator FIERRAVANTI-WELLS**—Well, I did go to DEEWR. I went to other agencies.

**Senator Chris Evans**—In terms of our responsibilities, we are happy to help.

**Senator FIERRAVANTI-WELLS**—All right. Given the economic circumstances at the moment, is there an intention to revise the scheme?

**Senator Chris Evans**—Senator, I have not had a discussion with the Deputy PM that would allow me to answer that in any sort of fulsome way but, as you know, it is purely a trial and the numbers brought in this season were very small and that will obviously give us a range of experience. The evidence we have in recent times is that, despite some of the regions actually having slightly higher unemployment than some other areas, they have not been able to attract people to do this work and there has been a constant complaint from growers et cetera.

Obviously, these things will be monitored closely. While a full assessment will be done at the end of the trial, there is no doubt that at the end of this first phase people will have a look at how things are going and whether circumstances are changing. I think we got 50 in. For what period of time was it?

**Mr Kukoc**—The first 50 Tongans that have arrived are here for seven months, and then in the next financial year the whole pilot aims to bring in up to 2,500 Pacific Islanders over the three financial years. We are talking about around 600 people a year in two or three regions of Australia, so we are talking about very small numbers. The scheme was designed in such a way that, if there is no labour demand, the number of visas issued will be lower.

**Mr Vardos**—The group of 50 that have arrived will be here for the period from February to August this year.

**Senator FIERRAVANTI-WELLS**—It is interesting that the area that they went to was not one of the three pilot areas that you were looking at before. There seems to be quite a bit of confusion around this. I have to say that, even when I did go to the DEEWR minister, the answers that I got were not very organised—and that is an understatement. I am very concerned at the fact that, at the last moment, they have gone off to a place that was not even part of the pilot scheme. It seems to me that it certainly was not very well organised or at least there have been some problems with it.

**Senator Chris Evans**—I am not close to the detail, so I do not want to go responding in too much detail because I am not capable of that. I do think people need to just understand that, firstly, we are responding to demand from those fruit growers and local communities—and there are very strong representations from people like Mr Forrest and others—that say they cannot get their fruit picked and that they need that labour supply. Secondly, we said we would institute a trial. Trials include trial and error, and we will see how it goes.

A lot of effort has gone into trying to make it work well. There will be teething problems. That is why you have trials. So, yes, people have concerns, issues and experiences that they may not want to repeat; that is the nature of a trial. We will make a proper assessment at the end of it as to how it has gone. I think it is a bit unreasonable for some of the commentary to be ‘Well, it has not happened fast enough; it is not perfect—but we oppose it anyway.’ We said we would have a go at trying to meet the demand that had been there for years. There were very loud calls from the National Farmers Federation and others to try and meet that need with some casual labour brought in under such a scheme. We will be giving it a good go and we will make an assessment of how it goes in the coming period.

**Mr Vardos**—Could I just clarify one point. I am advised that Robinvale is a part of the Swan Hill region and so it is part of the pilot area.

**Senator FIERRAVANTI-WELLS**—Okay. Are you aware of the hire companies that brought in the workers—or is that a question to DEEWR?

**Mr Kukoc**—Sorry, Senator, could you repeat that question, please.

**Senator FIERRAVANTI-WELLS**—The labour hire company that brought in the workers—was it a labour hire company? If it was, which company brought them in?

**Mr Kukoc**—I think this question should be referred to DEEWR; it is more appropriate for them to respond.

**Senator FIERRAVANTI-WELLS**—Okay. Do we know the costs that were paid by the employer in this phase or as a part of the 50 that came out? On the last occasion I asked questions in relation to the costs that were actually going to be borne by the employer. Are you aware of those costs?

**Senator Chris Evans**—I think the difficulty we have got is that these are mainly DEEWR functions. This has happened from the start: because people are coming from overseas, it is assumed that it is an Immigration function. I think it might be useful if one of the officers explains to you what we do as part of this—

**Senator FIERRAVANTI-WELLS**—I am going to come to that, Minister, because I have got the evidence from the last estimates when we looked at the areas your department is responsible for. So I will come to that in a moment.

**Senator Chris Evans**—Okay.

**Senator FIERRAVANTI-WELLS**—But this is on an immigration related component of it. These people are here for seven months, but, once the almond picking—I understand that is what they have been doing at Robinvale—finishes, what happens next in terms of their visas? They are here for seven months; do we know what they are going to do when that finishes? Or are we going to see a situation where, if there is no work, it will potentially be open to them to stay here for a period of time? Can you explain to me how, logistically, that could happen.

**Mr Kukoc**—Under the special program agreement which the department signed with the relevant labour hire company, it is the labour hire company's obligation to provide work for six months and for 30 hours a week. The labour hire company will have to make the effort to provide work for the duration of those six months, for a minimum of 30 hours a week. If, for example, after two or three months, there is no more work available on that particular farm, the labour hire company will probably negotiate work on another farm. They can engage up to five growers in the scheme.

**Senator FIERRAVANTI-WELLS**—Again, just on a visa related issue, what processes have you put in place to ensure that the workers meet their visa requirements and not overstay? I think on the last occasion you were here I was advised that you were undertaking that as part of the briefing programs. What have you actually put in place to ensure that does not happen?

**Mr Kukoc**—These visa applicants have to go through standard health and character checks that we have for all other visa applicants. There is also a strong incentive for visa applicants and the sending countries to ensure that the people who come here for six months or seven months work do return to their country of origin, given that a condition of them coming back

here next year is compliance with the first visa. But there are those standard health and security checks. There are a number of incentives built into the design of the scheme that actually encourage people to return to their countries, because the whole point of the scheme was circularity—for Pacific islanders to go back to their countries and actually use the funds that they have earned during the six months to establish a business or support their families. So there are a number of incentives built into the scheme to encourage that return. In addition to the visa conditions, workers normally become entitled to a superannuation return on their departure from Australia, and possibly a tax return as well.

**Senator Chris Evans**—I do not think we answered the senator's question regarding what visa conditions are applied in terms of their work. She basically asked: if they did not have work under the labour hire firm, could they move and work elsewhere. It would be useful to run through the visa conditions.

**Mr Kukoc**—The visa conditions specifically stipulate that the work, under the special program agreement, is only for that particular labour hire company.

**Mr Vardos**—They cannot enter the general workforce, Senator.

**Senator FIERRAVANTI-WELLS**—No. I guess what I am asking is, if they finish what they are doing at the moment and there is no other work, or conditions deteriorate or other issues arise and not all of them have work, are we going to basically see these people sitting around for seven months—or the proportion of those seven months that they might not have something to do? It is about perception, Minister; that is where I am coming from.

**Senator Chris Evans**—The reality is that the labour hire firm is contracted to provide them with work and is responsible for paying them.

**Senator FIERRAVANTI-WELLS**—So they will have to pick up the costs.

**Senator Chris Evans**—So the labour hire firm will have a huge incentive to make sure they are working, I suspect. Also, the communities have said, 'Yes, we need them and we'll use them.' Those communities know that they will not be returning if they are not in fact being used. We think those parameters will work. If you said to me, 'What if the whole region is flooded and there is no work?' I think at some stage they would be returned if that work were not available.

**Senator FIERRAVANTI-WELLS**—Madam Chair, I will continue with the community relations program after lunch.

#### **Proceedings suspended from 12.30 pm to 1.30 pm**

**CHAIR**—We are dealing with outcome 1, output 1.1.

**Senator FIERRAVANTI-WELLS**—At the last estimates we looked at those aspects of the guest worker program that the Department of Immigration and Citizenship was especially involved in. Mr Vardos, I think you said that one of the goals of your community relations program was the development of a community engagement strategy targeted at social cohesion activities at the grassroots level. I think it is from outcome 2.

**Mr Hughes**—The officer concerned is at the table.

**Senator FIERRAVANTI-WELLS**—Ms Pope, yes. This is in outcome 2.

**Senator Chris Evans**—I think it is reasonable to deal with it all at once.

**Senator FIERRAVANTI-WELLS**—Ms Pope, how has our evaluation gone and what has the department done under this program?

**Ms Pope**—Thank you. I think the key thing is that we have had two sets of face-to-face consultations, in December and then again in February, with the communities in Griffith, Swan Hill and Robinvale involving, representatives of local government, church groups and growers. We have also had ongoing telephone discussions with them refining the approach that might be taken around community engagement activities. The intention is to fund a range of activities designed to promote positive community relations in those locations. The precise activities are being developed between the employers, local government, industry groups and the community organisations in those locations. Our expectation is that they will include sporting and other social activities that might involve local community groups such as the CWA, Rotary, the Lions Club and those kinds of organisations. The aim of the projects will be to improve mutual understanding and community understanding of different perspectives that people might bring to the table and to the circumstances they find themselves in in Robinvale and Griffith.

**Senator FIERRAVANTI-WELLS**—The portfolio additional estimates statements indicate that that funding of \$1.3 million effectively covers all of DIAC's responsibilities for this scheme across the portfolio.

**Ms Pope**—Not exactly. There is \$1.2 million over four years to deliver the community engagement activities. I can break that down over the forward years if that is helpful.

**Senator FIERRAVANTI-WELLS**—I see: the amount set out in 1.2 is your component of it.

**Ms Pope**—It is the community engagement component.

**Senator FIERRAVANTI-WELLS**—That is fine. Do we envisage that there are going to be problems? Everybody seems to have cooperated. Is that the general situation?

**Ms Pope**—I believe that is the sense. These are programs designed not to address an existing problem but rather to promote the continuation of a successful community and some mutual understanding between the groups as they go forward. That is in a social sense, not in a prescriptive, anti-racism way.

**Senator FIERRAVANTI-WELLS**—It is a voluntary social sort of sense?

**Ms Pope**—Exactly.

**Senator FIERRAVANTI-WELLS**—Thank you. It seemed the appropriate time to deal with that. On the last occasion it was mentioned that part of DIAC's responsibility was the health checks in situ in the countries. One of the issues that we raised was the availability of doctors in those areas. Obviously we are dealing with a small number of people, but were there any problems in dealing with those sorts of issues?

**Mr Kukoc**—No. We are talking about 50 visa applications. Even when the numbers ramp up to around 600 a year, we do not envisage many problems, given that we have panel doctors

in most of these countries, except for Kiribati. We have panel doctors in Tonga, Vanuatu and PNG.

**Senator FIERRAVANTI-WELLS**—Alright. I think the question that we raised last time about the reimbursement for ‘inviting participants to the pilot scheme’ is probably best directed to DEEWR. I think we have covered overstaying. I do not have any further questions in relation to the guest worker program. Thank you.

[1.36 pm]

**CHAIR**—We are dealing with 1.2, refugee and humanitarian entry and stay.

**Senator HANSON-YOUNG**—I have some specific questions and then some more general ones. I will start with the specifics, if that is all right. I have some questions in relation to West Papuan refugees Yunus and Anike Wanggai, who were deported in November last year to Indonesia. There was obviously a little bit of press around that.

**Mr Metcalfe**—Those people were not deported to Indonesia; they left voluntarily.

**Senator HANSON-YOUNG**—Okay. My understanding is that they are still there. It is their cases that I am particularly interested in today. Were there any other Indonesian nationals present when Yunus Wanggai was interviewed by immigration officials in Canberra?

**Mr Metcalfe**—I am happy to answer questions on this issue. The two folks you are referring to were in Australia on temporary protection visas and were very close to having resolution of status visas granted to them. I will ask Mr Hughes to answer your question in the broad sense of describing approaches that were made to the department.

**Senator HANSON-YOUNG**—It would be great if you could clarify the issue about leaving voluntarily.

**Mr Metcalfe**—Certainly. Mr Hughes can talk you through the process and then you can follow up with questions. It is important—

**Senator HANSON-YOUNG**—That we get the record straight.

**Mr Metcalfe**—Yes.

**Senator HANSON-YOUNG**—Fabulous.

**Mr Metcalfe**—You can then cross-examine on the details.

**Mr Hughes**—I will say something about the context. Of course, we have about 13,000 people given refugee visas a year. Most of them are offshore humanitarian visas; some are onshore protection visas. From time to time people given those visas choose to leave the country, like anyone else can do, possibly to travel to another country or to their home country. That is not unusual. We do not have any particular role in that. The only time that we have taken a role is in relation to people departing Australia who have temporary protection visas. The reason for that is that under the old, now abolished, temporary protection visa system, if you left, the visa expired; therefore, you did not have an automatic right of re-entry. If we became aware that people on temporary protection visas were departing and we had the opportunity, we would counsel them on the effect on their visa status if they chose to depart—that is, they did not have an automatic right of re-entry.

That was our role for the two Papuans you mentioned. As I recall it, we were given advice, I think from the Department of Foreign Affairs and Trade, that the two intended to leave. We wanted, as we have done with other temporary protection visa holders, to ensure they were aware of the visa implications of departing Australia. Therefore, a meeting was arranged to allow that. We had also arranged for their legal representative to attend that meeting.

**Senator HANSON-YOUNG**—A legal representative for the two refugees?

**Mr Hughes**—Yes, the person who had represented them initially in connection with their protection visa application, and I think also at least one person from the Indonesian embassy was present.

**Senator HANSON-YOUNG**—So there was one person from the Indonesian Embassy?

**Mr Hughes**—At least one.

**Senator HANSON-YOUNG**—At least one?

**Mr Hughes**—At least one, yes.

**Senator HANSON-YOUNG**—That was from the Indonesian embassy here in Canberra?

**Mr Hughes**—That is right.

**Senator HANSON-YOUNG**—If this meeting was about ensuring that the two people understood the implications of leaving in terms of not being able to re-enter Australia—and they had obviously sought protection previously because of issues back to their homeland—how confident are you that having other representatives in that meeting did not lead to any feeling that they had to go back to Indonesia?

**Mr Hughes**—I think the starting point on this is that we can only ask people if they would like to be counselled by us on their visa conditions. In other words, we cannot require a person to talk to us. It is just an offer that we make and that is the offer that we made.

**Senator HANSON-YOUNG**—Did you make it clear that there would be Indonesian officials at the meeting?

**Mr Hughes**—I think the people were in the company of Indonesian officials at the time and they said that they wanted to be accompanied by those people. We also suggested that it would be a good idea for their legal representative to be present, and that in fact happened.

**Senator Chris Evans**—This was raised with me also when there was concern from some of the community supporters about these two persons and their possible return to Indonesia. I was contacted by them via a couple of intermediaries. I stressed to the department that we wanted to make sure that they understood that they were close to gaining a status of resolution with their visas. As I recall the impediment was the fact that the gentlemen had to have another health check because I think he had TB or some other health issues. His visa had taken a little longer, but we wanted to make sure that they understood the conditions of the TPV and that they were only weeks away from being given a resolution of status visa automatically in terms of how we decided to close off the TPV regime. Under that visa they would then have the right to return; there would be different conditions. We were keen to make sure they understood that they would have, if you like, more rights or benefits in terms of residency in Australia if they awaited the award of that visa, which was basically automatic

subject to this health issue. But as part of that we did not want to just make sure we told them. We were also very keen to make sure—and I asked the department to make sure—that their legal representative, who I knew was acting for them, was able to access them and make sure they understood the impact of any decision to return in terms of their visa status. That was our obligation, and my understanding is that that occurred.

**Senator HANSON-YOUNG**—Do we know if there has been any follow-up by the department? Have you heard about how the family is going? Did they get on the plane, get off in Indonesia and that was it?

**Mr Hughes**—I have not heard anything.

**Senator HANSON-YOUNG**—So we have no information about their current situation?

**Senator Chris Evans**—I think some of the advocates are in contact. I had somebody report to me about how they thought they were going, but that is second-hand. Officially, we do not know. I know there were advocates they were close to in Melbourne who I assume are still in touch, but I am not sure.

**Senator HANSON-YOUNG**—In this meeting where the implications for their visa applications were articulated to both people—that is, that they were pending and it looked as though they were going to be successful based on the health tests—was there any discussion about their potential safety if they went back to Indonesia? Did the department have any discussion with them about that?

**Mr Hughes**—That was not the basis of the discussion. As I said, the discussion was about their visa status—what would happen if they left with a temporary protection visa, the processing in relation to the resolution of status visa and the difference that that would make if they left.

**Senator Chris Evans**—We became engaged when we were told that they were planning to leave. We wanted to make sure that we exercised our responsibilities and that they understood their status. We became involved only when we were informed that they were about to leave the country.

**Senator HANSON-YOUNG**—Correct me if I am wrong, Minister, but what I am hearing from you is that your responsibility starts and finishes with telling them what this means for their visas and visa conditions, not necessarily what may lie ahead of them regarding their personal safety?

**Senator Chris Evans**—I think that is right. We are saying that they were free to leave the country and they could act on their own judgment about those issues. We just wanted to make sure they understood their visa status and the fact that they were basically shortly to get permanent residency in Australia. Certainly, their legal representative was aware of that and we undertook to make sure that they had access to their legal representative so he could explain those things to them and that it was not just coming from the department. I was very keen to make sure that he got to speak to them, and that is what occurred.

**Senator HANSON-YOUNG**—Was there any time after that meeting for the legal representative to speak to them alone, in private?

**Mr Metcalfe**—My understanding is that that offer was certainly made to them. Mr Wanggai declined to have that meeting with his legal adviser.

**Senator HANSON-YOUNG**—What was the purpose of having the Indonesian embassy representative there?

**Mr Metcalfe**—Just to be quite clear: we did not invite the representatives from the Indonesian embassy; Mr Wanggai brought them with him.

**Senator HANSON-YOUNG**—Right.

**Mr Metcalfe**—As Mr Hughes and the minister have explained, the whole purpose of the meeting was to allow us to explain their visa circumstances to Mr Wanggai and his daughter. As it turned out, the daughter had in fact around that time been granted a resolution of status visa, which she still holds and which provides re-entry rights to Australia. Mr Wanggai's visa had yet to be finalised because of the health issue, but we certainly advised that it was close to finalisation. We advised him that should he leave before it was finalised and granted, he would be doing so on his temporary protection visa, which does not provide a right of re-entry. However, if he waited and decided to leave at some other stage then he would have that re-entry right. In those circumstances, the meeting was to ensure that that was well understood. From the briefing I have had from our officers present, I understand that that matter was reiterated on several occasions and was fully understood.

We have no powers to prevent a person from leaving Australia. Our meeting was purely to inform the couple of their visa situation. At the minister's request, we ensured that their legal adviser was aware of the meeting and in fact came up to Canberra to attend it. But Mr Wanggai arrived with two officials from the Indonesian Embassy, who were present at his request throughout the meeting.

**Senator HANSON-YOUNG**—Correct me if I have interpreted this wrongly: Mr Wanggai was offered the opportunity to have a private meeting afterwards with his lawyer and he declined.

**Mr Metcalfe**—That is right. I am advised that he declined a private meeting with his lawyer prior to the briefing.

**Senator HANSON-YOUNG**—Prior to the briefing?

**Mr Metcalfe**—Prior to the briefing. He was given the opportunity. At any time, if Mr Wanggai had wished to have a private meeting with his lawyer, that was between the two of them. There was no role for us to do other than ensure that the lawyer was aware that the briefing was occurring and he was able to be there for it.

**Senator HANSON-YOUNG**—Thank you. Australia is a signatory to the United Nations refugee convention.

**Mr Metcalfe**—Certainly.

**Senator HANSON-YOUNG**—We have ratified all the aspects of the convention.

**Mr Metcalfe**—We were one of the very first signatories to it.

**Senator HANSON-YOUNG**—Exactly, and we included it in Australian law. Can you outline for me the way that the department interprets this and therefore our obligations under the principle of nonrefoulement?

**Mr Metcalfe**—Certainly; the principle of nonrefoulement—I gather it is a French word.

**Senator HANSON-YOUNG**—Sorry, I am originally from Victoria.

**Mr Metcalfe**—I am from Queensland.

**Senator Chris Evans**—Like you, Senator, I do not do French things very well.

**Mr Metcalfe**—The principle of nonrefoulement is essentially that a person to whom a country should give protection should not be returned to a place of persecution. It is a fundamental principle of the refugee convention, and we obviously give effect to that. We have some small thousands of people applying for refugee status in Australia every year. Those applications are considered and determinations are made by the department and, on review, by the Refugee Review Tribunal. In this particular case, of course, these two folks arrived in Australia as part of a group of 43 persons, all of whom were granted refugee status by the department some years ago. At that time, the applicable visa that flowed from the refugee status determination was a temporary protection visa, and hence the circumstances about the conditions of that visa that we sought to explain to Mr Wanggai when we became aware that he was in fact seeking to leave Australia.

**Senator HANSON-YOUNG**—So how do you balance the obligation not to send somebody back to a place where they may or may not be safe? I guess that in some cases it is hard to tell.

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—Senator, be careful; we did not send them anywhere.

**Senator HANSON-YOUNG**—Yes, I completely take that on board.

**Senator Chris Evans**—We were advised that they were about to leave the country and we made strenuous efforts to ensure they understood their status in terms of immigration in this country. Their decision to leave—

**Senator HANSON-YOUNG**—Can I finish? Must we abide by these conventions only when we are sending people back as opposed to when people are perhaps leaving voluntarily, whatever the circumstances? Where is the line of duty of care?

**Mr Metcalfe**—Essentially the line is as the minister has described. In your very first comment you talked about them being deported to Indonesian. Of course that is not the case. They left of their own free will. There was no Australian government decision or order compelling them to leave the country.

Our obligations as to nonrefoulement are exactly that. We will provide protection and not forcibly remove from Australian territory people who are in need of international protection for grounds articulated in the refugee convention, such as a well-founded fear of persecution. But as Mr Hughes explained, there is a number of occasions each year when people who have been found to be refugees in Australia of their own free will choose to leave this country. There are no laws in place that prevent people from departing; there are no laws that would

preclude a person who had been found to be a refugee from leaving Australia, either to travel overseas or, in fact, to return to their country of origin. That is a personal choice and essentially that is what occurred in this particular matter.

**Senator HANSON-YOUNG**—I accept that. Putting this case aside, if somebody decides to leave of their own free will for whatever reason—perhaps their family back home is being threatened and they feel they have to be there because they have not been able to go through the process quickly enough to bring them out—and if the department feels it has a responsibility to inform them about their visa conditions, surely there is some duty of care to tell them about what that may mean for their safety?

**Mr Metcalfe**—I do not accept that. What I do accept, as the minister has described, is that, because of the particular nature of the temporary protection visa, which does not provide a right of re-entry to Australia, we adopt a practice in circumstances such as these, where we become aware through contact with the department that these folks are planning to leave Australia—or if in fact a person is detected leaving Australia at the airport—of one of our officers saying, ‘Do you realise that this visa does not allow you to come back again?’ By doing that, people are aware of their immigration status and what the visa does and does not do. That is what we did in this case.

As you said, there are many reasons that a person may choose to leave Australia. Their fear of prosecution, which was in our assessment well founded, may have diminished. They may have satisfied themselves in relation to that particular aspect. I am not talking about this specific case; I am just talking generally. They may have feelings in relation to other family members. There may be a whole range of subjective reasons why a person says, ‘Although I came to Australia and was found to be a refugee, I now want to go back to where I came from.’ As Peter Hughes said earlier, that is not an uncommon occurrence; it does happen.

**Senator Chris Evans**—The extra step was taken. However, we have no obligation as an immigration department to tell people—apart from the general travel advisory on the Foreign Affairs website—where they can and cannot go if they have a valid passport and are free to travel. But we did take extra measures on this occasion to ensure that these people had independent legal advice from their advocate, who had been responsible for advocating for their status in Australia.

So, beyond our normal procedure—which is to try to ensure that people understand their status—we arranged for their legal advocate, who is a well known and very capable advocate, to have access to them to ensure they fully understood what was occurring. If you like, they got some independent advice in relation to their immigration matters. I think we did all that we could to ensure they understood. We were particularly concerned to ensure that there was no suggestion that their resolution of status visas were not going to be granted, because they were imminent. It turned out that the young woman got hers two days before she left. We just wanted to ensure that they understood that there was no problem in that regard and that by leaving without those visas they lost the right of automatic return.

**Senator HANSON-YOUNG**—Okay. I am using this case as an example, I guess. However, even if the department were deporting somebody for some reason, it would not do it if it felt there was a threat to their safety and that persecution was likely. If you decided not to

deport somebody because of that, why would you not tell people that their safety may be at risk?

**Mr Metcalfe**—As I have said, we made an expert decision based upon the circumstances at the time they applied for protection in Australia. We agreed, according to the appropriate legal principles, that they had a well-founded fear.

**Senator HANSON-YOUNG**—Apparently all 43 did.

**Mr Metcalfe**—That is right.

**Mr Hughes**—Yes.

**Mr Metcalfe**—At the time we made that decision. As I said, circumstances can change. There can be a whole range of reasons why a person may decide they no longer have that fear. It is not up to us to provide an ongoing commentary to people about whether or not that fear should exist. We satisfied ourselves that they understood that there was absolutely no reason to leave Australia because of any issues to do with their visas. They understood that there was an issue as it turned out that applied only to the father because at that stage he had not finalised his resolution of status visa. But it was very close to finalisation and would be granted. From an immigration visa perspective, they were very welcome to stay in Australia. The issue of whether we should have some role in providing an ongoing commentary to people—

**Senator HANSON-YOUNG**—That is not necessarily what I am suggesting, by the way.

**Mr Metcalfe**—or provide advice to them as to their circumstance should they return home is frankly not appropriate for us to do.

The final point I might make is that if my officers had detected that in fact there was some suggestion that the folks were being improperly held or detained—sort of kidnapped—then of course we would have immediately alerted the police about that matter. It is a criminal issue as to whether there has been an element of lack of consent. From everything I have heard and seen, given the fact that we made arrangements for their legal representative to meet with them, there is absolutely no suggestion that they did not leave other than of their own free will.

**Senator HANSON-YOUNG**—I will leave it there. I am not necessarily convinced that the department has no duty of care to inform people, that if it were their choice the department would not necessarily advise them—

**Senator Chris Evans**—We cannot make that sort of judgement. First, often we do not know that people are returning. People are not required to consult us before returning to their country provided they have a valid passport and visa. They just make application and get on the plane. We might check their passport and record that they have gone, but we are not responsible for them in that way.

The other thing, of course, is that the circumstances in the home country might change. Afghanistan is a classic example. We were granting protection visas because of well-founded fears. Just after the turn of the century—2001-02—the situation stabilised in Afghanistan and many people were found not to be owed protection at that time. Many returned voluntarily; many who had been granted visas returned. The situation in Afghanistan has got worse again

and you would make a different call. I think we have one client now on Christmas Island who returned to Afghanistan, after being granted a TPV, and has now decided to return by unlawful means. People make their own decisions.

**Senator HANSON-YOUNG**—I accept that but, if the department is making a determination on individual cases as to whether somebody should be granted protection because they have a well-founded fear of persecution, surely if that person is going to return to the same type of situation the department should at least check its books?

**Mr Metcalfe**—As a matter of course, the answer is no. But, as we said, on this occasion we went to some lengths to ensure that they were properly and fully informed of their legal rights in relation to immigration. We also went to some lengths to ensure that they had access to their legal adviser. I think it is fair to say that we did more on this occasion than would normally be our process and much more than is required in terms of our duty of care.

**Senator HANSON-YOUNG**—I accept that, but it has been reiterated numerous times by all three of you that that meeting was specifically about the visa conditions; it was not about the safety of those people.

**Mr Metcalfe**—We placed no limits on what the legal adviser could say in that meeting. I do not know what the legal adviser said, but he was free to say anything. He was their adviser. As the minister said, not only did we ensure that they were informed as to their visa status—which was our business—we also ensured on this particular occasion, because we knew of the planned departure, that their legal adviser was able to be present and say whatever he felt like saying. A specific offer was made for a private meeting between Mr Wanggai and his legal adviser, but Mr Wanggai refused it. But the legal adviser was present in the wider meeting and it was open to him to say anything he wished to say. Frankly, it is more appropriately his role to provide that advice. We made sure that occurred.

**Senator HANSON-YOUNG**—I keep referring to it as ‘duty of care’, but I have no other terminology that fits.

**Mr Metcalfe**—I would submit that there is no duty of care. You might be asserting, Senator, that there is some sort of moral obligation. We do not believe there is a legal or moral obligation or, indeed, that it would be appropriate for us to start trying to talk to people about whether or not they should leave Australia.

**Senator HANSON-YOUNG**—What we have is an obligation under the international convention, which says that we do not send people back—

**Mr Metcalfe**—Forcibly remove someone.

**Senator HANSON-YOUNG**—I accept that. We do not do that. I would suggest that we have a duty of care not to send somebody back to a situation where we know their safety is in danger.

**Senator Chris Evans**—The key difference is between a decision made by this government, or the government of Australia, to return someone against their will—that is, for us to take responsibility for sending them back—and a decision made by an individual exercising their own free will to make their own travel plans. That is a very big difference.

**Senator HANSON-YOUNG**—So if it is not an immigration department responsibility, is it a Foreign Affairs responsibility?

**Mr Metcalfe**—No.

**Senator HANSON-YOUNG**—So we have no responsibility to tell people leaving the country that they are in danger?

**Mr Metcalfe**—The extent to which the Department of Foreign Affairs and Trade take that role is in relation to its consular responsibility for Australians. They obviously provide advice about whether it is advisable to travel to certain parts of the world. That is a broad service provided by that department.

**Senator HANSON-YOUNG**—But it is not only based on an individual.

**Mr Metcalfe**—It is then up to an individual. If you were to read the travel advisory about Bali, you would probably not go there. However, 300,000 Australians ignored that advice last year.

**Senator HANSON-YOUNG**—Okay. I think I have fleshed it out as much as I can. I do not accept that it is as clear cut as perhaps the department manages it.

**Mr Metcalfe**—We have no vested interest in this matter. In fact, we were the folks who found the group of 43 to be refugees. We take our obligations under the convention extremely seriously. Yesterday, today and tomorrow we have in Australia the United Nations High Commissioner for Refugees, Mr Guterres. He has described Australia as a model country and as having world's best practice in relation to asylum and resettlement issues. We take our jobs very seriously. I know you are not saying it, but I would resent any suggestion that my officers were less than diligent in their jobs. They did their job very professionally and appropriately. We went the extra mile to ensure that their legal adviser was able to speak with the gentlemen concerned. But, ultimately, if an individual decides they want to leave Australia, that is their own responsibility.

**Senator HANSON-YOUNG**—I am not suggesting anything in relation to whether the department did something right or wrong based on the laws, regulations and your policies. What I am interested in is the fact that there is a feeling that in cases such as this some people are returning to places where if Australia wanted to forcibly remove them they would not be sent because of threats to their safety. In terms of the international convention, I think it is a little greyer.

**Senator Chris Evans**—That leads you to the logical position that I did not think was your traditional position in terms of civil liberties, that we should tell people that they are not allowed to travel to certain countries.

**Senator HANSON-YOUNG**—That is not what I am suggesting.

**Senator Chris Evans**—That is where you get to in the end.

**Senator HANSON-YOUNG**—No, it is not. What I am suggesting is that, if the department has made a decision to grant somebody protection based on threats to their safety and persecution, surely that is information you should then share with that individual.

**Senator Chris Evans**—They know that when they are granted the visa based on what they tell us.

**Senator HANSON-YOUNG**—Except that it was not raised in this meeting.

**Mr Metcalfe**—Let me go through it again. We made a decision two or three years ago in relation to material provided to us at the time by this man and other members of the group about their circumstances. We received submissions from their lawyer. Based upon all that we made an assessment at that stage that they met the conditions of the refugee convention. If we had then proceeded to remove them from Australia we would clearly have been in breach. Certainly, that did not happen. They were granted temporary stay in Australia. Pursuant to changes initiated by the current government, they then had access to resolution of status and permanent residence.

**Senator HANSON-YOUNG**—As opposed to permanent protection?

**Mr Metcalfe**—It is the same thing—permanent protection, permanent residence. It is the right to live in Australia permanently and to come and go from Australia as they wish.

**Senator HANSON-YOUNG**—I am not suggesting that we limit that. I am suggesting that I think it is strange that you have a meeting with somebody to tell them about the limits of their visa, but yet do not mention to them that perhaps it is not the safest thing to do to return.

**Senator Chris Evans**—That is what their legal adviser is for. That is why we made sure they had an advocate, a person who could advise them on their broader circumstances and their options in relation to migration law. To be fair to us, that is why we went the extra yard. Again, people are responsible for their own decisions. We had no concerns that that was not their decision.

**Senator HANSON-YOUNG**—And you felt that in that situation and that environment that they made their own decisions and they had access to all that information. There was no—

**Mr Metcalfe**—Yes, we did. As I said earlier, there was no suggestion whatsoever that there was any element of unwillingness or compulsion. I am not sure whether you are aware, Senator, but there had been a report made by some people that the family had sort of disappeared. That was referred to the AFP, who met with the couple and satisfied themselves that they were doing everything of their own free will. We had that information at the time. I am not suggesting that that would have changed what we did. But, ultimately, if you decide to do something, that is your decision. In relation to the extent to which the government should provide information about that issue, we described where we thought it was appropriate to ensure that they really knew that they were very welcome to stay in Australia. Ultimately people have lots of reasons to travel and do different things, and they clearly came to the view that this was something they wished to do. There was the backstop of their legal adviser being present and able to talk to them as well, which he did.

**Senator Chris Evans**—I reiterate that the young woman has return rights under her residential visa.

**Senator HANSON-YOUNG**—That is the daughter.

**Senator Chris Evans**—She has re-entry rights for five years as a result.

**Senator HANSON-YOUNG**—I turn to a separate case. What about somebody who has not been able to fulfil the requirements and is therefore not able to be granted a protection visa and is in detention? They are told that they have not been successful and that they will have to be deported. When they request to be deported to a different country, which I know is a sticking point anyway, what are the obligations under this international convention to ensure that we are not compromising their safety?

**Senator Chris Evans**—Do you mean to a third country?

**Senator HANSON-YOUNG**—Yes.

**Mr Hughes**—I think it depends very much on the circumstances of individual cases. It is very hard to give a generic answer.

**Senator HANSON-YOUNG**—Yes.

**Mr Metcalfe**—The fundamental point is that of non-refoulement, and that a person would not be removed to a place where they would suffer persecution on the grounds articulated in the convention. If there is such a case or issue in mind, we would be happy to talk to you about it. But the general principle is that a person is deported only to safety, not to harm. That is the basic proposition.

**Senator HANSON-YOUNG**—Okay. What is the position of the department when they have found out about people who have returned? I accept that a lot of the documentation of particular cases where this has happened is about people who were returned to their country of origin by the previous government.

**Senator Chris Evans**—I have returned a great many, too, Senator. I have to fess up. The whole basis of the immigration system is to have integrity, and that involves returning people who are not found to have a right to stay.

**Senator HANSON-YOUNG**—Okay. What is the position of the department when you find out, or it is reported, that somebody who has been returned for legitimate reasons—because they did not fill the requirements of a protection visa—find that their safety is compromised? What does the department do in that case?

**Mr Hughes**—If individual cases are raised involving people who have been returned and who find themselves suffering what would amount to persecution if they were outside their country, we examine each situation a case-by-case basis to see if we accept the claims of the situation and whether we think there is anything we should do for them.

**Senator HANSON-YOUNG**—Okay. Do you try to make contact with them?

**Mr Hughes**—Again, it is very much a case-by-case situation depending on what has been raised with us. There have been occasions where community advocates have raised cases of people who have been returned to a country and who find themselves in particularly difficult circumstances that might amount to a refugee claim or to a very strong humanitarian claim. On occasion we have brought the people to Australia on visas.

**Senator HANSON-YOUNG**—Do you have numbers? Do you know how many people you have reports about, who have been removed from Australia and then believe that they were deported to unsafe conditions?

**Mr Hughes**—I do not have specific numbers.

**Senator HANSON-YOUNG**—Does the department keep track of any of that?

**Mr Hughes**—Whenever issues are raised with us, we look into them.

**Senator HANSON-YOUNG**—Yes, but you do not record them?

**Mr Hughes**—We do, but not necessarily in terms of a continuous statistical series of what issues have been raised with us.

**Senator Chris Evans**—There are a couple of things to say. One is that because claims are made does not necessarily mean they are true.

**Senator HANSON-YOUNG**—That is my point. What action is taken?

**Senator Chris Evans**—The department's capacity to inquire into such things is sometimes quite limited in terms of asking questions about a foreign national in a foreign country. Our capacity to demand records or accounting for actions is limited.

A couple of reports have been made more recently about people who have made claims that we returned someone to a certain country 10 years ago and they were attacked recently. The implication is that somehow we should take some responsibility for that, et cetera. Of course, the reality is that people are returned to what are judged to be safe situations at the time. Situations have deteriorated in lots of countries and people's personal circumstances have changed. They might have come into difficult times as a result of their own activities. There is a range of things. All we can do is to make an assessment at the time that the return is safe.

If concerns are raised by advocates about particular cases where we think we have some responsibility, we will make inquiries. Since I have been minister, I know we have intervened on a couple of occasions. Fundamentally, there is a bit of an argument around that somehow once we have returned someone we ought to take an ongoing duty of care for them. I think that sort of stretches it beyond what is reasonable. If there is a serious concern raised, we follow it up. Edmund Rice have raised some concerns with us and we are following them up. There are a couple of other cases, one of which will be reported on publicly shortly, where we bent over backwards to rectify what was clearly an untenable situation. But I do not want to suggest that somehow we are able to monitor or take responsibility for people—

**Senator HANSON-YOUNG**—I am not suggesting that.

**Senator Chris Evans**—Some advocates have. I just want to say that there is a limit to what we can do.

**Senator HANSON-YOUNG**—Absolutely. I am not suggesting that. I was wondering: what is the process when somebody makes a claim or it is reported that somebody has been deported to an unsafe situation? We all know that there are plenty of reports out there at the moment. I guess it would be interesting to see some type of figure about the number of people who were removed because they were not given visas for whatever reason—obviously they did not qualify, they did not fulfil the requirements—and who have reapplied and have been given a visa after they have been deported?

**Mr Hughes**—That would be a very small number, but I can take that on notice and see.

**Senator HANSON-YOUNG**—It would be good to know which years they were denied entry and which years they were successful.

**Senator Chris Evans**—Of course, the obvious point to make is that the circumstances may have changed.

**Senator HANSON-YOUNG**—I accept that.

**Senator Chris Evans**—I use the example of Afghanistan again. Someone who applied in 2002 might well have been rejected, but if they applied now they would be accepted.

**Senator HANSON-YOUNG**—I accept that it is a constantly changing world. I think that is enough from me.

**CHAIR**—That is output 1.2 finished for you?

**Senator HANSON-YOUNG**—Yes.

**Senator FIERRAVANTI-WELLS**—I might just ask some questions in relation to those Iraqis I referred to before. I was told to refer to output 1.2, so I will ask those questions now.

**Senator Chris Evans**—This is the LEEs?

**Senator FIERRAVANTI-WELLS**—This concerns the announcement you made in April last year that you would adopt a new visa policy to enable permanent resettlement in Australia of locally engaged employees and their families at risk because of their engagement with the Australian government.

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—I think it was anticipated that up to 600 visas would be granted. Have any Iraqis arrived in Australia since that announcement?

**Senator Chris Evans**—Yes, certainly.

**Mr Hughes**—I will ask one of my colleagues to get that figure. It is very close to that figure. It is a bit over 400 locally engaged staff members and their families. That includes family members coming with them.

**Senator FIERRAVANTI-WELLS**—Okay. What was the selection criteria adopted by the department in that respect?

**Mr Hughes**—The selection criteria was really based on people's association with the defence forces and being at risk as a result of that association. That is not something that we as a department were in a position to identify. We relied on the Department of Defence and the Australian Defence Force to identify the cases for us, and people were subject to other usual health and character requirements.

**Senator FIERRAVANTI-WELLS**—Thank you. I guess if more than 600 had been identified then perhaps you may have looked at that.

**Mr Hughes**—That is correct. Initially it was only an estimate based on the Defence Force's view of the number of people that they had been associated with over several years of Australian engagement and whether they would be at risk, and, of course, ultimately whether the people wanted to take up the offer. Obviously some people would be happy to remain

where they live and not necessarily take up the offer. It was always an estimate and at this stage a bit over 400 people have taken up the offer.

**Senator FIERRAVANTI-WELLS**—Has this required assistance from and coordination with the Iraqi government? Has something like that been needed?

**Mr Hughes**—I do not know that there had to be a great deal of Iraqi government involvement apart from passport documentation for the people concerned. Other governments that have had armed forces in Iraq have also done this.

**Mr Metcalfe**—In order to undertake a fair bit of the initial processing of this group, we had two of our officers actually move into Iraq. They were based at the US air base where the Australian force was also present. Mike Fitzgerald from the Australian Embassy in Teheran and Pat Dever from the Australian High Commission in Islamabad did a truly outstanding job. They were recognised in our internal Australia Day awards this year. They also had the opportunity to meet with the minister and his staff. It was a major logistical exercise undertaken very professionally in quite difficult circumstances. I would like to place on the record here our appreciation for their great work.

**Senator Chris Evans**—Not only did they do a fantastic job but they have some great war stories as well, if you have the chance to have a cup of tea with them.

**Senator FIERRAVANTI-WELLS**—Have the Iraqi authorities expressed any concerns regarding the program, particularly in terms of loss of workers and capacity at a time when they are trying to build their economy? Has this arisen as an issue or have concerns been raised about Iraqis coming out to Australia?

**Senator Chris Evans**—They have not been raised with me. I had a chat with the Iraqi ambassador earlier last year, but it was more about thanking us for our support and the general brain drain, or skill drain, in Iraq.

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—But that was not in relation to the LEEs, who tend to be translators and/or other people who have assisted the defence forces. It was more generally about them trying to stabilise the country and rebuild. They were concerned that they were losing a lot of their highly skilled people who were going to safer environments. In a general sense, he raised it with me, but it was certainly not in relation to the LEEs. The point he was making is often made to us by overseas governments—that we run a skilled program that seeks to attract their best and brightest to Australia. It does not always go down well with foreign governments because we have been quite successful at it. But no concerns have been expressed to me. I will take the question on notice in case the foreign affairs minister or someone else has had some representations, but I do not think so.

**Senator FIERRAVANTI-WELLS**—Are you aware of instances of persecution as a result of Australian forces being assisted? Have we had to directly intervene to help any of those individuals?

**Mr Hughes**—I think that question might be best addressed to the Defence Force. We generally took people identified by them as potentially at risk. I think they would be in a better position than us to know whether any of them have suffered from a direct association.

**Senator Chris Evans**—This is something that was decided by the government, by the cabinet. I think it was based in part on our experience in Vietnam and what was I think an understanding that perhaps we did not do the right thing when we left in terms of a lot of the people who provided assistance to us. I know that the Prime Minister had a very strong view that we had an obligation to people who provided essential assistance where there was fear that they might suffer some sort of retribution or disadvantage. Defence was given the role of identifying those persons. There did not need to have been actual persecution, as it were. But people came forward who were of the view that they might be at risk and they preferred to take the visas being made available.

**Senator FIERRAVANTI-WELLS**—Are any settlement requirements attached to this special form of visa?

**Mr Metcalfe**—They were not refugees, as such. But we treated them in a similar way in terms of access to resettlement assistance on arrival in Australia, access to accommodation and other services and support and those types of arrangements. That was the set of circumstances that applied to the groups as they arrived here.

**Senator FIERRAVANTI-WELLS**—Following on from Senator Hanson-Young's views, of course they are free to return to Iraq at any stage in the future if circumstances were to change.

**Mr Metcalfe**—I understand a few may have already gone back. It is purely a subjective issue. People may have a whole range of reasons for wanting to be part of the program. Ultimately, if they choose to return it is a personal decision. There is no compulsion on them to return; there is no requirement for them to return. They are very welcome in Australia. I am sure they will make fine citizens in due course.

**Senator FIERRAVANTI-WELLS**—That concludes that line of questioning. I will move now to Refugee and humanitarian entry and stay. What is the current official target for humanitarian refugee intake for this financial year?

**Mr Hughes**—The planned program is 13,500 for 2008-09.

**Senator FIERRAVANTI-WELLS**—Do we have ongoing figures?

**Mr Hughes**—The program comprises 6,500 refugee places, which included a special one-off allocation for Iraqis that the government made for 2008-09. The balance is the Special Humanitarian Program, and some of that balance is made up of protection visas granted onshore. The geographical source balance is 33 per cent from the Middle East and south-west Asia, 33 per cent from Africa and 33 per cent from Asia. That is the planning at this stage.

**Senator FIERRAVANTI-WELLS**—And you are not planning to review any of these targets?

**Mr Hughes**—No, we are not.

**Senator Chris Evans**—Successive governments have tended to run the humanitarian programs separately from the general migration program and it has not been treated as sensitive to economic conditions. We have tried to run a stable planning level. As you know, we made commitments to the UNHCR about long-term resettlement of particular protracted

cases. We try to keep a stability about the program. That is why I think the Australian program has been so well regarded internationally for many years.

**Senator FIERRAVANTI-WELLS**—I have heard the comments made by the UN High Commissioner for Refugees and I think the implication was that it has been run quite well over a long period. I have heard his comments in recent days and, despite the commentary in the past against the previous government in this area, I certainly read into those comments that it is a program we have run very well as a country over quite a number of years.

**Senator Chris Evans**—If you were to ask your shadow spokesperson for immigration affairs, who was at a dinner I hosted for the high commissioner last night, she would tell you that that was exactly the point I made in my remarks. Mr Bruce Baird, head of the Settlement Advisory Council, was there as well. I also made the point that the former Prime Minister used to hide his light under a bushel a bit about such things—the fact that he ran a strong humanitarian migration program and, in fact, a very strong skilled migration program, which he increased each year for 11 successive years. I do not think the general public understand what a strong migration man he was. I give him due credit at every public opportunity. We have had bipartisan support for that policy for many years, and long may it continue.

**Senator FIERRAVANTI-WELLS**—Thank you for those comments.

**CHAIR**—Let us go back to questions.

**Senator FIERRAVANTI-WELLS**—Under this program, how many have arrived so far this financial year?

**Mr Hughes**—I can give you the visa grants. Arrivals is a somewhat different figure. I think we are broadly on pro rata with visa grants. If I cannot get the figure this afternoon, I will take the question on notice.

**Senator FIERRAVANTI-WELLS**—I was referring to the humanitarian refugees.

**Mr Metcalfe**—We can give you a progress report on how many visas we have granted. But there is obviously a lag time between the grant and arrival.

**Senator FIERRAVANTI-WELLS**—I appreciate that. Just take that on notice. Would you also outline the country of birth of entrants through the program for 2007-08 and the total so far in 2008-09? The annual report refers to offshore visa grants by the top 10 countries of birth for 2006-07. Would you provide an update for those?

**Mr Hughes**—I can tell you now that for 2007-08 the top five countries of birth were Burma, Iraq, Afghanistan, Sudan and Liberia.

**Senator FIERRAVANTI-WELLS**—Thank you. Are any countries or communities targeted for the intake specifically or has it been as is dictated by the UN?

**Mr Hughes**—There is a combination of factors. The program under the previous government and the current government is formulated taking into account the UNHCR's advice on areas of the world where they believe refugees are most in need of international resettlement as opposed to local integration or return home, views of Australian community groups and also those people nominated under the Special Humanitarian Program through

contacts in Australia. That combination of effects dictates where places are broadly allocated and the changing geographical patterns of resettlement.

**Senator FIERRAVANTI-WELLS**—How many onshore protection visas have been applied for? Mr Metcalfe, I believe you are going to provide me with that information.

**Mr Metcalfe**—Did you say onshore visas?

**Senator FIERRAVANTI-WELLS**—I want the number of onshore protection visas that have been applied for to 2008.

**Mr Hughes**—I can give the figure for the first half of the current financial year. There were just under 2,900 onshore protection visa applications in the first half of the current financial year.

**Senator FIERRAVANTI-WELLS**—What is your current protection visa case load?

**Mr Hughes**—I would have to get the cases on hand for you separately.

**Senator FIERRAVANTI-WELLS**—Thank you. I think you have a sensitive case protection visa register. Is that ongoing?

**Mr Hughes**—We have traditionally kept a list of the more sensitive cases passing through the system. I believe we still have that.

**Senator FIERRAVANTI-WELLS**—Is the number increasing or decreasing in that category?

**Mr Metcalfe**—I have not looked at it in the past week or so. But that is purely an internal device to ensure that senior folks are aware if there are any particular sensitivities, high-profile applications or anything like that. Whether it is bigger or smaller is probably immaterial. It is designed to ensure that senior folks in the system are sensitive to the sorts of applications we might have on hand.

**Senator FIERRAVANTI-WELLS**—What is the increase in the number of unauthorised boat arrivals since the abolition of the temporary protection visa?

**Senator Chris Evans**—I think—

**Senator FIERRAVANTI-WELLS**—There has been an increase.

**Senator Chris Evans**—You are right. I think it is 14 over the comparison of 2007 to 2008, but I will double check the figure for you. I think you will find that under the last Howard government and in the first year of this government the difference was about 14, but I will get the exact figures for you of unauthorised boat arrivals. I think we have gone across the borders of outputs, but we will get Mr Correll to give you the figures for 2007 and 2008.

**Senator FIERRAVANTI-WELLS**—Have I have strayed over to 1.3?

**Mr Metcalfe**—We can tell you that, in 2007, 148 people arrived without authorisation by boat and, in 2008, 161 people arrived without authorisation by boat. The minister mentioned the figure 14. I think the figure is actually 13.

**Senator FIERRAVANTI-WELLS**—I will ask one more question here and then I have some other questions in relation to 1.3. One of your fact sheets entitled ‘Abolition of temporary protection visas’ states that the evidence clearly shows that TPVs did not have any

deterrent effect; indeed, there was an increase in the number of women and children making dangerous journeys to Australia. Can you give me the evidence that you used to make those claims?

**Senator Chris Evans**—I will see if we have the exact numbers for you. But in the next couple of years following the introduction of TPVs, there were record numbers of arrivals. If we do not have the file, I will get it from my office. I think the years succeeding its introduction saw very large numbers of arrivals. The other reference there is to the fact that there was a suggestion that, because of the restriction on capacity to reunite with family, we had more women and children coming on the boats. They increase as a proportion of those leaving. I know I have those figures somewhere.

**Senator FIERRAVANTI-WELLS**—That is fine. We are going on to the next program. I refer again to 1.2 and safe haven. I know that we will come back to border security. How many people have been granted visas through the safe haven program since the change of government? Do you want to take that on notice?

**Mr Hughes**—I think we should take that on notice.

**Senator Chris Evans**—I need to make the point that we often get these questions based on the change of government. I suspect that that is done for political reasons.

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—But the department actually do not record their figures on the basis of a change of government. They tend to report them on an annual basis for a financial year or a calendar year. While I know it suits some people to ask—

**Senator FIERRAVANTI-WELLS**—Okay, from 1 January 2008—

**Senator Chris Evans**—I will also provide the earlier figures for reference.

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

**Senator Chris Evans**—I am just making the broad point that figures are kept on the basis of normal collection methods, be they three monthly, six monthly or annually, not on the basis of a change in government.

**Senator FIERRAVANTI-WELLS**—Perhaps if you can provide the figures for 2007-08 and 2008-09.

**Mr Hughes**—I have found them in this voluminous folder. There are currently no people holding a safe haven visa.

**Senator FIERRAVANTI-WELLS**—Are there provisions to allow those who assist with the prosecution of people smugglers to be granted safe haven visas?

**Mr Metcalfe**—I will answer by saying a bit about the safe haven visa. It was a particular visa category created some years ago to cater for some new circumstances at the time, primarily the entry of a large number of Kosovans who were brought to Australia for temporary safe haven pending their return to their own region. The visa was also used for the 1,500 or so people who were evacuated by the Royal Australian Air Force from the United Nations compound in Dili following the referendum and prior to the formation of East Timor as a country. You will recall there were quite extraordinary events where militia were firing into a

compound where a large number of people had taken refuge. The ADF was able to work with the Indonesian and other authorities to secure their passage.

The feature of the safe haven visa is that it prevents other applications being made. It prevents a person from applying for refugee status and for other forms of visas to Australia. It requires a person to be notified of that and to accept those conditions. So it was, dare I say, a fairly unusual and specialised visa.

In relation to the question of whether it would be precluded from being used, I suspect the answer is no. But, if the question is whether there was someone who was cooperating in relation to people smuggling and part of the arrangement would be their having some sort of stay in Australia, I suspect we might look at other visa classes or categories to manage that situation.

**Senator FIERRAVANTI-WELLS**—I see.

**Senator Chris Evans**—The broad question relates to whether it was thought helpful to get a conviction against a people smuggler. In that case we would make every effort to ensure persons were available to assist in the prosecution.

**Senator FIERRAVANTI-WELLS**—It is similar to some of the trafficking—

**Senator Chris Evans**—It has not come to my attention that there has been a problem to date. Generally the prosecution has relied on the AFP and interception agency evidence, I think. There are certainly a number of cases currently on foot in Perth resulting from those more recent arrivals.

**Senator FIERRAVANTI-WELLS**—I understand that in 2007-08 certain individuals were granted humanitarian stay temporary visas—safe haven visas. Is that the case?

**Mr Hughes**—What would the number be?

**Senator FIERRAVANTI-WELLS**—I have 83.

**Mr Hughes**—I would have to check. There is sometimes confusion between the safe haven visa, which is the offshore visa that is granted in the circumstances that Mr Metcalfe mentioned, and a temporary visa, which they can sometimes transition to if the government wants them to stay longer. It may be that that figure relates to that onshore temporary visa.

**Senator FIERRAVANTI-WELLS**—I would appreciate it if you could take that on notice. Do you have any plans to continue on with or review the safe haven program?

**Mr Metcalfe**—The visa sits within our regulations, so it is a tool available to the department, or the government. As I said, it has been used in quite specialised and unusual circumstances in the past.

**Senator FIERRAVANTI-WELLS**—I do not have anything else on that.

**Senator TROOD**—When you were giving notice of the statistics about the visas granted I thought they were in relation to refugees. You had Liberia in that list, in fourth or fifth position. Was that an unusual circumstance—that is, is Liberia unusually high on the list? If so, how is that explained?

**Mr Hughes**—That was for the 2007-08 financial year. I am not sure that Liberia would necessarily figure as high in the list in the current financial year. I think there were specific circumstances of some caseloads in West Africa and countries neighbouring Liberia that the United Nations High Commissioner for Refugees was looking to resolve fairly quickly. I recall that there were a significant number of women at risk amongst that group. My recollection is that that would reflect a special effort that we and other resettlement countries were asked to make by the UNHCR in 2007-08. Although a country might pop up in the figures with a significant number in a particular year, it may not continue that way.

**Senator TROOD**—Is that the trend this year—is Liberia not as high on the list?

**Mr Hughes**—I have to take that on notice; I do not know that off hand. I recall that there were special circumstances in that year and a request was made by the UNHCR to deal with a group of people who needed a solution fairly quickly.

**Mr Metcalfe**—Earlier on I referred Senator Fierravanti-Wells to this document—*Population flows: immigration aspects*.

**Senator TROOD**—I see.

**Mr Metcalfe**—You will see on the bottom left-hand side of page 74 the figure 4-6 for ‘offshore humanitarian visa grants by country of birth 2007-08’. That is actually the top 10 countries. Liberia appears as fifth, but it is a long way short of fourth, which is Sudan, and not very far ahead of No. 6, the Congo, No. 7, Burundi and No. 8, Iran. It does appear there in the statistics. We can take on notice whether there is any particular reason for that and whether that trend is continuing. Clearly, there are the big four countries, Burma, Iraq, Afghanistan and Sudan, and then a number of other countries with much smaller numbers to make up the top 10.

**Senator TROOD**—I would be grateful if you could take that question on notice, Mr Metcalfe.

[2.50 pm]

**CHAIR**—We will now move to 1.3, border security.

**Senator FIERRAVANTI-WELLS**—Has the government commenced any reviews or examined options for cutbacks in border management?

**Mr Metcalfe**—We constantly review its effectiveness but not to cut it back, Senator; to make it better.

**Senator FIERRAVANTI-WELLS**—What action have you taken—

**Senator Chris Evans**—Before you go on, Senator, the government announced a change to some of the border security arrangements. The changes to the department mainly affect the Australian Customs and Border Protection Service, as it has been renamed. The Prime Minister announced that as part of the response to the Smith review, which saw them take on greater responsibilities, and to take over a small number of responsibilities previously undertaken by the immigration department.

**Senator FIERRAVANTI-WELLS**—What action have you taken to help stem the business of allegedly corrupt officials selling visas to Indonesia in Afghanistan? We saw some problems in reports relating to corrupt officials. Have you taken any action in relation to that?

**Mr Metcalfe**—I am certainly aware of the issue, Senator. Let me double-check to ensure that we have up-to-date information. My recollection is that it was conveyed to the appropriate authorities who were concerned and who were looking closely at how they would ensure that that issue did not continue.

**Senator Chris Evans**—We found that there was an issue, but obviously it was an issue to be handled by the Indonesian government. They were also alerted to it and obviously they were very concerned about it. But it was a matter for them to deal with. While we worked very closely with them, the question about whether there was corruption or misuse of their processes by one of their officials was a matter for them to deal with. But certainly my understanding is that they were very determined to deal with it.

**Senator FIERRAVANTI-WELLS**—I wish to go back to questions that were asked earlier. I refer to boat arrivals and the trend that we are seeing. I want to go back a bit and highlight some of the comments that the minister made. In 2000-01 there were 54 boats with 4,137 arrivals. In 2001-02 there were six boats with 1,212 arrivals. In 2002-03 there were no boats and no arrivals.

**Senator Chris Evans**—What was the figure for 2001-02?

**Senator FIERRAVANTI-WELLS**—Six boats.

**Senator Chris Evans**—And 3,043 people arrived.

**Senator FIERRAVANTI-WELLS**—Are you going on a financial year or on a calendar year?

**Senator Chris Evans**—I was going to ask you whether we were on the same page.

**Senator FIERRAVANTI-WELLS**—No, my figures are based on a financial year.

**Senator Chris Evans**—A while back I took to using calendar years because we were seeing both sets and we were seeing confusion.

**Senator FIERRAVANTI-WELLS**—For the purpose of my question, Minister, I want to go through it in this way. In the end my question does not really reflect whether it is based on a financial or a calendar year.

**Senator Chris Evans**—All right.

**Senator FIERRAVANTI-WELLS**—In 2002-03 there were no boats and no arrivals. In 2003-04, there was one boat and 53 arrivals. I understand that another 29 people arrived at offshore excise places. In 2004-05 there were no boats and no arrivals. In 2005-06 there were four boats and 56 arrivals. In 2006-07 there were five boats and 135 arrivals. In 2007-08 there were three boats and 25 arrivals. In 2008-09 there were eight boats and 199 arrivals, since August 2008.

**Senator Chris Evans**—Senator, before we go on, I do not necessarily agree with the figures, but that depends in part on whether you are talking about a financial year or calendar year. If we are going to rely on the figures, we ought to agree on what we are dealing with. It

also depends on whether you are counting in your statistics the people smugglers or people who have applied for protection visas.

**Senator FIERRAVANTI-WELLS**—With your indulgence, I might just ask my question. It might take a bit of time to put the background on the record.

**Senator Chris Evans**—I do not want to leave the figures unchallenged if they are not the same as the ones that I have.

**Senator FIERRAVANTI-WELLS**—In that case, let me just put it on the record. I will ask my question and you can give me your answer. If your officials and Mr Metcalfe wish to add any more or challenge it in any way, they can do so. Since 2001 the first boat arrival was in July 2003 when a boatload of 54 Vietnamese arrived off Port Hedland and they were taken to Christmas Island. In November 2003, 14 Turkish Kurds arrived on Melville Island. In March 2004, 15 Indonesians wanting to pick fruit in Australia arrived on Ashmore Reef. They were sent back to Indonesia. In August 2004 there was talk about a boat of Sri Lankans that had arrived. In November 2005 a group of four men, one woman and two children arrived by boat in Australian waters and came ashore at Kimberley coast in Western Australia. On 18 January 2006, 43 Papuans arrived on Cape York and were then flown to Christmas Island. In August 2006, eight men from Burma arrived on Ashmore Reef. They were sent to Christmas Island on 16 August. In October 2006, two Vietnamese and one Indonesian arrived at Ashmore Reef and they were transferred to Christmas Island. On 20 February 2007 the press reported that 85 boat people were intercepted by the Navy and they were taken to Christmas Island on 24 February 2007. On 5 May there were press reports that 120 Afghan and Iraqi asylum seekers in camps across Indonesia would be accepted by Australia as humanitarian cases, even though their application for refugee status had been rejected in the past.

**Senator Chris Evans**—Sorry, what was that? That was nothing to do with the boat arrival. What are you introducing now, Senator?

**Senator FIERRAVANTI-WELLS**—Let me just go back. I retract the press reports and state that on 5 May 2007 there were press reports that 120 Afghan and Iraqi asylum seekers in camps across Indonesia would be accepted. I am just quoting from the press report.

**Senator Chris Evans**—Senator, I do not know what you are attempting to do here, but you are purporting to be reading a list of boat arrivals?

**Senator FIERRAVANTI-WELLS**—Yes, I am.

**Senator Chris Evans**—You then throw in a figure from a report of a group that are not boat arrivals. I do not know what your intention in reading that list is, but clearly you have now introduced a different set of circumstances with a claim about a press report that is not about the people who arrived by boat. If you are purporting to give me some information I would like to know what it is because, clearly, you have strayed into a very different area.

**Senator FIERRAVANTI-WELLS**—The point that I am making, Minister, is that there have been a series of incidents—reports, arrivals et cetera—which are pointing to a definite increase in activity. That increased activity seems to coincide with a perception of a change in the temporary protection visa system.

**Senator Chris Evans**—That is an allegation that some people have made. That is not what I said.

**Senator FIERRAVANTI-WELLS**—It is an allegation. If that is an allegation why is there an increase in output 1.3 and at page 14 of the portfolio papers? The budget for combating people smuggling, order intelligence capacity and management is \$1 million, but that will be increased to almost \$1.6 million in 2009. It is \$1.6 million in 2010 and \$1.6 million in 2011. Is there a reason why you are markedly increasing the budget in that area? I am seeking the correlation. Clearly, there has been a lot more activity. Obviously you are matching that and, by inference, you are increasing the money that you are putting towards combating people smuggling because there is an increase in activity.

**Senator Chris Evans**—There were a couple of long jumps there, which reminded me of a report by Bob Birrell that I read recently. If you want an explanation of the funding allocation I will get one off the officers to explain what has occurred in the funding area.

To put it into context, I might add that we have continued and enhanced virtually all the measures adopted by the Howard Government in trying to combat people smuggling. We have added some new ones and we have added capacity, but we have continued the activities rightly undertaken by the Howard Government to try to combat the evil trade of people smuggling. We have refocused on that issue and we have made investments to try to maximise our impact. We have also made some changes to administrative arrangements to ensure that we are properly targeting that activity. I and the government remain absolutely committed to trying to stamp out the trade. We are getting good cooperation from the governments of South-East Asia in that endeavour. Part of that is to reinvigorate the Bali process, which was first undertaken by the previous government. As we speak, officials are meeting in Brisbane in preparation for the next meeting of the Bali process, to be held in April in Bali under the joint chairmanship of Indonesia and Australia. We think that process will deliver a very useful mechanism for us in tackling these issues. If you ask whether we remain absolutely committed to combating people smuggling, the answer is yes. Are there resources being deployed? Yes. In relation to this particular resource allocation, is Mr Frew or the secretary best placed to answer that question?

**Mr Metcalfe**—It is good to see that Mr Frew is back. He has been overseas and I think he just got back this morning. Senator, I might provide a response and Mr Correll might add to it. The measure to which you pointed is evidence of the fact that measures to combat people smuggling have to be adaptable and have to change as the nature of the issue changes. You have rightly pointed out that what we saw over the last decade in Australia was a very, very large surge of people coming through in the early part of the decade and then a distinct drop. That as the result of very concerted action by Australian and Indonesian authorities and authorities elsewhere—taking into account changes in the international situation, of course. By 2002-03 the refugee-producing countries of Afghanistan and Iraq had substantially changed in relation to the pressures being placed on people. Many millions of Afghans—I think two million or three million Afghans—returned to Afghanistan at that time.

The pressures for illegal immigration and people smuggling are always present. As I have said, it is a question of international pressures changing and whatever. While Australia is a long way away from most of those terrible situations where refugee events occur, there are

some in our region, as we have seen recently with the Rohingyas and the issues in Sri Lanka and elsewhere. One of the reasons for this additional funding was the work done by the government to establish how to continue to enhance our capabilities to prevent people smuggling. What we have seen over the last year or so was a change of tactics from the people smugglers, usually moving to having much smaller groups of people; having what I describe delicately as better operational security, which made it more difficult for authorities to keep tabs on them; and moving to more remote parts of the Indonesian archipelago, which again made it more difficult for law enforcement authorities to move.

The result of that is that we have had a relatively small number of arrivals in the last few months when you look at historical trends. Certainly, as the UN high commissioner said yesterday, the unauthorised arrivals by boat in Australia are absolutely minuscule compared to what we are seeing, for example, in Italy and other countries where there are very large numbers of people arriving. We need to stay ahead of the people smugglers. The tool that we have is to develop the best possible intelligence and knowledge of their activities. This particular measure goes to strengthening that capability, but frankly the most effective tool that we have is strong cooperation with our regional partners—with countries of transit such as Indonesia, Thailand, Malaysia, Vietnam and elsewhere.

Something that has been done for a number of years and that is constantly enhanced is cooperation between Australian and regional immigration authorities, police authorities, security authorities and so on. It has certainly been a priority for immigration ministers, both the present minister and previous ministers, to pursue very strong cooperation. In my view, that is the single most important aspect to prevent people smuggling from occurring.

**Senator FIERRAVANTI-WELLS**—I accept your comments that it has always been a priority; it certainly was when we were in government. The point that I am making, Mr Metcalfe is that there is one difference—that is, you have now abolished temporary protection visas. Since that announcement there has been a marked increase in activity. Call it arrivals, call it reports, call it interceptions or call it whatever you will, but the activity that has occurred since last year has been marked. There has been an increase in activity. My question to you is: are you saying that the abolishing of temporary protection visas had nothing whatsoever to do with the increase in activity?

**Mr Metcalfe**—I would say it is the reverse. I think the proposition that there is a direct causal link between abolishing temporary protection visas and the increase in people smuggling is an incredible stretch. I know that that suggestion has been made, and I do not want to stray into what might be political comment. When you have a look at what happened when temporary protection visas were introduced, you will find that it was at a time when there were large numbers of people coming to Australia. I think the best information is that there was a very small decline initially but then a significant increase in people smuggling and indeed a change in the population of those being smuggled: there were more women and children because there were no other avenues for family reunion to occur if people were here as refugees. They could not sponsor their families. Therefore, you could equally argue the proposition that temporary protection visas promoted illegal immigration because they did not allow for family reunions to occur.

**Senator FIERRAVANTI-WELLS**—The other side of that—

**Mr Metcalfe**—Sorry, Senator. I have been associated with this issue for well over a decade—probably closer to two. As I have said, my view is that of all the measures undertaken by successive governments to deal with people smuggling, the single most effective tool is cooperation with our regional partners. The arrangements that were put in place by the previous government and that remain in place enable the interception of caseloads of people in Indonesia and their safe residency there through Australian funding of the International Organisation for Migration to provide for their care and maintenance and their access to UNHCR refugee determination processes so that there is no danger of people who are refugees being returned summarily to a situation of danger—as we discussed at length with Senator Hanson-Young. I think those measures have been singularly effective.

Against this backdrop is a changing world refugee problem. In the early part of the decade there were major push factors and criminality associated with the movement of people out of Afghanistan and Pakistan and on into this region or out of Iraq and on into this region. Conditions of relative safety were occurring in those countries in the middle part of this decade and then there was deterioration again—certainly in relation to Afghanistan in the last couple of years. I do not in any way want to be disagreeable on this point. I just think it is too simplistic a proposition to say that this causes this. I think you need to look at the totality of circumstances and you then need to look at what has happened. My view is that Australia receives remarkably small numbers of unauthorised arrivals by sea. Clearly, it is an extremely high priority for government, not least because of the danger in which people put themselves when they travel on these small boats. Over the years we have seen some terrible tragedies occur. The single most effective way of managing that is to ensure that people are prevented from setting sail in the first place.

**Senator FIERRAVANTI-WELLS**—In fairness, Mr Metcalfe, I will give my document to you and you might clarify it for me. In particular, could you give me a breakdown and some additional information? I will put that question on notice and you can provide that to me.

**Mr Metcalfe**—I am always happy to help, Senator.

**Senator Chris Evans**—Senator, I found those figures for you. My understanding is that the temporary protection visa regime was introduced in late 1999. Following that there was a small drop-off in arrivals. From December 1999 to November 2010 there were only 2,900 arrivals, as compared with 3,000 before that. So there was a small drop of about 100 to 2,900. From December 2000, a year after its introduction, until November 2001 there were 6,540 boat arrivals in the second year of the operation of the TPV regime. The claim that the TPV introduction halted arrivals is not supported by the evidence. In relation to the abolition of TPV visas in Australia, announced by me as part of the May budget, we have established that in the calendar year 2008 compared to the calendar year 2007 there was an increase of 13 arrivals between those two years.

Some of the claims are not supported by the facts. As a policy decision people may want to argue for temporary protection visas. If that is the policy position of the coalition obviously that is something that they can advocate. To directly try to link it to arrivals is not correct. If you want to make that argument you could equally make an argument about the softening of the previous government's policy in 2005, which led to arrivals in 2006 and 2007. I do not make that argument, but if you want to follow the figures you could make that argument.

As the secretary outlined, there is no evidence that the TPVs resulted in fewer arrivals. In fact, in the period after that there was a huge surge. Our figures show that in that period the percentage of women and children went from around 25 per cent to around 40 per cent. We saw more women and children taking the very perilous journey to come to Australia by unlawful boat arrivals. I do not think that the evidence supports the case. There is no doubt that people-smugglers continue to seek to do business. There is a lot of activity and they look to market their product in any way that they can. As I said, the previous government found—under the previous government the secretary was part of the People Smuggling Task Force—that the engagement with our northern neighbours in looking to disrupt people-smuggling activities at source has been the most successful strategy.

We are now confronting new techniques. People being recruited out of Pakistan and Afghanistan move quite quickly down and in different ways to those that occurred before. We have had to deploy—not so much us but the AFP and others—new strategies to try to combat that. We have had good cooperation from the Indonesians. In recent time two major operators who we think have been linked to some of these recent arrivals have been detained. Whether they will be successfully prosecuted is another question because of some of the complications under Indonesian law.

**Senator FIERRAVANTI-WELLS**—I was going to come to that.

**Senator Chris Evans**—The Indonesian authorities, supported by some of the Australian authorities, have had some success. I do not pretend that this battle has been won. It will continue, and it will always continue. Australia is a very attractive destination and there are very desperate people. As I said, if you look at the number of arrivals, you will find that in recent times they are dominated by Afghans. The push factor in Afghanistan has become very strong. People are desperate to leave. We have seen a lot of unaccompanied minors as people are looking to give their children or young men a chance. We have to deal with those new factors. As I said, the Bali process, which has been reinvigorated, hopefully will help to extend the regional cooperation that we are getting. I do not know whether you want to ask questions about those characters. You might like to, but I am sure that Mr Correll and Mr Frew can help you with some of the details.

**Senator TROOD**—I wondered whether I could explore the nature of the challenge that we face now, Mr Metcalfe. Obviously there has been an increase in activity. Is the difficulty now that there has been a decline in the vigilance of our regional partners in dealing with this issue? For example, we are now going Bali to refurbish the process. Is that part of the problem as well as there being a significant increase in the number of people who are arriving in South-East Asia? Is it the case that we have two problems: first, an increase in numbers coming from wherever they may be but landing in parts of South-East Asia and; second, those on whom we rely to work with us to try to solve this problem have let down the team in that they have failed to be as conscientious and as diligent as they have been in the past?

**Mr Metcalfe**—I certainly reject that latter proposition. I think that the commitment and diligence of our counterpart authorities is greater than it has been. It has become increasingly better over the past few years, and that is a tribute to the hard work of many agencies, officials and ministers from both the previous government and this government who saw it as a clear priority. The Bali process has provided some institutional support for that. That, of course,

was initiated by Alexander Downer and Hassan Wirajuda. It will now continue under Stephen Smith and Hassan Wirajuda. I think we have had good cooperation and it is continuing to strengthen and deepen. Certainly the resourcing that we and our counterpart agencies, in particular the AFP, have put into this has been critical.

At the same time, one of the key aspects of managing the situation is that we obviously are at great pains to ensure that if people are refugees they are not managed in a way that results in their return to persecution. Although this is happening outside Australia it would be completely and morally reprehensible for us to be undertaking activities that led to a refugee returning to a place of persecution—hence the regional cooperation agreement that was established some years ago and that I described briefly before. Australia funds the International Organisation of Migration and the UNHCR, with the permission of Indonesia, remains in Indonesia and undergoes a status determination process. Ultimately, if they are refugees, they are considered for resettlement as refugees somewhere else in the world.

The other underlying issue is, firstly, the continuing adaptability of people-smugglers. It is a highly profitable, low-risk venture. In some countries it is not a criminal offence. It is not a criminal offence in Indonesia, although there are moves afoot, and there have been for a time in the parliament, to criminalise the smuggling of people out of Indonesia. There have been arrests over the years and certain people have been put out of action. The people-smugglers have responded to certain tactics that have been undertaken by Australia. Perhaps the best example is that some years ago on three or four occasions the Royal Australian Navy was able to intercept a vessel, secure it, and return it adjacent to the Indonesian territorial sea.

The people who were returned to Indonesia clearly were unhappy with the people-smuggler because they had not achieved their outcome. Soon after that we then saw a change in tactics, whereby boats essentially were scuttled or sabotaged and the opportunity for the Navy to effectively secure a tow-back was countermanded by the actions of the people-smuggler. In recent times we have seen some new folks on the scene who are very conscious of their security, which makes the work of the authorities in seeking to detect them much more difficult. We have seen them dealing with smaller groups of people, which makes it easier for them to move around and thus be less visible to the authorities.

We have seen them moving to far more remote parts of Indonesia where authorities are not able to detect them. We have responded to that. The Australian Federal Police, other agencies and the Indonesian authorities have responded to that. One thing we have done is to provide further funding to the IOM to establish a whole series of sub-offices throughout Indonesia. The role of those sub-offices is to work with local authorities at a provincial, town and village level to provide them with information about this crime and how it should be prevented.

As I said earlier in response to Senator Fierravanti-Wells, the other factor that I think is important is that the global refugee-producing situations continue to change and evolve. Some years ago there was a very high return of Afghans to Afghanistan, but clearly we are now seeing some real issues relating to security, particularly for minority groups in Afghanistan. It appears as though progress in Iraq is good, but there are other situations, such as the treatment by the Burmese authorities of the Rohingya, a particular group, as well as the currently unfolding situation in Sri Lanka. Sadly, those pressures will continue to change and evolve and we need to continue to adapt as well.

The final point I would like to make is that while we place a high priority on this issue—I would never dismiss it as being not a problem—it is important, as High Commissioner Guterres said yesterday, to look at this from a wider perspective. In global terms, Australia does not have a problem compared to the problems facing the Italian authorities and authorities elsewhere, where literally thousands of people are arriving every week. That is not any reason for us to be complacent, but it puts things into perspective.

**Senator Chris Evans**—Just to add to that, the foreign minister and Deputy Prime Minister of Malta come to see me this morning to discuss their problems. They are looking for support for resettlement around the world. I think they are having 2,000 arrivals a year, or something of that order, on an island the size of Malta with a dense population. I think they have the densest population of any country in the world.

**Senator FIERRAVANTI-WELLS**—They do.

**Mr Metcalfe**—There are 400,000 on Malta.

**Senator Chris Evans**—I think the population density is higher than in Singapore. They are having large numbers of arrivals from the Horn of Africa et cetera. While I was sympathetic, it did make me feel a bit more relaxed that the size of my problem currently was not as great as those that we are seeing in Italy and Malta. That is not to say that we do not have to remain focused on that issue. In the early part of the decade we know that the previous government was confronted with large numbers arriving in short periods. We are very much focused on the issue and we certainly have to try to deal with it as much as we can at source.

**Senator FIERRAVANTI-WELLS**—In fairness, Minister, over the years I have had a lot of experience observing the Italian situation. Part of the problem in the Italian situation regrettably was that governments of different political persuasions—and there have been quite a number in Italy—have not had the political fortitude to deal with the issue with the strength that the previous government certainly had or through some of the programs that your government now have. I think that is partly why a lot of their problems are a lot worse. I do not think they worried too much about it for many years. It has now become a major problem for them.

**Mr Metcalfe**—I think it was Churchill who said that the price of freedom was eternal vigilance. It is a bit the same here. I suspect that some years ago it would have been fairly easy for the government to say, ‘There are not votes in it; we can ease off on all this.’ The clear lesson here is in the changing world circumstances. They can happen quite quickly. It is an immensely profitable business. From advice that we have had we estimate that the fare to Australia from Indonesia is about \$US10,000. There is very low risk for the people smugglers and that is a critical point of vulnerability for the police and other authorities—the Indonesian authorities—to target people smugglers and to put them out of business. We must maintain and increase the resourcing of the previous government and this government in the additional estimate statements and we must continue to evolve our responses. That is a key aspect. Apart from national security and border security issues there is a real issue about safety of life at sea. Some years ago we saw a tragic, terrible accident in which many people—largely women and children—drowned. We have had some recent drownings of people setting sail for Australia. We say, ‘There are other ways to avail yourself of international protection. The

UNHCR exists for a good reason. Use those mechanisms. If you need to seek safety do it in that way rather than paying people smugglers and risking your life.'

**Senator FIERRAVANTI-WELLS**—In an appropriate manner. Could I ask another question?

**CHAIR**—Is it still on the same topic?

**Senator FIERRAVANTI-WELLS**—Yes, it is still on the same topic.

**CHAIR**—I was going to bring you back to questions as opposed to afternoon tea chatter.

**Senator FIERRAVANTI-WELLS**—I was going to ask a question about prosecutions. What is the current state of prosecutions of people who have been charged with offences? Could we get some statistics for 2007-08 and 2008-09?

**Senator Chris Evans**—We will see what we have, Senator. The responsibility for charging them rests with the AFP. My recollection is that the captains of each of the boats that arrived have been charged, along with some other crew. We will see whether we have the statistics.

**Mr Correll**—Since 2004 five major maritime people smugglers have been prosecuted in Australian courts, with sentences ranging up to 12 years in gaol. In addition, 431 people have been prosecuted for acting as crews of vessels used to transport illegal immigrants to Australia. They have received sentences ranging from four months to seven years. Another 13 people have been prosecuted for people smuggling to Australia by air, either as organisers or as client smugglers. So there has been quite a substantive amount of prosecution action in relation to people-smuggling activity. There has also been activity in our partner countries such as Indonesia and Malaysia, both of whom are very active in this area. We operate a joint people-smuggling team with the Australian Federal Police, which specifically focuses on the issue of people smuggling. The great weight of its focus is in the area of maritime people smuggling, by boat.

**Senator FIERRAVANTI-WELLS**—Just before we leave output 1.3, have there been any changes? This is the staffing question, Mr Metcalfe. At the initial estimates committee hearings I think I asked some questions about immigration staff at overseas posts. Are those posts more sensitive to smuggling or potential smuggling activities?

**Mr Metcalfe**—For sure. I think we almost have that information, Senator. Perhaps after afternoon tea we can come back to you with the details.

**Senator FIERRAVANTI-WELLS**—Sure, that is fine. I had one other question that related to that area. That completes my questioning on output 1.3.

**CHAIR**—We will break for 15 minutes for afternoon tea.

#### **Proceedings suspended from 3.30 pm to 3.46 pm**

**CHAIR**—Mr Metcalfe, I understand that you have some answers for us?

**Mr Metcalfe**—Earlier this morning, Senator Fierravanti-Wells asked some questions—firstly, relating to freedom of information and, secondly, relating to staffing issues. Mr Fox can provide some information about freedom of information and I will then provide information about staffing.

**Senator FIERRAVANTI-WELLS**—Can we wait until Senator Barnett comes back to obtain the freedom of information answers? I am happy to take the staff information.

**Mr Metcalfe**—Senator, you asked a series of questions—firstly, relating to our staffing head count by location at the end of the financial year and as at 31 December. I can advise about the department as a whole and this figure excludes locally engaged employees who were formally employed by DFAT. However, I will talk about those employees later. I refer to staff directly employed by the department. As at 30 June 2008 there were 7,106 employees, and as at 31 December there were 7,092 employees—a very small reduction. Sitting below that there was a reduction in our national office numbers and an increase in our numbers in our state and territory offices.

As at 30 June 2008, 2,978 employees were located in our national office in Canberra. As at 31 December there were 2,786 employees, which was a 6.4 per cent reduction. On 30 June 2008, 3,973 employees were employed in our state and territory offices, and by 31 December we had 4,156, which was a 4.6 per cent increase. The final component of our staff are Australian based staff overseas. On 30 June 2008, 137 staff were based overseas, and on 31 December 124 staff were based overseas. That is consistent with information with which we previously provided the committee about the decision taken by the government to reduce our overseas staffing numbers as a result of last year's budget. I can confirm, though, that none of those reductions occurred in what I would regard as sensitive posts relating to people smuggling, particularly the effort in Jakarta, which is the most critical.

You also asked whether the department had done any internal review that resulted in job cuts and, if so, in which divisions. The answer to that question is yes, indeed. In the first half of last year, 2008, we undertook a significant internal financial health check review, as we called it, to assess and reform our business operations and staffing arrangements. That was done in close consultation with managers and staff. It was a measure that we put in place essentially to help us reduce our national office numbers to meet our obligations relating to our budget position while seeking to continue to deliver quality services to our clients and to the government. We managed to achieve some of those reductions in our national office by a program of voluntary redundancies. Those voluntary redundancies, which numbered about 149, came across most parts of the national office.

You also asked whether we could provide the 10-year profile of DIAC employees. I am advised that as at 31 December 2008 the average organisational tenure, or departmental length of service for our ongoing employees, was seven years. That has increased slightly since December 2006 when the average organisational tenure was 6.6 years. The 2006 figure reflected the large number of changes that resulted following the Palmer and Comrie reports. In particular, a lot of new people joined us who, of course, reduced the average length of time in the department.

You asked, and I think I offered to provide some information about, how many people have been with us for a long time and a short time. As at 31 December last year about 10 per cent of staff have been with us for one year, about 20 per cent have been with us between three and five years and about 21 per cent of our staff have been with us for more than 10 years. The balance is between five years and 10 years. You also asked how many locally engaged employees were in the department. As I mentioned before, locally engaged employees

overseas are formally employed by the Department of Foreign Affairs, but, to all intents and purposes, we fund them and manage them so we regard them as ours. They are an important part of the department.

I am advised that as at 30 June 2008 we had exactly 1,000 locally engaged employees, and on 1 January this year, 2009, we had 985. The number of employees will, of course, vary, depending upon application caseloads, how we manage things, the post they are present in, and so on. Essentially, that is a stable proportion. There were changes in numbers, but very small, across virtually all posts. I know that one post you are interested in is Jakarta. It has one fewer locally engaged employee than it had previously, whereas, just by comparison, London was also down one, and Quangzhou was up by seven because of an increase in workloads. Those numbers will change depending upon the people coming and going, but it is roughly stable at just under 1,000.

**Senator FIERRAVANTI-WELLS**—Where there have been reductions, what roles were those people playing? Could you take that question on notice? Was that natural attrition?

**Mr Metcalfe**—Those 15 reductions across the posts?

**Senator FIERRAVANTI-WELLS**—Yes, where there have been reductions. Just take that question on notice, Mr Metcalfe.

**Mr Metcalfe**—I will take the question on notice. We operate in many posts. If it becomes a large exercise we might just do the top 10 or something like that, Senator.

**Senator FIERRAVANTI-WELLS**—In relation to locally engaged staff, I assume that processes are in place to carry out security checks and all that sort of thing?

**Mr Metcalfe**—Yes. Within any organisation there is obviously turnover. That reduction from 1,985 is not a deliberate intention to reduce the numbers overseas. As you would have seen from the earlier figures, essentially we have been trying to reduce our numbers in the national office and—

**Senator FIERRAVANTI-WELLS**—To get them out to see the real world.

**Mr Metcalfe**—To get them out where the real applicants are.

**Senator FIERRAVANTI-WELLS**—That is right.

**Mr Metcalfe**—A lot of work is done in Canberra that provides direct services to clients—for example, our entry operation centre, our border operation centre, our 24-hour-a-day centres that provide support to airlines and passengers. The national office is not just a national office function; a whole range of other work is done there as well.

**Senator Chris Evans**—Are you quite practised at that defence? Both Minister Tanner and I raised these issues. I noticed that he was ready to deal with it.

**Mr Metcalfe**—Absolutely.

**Senator FIERRAVANTI-WELLS**—What about the movements? You have not given us the number of movements with which the department deals.

**Mr Metcalfe**—If you want to ask that question, Senator—

**Senator FIERRAVANTI-WELLS**—I would have thought that would follow, Mr Metcalfe.

**Mr Metcalfe**—One a second across our borders.

**Senator Chris Evans**—In relation to locally engaged employees overseas, some of our most loyal and long-serving staff are in that category. When I visit posts, I run into people who have been with us for 15 or 20 years, and some a few more years than that. They are very long serving, very efficient and very loyal. We rely heavily on those staff.

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

**CHAIR**—We will move to output 1.4: compliance.

**Senator FIERRAVANTI-WELLS**—Can you tell me a little bit about the community care pilot program? There were some references to it in the annual report. Just tell me where we are at with that.

**Senator Chris Evans**—You will be pleased to know that that is another great initiative of the Howard government.

**Senator FIERRAVANTI-WELLS**—Thank you, Minister. Tell me how it is going.

**Mr Metcalfe**—I was not going refer to it in relation to election dates, but I will say that the dates were an initiative from late 2005. Essentially, we sought to explore options. I think we can now say that we have moved beyond that. The initiative was established to manage the resolution of the status of people who had become unlawful in Australia or who were seeking to stay, to assist in the speedy resolution of their circumstances and to provide them with support in the community rather than what might have happened in the past—which was that they moved into detention on the rationale that detention was there as an administrative function to ensure availability. If we can find ways to deal with people's circumstances without them being in detention that is better for them and better for us.

**Senator FIERRAVANTI-WELLS**—This was the women and children?

**Mr Metcalfe**—It was related. In June 2005 there was a straight government decision that women and children would not be detained in immigration facilities and only as a last resort would ever be held legally in immigration detention.

**Senator FIERRAVANTI-WELLS**—Despite all the rhetoric, Mr Metcalfe, in the end those who were in detention chose to go there, in some cases often so that the family unit could all stay together. Anyway, we will not go there.

**Mr Metcalfe**—We all know what the previous government did in 2005, Senator. Following the Palmer and Comrie report, I was obliged to report to the cabinet and then to the parliament on a range of measures for the department to institute internal reports as well as external reforms as to how it did its business. In early October 2005 we took a series of ideas to the government which were the subject of major announcement by the then minister around that time and further announcements in the 2006 budget. One of those was a community care pilot. Mr Hughes and Ms Gillam are closer to the day-to-day administration, but I think we can say that the public policy pilot trial has been an outstanding success. It has very clear pointers as to how we can do our business better and just as effectively, if not more

effectively, without the need for people or the previous presumption that people would move into immigration detention.

**Senator FIERRAVANTI-WELLS**—Have you conducted a review of the pilot, or is it still a pilot?

**Mr Metcalfe**—The pilot ran for a couple of years and further funding was provided in the last budget.

**Senator FIERRAVANTI-WELLS**—Right.

**Mr Metcalfe**—It is now the subject of consideration in the current budget, so obviously I cannot go into detail about that. The minister probably could.

**Senator Chris Evans**—Perhaps I can, Mr Metcalfe. I can say that its assessment has been very positive and the department and the interest groups are very supportive. Last year I sought an extension of the pilot, for which we got funding. This year I am determined to see whether we can turn it into a more permanent program. Obviously funding will be tight, but it is a priority to try to expand, institutionalise, or turn it from a pilot into a fully fledged program. It is working, we have had good success with it and it is a much better approach. Subject to us managing to find the money, we are keen to expand it, turn it into a fully fledged program and look at better integrating it with the other programs that we run in the community.

**Senator FIERRAVANTI-WELLS**—Going back to when it was set up, basically it was set up to assist people within the community with access to medical, welfare, mental health, housing and living assistance. In practical terms, how has that occurred? Could Ms Gillam provide us with some concrete and practical day-to-day examples of where that has worked and how it has worked?

**Senator Chris Evans**—I am sure that Ms Gillam can help you with that, but I am happy to organise for you, in Sydney, a tour or a briefing session on the program at some stage.

**Senator FIERRAVANTI-WELLS**—That is good.

**Senator Chris Evans**—Ms Gillam can help you now, but I am also happy to organise a visit.

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

**Senator Chris Evans**—The other day I met with the Red Cross in Sydney. They run the program for us. I found it very helpful, so I am sure they can do the same thing for you.

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

**Ms Gillam**—Senator, under the community care pilot we fund a number of different programs. The minister has mentioned the service provided by the Australian Red Cross, which provides health, welfare, income assistance and accommodation support to vulnerable clients. We also run a program through the International Organisation for Migration to provide counselling and information assistance to people, particularly focusing on return assistance. Other services have been provided through IAAAS advisers to provide migration advice to some of the clients in that group as well, and all the clients in the community care pilot are

managed by the department's case managers to ensure that they are progressing to an immigration outcome as quickly as possible.

Referring to outcomes, as at the end of January about 900 clients participated in the pilot. Of those that had exited, 420 clients exited with an immigration outcome. Some, of course, are still in the pilot. Of those, 114 returned voluntarily to their home country. As Mr Metcalfe indicated, they are clients who, in the past, in order to help them return, we would have been obliged to detain and remove. But with the pilot we have been able to assist their return while they are in the community. Other clients have been granted protection visas and other substantive visas and a small number were ultimately removed when it became evident that they were not going to depart voluntarily.

**Senator FIERRAVANTI-WELLS**—Do you get some assistance from various communities, for example, if you are dealing with a client from a particular background? Is there some interaction with that community? I do not want to name any community, but I think you understand the gist of my question. Are you sensing cooperation within those communities and are assistance groups within those communities helping you with this?

**Ms Gillam**—I think that is something that I would have to look at on a case by case basis. This is very much about those particular non-government organisations providing specific services.

**Senator FIERRAVANTI-WELLS**—Thank you. Thank you, Minister. I will take you up on that offer of the tour.

**Senator Chris Evans**—It is probably better to get a feel for it.

**Senator FIERRAVANTI-WELLS**—We are still on output 1.4. I will now move to detection onshore. Are there any cuts, changes or reviews to the department's compliance programs or operations?

**Mr Hughes**—Nothing that is not across the board or departmental.

**Mr Metcalfe**—While we are on this, Senator, there have been quite a lot of developments in this area. Over the past few years we have increasingly moved to seek voluntary compliance and to enlist the support of key stakeholders, in particular, employers, while at the same time maintaining a capability to undertake what I describe as field compliance work, where departmental officers physically go out and interview people. At the same time we ensure that those officers are much better trained and supported than they may have been previously. Obviously one of the key outcomes following the Palmer report was to ensure that there was far more professional training and awareness of immigration law, practice and whatever. Indeed, we have formed the College of Immigration to provide that training.

Many hundreds of officers have now completed courses to that extent. You would be aware that we increasingly now have legislation in place—again proposed some years ago by the former government but recently enacted—in relation to employer sanctions. There has been a strong awareness program with employers so that they are able to check the status of potential employees to see whether they have work rights in Australia.

We have an online service known as the Visa Entitlement Verification Online, VEVO, which allows registered users to check whether there are work rights. All those compliance

tools are designed to ensure that people who do not have work rights or who are in Australia illegally are not able to access work, which is one of the key things that they seek to do. We continue to work very closely with the police forces in each state and territory. In recent times we have provided much better support for them if they detect someone who they believe may be here unlawfully to ensure that there is a rapid response and identity checking, first, to identify whether someone is here illegally, and, second, to ensure that there is no confusion as to that person's identity which, of course, can occur in remote situations.

While there is constant change as we seek to strengthen our compliance activity and to work with others, our efforts in that area remain unabated. An issue that we have discussed before relates to overall resourcing to the department. Ultimately, the minister and I need to make decisions about how resourcing is applied. That occurs in the context of every budget that we receive. I would never say that we are not going to change; it is just that we are going to do things differently.

Let me give you a couple of final examples. About a year ago we moved the responsibility for the compliance division from the group of divisions reporting to Mr Correll, which also included border security and the detention services division, into the group of divisions under the responsibility of Mr Hughes, which essentially includes the big visa policy divisions—migration, refugees and citizenship. That is certainly no reflection on either of those two gentlemen because they both do very fine work; rather we had got to the stage where we needed to see immigration compliance as our overall efforts to detect and prevent fraud against our programs. That may have been described as immigration compliance five or 10 years ago—a program that in itself located, detained and removed illegal immigrants.

Like all agencies, we are subject to attempted fraud across our range of programs. Certainly we receive high levels of attempted fraud in visa applications from certain parts of the world. We receive fraud in relation to people seeking to assume different identities and we receive fraud essentially relating to people overstaying and seeking to work. We think it is important to have that anti-fraud capability as something that we design into all our work and into all our activities, rather than simply be in an end unto itself sitting at the back end of the process.

That has been a significant change and I think it is fair to say that that is still reaching maturity. It is a dynamic area. One of the key measures, of course, is how many illegal entrants there are in Australia at any one time. As you can see from the annual report, the figure is under 50,000, where it has been for some years. That figure is a good outcome because increasing numbers of temporary entrants have been coming to Australia—tourists, students and other temporary visa holders.

We have seen a strong increase in the numbers of people coming here, but the proportion of illegal immigrants is declining. In absolute terms it is staying at about the same, but the proportion is very low. We seek to ensure that it is less than one per cent globally. We are pretty confident about our overall compliance programs—working with employers, working with police and direct field activities such as still going out and responding to reports that illegals are working in the sex industry or in horticulture. All those things in combination ensure that we have a strong focus on compliance. These days we are trying to be more sophisticated in how we do it.

**Senator FIERRAVANTI-WELLS**—Over the time in which I have been involved in the broader community I have found that word of mouth is important. I think I have raised this issue before at estimates committee hearings. Often it involves getting that information out. I appreciate the work of officers in these areas. We need to get information out to communities. A lot of our illegals have interaction with communities no matter from which community they come, in particular if they do not speak good English. Their interaction inevitably will be with people who speak their own language. I would be interested to know how much usage you make of language, language programs, the radio medium and other language mediums to communicate with people and to get across messages about illegal immigration. I would be interested to see whether you have done work like that. I will keep asking that question at other estimates committees. Over my many years of experience I have found that you are often dealing with people where the oral medium is the only medium that they understand.

**Mr Metcalfe**—We do all that. I can check, but I think I gave figures at the last estimates that the largest nationality that overstays is the United States of America.

**Mr Hughes**—And also China.

**Mr Metcalfe**—Referring to numbers, proportions, or something like that. Of course we have different cohorts across that noncompliance. Some people overstay for a week and others may seek to overstay until they are found. Some folks work without permission when they have a visa and others overstay altogether. I accept that very good point. We seek to use the community contacts that we have. We, probably more than any other Commonwealth department, have extensive contacts through the different community groups, the ethnic community groups, in Australia. As appropriate, we send out messages that there is a right way of doing things and a wrong way of doing things. We also encourage people to come forward if they have a problem. That takes us back into the community care pilot and status resolution work that we are doing. If people have an immigration issue we encourage them to come and talk to us so that we can work out a solution. That solution may well be, ‘You should go home,’ but it may well be, ‘There is a visa pathway available to you, so let us at least legitimise the situation.’ Increasingly, that is something that we are seeking to do.

**Senator FIERRAVANTI-WELLS**—Centrelink uses a hotline for its information. Is that something that you have utilised? Do you have an information line on which people can ring you?

**Mr Metcalfe**—Yes. I think we still have a particular number. If a person has a concern about someone who is working illegally in Australia he or she can contact us. We are easily accessible through our call centres, through emails and the internet. We receive that information and we follow it up. The picture I am trying to paint is that we believe in a modern environment and we need to be more sophisticated than simply having teams of staff going out, as may have happened in the past, raiding the kitchens of restaurants in the hope that they may find someone. We need to do things in a far more targeted and intelligence-driven way. We need to work with employers to make it more difficult for people to overstay and we need to provide pathways. We are looking increasingly at one thing. For many of our clients their contact with us is quite limited. They apply for a visa electronically, they come through the airport, and they do not hear much from us. In the future, when utilising technology, we might be able to provide them with a friendly reminder a couple of days

before their visa expires, for example, through a text message to their mobile phone, 'Hello. I am the friendly guy at the immigration department. If you are not leaving Australia then you need to come and see us.' In some situations I think that contact is needed.

**Senator FIERRAVANTI-WELLS**—You look like that kind of friendly guy, Mr Metcalfe.

**Mr Metcalfe**—With luck we could send them a picture of me.

**Senator Chris Evans**—You could text them in the teenage-style shorthand and say, 'Hi, I am Andrew from immigration. I am here to help.'

**Senator FIERRAVANTI-WELLS**—That is like Mr Rudd saying, 'I am Kevin. I am here to help.' Could I have a breakdown of that figure of 50,000? You can take that question on notice. It would be useful.

**Mr Metcalfe**—I would say that it is probably in the annual reports. It probably will not have changed very much from then. I will see whether we can help you.

**Mr Hughes**—Senator, were you interested in a breakdown by nationality?

**Senator FIERRAVANTI-WELLS**—It would be interesting to see a breakdown by nationality. I think there was an answer to a question on notice that did not break it down. No, that was in relation to World Youth Day. I require a breakdown by nationality and also by categories. We cannot tell from categories the sorts of people that we think are overseas.

**Mr Hughes**—We will give you what information we can. Certainly the top three countries with the largest representation in the overstay population were China, the United States and Malaysia. But when we provide the answer on notice we will see what other breakdown we can give you.

**Senator FIERRAVANTI-WELLS**—Is that in the annual report, Mr Hughes?

**Mr Hughes**—No. That is from some figures that I have. There is other material in the annual report.

**Senator FIERRAVANTI-WELLS**—I will now move to ministerial intervention.

**Mr Metcalfe**—Sorry, Senator. I can helpfully point you to page 149 of population flows.

**Senator FIERRAVANTI-WELLS**—That will definitely have to be bedtime reading, Mr Metcalfe.

**Senator Chris Evans**—He is helpful.

**Mr Metcalfe**—Our estimate is of unlawful noncitizens in Australia as at 30 June last year. The United States, which is at the top, is just ahead of China, at 4,900, and it goes down to Belgium with 106.

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

**Senator Chris Evans**—I thought we were talking about the stock of people who have gone missing?

**Mr Metcalfe**—No, just overstayed for one day, Senator.

**Senator Chris Evans**—It might be worth clarifying. On that basis you would be very worried about recalcitrant Americans, given that in comparison not that many of them come

in. I am advised by the secretary that they overstay for just a couple of days, so in that sense the figure could be a bit misleading.

**Senator FIERRAVANTI-WELLS**—Yes.

**Mr Metcalfe**—The other point, of course, Senator, is that that is absolute numbers. If you were to ask, ‘Which nationalities represent the highest portion of overstayers?’ you would get quite a different figure.

**Senator FIERRAVANTI-WELLS**—Could we get a bit of a picture of those 50,000 people? I appreciate that it cannot be accurate.

**Mr Metcalfe**—This shows you the 50,000, or the 48,000 that we estimated that are unlawfully here. But it relates to their length of stay or the proportionality. We will see whether we can give you some statistics.

**Senator FIERRAVANTI-WELLS**—Do you have some more statistics just to get a better picture?

**Senator Chris Evans**—Some of them have been on that list for a long time.

**Mr Metcalfe**—Some of them have been here for 20 years and others would have been here for one day.

**Senator FIERRAVANTI-WELLS**—I move now to requests for ministerial intervention. How is your in-tray going?

**Senator Chris Evans**—My in-tray and my out-tray are both going well. However, there are still too many of them. We are going on informed statistics, but the total number of interventions has been rising.

**Mr Hughes**—In the first half of this year, up to 2 January, in relation to section 417, section 501 and section 454, we received 1,555 intervention requests. Of those, 1,373 have been finalised, of which 839 were finalised personally by the minister, and there have been 407 visa grants. Under section 351 these figures go up to 5 February this financial year. There were 791 received and 724 finalised, of which 558 were finalised by the minister, and there were 114 visa grants.

**Senator FIERRAVANTI-WELLS**—What ministerial intervention categories are there? Are we seeing trends?

**Senator Chris Evans**—Senator, we are trying to get better information on this issue. I have been frustrated at our lack of analysis of it, and some useful work has been done, but I do not think we are quite there yet. For instance, there are quite a large number of onshore spouse applications. The only route through the system is ministerial intervention. I am a bit frustrated by that. I think we ought to be able to find a better way of dealing with it other than through ministerial intervention. Many of them have Australian kids and they have been in long-term relationships, et cetera. Some of them are pretty compelling cases, for example, a couple has two Australian kids and they have been in a relationship for five years, et cetera. Obviously it varies. With spouses there are complementary protection type claims. Do we have a breakdown of the others?

**Mr Hughes**—Minister, these figures are just headline figures. I think primarily they might be sick parents.

**Senator Chris Evans**—Some are just long-term integration. We have a family that has been here for 25 years. That is a record, but plenty have been here for 17 years, 18 years, et cetera.

**Senator FIERRAVANTI-WELLS**—Despite efforts to try to get them to become citizens?

**Senator Chris Evans**—Some of them have been unlawful for 25 years. I will see whether we can get you a breakdown.

**Senator FIERRAVANTI-WELLS**—It would be useful just to get a picture of the trends. If you have ages it would be interesting to see the nature of the interventions for which you are being asked. Are there shifts in that?

**Senator Chris Evans**—I have been chasing the same information myself, Senator. We are not yet at that level of detail. That sort of information has not been recorded, but we are trying to drill down and get a better recording of those things. Again, it would be nice to know if a lot of spouses were coming through. Is there a better way of handling it? Is the system failing if the only way through is ministerial intervention? Can we fix that? Are people inappropriately using ministerial intervention because of a certain category or what have you? Those are the sorts of things that I look for. It is very varied, but I think spouses were the largest group when we had a look at it.

**Mr Metcalfe**—I think so.

**Senator Chris Evans**—It was about 15 per cent or 20 per cent. I will see what I can get for you. As I say, the figures have been rough and that is due to our recording material. A lot of work has been going on to try to improve that. I am promised by my staff that we are close.

**Senator FIERRAVANTI-WELLS**—I will ask you to provide what you have at the moment and then at the next estimates committee we will get an update in relation to that. Minister, when will you outline your response to the Elizabeth Proust review relating to your use of the intervention powers?

**Senator Chris Evans**—I have already made some responses. That really takes us back to the point where I said earlier that I had made a number of administrative changes. I asked the department to make a number of decisions—changes in guidance, et cetera—so a number of changes have been made, for example, things like templates for the submissions and schedules. When I took over the job the Victorian, New South Wales and Australian Capital Territory offices provided different templates. I have encouraged the department to provide departmental recommendations. I am trying to get stronger links between ministerial intervention and compliance.

One of the things that worried me was that the minister said no and nothing was happening. They would apply again in two or three years and you would see files where people had applied five or six times. If the minister said no they should have had a compliance activity, not just wait in the community while their claims get stronger as they have more children or what have you. We have done a number of things like that and we have made some changes to the guidelines for dealing with ministerial interventions. A lot of work has been done. The

claim by Ms Stone that hundreds of cases are now stacked on the minister's desk I think is a rather deliberate or accidental misreading of the situation. I think some figures were released about how many were still being handled by the department.

The department has to process the applications, seek evidence, prepare a submission for the minister, et cetera. At any one time we might have a couple of thousand such as those in the pipeline that have not yet come to me. Under the guidelines they do not ever come to me because the department says that they do not meet the criteria to be presented personally to the minister. I think it is fair to say that I have made some progress but not as much progress as I would like. Some of that will require regulation change and some of it will require legislative change.

One of the things I have been trying to do is deal with the very good question that you asked before, that is, what cohort is coming through and why are they coming through to the minister? Dr Moeller was a classic case where no-one else had the power to fix it, so I fixed it. I suppose that that is the sort of relief valve for which it was meant, but is it designed for 500 to 1,000 spouse applications a year? Is that a proper use of ministerial powers? I do not think so. We are trying to find ways in which the department can handle that caseload more appropriately. We have done a lot of work on it, but I must say we have not come up with as many solutions as I would like.

**Senator FIERRAVANTI-WELLS**—If you do manage to analyse the trends you may find there are other ways of dealing with it, especially if there is a backdoor trend, if I could put it that way. There might be other ways in which the department can deal with it.

**Senator Chris Evans**—Even if they are legitimate, Senator. I do not want to labour Dr Moeller's case, but that was a classic case where the department could not fix it under the legislation. Every man and his dog could work out the appropriate decision in that case. Even I got it right but the department could not fix it. Sometimes there are those sorts of legislative regulatory barriers and it is a matter of analysing them. It has become part of the system rather than a rare appeal mechanism. Part of it involves analysing those caseloads to see whether we cannot deal with them better, whether or not they are legitimate claims.

I think we are making some progress. I certainly have much more confidence in the scheme. There are other things that the department is doing on which departmental officers might wish to comment. I was shocked when I realised that protection visa applicants had come through to ministerial appeal who had never been interviewed and who may not have turned up at the RRT for their hearing. That seemed to me to be a sign of a dysfunctional system. I have certainly been encouraging the department to try to interview applicants to get a better understanding of who they are and what are their claims. Maybe one of the officers has an update on what progress has been made on that.

**Mr Hughes**—Yes, we have increased the rate of interviewing. I do not know whether we are 100 per cent nationally yet but I think we are well on the way there.

**Senator FIERRAVANTI-WELLS**—Minister, in summary, are you considering changes to the powers that you may delegate? You have not yet made a decision in relation to that. You will continue with ministerial intervention?

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—But you have not quite delineated which of those could be delegated and which of those could not.

**Senator Chris Evans**—Let us be clear on this. There is no question that as long as those powers in the act are available to the minister I will exercise them in accordance with my responsibilities. There are a number of different approaches. One is making the system work better, which is to do with template forms, a better understanding of how it works, a lot of consultation with advocates to ensure that people know how the system works and know that they get a once-only opportunity, and making our processes better. We have also had changes to the delegation and I have encouraged the department to make the decisions and change the administrative directions around those things. But more fundamental issues will require legislative change. I have not yet moved to that stage, partly because I still do not feel we have the best information on the sorts of things you are asking about—who we are dealing with and who are better dealt with in another way. Until we get more precision about that, I cannot seek to come to the parliament to change the act. You will want to know who it affects, how many, and why.

**Senator FIERRAVANTI-WELLS**—In effect, the potential situation could be that categories are now confined to ministerial intervention and that is your one shot in the locker, whereas if you bring those down to some sort of delegated power within the department, that opens up options for that person, both in relation to review and potential avenues for litigation or otherwise. If I understand intervention correctly, that is the other side. Intervention means one shot in the locker and that is it. It might sit on your desk for however long.

**Senator Chris Evans**—I can assure you, Senator, that it does not sit on my desk for long.

**Senator FIERRAVANTI-WELLS**—No, but you know what point I am trying to make. I might ask Mr Metcalfe whether he has to offset that against potential categories that you are opening up for litigation, legitimately or otherwise.

**Senator Chris Evans**—That is right, Senator. That is one of the balances. That is why, before I bring legislation before the parliament, I have to have answers to all in order to get you to vote for it. I still do not think that we have as clear a picture as we want on that. One of the advantages of having delegated power and appeal rights is that there is accountability and transparency. While I do not want to get into the particular case, I think the allegations about the Madafferi case that are currently in the media indicate the difficulties about ministerial decision-making powers. Senator Vanstone has no capacity to defend herself against the allegations because it is made as a decision by the minister under no criteria and it is not reviewable. I know it is not the major issue in that case—I do not want to get into it and I do not have any personal knowledge of it—but it highlights the fact that there is no transparency or accountability about the process.

**Senator FIERRAVANTI-WELLS**—It has been defined by legislation. That is the avenue. It is black and white. You have the power or you do not have the power, or it must go to the minister. To some extent in some of the recent cases in which you have had some scrutiny, you either have the power or you do not. A lot of people do not quite understand. I suppose that those of us who boringly waded their way through Federal Court and other issues see the finer points but a lot of this stuff is not well known in the community.

**Senator Chris Evans**—No. One of the things we have done is to work with the sector to get better guidance on ministerial interventions. Quite frankly, some of the applications that come forward do not do justice to the applicant's case at all. Trying to make a decision on the file would be very difficult, so we try to provide more guidance. As this has become part of the system we are trying to say, 'If you are going to make a ministerial intervention these are the sorts of things you ought to make in your application.' Is that now on the website, Mr Hughes?

**Senator FIERRAVANTI-WELLS**—I see what you mean.

**Mr Hughes**—I believe it is.

**Senator Chris Evans**—We are trying to put in place a better system so that people know what they have to try to establish. We were getting applications from people—

**Senator FIERRAVANTI-WELLS**—You might just get a letter?

**Senator Chris Evans**—Yes, and it was not necessarily authorised by the applicant. We would get a letter from somebody who hopefully was supportive of this person, asking, 'Could you intervene?'

**Senator FIERRAVANTI-WELLS**—And that is their one shot in the locker.

**Senator Chris Evans**—That is why there was not one shot in the locker. That is why they kept coming around and around.

**Senator FIERRAVANTI-WELLS**—I know.

**Senator Chris Evans**—We are trying to implement a system. The applicant has to authorise it. I think that is now in the guidelines.

**Mr Hughes**—I am not certain of that.

**Senator Chris Evans**—The intention was that the applicant had to authorise it. Where else would you have a system where someone else can act for you, if you like, without your authority? It seemed to me to be important that the applicant should authorise a ministerial intervention request. We are trying to get better guidance about those things. We are trying to make it more transparent and more systemic. I have to say that we have made some progress but not as much as I would like.

**Senator FIERRAVANTI-WELLS**—I probably should have asked this question earlier, but because most of the legal costs for the department are generally in this area, could Mr Metcalfe provide a breakdown? How is litigation going in the department? I appreciate that not all your litigation is compliance but it is a great component of it. I probably should have asked this broader question earlier.

**Mr Metcalfe**—I will ask Ms Davis to join us. She is our Assistant Secretary, Litigation. In summary, you heard from Mr O'Brien this morning about the success rate. The majority of litigation relates to appeals following the Refugee Review Tribunal's decisions. Overwhelmingly, the litigation, which is in the name of the minister, is resolved in favour of the minister. However, there are some interesting trends. The number of cases on hand before the courts and the AAT are well under 1,000. I recall that three-and-a-half years ago, when I became secretary, I think the figure was of the order of 4,000.

Determined work by the department, the courts, the tribunals and the legal profession meant that we are able to deal far more expeditiously with matters and to ensure success. That, in turn, is bringing down our litigation costs. We do have a growing case load in relation to compensation litigation, largely relating to persons who may have been in detention in the past. Increasingly, our legal expertise is focusing not only on administrative law matters but also on torts and compensation issues. But Ms Davis can probably give an update of the cases on hand, the success rates and those sorts of things.

**Senator FIERRAVANTI-WELLS**—Thank you, Ms Davis.

**Ms Davis**—In relation to the administrative and judicial review case load, as at 31 December the active case load was 871 cases. In relation to the civil and other case load, for the same period the active case load was 395 cases. So there was a total case load, as at 31 December, of 1,266 cases.

**Senator FIERRAVANTI-WELLS**—Trending?

**Ms Davis**—In relation to the administrative and judicial review case load, it is continuing to trend down from a high of 4,500 in 2004. The civil and other case load is trending slightly upwards, but the majority of that case load is the 247 ombudsman referred cases.

**Senator FIERRAVANTI-WELLS**—How are those cases going where people in detention brought actions for alleged personal injuries involving contractors that are looking after your detention centres?

**Ms Davis**—I would have to take that question on notice.

**Senator FIERRAVANTI-WELLS**—Would you? When I was still at AGS there was a spate of them. I would be interested to see whether some of those cases that were brought by people in detention against the department—and, as co-defendants, the managers of your detention centre—are continuing.

**Mr Metcalfe**—I have some figures and Ms Davis might be able to provide more detail on notice. Essentially, there are a couple of different cohorts. You recall the 247 cases which were referred either to Mr Palmer or Mr Comrie or to the ombudsman as being people about whom there was a view that they were being or may have been unlawfully detained.

**Senator FIERRAVANTI-WELLS**—Yes.

**Mr Metcalfe**—We have described in previous appearances before this committee our ongoing efforts to resolve compensation that may be due in those cases and to contact the people concerned. We are continuing to make efforts to contact everyone in that group. Where possible, we are seeking to settle those matters by mediation and out-of-court settlements rather than taking up the time of the courts. There are also issues associated with visa status—the underlying status of people that we are also actively seeking to resolve.

There are other compensation claims made by individuals against the department. The figure I have here is that as of 31 December there were 38 other individuals, separate from the 247 cases, who independently approached the department seeking compensation. Some of those have filed in the courts; others have simply contacted us. Obviously we are working through each of those cases in relation to potential liability and the appropriate way to manage that situation. As I have said, that has become a more substantive part of our workload in the

litigation area than we had seen previously and it is related to that period of unlawful detention.

**Senator FIERRAVANTI-WELLS**—And the breakdown of costs obviously would reflect that.

**Mr Metcalfe**—Yes.

**Senator FIERRAVANTI-WELLS**—I think on the last occasion there was an indication that we are now no longer pursuing costs associated with litigation where applicants are unsuccessful. Is that the situation?

**Ms Davis**—Where applicants are unsuccessful?

**Senator FIERRAVANTI-WELLS**—Yes.

**Ms Davis**—No, we still pursue costs orders if the orders are made by the courts.

**Senator FIERRAVANTI-WELLS**—What about where they are unsuccessful and then deported? Does it just sit there?

**Mr Metcalfe**—It sits there as a debt to the Commonwealth.

**Senator FIERRAVANTI-WELLS**—And if they reapply to come back?

**Mr Metcalfe**—They have got an issue.

**Senator FIERRAVANTI-WELLS**—They have a real issue.

**Ms Davis**—Yes. At the moment, the criteria require that they make appropriate arrangements to repay. It is not the intention or necessarily the case that they would have to pay the entire sum before they return to the country, but they have to make acceptable arrangements to qualify for a visa to return.

**Senator FIERRAVANTI-WELLS**—Do you have some statistics on that sort of stuff? If you could take that question on notice I would be interested to see some of those statistics.

**Ms Davis**—Yes.

**Senator FIERRAVANTI-WELLS**—That concludes my questions on output 1.4.

**CHAIR**—We will now move to output 1.5.

[4.43 pm]

**Senator HUMPHRIES**—How many people are in detention at the moment on Christmas Island?

**Senator Chris Evans**—According to my notes there are 137, but I will get the department to check that, of which 33 are in community detention arrangements.

**Senator HUMPHRIES**—Can you say how long they have been there? I assume that that figure would vary, but have most of them been there for a long period?

**Mr Correll**—On Christmas Island, no. The numbers relate almost totally to the recent boat arrivals that started from September last year. In the longer cases we are talking about four months. I might ask my colleague Ms Wilson whether she has precise data.

**Ms Wilson**—The period spans from the recent boat arrival from 2 October to 20 January. In relation to the boats arriving on 2 October, 10 October and 25 November, those people have already been resettled on the mainland. Passengers on the subsequent boats are still largely on Christmas Island. They are undergoing processing.

**Senator HUMPHRIES**—Which was the first boat for which there has not been any repatriation to the mainland?

**Ms Wilson**—The boat that arrived on 29 November. Processes are still taking place for that boat.

**Senator HUMPHRIES**—At this stage have all the detainees on Christmas Island, including those who have been sent to the mainland, been interviewed at least once?

**Ms Wilson**—They have all undertaken some initial interviewing and they are in various stages of having clearance for their security, health and identity, which are the three criteria that they have to meet before they become eligible for further consideration.

**Senator HUMPHRIES**—Have any of the detainees come to the attention of the department before?

**Ms Wilson**—In what way?

**Senator HUMPHRIES**—Have they previously been processed by Immigration for visas or been illegal entrants before or something of that kind?

**Mr Correll**—I am aware that at least one is in that category. It was mentioned earlier today in the hearings that there is at least one in that category. I would need to check to be absolutely precise that there are not any more, but we are certainly aware that there is at least one person on Christmas Island in that category.

**Senator Chris Evans**—From the information that I have, one of them had a TPV and had returned to Afghanistan when the situation was safer. He was intercepted on one of the boats in recent times. There is probably more than the one, but there is at least that one.

**Senator HUMPHRIES**—You say that there is at least one but there could be others who have come to the attention of Immigration?

**Mr Correll**—Yes. It would not be a significant number. I believe it is likely to be one. That is the final answer that we give but I would like to verify that we have not established another person who has a previous history.

**Senator HUMPHRIES**—Does this include those people who have already been on Christmas Island, being those from those boat arrivals from 2 October onwards who have been sent to the mainland?

**Mr Metcalfe**—Let me just draw a distinction as to the folks that Ms Wilson said had come to Australia. They have come here not in detention; they have come to the mainland having been found to be in need of our protection and they have thus been granted a visa enabling their entry to the Australian mainland. From memory, that group was resettled in Adelaide. I think there was some media attention about their arrival over the January period. The other folks remaining on Christmas Island are at some stage of a processing consideration as to

whether or not they are owed protection by Australia together with health, character and identity checking processes.

**Senator HUMPHRIES**—I am particularly interested in those who arrived by boat and who have been and are in the process of being assessed.

**Senator Chris Evans**—All those on Christmas Island have arrived by boat. But they are not all offshore arrivals. The Sri Lankans, who arrived at the coast of Western Australia, were onshore arrivals.

**Senator HUMPHRIES**—Because they reached the mainland?

**Senator Chris Evans**—They reached the mainland. A group of four Indonesians who have been there for a little longer were also boat arrivals. They are in the final stages of processing. So they are all boat arrivals, but the Sri Lankan group were not offshore arrivals; they were onshore arrivals.

**Senator HUMPHRIES**—Okay. Have any of the arrivals in this most recent round been previous boat arrivals in Australia, onshore or offshore?

**Mr Metcalfe**—It is the same answer that we gave before. We are almost certain that one person had come here previously by boat.

**Senator HUMPHRIES**—Do you know when?

**Mr Metcalfe**—In the period around 2000-01. He had been granted refugee status and a temporary protection visa and he decided to return to Afghanistan. He has now returned. Out of an abundance of caution we will check to ensure that the figure is not more than one. However, we are almost certain that it is just one.

**Senator HUMPHRIES**—It was put to me that a number of such detainees—certainly more than one and at least three—had been previous arrivals and, specifically, that they were people who had come to the attention of the department by virtue of having come to Australia or been en route to Australia aboard the *Tampa*.

**Mr Metcalfe**—Prior to the *Tampa* that would probably be the one individual that we are talking about, Senator. We will also check to ensure that we are being absolutely precise. The minister just mentioned four people who have come to Australia. We had seen them previously as well but they had been found on the earlier occasion not to be refugees and returned home.

**Senator HUMPHRIES**—On the earlier occasion were these four also boat arrivals?

**Mr Metcalfe**—They were also boat arrivals. They arrived two or three years ago following the *Tampa*. At that stage they were found not to be refugees and thus were never considered for processing under the Pacific strategy—which would have had them sent to Nauru—but rather sent directly home.

**Senator HUMPHRIES**—To be quite clear, you are confirming that you think only one person is currently in detention on Christmas Island who had previously been aboard the *Tampa*?

**Senator Chris Evans**—The secretary is seeking a position. We are just checking to establish whether or not that person may have been on the *Tampa*.

**Mr Metcalfe**—I do not think he was.

**Senator Chris Evans**—I do not think that is right. We have to look at the details. We have said to you that, at the moment, the department is aware of only one person who has previously been granted our protection and granted a TPV. He then left the country and has now returned as an unlawful arrival. We will double-check to ensure whether or not he was a passenger on the *Tampa*.

**Mr Metcalfe**—I think the answer to that almost certainly is no. I am sorry if I misheard you or misled you. I said that my understanding is that he would have arrived in around 2000 or 2001. But, of course, the group on the *Tampa* were all taken on board HMAS *Manoora* to Nauru and then processed in Nauru. The result was that they ended up in New Zealand and other places. My understanding is that the gentleman we are talking about arrived, in fact, arrived prior to the Pacific strategy arrangements, was processed and probably came into Australia and, I think, may have spent some time at Woomera before being granted temporary protection. Could we take that question on notice and come back and clarify or correct that if any of it is incorrect? That is based on my recollection.

**Senator HUMPHRIES**—Sure. I am particularly interested in this suggestion that more than one of the recent arrivals on Christmas Island was previously on the *Tampa*. That is the question I am asking.

**Mr Metcalfe**—Okay. We can check that point. I think the answer is almost definitely no. We will come back on notice and let you know for sure.

**Senator HUMPHRIES**—Thank you.

**Senator FIERRAVANTI-WELLS**—Before I ask some questions about detention generally, I want to mention the report of the Joint Standing Committee on Migration. Do you endorse those recommendations, Minister? What is the government's position in relation to that report?

**Senator Chris Evans**—I have the draft response for formal tabling in the parliament—the government's response to that report. That is in draft form. I have made some amendments and we then have to consult with a couple of other departments. The formal response from the government is not too far away. It will be lodged in the parliament in the normal way.

**Senator FIERRAVANTI-WELLS**—That is not too far off?

**Senator Chris Evans**—No.

**Senator FIERRAVANTI-WELLS**—All right. I refer to some of the instances of self-harm at the detention centres. Are those instances continuing? Does Mr Correll have some statistics relating to that?

**Mr Correll**—I am sure that we do. Whilst Ms Wilson is just grabbing those statistics, I emphasise that today we have a much lower number of people in detention facilities. Not counting the numbers on Christmas Island, the number of people in detention facilities from around the middle of this month was below 200. Historically, that is an extremely low level.

**Mr Metcalfe**—It is an extremely low figure.

**Mr Correll**—I think Ms Wilson now has the numbers.

**Ms Wilson**—Senator, for the period 1 July 2008 to 30 January 2009 there were nine incidents of actual and attempted self-harm. They took place in detention centre facilities. That figure compares to 42 incidents which were reported in the 2007-08 financial year. So it is trending downwards.

**Senator FIERRAVANTI-WELLS**—Yes, we are seeing fewer incidents.

**Senator Chris Evans**—It still remains a problem, Senator.

**Senator FIERRAVANTI-WELLS**—Of course. I am not saying that, Minister.

**Senator Chris Evans**—I just want to make it clear that we are not claiming that we have solved those problems. People get desperate, but the reality is that there are fewer people in detention and, therefore, those figures should be coming down. They have been. But we have had continuing problems with people self-harming, with hunger strikes and with other behaviour we have seen over the years. It is a continuing challenge for the department.

**Senator FIERRAVANTI-WELLS**—I would like figures in relation to people who have been released from detention into the community. Do we have some statistics on that over the past couple of years?

**Senator Chris Evans**—Are you asking for people granted visas or people put into community detention?

**Senator FIERRAVANTI-WELLS**—I am interested in those various categories of people. We talked about some of the community assistance available. I guess it is about people who otherwise could be in detention but are now in some sort of community type arrangement.

**Senator Chris Evans**—We could all otherwise be in detention.

**Senator FIERRAVANTI-WELLS**—I think you know the gist of my question, Minister. Do we have any statistics in relation to that?

**Mr Hughes**—The answer is complicated because it is partly about people who have been resolved outside the detention environment in community care and partly about people who are in other forms of detention; perhaps that might be the wording.

**Senator FIERRAVANTI-WELLS**—I am happy for that to be taken on notice; that is not a problem. Can you take me through some of the boat arrivals since June 2008, some of whom have been mentioned before? I would like to ask the question so I do not traverse the comments made previously. How many of the boat arrivals that we have seen since June 2008 are in detention, some form of community arrangement or have been let out after checks? Are they covered by the previous statistics?

**Senator Chris Evans**—No, I think the best way to put it is that the only persons who have come to the mainland are those who have been found to be owed protection. As I said, they have been granted a protection visa and have been resettled. Those who have not been assessed as yet remain on Christmas Island. Some of them are in the detention centre and some are in community detention. That might mean in the duplex accommodation or in the camp, because we have been particularly keen to get women, children and families into that alternative accommodation. We can provide the figures on who is on Christmas Island.

**Senator FIERRAVANTI-WELLS**—Yes, please.

**Senator Chris Evans**—Of course, the secretary has just reminded me, quite rightly, that the exception to that is the crew who have been brought to Perth for prosecution. They have been moved to Perth and are undergoing prosecution by the AFP. Two of the Sri Lankans have gone home voluntarily. A couple have come to Perth for medical attention; there is one pregnant woman et cetera.

**Senator FIERRAVANTI-WELLS**—It would be useful to get a snapshot of those in detention at the moment, obviously while protecting privacy. For example, are they part of the group of 12 people who arrived on 28 November and who are now on Christmas Island? Do you see what I am getting at? I have some statistics about where people are in detention, but it would be interesting to have that table amended.

**Senator Chris Evans**—I am sure Ms Wilson can give you a table—of the boat arrivals, the number of people and where they are—if not immediately then within an hour or two.

**Senator FIERRAVANTI-WELLS**—I would like to see where they have gone. I have an immigration detention statistics summary dated 26 December that obviously came from the department. It would be useful to see a breakdown of the people who are now on Christmas Island. It says that there are 104 on Christmas Island. Were they part of the group that came in on a particular date? Could there be a description?

**Ms Wilson**—So you are after a breakdown.

**Senator FIERRAVANTI-WELLS**—It is really just a further breakdown and an update of that table dated 26 December. That would be useful.

**Mr Correll**—It would be easiest for us to take that on notice.

**Senator FIERRAVANTI-WELLS**—Absolutely. That is what I intended.

**Senator Chris Evans**—If you want specific information, we can give it to you, but the table will be the easiest.

**Senator FIERRAVANTI-WELLS**—I will show Ms Wilson in the next break what I have and then she can work on that.

**Senator Chris Evans**—The simple answer is that those who have been found to be owed protection have been brought to the mainland and those who have not are either in detention or in the community on Christmas Island. We have brought 36 to the mainland. As I said, there is the separate issue of the crew and a pregnant woman who needed medical attention. We are obviously seeking to prioritise processing of the children and families.

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

**Ms Wilson**—Three people were granted detention visas yesterday, so the 36 actually became 39 overnight.

**Senator FIERRAVANTI-WELLS**—I think we have covered the question of prosecution for trafficking and you were going to get more statistics in relation to that. On the last occasion we had some questions about the details of your programs that were going to change as a consequence of the new detention values. We had a little exchange of views in relation to that. You provided me with an answer, No. 49, as to output 1.5, Detention. You identified 26

initiatives or projects to implement the government's new detention values. Mr Correll, can you take me through them and perhaps flesh them out? Do you have all that in front of you?

**Senator Chris Evans**—This is one of those occasions when the minister is just as interested in the answer as the questioner is.

**Senator FIERRAVANTI-WELLS**—That was definitely the exchange on the last occasion.

**Mr Correll**—I can work through that in a broad summary form. With your agreement, I will refrain from working through every one of the 26 initiatives. Across the implementation of values, there has been immediate administrative implementation of the principle of no children detained in an immigration detention centre. There are no children in immigration detention centres. That is fully implemented.

**Senator FIERRAVANTI-WELLS**—That has been a feature of our policy before; that has not changed. We canvassed that there was a policy of not keeping women and children in detention before. It is just that some choose to go into detention for their own personal reasons. I would like it clarified that it has been a feature of our policy for quite some time, even before the change in government.

**Mr Correll**—I would simply make the clear point that, yes, since the announcements of 2005 there has been a clear policy position in relation to women and children in detention centres. Since the announcement of the new detention directions there has been a clear, absolute continuation of the policy of no children. There are no children in immigration detention centres today. That is a factual statement. There is senior management oversight of detention decisions.

Training programs have been or are being updated to reflect all the values. In some cases that is fully implemented and in some cases it is a work in progress. An assessment tool has been developed to identify risks posed by individuals and to assist in the overall risk consideration. Operational guidelines have been and are being updated to take into account community feedback and experience to date.

I think it was mentioned at the last hearings that there has been wide-ranging consultation with the community. A national status resolution service is boosting the department's capacity to actively engage in and resolve immigration status of bridging visa holders. The values are being applied to guide placement decisions within the detention environment. Infrastructure improvements have commenced. Short-term measures at Villawood are expected to be completed in March and April this year.

The numbers of people who are moving from compliance action into detention facilities is certainly down year on year. A whole-of-government surge plan for unauthorised boat arrivals is nearing completion. A review of 438 clients identified for review at the time of the announcement has been completed. There has been the engagement with the Ombudsman and a consultancy operation to develop the methodology of three-monthly senior officer and six-monthly Ombudsman reviews. A detention review unit has been established to assist the senior officer and the Ombudsman officer in those reviews.

Interim arrangements are in place in all aspects of the arrangements for Christmas Island. Publicly funded advice and assistance, the independent merits review process and the Ombudsman oversight is all fully operational. As I flagged earlier, a wide-ranging stakeholder consultation on the implementation of the processes has been completed. There has been substantial progress and implementation across all aspects of the values.

In terms of the overall impact that we are seeing, already fewer people being detained. Those who are being detained are being detained for shorter periods. People are detained in the least restrictive environment possible consistent with a risk-based approach, and more people are remaining in the community whilst their status is being resolved. Again, that is consistent with the risk-based approach associated with the principles. So it is not yet complete, but those projects are well advanced across all fronts.

**Senator FIERRAVANTI-WELLS**—I would like to deal with a number of those issues. I do not want to go through the whole list, but I would like a little bit more information about some of them. Tell me a little bit more about undertaking stakeholder consultation and public communication activity on the government's new direction in detention. What are you doing there?

**Mr Correll**—I will ask my colleague Ms Gillam to provide detail underpinning this. It basically involves community stakeholder consultations that occurred as usual across all capital cities. Representatives discussed and fed through their ideas on aspects of implementation of the new detention directions. That feedback has now in turn been forwarded to the minister and is informing whole processes of implementation of the new detention directions.

**Mr Hughes**—I think that is the answer. The idea was to engage stakeholder communities who are familiar with the clients who go into detention, who interact with the department, and to get that feedback on the best ways to implement the new values to get resolution for the cases concerned, whether it is departure or a visa, without the use of detention. Those took place throughout the greater part of 2008.

**Senator FIERRAVANTI-WELLS**—And minimise any instances of absconding and that sort of thing. Have we had instances of people absconding?

**Mr Hughes**—I think the interesting thing is that, since the implementation of the new values—and in many cases it is using the opportunity of bridging visas rather than putting people in detention—we have not seen any increase in the incidence of people overstaying their bridging visas. I think that means the risk judgements we have been making under the new values have been the right ones. Where we have resolved people's cases while they are outside detention and on bridging visas, we have not seen any significant increases in the percentage of people overstaying those bridging visas. So far so good, but we are not fully implemented yet.

**Senator FIERRAVANTI-WELLS**—In terms of numbers, that will be the source of the statistics you will provide to me that we talked about before.

**Mr Hughes**—Yes; we will do our best.

**Senator FIERRAVANTI-WELLS**—I take you now to the initiative concerning arrangements to place the onus on the department to justify a decision to detain unlawful noncitizens. How does that work in practice?

**Senator Chris Evans**—Another very good question, Senator.

**Mr Hughes**—That is not fully implemented yet; it will be part of the final implementation package. But it is turning around the way that we approach detention. Rather than regarding it as the default position that it might have been regarded as in the past in terms of a client's location, it is now a question of how we can resolve the case without the use of detention and using detention only in the risk-based circumstances with the values. I would not say that is fully implemented.

**Senator FIERRAVANTI-WELLS**—We will keep an eye on that. I guess it is that case where you err on one side that will turn out to be the problem case in the community. I am concerned from that perspective. It is a balancing act; I appreciate the need to balance the two things. If you have an instance where a person you let out in the community commits a crime—

**Mr Hughes**—The main risk group is the section 501 visa cancellation cases involving criminal histories. Those people are remaining in detention on a risk basis.

**Mr Correll**—If there are any concerns about security, the people are detained. There will be no change in that regard. We are talking about risk-based assessment, but it is not risk to the community; we are talking about the risk of absconding. If they are a risk to the community, they are detained in the same way they were previously. There is the 501 group. If an officer in compliance has any concerns about the potential behaviour of a person and detention is appropriate, then that would be case. There is no change in that. We are not talking about the risk of them going out and attacking citizens; it is about the risk of their not complying with their visa conditions.

**Senator FIERRAVANTI-WELLS**—That is not the gist of what I was saying. I was saying that it is important that you get your checks right, because, if that person does something out in the community while they are out and about, there are circumstances you have to—

**Mr Correll**—I think we are at cross-purposes. If there is any concern about security, if the person is of bad character or a risk to the community, the officers would act in the same way. What we are discussing is whether the decision is taken to detain based on likely immigration behaviour, if you like, not risk. If there are concerns about health, security or identity then the normal processes apply.

**Senator FIERRAVANTI-WELLS**—In other words, defining that in the next strengthening arrangements to allow for the release of unauthorised arrivals when their immigration detention is no longer required for the management of health, identity and security risks to the Australian community. That was what was prompting some of my questions.

**Mr Correll**—This data might be helpful. Since the announcement in July—and this is a relatively short amount of time—of the new detention directions, around 50 per cent of

unlawful noncitizens located by compliance officers in the field or through police referral have been detained compared with 65 per cent in the previous financial year. At the same time, the proportion of people overstaying their bridging visa E—that means more people are going onto bridging visas—has remained steady. So there has been no deterioration in that figure. That reflects the increased use of a risk-based system without that approach having any negative impact on the overstay rate. As I said, it is early data, but that is a reflection of the new detention directions being implemented.

**Senator FIERRAVANTI-WELLS**—All right. One of the changes you referred to was implementing new detention, health and service providers. Can you provide a little background about that?

**Mr Correll**—An announcement has been made in relation to one of the three tenders operating, the health services tender. The announcement of the successful tenderer has been made and we are in the process of transitioning across to that service provider. One of the other two tenders relates to immigration detention centre services. The other service is for residential housing and transit accommodation. In both cases no announcements about the tender process have yet been made, although the tender process is nearing completion in both of those cases.

**Senator FIERRAVANTI-WELLS**—The next one is leaving whole-of-government contingency planning for responses to surges in unauthorised boat arrivals and disaster recovery. That is the point I was making before. Perhaps I should have used the word ‘surge’ to reflect your language. Clearly there is a recognition that there are surges in unauthorised boat arrivals. Tell me a little more about that. Is that the sort of stuff we were talking about before in program 1.3?

**Mr Correll**—This is reflecting the fact that the number of unauthorised boat arrivals and the number of people on Christmas Island has increased. As a result we have worked with other agencies to develop planning strategies for handling that particular increase and any further increase as a contingency should there be further boat arrivals. That has been done linking in with a range of other agencies. All up, there are approximately seven or eight different agencies or service providers involved with services on Christmas Island. We have been working actively with those agencies to establish the best possible operational processes on the island and arrangements to be able to handle on a contingency basis any increase in boat arrivals.

**Senator FIERRAVANTI-WELLS**—So all of Christmas Island is now being used—the whole facility?

**Mr Correll**—At the present the North West Point detention centre is being used and the duplex facilities are being used for families. The Phosphate Hill site is also being used including, significantly, the construction camp. It is not at full capacity but all of the various facilities are being used. The nature of the operation on Christmas Island is to use the range of facilities there as flexibly as possible based on the circumstances of the passengers on the boats that are arriving and depending on whether there are families involved or single males. We utilise all of the facilities on the island. It is certainly not at full capacity.

**Ms Wilson**—There is actually no-one at Phosphate Hill or the construction camp as of today.

**Senator FIERRAVANTI-WELLS**—I appreciate that. I guess that if the search continues you will be using much more of the facility.

**CHAIR**—Is that the construction camp or the temporary detention site?

**Ms Wilson**—There are multiple facilities on the island. Largely, the people are in the North West Point immigration detention centre or in detention at the duplexes. We have been using the construction camp and Phosphate Hill as well, as Mr Correll outlined. However, there are no people in the Phosphate Hill or construction camp facility as of today. We are using all of the facilities as the demand presents.

**CHAIR**—But you have just fenced the construction camp. Are you not intending to use that?

**Mr Correll**—The officer is saying that we try to use the best facilities available for the client base at the time. The families are now largely in the duplexes and other accommodation. The actual camp is not being utilised at the moment. It is available for use, but it is not being used at the moment. We have the single males in the new detention centre and we have families and children in the duplexes and other accommodation. So Phosphate Hill and the construction camp are now empty but available for use.

The planning for this was put in place by the government back in May or June, well before the recent arrivals. It is about contingency planning. The previous government made arrangements to close down Port Hedland, but keep it there as a capacity we can bring back. It is just part of prudent planning. Of course the most obvious point to make is that the Howard government built the new facility to accommodate a surge capacity of 800 and it continued the building of that capacity so that the keys were delivered to me in April 2008. Clearly, the Howard government planned for potentially needing 800 beds on Christmas Island. We utilise the capacity they planned for and invested in.

**Senator FIERRAVANTI-WELLS**—Minister, what was described by elements of your government as a ‘white elephant’ has turned out to be very useful. I suppose it cuts both ways.

**Senator Chris Evans**—It was not described as a white elephant by me.

**Senator FIERRAVANTI-WELLS**—I did not direct that at you, Minister. I just said there were certain elements that made a lot of mileage out of describing it as a white elephant. But it has turned out to be a very useful facility.

**Senator Chris Evans**—I think you can have a legitimate debate about whether the investment of resources in Christmas Island was the best use of our funding. Villawood is dilapidated, but \$400 million was spent on Christmas Island on a very expensive project that was managed by Finance, not Immigration. Clearly, there are significant costs associated with operating on Christmas Island way beyond those incurred on the mainland. But I always made it clear that I would utilise whatever facilities we had available in the best combination, depending on what clientele we were dealing with.

The department has successfully managed that, but I have been at pains to ensure we have as many options as possible, particularly to deal with families. Quite frankly, there was no

investment on Christmas Island by the previous government to deal with families and children. That is why we have had to do this mixing and matching. What was built was a brand new, high-security detention centre that included childcare facilities et cetera in the original plans. We have had to adapt to make sure we have facilities that accommodate families and children that are not in the detention centre, and we will continue to try to provide the best options we can for the most appropriate accommodation on the island.

**Senator FIERRAVANTI-WELLS**—Just as Villawood was accommodated to meet the changing mix and demands to accommodate children and families—and one only has to walk around in Villawood to see the changes that were made—I wonder whether Finance is still looking after the changes and building renovations of stage one. Is it Finance that is responsible for stage one, or your department?

**Ms Wilson**—Yes, it is.

**Mr Correll**—Senator, the finance department is responsible for project management for the longer-term redevelopment of, say, Villawood.

**Senator FIERRAVANTI-WELLS**—Stage one.

**Mr Correll**—We are managing directly the short-term immediate changes that have been happening there now.

**Senator Chris Evans**—My only point to Senator Fierravanti-Wells was that there was no investment in other facilities, other than the new centre on Christmas Island. What we have had to do is make do with older and probably less purpose-designed options, but we will manage as best we can, and we will just have to work our way through those issues. Officers have done a great job in managing in quite difficult circumstances.

**CHAIR**—I thought I saw in an answer to a question on notice to Senator Hanson-Young yesterday that the North West Point Immigration Detention Centre on Christmas Island is costing \$9 million a year to maintain as operational. Is that correct?

**Mr Correll**—Senator, that is correct. That is consistent with answers to questions at the last Senate estimates hearing in that the overall cost annually for North West Point and Phosphate Hill is around \$9 million with an additional approximately \$9.8 million in fixed maintenance costs, security and variable costs for utilities.

**CHAIR**—Is that without people in it?

**Mr Correll**—Yes.

**CHAIR**—That is nearly \$10 million a year to maintain detention centres on Christmas Island without people in them.

**Mr Correll**—That is correct. That is the cost across all of Christmas Island.

**CHAIR**—Are there any plans to paint the inside door frames on Christmas Island, or are we just going to leave them as bare, grey steel?

**Ms Wilson**—Senator, can I just clarify that \$9 million is for the North West Point facility only.

**CHAIR**—Only.

**Ms Wilson**—Yes. The \$0.98 million is for Phosphate Hill and the construction camp.

**CHAIR**—That is what I said: \$10 million for the detention centres.

**Ms Wilson**—All three facilities, yes, and we are looking at how we can improve amenities at the North West Point facility, including looking at growing plants and potential for making changes to the grey by bringing in a bit of colour.

**CHAIR**—But it costs \$9 million a year to maintain that facility, even though it might remain empty.

**Senator Chris Evans**—I think it might be useful just to explain the use of the internal security arrangements.

**Ms Wilson**—Senator, we have the centre operating on a low security mode which means that once people have got through the restricted part of their detention, we can open up a lot of the doors. If you have visited, a lot of the roller doors can be lifted up and there can actually be quite a lot of movement within the facility. There is a green heath at the centre which provides a lot of recreational facility. At the moment we are at the point at which it is on very low security mode, but there is a lot of flexibility for people to move and use the amenity that is there, including gymnasiums and study rooms.

**CHAIR**—Once you go through the initial reception area and security hub, do I then need to either get security clearance or swipe my pass to go in and out to the recreation centre, or in and out to the classrooms or in and out of my living quarters?

**Ms Wilson**—What we had asked is for those doors to be kept open rather than having to swipe in and out.

**CHAIR**—I see.

**Senator Chris Evans**—You can get access to the cooking class without having to use your swipe pass at the moment, Senator.

**CHAIR**—There is actually a boot-scooting class in the community. They could jump on a bus and join the rest of the Christmas Island community at some stage.

**Senator Chris Evans**—We might organise a boot-scooting face-off between the clubs and the local community. It would be a sight for sore eyes, I am sure.

**CHAIR**—There is a big contingent of boot-scooting happening on Christmas Island, and a bit of karaoke would mix eminently well in the community.

**Senator Chris Evans**—I had better not say anything before I get into trouble.

**Senator FIERRAVANTI-WELLS**—Can I ask a more serious question about the cost of maintaining all of our facilities, even though they may not be used to their maximum capacity. Villawood is not being used to its maximum capacity, but there is also a cost. I am happy for you to take that on notice.

**Mr Correll**—We will have to take that on notice.

**Senator FIERRAVANTI-WELLS**—But it is the point that Senator Crossin was clearly trying to make. This is a facility that costs a lot to maintain, but we do have other facilities. I

assume there would be a cost with Port Hedland as well even though we do not use it. It is kept as a contingency and there would be a costs associated with that.

**Senator Chris Evans**—No, it is rented out, Senator.

**Senator FIERRAVANTI-WELLS**—I beg your pardon.

**Senator Chris Evans**—We are making a profit.

**Senator FIERRAVANTI-WELLS**—Mr Correll, I think you know the gist of my question.

**Senator Chris Evans**—I think we are making a nice little earner off that at the moment, are we not?

**Mr Correll**—Yes, Senator. It is being leased out.

**Senator FIERRAVANTI-WELLS**—I do not have any more questions on output 1.5.

**CHAIR**—All right. We will move on to output 1.6.

[5.34 pm]

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe knows I have an interest in the detention centre at Christmas Island. I did not ask questions about the centre at Darwin, but never mind.

**CHAIR**—Are there different officers or the same officers?

**Mr Metcalfe**—This refers to things that do not happen any more, Senator, such as Nauru and Manus, which are in the past.

**Senator FIERRAVANTI-WELLS**—Perhaps I might as a couple of questions particularly in relation to the staff who were previously engaged there. Have they been absorbed?

**Senator Chris Evans**—The staff involved on Manus and Nauru?

**Senator FIERRAVANTI-WELLS**—No. Have staff that were previously involved in those areas been relocated? Has there been some rearranging? What I really want to know about is just the aftermath of it.

**Mr Metcalfe**—I will ask Mr Casey to respond although he has moved on in jobs. It was Mr Casey who was involved in the closure of both Nauru and Manus about a year ago, Senator. It is not something on which we have any active issues at the moment. Essentially our own departmental staff moved onto other things. The other staff, who would have been employed by the International Organisation for Migration or other authorities, obviously have been redeployed. Effectively the last clients of the Nauru facility had been resettled in Australia by this time last year. The facilities had been handed back to the host governments at around that time. There was some further work, particularly in relation to making good the PNG site and handing back the facilities in good order and in a way that best suited the local community. I imagine that work is not well and truly finished. I will ask Mr Casey to add to what I have just said.

**Mr Casey**—I was formerly responsible for the offshore asylum management program. Senator, I think Mr Metcalfe has very succinctly summed up the situation. The program was formally shut down on 31 March last year. The staff who were involved from a departmental perspective have been transferred to other duties. The staff who were working for contractors,

such as the International Organisation of Migration, left Nauru and went on to other activities with that organisation. The protective service officers who were engaged as part of the services on Nauru returned to Australia and were redeployed through their organisation into other duties. They all in a sense were contractors. Once the program was completed, they left. As Mr Metcalfe has said, the assets that were assets of the International Organisation of Migration—at least those that could be used by the host countries—were left and were reconfigured so that the people of Nauru and Manus Island could make maximum use of the facilities that were there.

**Senator FIERRAVANTI-WELLS**—Basically, it is just a question of finalising contracts, particularly external contracts. Everything has been done now?

**Mr Casey**—All of that now has been completed. As far as I am aware, all of that was completed. We have finalised all the arrangements with the International Organisation of Migration, which of course ran those programs.

**CHAIR**—Senator Fierravanti-Wells, can I just ask you—

**Senator FIERRAVANTI-WELLS**—I have some questions on Systems for People, output 1.7.

**CHAIR**—Do you have much for outcome 2?

**Senator FIERRAVANTI-WELLS**—I have some questions on settlement services relating to translating, a bit on citizenship and I have some questions on the Multicultural Advisory Council.

**CHAIR**—I am trying to assess whether you think you might be finished by 6.30 pm.

**Senator FIERRAVANTI-WELLS**—Outcome 2?

**CHAIR**—Yes, will it be completely finished or should we push dinner to 7 pm—you might be finished by then.

**Senator FIERRAVANTI-WELLS**—My feeling is that if we can crack on—

**CHAIR**—You might be finished by 7 pm?

**Senator FIERRAVANTI-WELLS**—I am happy to crack on, if the minister agrees.

**Senator Chris Evans**—That is agreed to. That will allow officers to go home.

**Senator FIERRAVANTI-WELLS**—If that is acceptable, I would rather just crack on.

**CHAIR**—I am just trying to get a feel for whether you are have three hours of questioning left or an hour.

**Senator FIERRAVANTI-WELLS**—Oh god, no. I would rather crack on, if I may.

**CHAIR**—We might do that. Even if we get to 7 pm, we might keep going and then pull up stumps.

**Senator Chris Evans**—That is good. I think that will suit our officers better. Some of them have private lives and families.

**CHAIR**—That is outrageous!

**Senator FIERRAVANTI-WELLS**—Mr Metcalf wants to run around the oval, or something.

**Mr Metcalfe**—Yes. I will get back on my rowing machine, Senator. Chair, could I just say that, earlier, Senator Humphries asked about whether we had knowledge that some of the recent arrivals may have been on the *Tampa* vessel and whether there was more than one or two. I was reasonably unequivocal in saying that I thought the answer was one. Since then I have received information indicating that my answer may not have been correct and that there may be a very small number, but more than one, who arrived in Australia, having been previously in Australia. Therefore my relatively unequivocal answer should have been more equivocal.

As we indicated we would take this on notice, I prefer to have the checking done and a definitive position reached. But because that the impression I gave Senator Humphries earlier was stronger than it should have been and the information I now have is that we may have more than one—only a handful but more than one—who have been here before, I thought I should state that on the record and say that we will provide advice that is as clear as we can provide. Given that Senator Humphries is not here, I have asked a senior officer to ring his office and let him know what I have just said.

**CHAIR**—All right. Thank you.

**Senator Chris Evans**—Can I also indicate that this will not be left on notice for a long period. We will attempt to get the committee and Senator Humphries the answer as soon as is possible. As I say, we may have created the wrong impression and we want to clarify it. We will try to get that to the committee formally, Madam Chair, but also to Senator Humphries as soon as we can.

**CHAIR**—We are dealing with output 1.7.

**Senator FIERRAVANTI-WELLS**—The same question for this part will probably apply to output 2. How is the Systems for People program going?

**Mr Metcalfe**—That is a very open-ended question, Senator.

**Senator FIERRAVANTI-WELLS**—It is. Can I refine it a bit? You might recall that I asked this question a couple of years ago when you were beginning to implement. You were basing your Systems for People, if I remember correctly, on a similar program that was in the tax office. It was a narrative system which in a previous life I had occasion to see. I might add that it was very good. Is that what you ended up implementing? How is it going?

**Mr Metcalfe**—Senator, perhaps I will make some broad remarks, and Mr Correll, who is the chief information officer and who has overall responsibility for the program, will come in with details if necessary. It is correct to say that, similar to the Taxation Office program, Systems for People is a very large business transformation program. The budget provided a couple of years ago was in the order of \$500 million. Indeed Systems for People was seen as one of the major responses by the previous government to the findings of the Palmer and Comrie reports on issues such as the department's ability to deliver nationally consistent business processes, so that what happens in Brisbane happens in Sydney and happens in Perth, rather than local arrangements applying.

That was done to ensure we have a much better capability to have a single view of our clients. You would be aware in Vivian Alvarez's case that she was known in multiple names and multiple identities, and that was one of the things that led to the terrible mistakes that were made. The objective is to have much better record keeping in the department and essentially to overhaul, replace and modernise information technology systems that are now very out of date.

We are now well into the program. It has delivered seven of the 12 scheduled releases. It is a four-year program and essentially we are having a release every three or four months. We have made a lot of progress in key areas, such as in our immigration compliance area, our case management, detention and border security areas as well as building critical infrastructure for our future developments as we increasingly move into modernised practices round visa application processing, and to enable clients to deal with us through electronic means rather than through paper forms.

One of the most visible changes to the general public is when you look at our website. You will see the front page has what is called a Visa Wizard. That allows a person to put in their own material, answer questions and then get advice or an answer in relation to what sort of visa they should apply for. It also allows them, if eligible, to proceed to apply for that visa. A similarly very useful and modern tool called the Citizenship Wizard provides the same type of advice.

The program will continue until July 2010. The future releases will embed some of the changes, such as the new directions in detention changes that we spoke about earlier, finalising the overall infrastructure of the program and continuing our work in visa services, processing client services, and related areas such as health processing and so on. It is clearly a very large, complex and challenging program.

Like any program, it has not been trouble-free—far from it. We have had many successes. We have had some areas of disappointment. We had a very dedicated team of people who worked hard when there had been disappointments and who continued to work on those programs. A good example is that late last year we introduced new electronic visa application processes for nationals of the European Union through a program called eVisitor. It allows them to apply online. The expectation was that the vast majority would be able to be what we call autogrant, whereby the visa decision is made automatically. The numbers referred for manual processing were relatively small.

In the early days, the autogrant numbers were not as high as we expected, but determined work has got that autogrant rate up to very high levels. Essentially, it is a very big and complex program that is now well advanced. There are strong levels of engagement between the business areas of the department and the technology areas of the department. There have been some strong successes and some areas where there have been disappointments and where we need to do further work. There also have been some good lessons learnt as we now move into the final phase.

**Senator FIERRAVANTI-WELLS**—I will ask a question that relates to some specifics. One of the memories and joys of acting for you in the past was the multiple files with the folio numbers in the corner. My question is this: is your system going to have on it 'Joe

Bloggs' and a complete narrative about Joe Bloggs in simultaneous time? The beauty of the Taxation Office system was that, when you got a narrative about Joe Bloggs from the tax office, you saw everything and every association that the tax office had with him in one document and in chronological order. It was easy to follow. To some extent, with the benefit of hindsight, that was always one of the difficulties with immigration.

**Mr Correll**—That is a key feature of the program, and it is what we call the single view of the client feature of the program. We now have what is called the client search portal within the program, which today gives a search across 90 million records. When the program is complete in July 2010 that will be up to around 110 to 120 million records that it is searching to ensure that you get the complete view of the transactions. As the portals for the various business processes are rolled out, they include a single initial contact or summary screen for a client—because it is impossible to have all the information for a single client.

**Senator FIERRAVANTI-WELLS**—Of course.

**Mr Correll**—From that single central screen—we will call that client central, if you like—you are then able to go to various other screens, depending on your role in the organisation. In some cases you may not have authorisation to seek all of the information.

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

**Mr Correll**—However, if you are a case manager—

**Senator FIERRAVANTI-WELLS**—Your access is wider.

**Mr Correll**—And I would add that three years ago end-to-end case management did not exist within the organisation. Now case managers have a portal that gives them a full picture, tells them of interactions with the client and enables them to obtain information when other parts of the organisation are dealing with transactions with that client that they otherwise may not have been aware about. That information comes through to them on their—

**Senator FIERRAVANTI-WELLS**—But even if they cannot access they know that there is information from another section—

**Mr Correll**—Yes.

**Senator FIERRAVANTI-WELLS**—so that you do not have that problem of one arm of the department not talking to the other arm.

**Mr Correll**—You mentioned similarities. There are both similarities and differences with the tax office system. One of the key areas of similarity is that the tax office system uses a software product to allow end-to-end client management. It is a customer relationship management—CRM—sort of software product. The department is using the same software product to support all of its work in the area of compliance, case management and detention. That has similar objectives in being able to provide the complete work flow support and a complete view of the client.

We think one very important measure of success for the program already is that, in implementing the new detention directions that were announced last year, we are not able to implement those without rolling them into the new portals that have been put out. In July this year, we have a major rollout of system changes for the portals in compliance, case

management and detention to complete the systems aspects of those new detention directions reforms. That is basically leaving behind completely the old legacy systems in that whole area of the department's operations and will be a major milestone for the program.

As Mr Metcalfe has indicated, there have been a number of successes. The big area of development that is now being focused on is in the area of visas in the program and the development of much more consistent business processes across the organisation globally as well as the use of quite sophisticated rules engines to support better quality, more consistent, faster decision making and processing of applications. The major emphasis of the remaining releases into the program will be in the area of the visa programs.

**Senator FIERRAVANTI-WELLS**—I do not have any more questions on that, but that covers for both outcomes.

**Senator HUMPHRIES**—I understand that an answer was given a little while ago to revise an answer. I wonder whether I could hear it again live so that I can ask any follow-up questions.

**Mr Metcalfe**—Senator, can I extend my apologies. According to the information I had when you asked the questions earlier, my understanding was that we had one person who had been to Australia previously from Afghanistan. I also mentioned that we had a family of four people whom we had seen in the past who had not been granted refugee status, who had been returned to their home country and who have now come back to Australia. I was relatively unequivocal in saying I thought there was only one but that we would check and take that point on notice.

Information that came to me soon after you left was that I should not have been so unequivocal. It appears that we may have a small number—fewer than five—who may have come to Australia in the past and been granted a visa and subsequently left Australia and have now returned. I wanted to state on the record that of course we will continue to provide you with clear and firm advice as quickly as we can on notice, but I would prefer not to give an absolutely unequivocal statement at this stage because I am just not satisfied we have the complete facts in the room this evening. I thought it was import to alert you to fact that, after being relatively unequivocal earlier, my view has changed. It would appear that the answer I gave was not the correct one. I wanted to apologise for that.

**Senator HUMPHRIES**—To clarify that, you are saying that there are a number of people, fewer than five, who previously had come to the department's attention because of an attempt to enter Australia?

**Mr Metcalfe**—Let me deal with the four individuals first.

**Senator HUMPHRIES**—This is the family.

**Mr Metcalfe**—Four individuals of a family came to Australia a while back, were found not to be refugees and were returned to their home country.

**Senator Chris Evans**—I think this is where there is some confusion, Senator. These people are not from Afghanistan. They are not the people you are referring to. Just for completeness, the secretary is mentioning this family to you.

**Mr Metcalfe**—Yes. This particular group have returned and are now undergoing processing to see if there are claims to stay in Australia. They are a family who are at a relatively advanced stage of determination and are in fact seeking review of decisions that the department has made.

**Senator HUMPHRIES**—They were boat arrivals originally?

**Mr Metcalfe**—They were boat arrivals.

**Senator HUMPHRIES**—And on the second occasion, they were also boat arrivals?

**Mr Metcalfe**—They were boat arrivals, but not from Afghanistan.

**Senator Chris Evans**—And not in that large boat. This was an independent family venture, unrelated.

**Mr Metcalfe**—Just a small family enterprise.

**Senator HUMPHRIES**—Right.

**Mr Metcalfe**—A resourceful family.

**Senator HUMPHRIES**—Are you are saying that the first boat arrival was possibly on the *Tampa*?

**Mr Metcalfe**—Yes. What I am saying now is that, in relation to the other group—the recent group of boat arrivals that we have seen, who are largely folks from Afghanistan—you asked if any have been to Australia before. The advice I originally had and which I provided, not completely definitively but with a high level of assurance, was that there was one person. The advice I now have is that there may be four people and that one of them may have been on the *Tampa*. But I am not sure about that and I would prefer to have the facts fully checked. We can do that as quickly as we can and, on notice, provide you with a complete picture in relation to that group of people.

**Senator HUMPHRIES**—Just to be clear, in the second group of possibly four, it is possible that one may have been on the *Tampa*.

**Mr Metcalfe**—That is what I am saying, and please do not hold me to the figure of four. The figure I currently have is four, but I want to make sure we have absolutely checked this point because this is developing this afternoon.

**Senator Chris Evans**—I think also it is fair to say that on the advice the secretary just received he could not say with any assurance that it was only one, or one who might have been on the *Tampa*.

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—The advice indicated that we would have to do a check and go looking for that in particular in the interview records. At the moment, on the basis of that advice, you would not want to be definitive. It will require us to check the records.

**Senator HUMPHRIES**—I understand what you are saying. That is the second group, but, regarding the first family of four who have now made two entries to Australia by boat, were either of those entries on the *Tampa*, as far as you are aware?

**Mr Metcalfe**—No. They were a small family group.

**Senator HUMPHRIES**—Fine. Thank you very much.

[5.57 pm]

**CHAIR**—We will move to outcome 2, which involves citizenship, predominantly. We will deal with output 2.1, Settlement Services.

**Senator FIERRAVANTI-WELLS**—Can you give me some indication of support for new arrivals? One of the indications that had been given before this government came to power was stated by Mr Rudd:

We are dead-set determined to get settlement services right for migrant and refugee communities.

I would be interested to see what changes you have effected in this area. Can you point me to what the differences are in this area now as opposed to before the election?

**Ms Pope**—Certainly. The first program that I ought mention is the funding that was an election commitment by the current government under the AMEP program, the Pathways to Employment and traineeships. I could give you some more detail about those, if you would like me to. The amount of money that was announced in relation to those two programs combined was \$49.2 million. The work in relation to those two programs is in pilot phase at the moment. We have contracted a group of existing providers of the AMEP to deliver those services and to trial methods of delivery around Pathways to Employment and the traineeships programs. We have encouraged them to be innovative in the ways that they go about approaching that. We will then evaluate the pilots and make a decision about how we take the programs forward in the future.

**Senator FIERRAVANTI-WELLS**—In doing that, did you do some sort of analysis of where you see areas in migrant communities of particular need?

**Ms Pope**—I am sorry, Senator. I do not know exactly what you mean.

**Senator FIERRAVANTI-WELLS**—You mentioned Pathways to Employment.

**Ms Pope**—Yes.

**Senator FIERRAVANTI-WELLS**—In communities that in particular need assistance, before you embarked on the pilot, did you do any analysis of the areas of most need?

**Ms Pope**—Yes. There were a range of areas where we thought it would be very useful to do some further work. These included areas such as work ethics and the Australian workplace culture, questions around occupational health and safety, around taxation, the role of unions—basically what it is like to work in an Australian workplace. This part of the program, which is the pathways program, is about learning English that helps orientation to the workplace and to gain familiarity with what it is like to work in Australia. The things they will learn as part of these programs are aimed to help them find employment when they graduate from those programs and to have them focusing on the sorts of vocational areas that might offer opportunities for them to work in. There is a whole range of areas that we have been looking at in that respect.

**Senator FIERRAVANTI-WELLS**—On that point, does that mean that you have some statistics? I would be interested to see statistics going back over the last three, four or five years regarding full-time and part-time employment statistics for new arrivals. We have seen

some statistics around about the need for having English and how, if people have English, it makes it easier for people to get into jobs more easily. Do you have some updated statistics in relation to that.

**Ms Pope**—I would have to take that on notice.

**Senator FIERRAVANTI-WELLS**—Yes, by all means. In relation to some of the questions I will ask you, I think it is best if you just take them on notice.

**Senator Chris Evans**—Senator, I think as you would appreciate, the driver is really whether we are teaching them English theory in a vacuum in which they do not see the relevance, or whether we are teaching them English that helps them gets jobs and stuff that is meaningful. That is the push—to try to make sure we get it right.

**Senator FIERRAVANTI-WELLS**—And experience from our traditional migrants tells us that where most of them learnt English was on the job.

**Senator Chris Evans**—Yes. But also it is about making sure that they have the sort of English and the sort of experience that allows them to apply for a job and can survive in the workplace, not how they deal with their adverbs et cetera.

**Senator FIERRAVANTI-WELLS**—Following on from that, I would be interested in where services or particular resources that have been used in the department are targeted at increasing English proficiency, especially in relation to vocational areas. If you could take that on notice, I think you will understand that I would like to see the picture of what you are doing that is specifically targeted in those areas. Regarding general language proficiency, does that mean that you have shifted your focus away from general English to more targeted programs for targeted English?

**Ms Pope**—In the AMEP in the broad changes were already taking place. Providers were responding to the economic circumstances that they were facing at the time, which were that there was a great demand for people to enter the labour force and a real pressure for new arrivals to balance the relative priority of learning English, settling and getting into work. There was quite a deal of pressure from the labour market that they take up the jobs that were available.

Obviously things have shifted quite markedly in that respect in the recent past, and we will see a different approach from our clients around their ability to enter the workforce quickly, and their focus on learning the English language. English is absolutely fundamental to getting a job, as you have said. We have been through a process of review of the AMEP over this past year. We are working towards a new contract period and a tender process that will be taking place through this year and into next year. Some of the things that we will be focusing on is the clients and their needs in relation to employment and the focus on English language learning that ought to be in the direction of employment.

**Senator FIERRAVANTI-WELLS**—So you have altered the criteria? Basically, you are putting it out to tender again. Is that what you are doing?

**Ms Pope**—We will be, yes.

**Senator FIERRAVANTI-WELLS**—You will be?

**Ms Pope**—Yes.

**Senator FIERRAVANTI-WELLS**—Have you undertaken some analysis of the faults of the previous one? Are they internal working documents?

**Ms Pope**—It is a draft at this stage. We have not finalised the report, but it was formulated on the basis of quite extensive consultations with clients, service providers, business people, teachers and so on.

**Senator FIERRAVANTI-WELLS**—But it is a process that obviously has been ongoing for a number of years.

**Ms Pope**—Certainly, and incremental changes have been made over time. But a new set of contracts gives us an opportunity to let a new picture of what AMEP needs to be into the future. That is what the tender process will represent.

**Senator FIERRAVANTI-WELLS**—If in so doing you have built up basic statistical data in relation to levels of proficiency not just on engaging in employment and new arrivals that they go on to employment but general statistics on English proficiency could you provide that? They would be useful.

**Ms Pope**—Yes.

**Senator FIERRAVANTI-WELLS**—Thank you. Recently there was decision to grant \$6 billion over three and a half years from 2008-09 to 2011-12 for the construction of new social housing as part of the recent economic spending package. Is any of that \$6 billion to be used to address housing needs of newly arrived migrants?

**Ms Pope**—I think it is important to point out in the first instance that we have been heavily involved in the government's review around homelessness. We have been advocating for the needs of humanitarian entrants and new migrants in that context. We have made some changes in our own programs to help set things to the advantage of our clients so that they are more able to access the housing market. But to date I have not had any detailed discussions about the intended spend on new housing and what relationship that might bear to the refugee and migrant caseload.

**Senator FIERRAVANTI-WELLS**—Without reverting to the preciseness of the question, I think we heard some evidence earlier about whether DIAC had had an involvement in relation to the \$42 billion package. I think Senator Barnett asked some questions earlier in the day in relation to it. I understood that the department had not had any involvement. Ms Pope, are you actually saying that in the housing component of it, the department has had some involvement? Have I misunderstood?

**Ms Pope**—You have misunderstood, I am sorry. I gave you a confusing answer, Senator. I was saying that we had been involved in advocating for access to housing for refugees and migrants through the paper on homelessness that the Minister for Housing has taken forward, but that we have not been involved in discussions about the \$42 billion spend.

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

**Senator Chris Evans**—But we are open to offers, if they ring.

**Ms Pope**—Absolutely.

**Senator FIERRAVANTI-WELLS**—In relation to underemployment and indications given before the election about reviews and foreshadowing underemployment in relation to migrant communities, has the department undertaken any reviews or taken any steps with employers' unions in this area to look at the question of underemployment of migrants?

**Ms Pope**—No. I would not expect that that would really be the responsibility of the department. The Department of Education, Employment and Workplace Relations is more likely to be focusing on that issue.

**Senator FIERRAVANTI-WELLS**—Other than the work that you said you were doing in relation to the pathways and the assistance in the proficiency to better assist people, it was within the scope of your programs.

**Ms Pope**—It is in the scope of our programs.

**Senator FIERRAVANTI-WELLS**—Okay. Could you give me some statistics on the number of migrants settling in regional Australia? I am sure Mr Metcalfe is probably going to point me to population flows regarding the statistics on patterns of migrants settling in regional Australia.

**Mr Metcalfe**—I was just admiring the document again, Senator.

**Senator FIERRAVANTI-WELLS**—Were you?

**Ms Pope**—He was just casually flicking through it, Senator. I have it more specifically in relation to humanitarian entrants and refugees than I do for migrants in general, because we focus very closely on the assistance that we provide to refugees in the first period of their settlement. For a proportion of them—around 30 per cent of them—we make the decision about where their initial point of settlement is. That is where the most targeted settlement focus around regional opportunities is placed. About 3,500 people a year do not have known links to either family or friends in Australia, at least at the time they are visaed. Obviously if people have family or friends or are sponsored by them, they generally settle where the link is. So around 3,500 do not have a known link, and we make decisions about their settlement. Many of those have service needs that are not easily met in regional areas, for obvious reasons—such as access to complex medical support and torture trauma in some cases—so that brings us down to a smaller group. We estimate that around 2,100 humanitarian entrants settled outside capital cities in 2007-08. That was about 18 per cent of that year's intake—11,500 arrivals. I can talk about where they have chosen to settle and our pilots and so on, if you want me to go further.

**Senator FIERRAVANTI-WELLS**—Obviously we read all sorts of things in the papers about some of the difficulties, but particularly for the more recent arrivals, do the trends show some of the issues that perhaps have been so starkly displayed in the press? How are some of those issues of integration going, particularly for some of the more traumatised people who have come from the Horn of Africa and those sorts of areas?

**Ms Pope**—Obviously, for refugees coming from difficult backgrounds—where their education has been disrupted, where their lives have been seriously disrupted and where many of them were born and have grown up in refugee camps—the transition is a challenge. But I would not characterise the sort of media reporting you generally read as being representative

of how settlement is progressing for most people and how they go about overcoming the challenges they face. There are more stories of success than there are of failure. The press does not deliver it in that way, but you would know the quite remarkable stories of overcoming challenges and very successfully settling in Australia that we routinely see.

For every worrying story on the front page of the newspaper, there are a very large number of very good stories to balance it out. It is not my view that there are particular cohorts that are struggling as opposed to others. I think for the African cohort, there is a struggle because of their visibility. That gives them attention to issues around their settlement that is not necessarily representative of the problems that in real life they are facing; nor is it a fair accounting of how settlement is going for the group as a whole. That is not to suggest that some are not facing enormous challenges. They most certainly are. There are very large families with maybe one woman in charge of a large number of children or teenagers that would be a struggle for any of us, I am quite sure, through to young men who have lived through very difficult experiences and who have experienced torture trauma, and so on. Like all the waves of refugee settlement before them, I am very confident that they will be very successful. We are seeing very good signs of that success to date. That is my personal view, Senator.

**Senator FIERRAVANTI-WELLS**—I would be interested in information you have, particularly some of the more positive stories you have. I would be very appreciative.

**Ms Pope**—I can give you an example, Senator. We settled a group of Congolese in Shepparton, as you may well be aware. In the group that came in late 2005, there were three young men who this year started university in Melbourne at RMIT and Victoria University. They did not speak any English when they arrived and they are now studying architecture and engineering at university. That is the sort of story that I think really demonstrates success. But the other more routine demonstration of success, I would say, is that people join their communities. They participate. Their children go to school. They struggle with the same things that every other family struggles with, and they learn to solve their problems in the same way as all the rest of us do, with support in the initial stages and then access to the same sort of mainstream support that other families manage on and go forward. Many of them, as we have seen in previous cohorts, will make quite remarkable contributions to Australia.

**Senator FIERRAVANTI-WELLS**—Some of us did not start with English on day one at school either. I could question whether that has been a success or not, but I will not go there. I will ask some questions relating to funding of community based migrant resources centres.

**Mr Metcalfe**—Ms Pope will continue to help you, Senator.

**Ms Pope**—I am sorry, what is your question, Senator?

**Senator FIERRAVANTI-WELLS**—In relation to funding for migrant resources centres, are there current trends? Are you proposing any changes?

**Ms Pope**—Senator, changes were made in about 2005-06—I do not have the date very clear in my head—to the way in which migrant resource centres were funded. In the past migrant resource centres were particularly funded; in other words, they were given grants because they were migrant resource centres. As a consequence of the settlement services review of 2003, decisions were made at that time to bring the separate funding for migrant

resource centres into the grants program, which at that stage was called the Community Grants Program. A combination of those two sources of funding resulted in the Settlement Grants Program, which is the one you see operating today. Migrant resource centres compete on the same basis as all other applicants for grants funding in response to the needs that we advertise.

I can speak to the performance of migrant resource centres in terms of their access to funding. The comparison is 2005-06 to 2006-07, if I have the years right, but I can clarify that. In both years, those centres received approximately \$14 million of the available funding. In the first year it would have been in the form of grants directly to those centres. Since then it has been in competition with other providers. They have won the grants on that basis and they have come out with about the same amount of money—core funding plus grants in the first instance and grants alone since then.

The ones that have been most successful are those that have diversified their sources of funding and that have also moved to where their clients are. One of the concerns back in 2003 was that we were investing in bricks and mortar and paying electricity bills and overheads and that kind of thing, which encouraged the migrant resource centres to stay where they were, whereas their client groups were settling further out. We wanted to see a more dynamic and flexible response to where our clients were. That has largely been successful. There were some transition issues in 2005-06, as I said, but it is well settled now.

**Senator FIERRAVANTI-WELLS**—That gave you the opportunity to look at existing funding agreements or existing operations as opposed to service providers and a new system. Did you discover that to some extent there were funding agreements or organisations that had received funding that had been discontinued, or that it was on a case-by-case basis? Did they simply tender and you did not go through a failure, if I can put it like that? You know the gist of what I am getting at.

**Ms Pope**—I understand your question, yes. We were mindful of transition issues between the old way of funding and the new way. There was some top-up funding provided to help make that transition largely, because some of the grants that those centres had managed were underpinned by their core funding. To have summarily cut off core funding may have had a negative outcome for some of those grants just because of the structure of the funding. Some transitional assistance was provided, and within the space of two years those transitional arrangements were phased out. Now, as I have said, those centres compete on an equal footing with all other applicants for grants funding. For the most part, they compete quite well for that funding. It was not a suggestion that the migrant resource centres were not doing a good job; it was that we felt we needed to be able to be more flexible in responding to emerging needs and that the service providers would be focused on those emerging needs.

**Senator FIERRAVANTI-WELLS**—Many of those centres were just in established areas.

**Ms Pope**—Yes, which served inner-city migrants. But when new people were settling in the other suburbs, it was not as responsive.

**Senator FIERRAVANTI-WELLS**—Exactly.

**Ms Pope**—I would say that every year there is a change in the funding arrangement. Every year some grants cease and are not renewed in the following year, largely because their client

numbers have declined to a degree where it is no longer necessary, at least in our view, to fund them. It is always a difficult process to talk to an organisation and say, 'In the past you have been funded but you won't be into the future.' But that happens each year. The funding is focused on the first five years of settlement. Longer settled communities move out at the end of that time frame and new ones come in at the other end. It is a fixed amount of funding and we have to focus on the newest and greatest needs.

**Senator FIERRAVANTI-WELLS**—Yes, the emerging needs. We are talking about 350 grants or thereabout. Is that right?

**Ms Pope**—That is about right, Senator.

**Senator FIERRAVANTI-WELLS**—I am just looking at page 45 of this.

**Ms Pope**—My colleague reliably advises me that there are 344.

**Senator FIERRAVANTI-WELLS**—Thank you. Is there a list of those grants?

**Ms Pope**—Yes. It is published on our website, Senator, and it is also on the discretionary grants register that the government collects.

**Senator FIERRAVANTI-WELLS**—Thank you. On the issue of the translators, are you looking at any changes in relation to that program? Are there any changes in the National Accreditation Authority for Translators and Interpreters? Are there any changes in that area?

**Ms Pope**—There has been quite a bit of work going on in relation to NAATI—the organisation to which you referred. Largely it is about determining the direction for the future and a firm funding base to take the organisation forward into the future. The biggest challenge that that organisation faces is that in the past we had lots of migrants from a relatively small number of countries, and people from countries where education had been well established and where there were plenty of people who could be trained as interpreters. The challenge today is that we have many, many more languages.

**Senator FIERRAVANTI-WELLS**—That is right, and the groups are a lot smaller.

**Ms Pope**—There are people from countries where their education has been disrupted and there are far fewer people who can be trained as interpreters. It is quite hard to establish examination panels to test new interpreters because there are not enough people who speak the African languages in particular and some of the South-East Asian languages from the Burmese sector.

**Senator FIERRAVANTI-WELLS**—Which makes the English language much more imperative.

**Ms Pope**—It does, but this is a very important investment for us as well, particularly in relation to medical issues, law, legal processes and so on.

**Senator FIERRAVANTI-WELLS**—Of course. I appreciate that.

**Ms Pope**—That is really critical. There is an ongoing investment and focus both by TIS, the telephone interpreter service and NAATI on accrediting interpreters in those new and emerging languages. But it is an area of challenge.

**Senator FIERRAVANTI-WELLS**—I think I have strayed into output 2.2. My apologies.

**Ms Pope**—That is fine. It is the same person.

**CHAIR**—Have you finished with 2.1?

**Senator FIERRAVANTI-WELLS**—I have finished 2.1.

**CHAIR**—Shall we move to 2.2 then?

**Senator FIERRAVANTI-WELLS**—I have strayed into 2.2.

**CHAIR**—All right. Let us keep going with 2.2 then.

**Ms Pope**—She is finished.

**Senator FIERRAVANTI-WELLS**—I have completed 2.2.

**CHAIR**—You have completed 2.2 as well?

**Senator FIERRAVANTI-WELLS**—Yes.

**CHAIR**—We will move on to output 2.3: Australian Citizenship.

**Senator FIERRAVANTI-WELLS**—I have one more question in relation to 2.1.2. Have the centres that provide migrant services, if I can put it like that, been providing support for those undertaking the citizenship test? I know I will cover it in citizenship. What sort of level of support are they giving? Can you just tell me a little bit about that?

**Ms Pope**—Certainly, Senator. The government funded a program of citizenship support grants, and that was let on a select tender basis to existing AMEP and settlement grants providers. If I am not mistaken, there are 35 or 36 providers across the country who offer support and various kinds of courses and classes for people who are preparing to sit the citizenship test. They range from assistance with basic computer skills, so that people feel comfortable with using a computer to sit the test, through to classes that might be conducted in the applicant's first language using the translated versions of the resource book to help people prepare in their own language to sit the test. Also there are classes based around the English language version of that document, and practising the questions that are on the website as well. They are doing a whole range of different things to help people prepare. We have asked them to be creative—this is a pilot—in the way to go about assisting clients to prepare to sit the test.

**Senator FIERRAVANTI-WELLS**—I guess we are going to output 2.3, but could I ask about the appropriateness of letting people sit a citizenship test and effectively learn it in their own language.

**Ms Pope**—They are not sitting the test in their own language. They are sitting it in English.

**Senator FIERRAVANTI-WELLS**—They are sitting it in English, but you are assisting them and they are being assisted and coached in their language to then sit the test in English. Is that correct?

**Senator Chris Evans**—This was as a result of an initiative of the previous government, Senator, which organised for the translation and, as I recall, budgeted for the support programs. All we are doing is implementing the announced policy.

**Senator FIERRAVANTI-WELLS**—I had misunderstood where it was sitting the test.

**Ms Pope**—I am sorry.

**Senator FIERRAVANTI-WELLS**—It is assisting them in the preparation for the test.

**Senator Chris Evans**—Preparation for the test, yes. Mr Andrews provided funds, as I recall, and the translations were done under the previous government.

**Senator FIERRAVANTI-WELLS**—I will move on to output 2.3.

**Mr Metcalfe**—I am sorry, Senator, but we had a comeback on one item for Senator Barnett in relation to FOI.

**Senator FIERRAVANTI-WELLS**—Please go ahead.

**Mr Metcalfe**—I have the officer here who can assist.

**Senator FIERRAVANTI-WELLS**—That is great, thank you.

**Mr Fox**—Senator, this morning you asked some questions about some FOI data. I understand your questions, and I will run through them with the answers. Have we received advice on how to respond to FOI requests? The answer is no. We consider each FOI request on its merits, other than general advice on the interpretation of legislation that comes out from the Attorney-General's Department. There has been no specific guidance on how to answer individual questions. The next question that I understand you asked was: how many requests did we receive between 1 July and 30 December 2008? The answer is that we received a total 4,619 requests in that period. You then asked how many of those were for access to documents and how many were for amendments to personal records. It is about a fifty-fifty split. Of that 4,619, 2,576 were for access to documents; 2,043 were for amendments to personal records. I understand you then asked about the breakdown of whether those accesses to documents were granted in part, in full or denied. Unfortunately I will need to take that one on notice because I do not have that breakdown. I was not able to get that today but I will be able to get that reasonably quickly. I understand you then asked about how many conclusive certificates we might have issued in that period, and the answer is none.

**Senator BARNETT**—Thank you. That is very much appreciated. Could you also take on notice the FOI for the previous 12 months just so that I can get a comparison?

**Mr Fox**—Certainly.

**Senator BARNETT**—Thanks, Mr Fox. I appreciate it.

**Senator FIERRAVANTI-WELLS**—I now want to move on to the citizenship test and put to bed one controversy. The whole kafuffle over the Don Bradman question was only ever a practise question. It was not ever an actual question, Mr Metcalfe, was it?

**Mr Metcalfe**—You are correct, Senator. It was only a practise question. It was never one of the 101 questions that were part of the course.

**Senator FIERRAVANTI-WELLS**—I just thought I would put that on the record, but I am not sure if it will clarify much of the public scrutiny.

**Senator Chris Evans**—There are a couple of other beauts but they are still not released. At some stage I will make them available to you when we have changed the test.

**Mr Metcalfe**—A point of trivia, Senator, that I should inject is that Bradman's batting average of course was 99.94. That has been adopted by the ABC as its post office box, so you will hear 'P O Box 9994 in your capital city', and that is where it comes from.

**Senator FIERRAVANTI-WELLS**—Right.

**Senator Chris Evans**—But that question is not in the test!

**Mr Metcalfe**—Pity.

**Senator Chris Evans**—But if he was writing the test, it would be!

**CHAIR**—Do you have any more pearls of wisdom like that?

**Senator FIERRAVANTI-WELLS**—I just want to focus on the English language. Your response to the Australian Citizenship Test—a review committee—is that the legislative requirements for citizenship applicants to possess a basic knowledge of the English language are to be understood as the applicant having a sufficient knowledge of English to be able to exist independently in the wider Australian community, and this should be in the Australian citizenship instructions. There were questions about the English requirement. Is this going to remain? The test will remain in English, minister? I know that that is a commitment.

**Senator Chris Evans**—Senator, that was all made clear at the time. The committee recommended the definition of English based on the act, and we have accepted that as being a useful and consistent way of treating it. But I have made it very clear that the test will be conducted in English.

**Senator FIERRAVANTI-WELLS**—And there will not be any attempt to reduce the English language requirement to make it easier to pass the test?

**Senator Chris Evans**—No, it is not about making it easier, Senator. What the committee did is try to work through—I will get Ms Pope to respond in more detail, perhaps—this issue of how to define what the standard of English is. But I have made the point to you previously that the original government intention for the English standard that was in the information booklet on which the test was based was supposed to be basic English. I think on any assessment, the level of English rose to a level that was much higher than was anticipated. That does not go to the English. I think it was assessed as being closer to the native speaker English.

To be honest, the content was a bit dense. One of the things we turned our mind to was the accessibility of the language, but it will be in English and it will be designed to be easily understood by people reading it. But as you know, the previous government organised for it to be translated into 29 languages so that people could access the information in a more familiar form. However, the committee recommended, and we endorsed, that the test remain in English,

**Senator BARNETT**—I wonder about your definition of basic English. Has the threshold increased, has it decreased, or is it the same?

**Senator Chris Evans**—Well, it is the same in the sense that it is now based on the legal definition. But perhaps Ms Pope or Ms Forster might like to take you through it.

**Ms Forster**—Senator, within the legislation, in some form or another since 1949, there has been a requirement for English. At the moment that requirement is around possessing a basic knowledge of the English language. That requirement is not changing. The review committee came up with a definition that the government supported around what that basic level of English would look like to an average person trying to explain what that actual knowledge might look like.

**Senator BARNETT**—Based on the definition that is in the recommendation from the review committee, will the threshold level of understanding of what is being defined as basic English be higher or lower or the same as it has been?

**Senator Chris Evans**—It will be consistent with the act.

**Senator BARNETT**—I did not ask that question, Minister.

**Senator Chris Evans**—That is the answer, though, Senator. It is consistent with the legislation; that will be the answer.

**Senator BARNETT**—We have a recommendation, and the recommendation has been read to you by Senator Fierravanti-Wells. We have been discussing the recommendation so I am asking you whether, as a result of the implementation of the recommendation, the threshold, or the definition that has been referred to as basic English, will be higher or lower or the same?

**Ms Pope**—Senator, I think perhaps the way of illustrating the difference is that the resource book will clearly need to be written in plainer English and English that is more readily understood by someone who has a basic knowledge of English, as defined in the act. The definition that Senator Fierravanti-Wells read out is the definition that the committee felt was a proper reflection of what is in the legislation. That will mean that the resource book that people will have to study to prepare for the test and pass it will be written in English that is, in the terms in which you are seeking to define it, at the lower level than the way the previous resource book was written.

**Senator BARNETT**—The feedback I get from what you have said is that it will be at a lower level than what we have previously understood and in terms of those who have sat the test.

**Ms Pope**—Not as we previously understood it, Senator, but the way the resource book was previously written, which was at a much higher level of English.

**Senator BARNETT**—You have expressed it much better than I have. Thank you, Ms Pope.

**Ms Pope**—I did not mean to be impertinent.

**Senator BARNETT**—That is most illuminating. On a slightly related matter, I am interested in the numbers of people who have applied to sit the test since its introduction. Can you provide those numbers for us?

**Ms Forster**—Since the test first began and through until 31 December 2008, which is the latest statistic.

**Senator BARNETT**—Just give me the date of commencement.

**Ms Forster**—It is 1 October 2007 through to 31 December 2008. There were 89,424 clients who sat a test.

**Senator BARNETT**—Let us break that down in terms of who passed the test on the first go, who passed on the second go, and so on.

**Ms Forster**—Yes: 86,312 people passed on their first or subsequent attempt. That works out to be 96.5 per cent, Senator. Of that, 75,572 passed on their first attempt.

**Senator BARNETT**—What percentage is that of the 89,000?

**Ms Forster**—It is 87.6 per cent, and that is not of the 96.5 per cent.

**Senator BARNETT**—I am with you. Are there any other figures that are relevant? Are there some who did not pass? Presumably there are some.

**Ms Forster**—Yes, that is right.

**Senator BARNETT**—You have about 3.5 per cent.

**Ms Pope**—Yes, 3.5.

**Senator BARNETT**—What are those numbers?

**Senator Chris Evans**—Senator, we can give you the numbers but we are putting on the website the three monthly updates of the quarterly. Is it still three monthly? Ms Forster is going to help you, but there is a full description, including countries of origin and pass rates, et cetera, and that is available publicly.

**Ms Pope**—We can give you further information by skill stream, family stream, and humanitarian program, if you are interested in that breakdown.

**Senator BARNETT**—That would be on the website, would it?

**Ms Pope**—Yes, Senator.

**Senator Chris Evans**—It is a very comprehensive report.

**Senator BARNETT**—I have seen the website, but not recently. I am not sure that I have looked at it going back to its inception. If you are happy to either table that or put it on notice, that will be fine. That is not a problem.

**Ms Pope**—We can table a hard copy of this snapshot report.

**Senator BARNETT**—Yes, that is a good idea because sometimes that is better than looking at the website. Thank you. That is helpful.

**Ms Pope**—Apart from a bit of highlighter, Senator, it is a clean copy.

**Senator Chris Evans**—Unless you would like to wait until tomorrow when we will give you a clean copy.

**Senator FIERRAVANTI-WELLS**—Much was made of mandatory questioning. In terms of those questions around the pledge and so on—

**Ms Pope**—Do you want to know how many mandatory questions there are?

**Senator FIERRAVANTI-WELLS**—No. The gist of it was that you are going to questions that are very much more on the pledge. Tell me a bit about that.

**Ms Forster**—The review committee recommended, and the government accepted, that the resource book for becoming an Australian citizen could consist of two components. The first is testable and the second is information that might be of use and of interest to people becoming or wishing to become citizens. The review committee formed the opinion that the words of the pledge of commitment that new citizens are required to make—in fact, it is the final step in becoming a citizen—and that the ideas encapsulated in the wording of the pledge should form the basis of knowledge that people have in regard to responsibilities and privileges and in regard to Australia's democracy and democratic beliefs, et cetera, and the fact that we require people to uphold law, and that we have a rule of law. Those concepts will form the basis of the testable section of the resource book and will become the basis for questions in future tests.

**Senator FIERRAVANTI-WELLS**—One of the recommendations was that the new resource book would be written by professional educators. Have you chosen those educators?

**Ms Forster**—Senator, the request for tender closed on 16 February. The process of selection of the successful tenderer is currently underway. They have not yet been chosen but apparently the results are locked away, I believe. That should come out very soon.

**Senator FIERRAVANTI-WELLS**—And the criteria that were used for the tender?

**Ms Forster**—Request for tender documentation was lodged on the AusTender website. That was a fully open tender selection process.

**Senator FIERRAVANTI-WELLS**—It is probably easy and we can go and look at it, but can you just tell us the criteria that you set out for that?

**Ms Forster**—I will have to take that detail on notice.

**Senator FIERRAVANTI-WELLS**—If you would take it on notice, thank you—that would be good. I think Senator Barnett asked about percentages.

**Senator BARNETT**—Regarding the tests, can you provide a final costing of the citizenship test review committee in terms of total costs to date? If you have a breakdown, that would be useful, but if you can provide that later, that would be good.

**Ms Forster**—Sure. The total cost was \$221,131. The breakdown that we had was that \$154,264 was for the committee, which included the sitting fees and travel, et cetera, for their consultations.

**Senator BARNETT**—Is that in equal shares, or do you have a breakdown of that?

**Senator Chris Evans**—It would not be for shares, Senator, because some people attend the whole set of hearings, and Western Australian members travel. We can probably get you a breakdown, but it will not be in equal shares.

**Ms Forster**—No, it would not be equal.

**Senator BARNETT**—If you can provide a breakdown on notice, that would be good.

**Ms Forster**—We can do that.

**Senator BARNETT**—Is it based on a per diem or daily basis?

**Ms Forster**—That is right. There were sitting fees for the days that they were actually working, meeting or consulting, or indeed writing their report.

**Senator BARNETT**—What was the sitting fee per day?

**Ms Forster**—I do not have that in front of me, sorry. I believe two of the committee members—I will have to double check that—were government employees and, of course, waived their sitting fee, so there would indeed be a differentiation there.

**Senator BARNETT**—How many committee members were there?

**Ms Pope**—I might add that the remuneration rates were paid in accordance with those set by the Remuneration Tribunal, so they are standard sitting fees. But we can certainly get you the exact figure.

**Senator BARNETT**—I am not sure what is standard these days in terms of sitting fees. I would like clarification of that.

**Senator Chris Evans**—We will get you the rate, but they were based on the Remuneration Tribunal rates.

**Senator BARNETT**—I am not talking about the daily travel allowance. I am talking about the sitting fees.

**Ms Pope**—Sitting fees, yes. We can provide those on notice too.

**Senator Chris Evans**—They were based on a Remuneration Tribunal rates, but we will get you the exact rate.

**Senator BARNETT**—So that was \$154,264 for the committee members. What were the other breakdown figures?

**Ms Forster**—We had \$14,477 for consultations—really we are looking there at venue hire, any equipment hire et cetera for the consultative process. The website that was established for the committee to accept the submissions et cetera was \$22,051.

**Senator BARNETT**—\$22,051 for a website?

**Ms Forster**—It was a separate website.

**Senator BARNETT**—It was not the department's website; this was a special website for the review committee.

**Ms Pope**—That is right.

**Senator BARNETT**—Is it still operating?

**Ms Forster**—I would have to check that—I am sorry, I do not know. I assume it is still up and running, but I honestly do not know. You certainly cannot lodge anything into it anymore. I will have to check.

**Senator Chris Evans**—If you cannot lodge anything into it, I would hope it was closed. I would be interested in the answer, too, Senator.

**Ms Forster**—That is right—whether people can still access it. The stationery, printing and administration around postage et cetera, was \$12,506. Travel for the secretariat group but not salaries was \$17,833.

**Senator BARNETT**—That is travel not for the committee members but for the secretariat?

**Ms Forster**—That is right. We had staff supporting that committee, assisting them to—

**Senator Chris Evans**—Departmental staff provided the secretariat for the committee.

**Senator BARNETT**—So the total cost is \$221,131. Were departmental costs on top of that?

**Ms Forster**—Salaries were on top of that, but we have listed for travel, which is the additional component.

**Senator BARNETT**—Can you advise how many departmental staff were engaged in the process?

**Ms Forster**—There were staff from within my branch, so there were not additional staff as such, but at any one time there would have been around four people working with the committee, either on secretariat work or helping to provide and pull together background information and briefings for them, collating the submissions et cetera.

**Senator BARNETT**—Would that have included the secretariat personnel?

**Ms Forster**—The secretariat personnel were staff from the department from within the citizenship branch.

**Ms Pope**—They were those four people.

**Senator BARNETT**—That is what I was checking. Thank you. Is there anything else on costings?

**Ms Forster**—That is what I have.

**Senator BARNETT**—That is done and dusted?

**Ms Forster**—Yes.

**Senator FIERRAVANTI-WELLS**—Before we leave citizenship tests, Minister, I think in your press release of November last year you talked about the new tests being operational by August 2009. Is that still the case?

**Senator Chris Evans**—Certainly I made Ms Pope swear on a stack of bibles that she would deliver.

**Ms Pope**—He did not, I might say!

**Senator Chris Evans**—You could ask her that question, if you like.

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

**Ms Pope**—We faithfully undertook to deliver it by August and we are on track, Senator—both senators, in fact.

**Senator FIERRAVANTI-WELLS**—The implementation of this is a decision of yours, Minister. It is not something that is reviewed or gets tabled.

**Senator Chris Evans**—What is that?

**Senator FIERRAVANTI-WELLS**—The new test and the resource book. That will just be launched by you. Given there is a legislative requirement for citizenship applicants to possess

a basic knowledge of the English language, my question is: is there some sort of legislative overview or at some stage of the process do we actually get to see that the test meets that requirement?

**Senator Chris Evans**—I think this is the constant problem we have. It is not the test; it is the booklet. The test is based on the booklet as it is currently. The booklet will be written professionally by the tender process that has been outlined to you. It will not be rewritten in my office. I am not following precedent. It will be done professionally and will obviously be approved by the department et cetera. The book then will be a public document and will be available for everyone to see, but the idea is to get it done professionally.

As I say, the booklet will be available, and that forms the basis of the test. What will not be public are the test questions because we decided not to release the questions, as is the current practice. Again we will release examples, which will give people a flavour, but because we decided to keep the questions confidential I will not be able to release them.

**Senator FIERRAVANTI-WELLS**—For obvious reasons.

**Senator Chris Evans**—Yes. Actually, other countries have made their questions public. There have been different approaches adopted in different countries, but the government took the view that we would maintain the current arrangement in terms of the questions. Some people say that just encourages people to make a quid on a website where they interview people as they leave the test et cetera—but, anyway, that is the decision we took. They will be treated in the same way as they are treated currently. You will see examples, but the actual questions will remain confidential.

**Senator FIERRAVANTI-WELLS**—That completes my questions on citizenship. Chair, shall we move to 2.4?

**CHAIR**—All right.

[6.50 pm]

**Senator FIERRAVANTI-WELLS**—Has the Council for Multicultural Australia now ceased and been replaced by the Multicultural Advisory Council?

**Senator Chris Evans**—I think it had ceased already.

**Ms Pope**—Yes. It ceased in 2006 and the new committee was appointed and announced in December. It in fact had its first meeting today.

**Senator Chris Evans**—Senator Fierravanti-Wells joined me for a cup of tea with them this morning.

**Senator FIERRAVANTI-WELLS**—I did.

**Senator Chris Evans**—Their first meeting was today.

**Senator FIERRAVANTI-WELLS**—I have seen the terms of reference, but it obviously will not have any powers; it is simply an advisory body to the government.

**Senator Chris Evans**—It is certainly an advisory body. It does not have a policy-setting role, but one of the first things it is doing is developing a work plan. I do not know if Ms Pope wants to add anything to that.

**Ms Pope**—I can outline the areas they will be providing advice on.

**Senator FIERRAVANTI-WELLS**—That would be useful, thank you.

**Ms Pope**—Social cohesion issues relating to Australia's cultural diversity; ways to overcome racism and intolerance; ways to communicate the benefits of cultural diversity to the broad Australian community; and issues in general relating to the participation of migrants in Australian society.

**Senator FIERRAVANTI-WELLS**—That is on the website. Having had involvement in the broader community over many years, I know that whenever you set up something like this there are always issues about selection. The minister rolls his eyes.

**Senator Chris Evans**—I was not rolling my eyes. I was agreeing with you.

**Senator FIERRAVANTI-WELLS**—Can you tell me what was the process for the selection of this group of people? That would be helpful.

**Senator Chris Evans**—The department was asked for suggestions and did some preparatory work. It is in the area of responsibility of the parliamentary secretary, Mr Laurie Ferguson. He did the work with the department on coming up with a proposition, but the decision was a decision of cabinet.

**Senator FIERRAVANTI-WELLS**—On a set of recommendations?

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—There will always be this issue, Minister—and I am sure that Parliamentary Secretary Ferguson will answer the question when it is appropriately raised. But with such a broad community and the settling of these people there will always be questions. Without particularly referring to anybody on that committee, there will also always be questions about whether it reflects diversity or whether it is too concentrated in one area and those sorts of issues. I think that those issues inevitably will arise.

**Senator Chris Evans**—Sure.

**Senator FIERRAVANTI-WELLS**—I do not mean that as any sort of criticism.

**Senator Chris Evans**—No. It is a balancing act. It is always very difficult. What I would say though is that Mr Ferguson and the cabinet both took the view that we would not select people who represented a particular organisation. We looked for people who made a contribution in their own right. Obviously they would be engaged with organisations, but we did not say that the head of this, this, and this would be on the committee. The individuals were selected on their capacity to make a contribution. Mr Demetriou agreed to be the chairman and we think he is an excellent choice. We think we have a good mix of skills, experience and potential contribution. Part of their job is to consult and engage with the community and to act as a conduit for ideas and issues. They will have a broad role of mixing inside communities and interested groups. As I say, there is quite a deal of diversity on the committee. It is not just ethnic diversity: we have a senior policeman from Tasmania.

**Senator FIERRAVANTI-WELLS**—Senator Parry will be most impressed.

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—He will be very happy with that.

**Senator Chris Evans**—I am happy to say that it was not Senator Parry who was appointed to the council.

**Senator FIERRAVANTI-WELLS**—Given the experience of some people on that body and without going into too much detail, can I ask whether this is an attempt with one advisory body that will, say, do away with bodies such as the Muslim Community Reference Group and some other groups that have been established over time for various reasons? Is this an attempt to put one body in place that will act as an advisory body to the government on a broad range of issues instead of going into specific areas—for example, the Muslim Community Reference Group?

**Senator Chris Evans**—As its title implies, it is the government's advisory body on multicultural issues. The other group you referred to also died on the vine under the previous government.

**Ms Pope**—Yes. It was appointed for a 12-month period from September 2005 to September 2006.

**Senator Chris Evans**—So I do not think we were actually replacing anything. There was nothing left of any structure in this area when we came to government.

**Senator FIERRAVANTI-WELLS**—I have one more question. Regarding the promotion of the value of Australian citizenship, how are we going with encouraging people to become Australian citizens? I know we keep statistics in relation to those things about having lots of people who have been here for years and years, but what is the trend, Ms Pope? Are we seeing more people becoming citizens?

**Senator Chris Evans**—I can say I have still not won my dad over.

**Senator FIERRAVANTI-WELLS**—I was about to ask whether you had managed to get your father over the line.

**Senator Chris Evans**—I am working on it.

**Senator FIERRAVANTI-WELLS**—Not yet.

**Senator Chris Evans**—He is considering it, though, and as Minister I expect him to do the right thing. How are we going more generally, Ms Pope?

**Senator FIERRAVANTI-WELLS**—Ms Pope, please take that on notice if you want to.

**Ms Pope**—Thank you, Senator.

**Senator BARNETT**—I was hoping to get the most recent figures.

**Ms Pope**—I think what I will say is that it is an estimate and not a precise figure.

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

**Senator Chris Evans**—We have had good numbers taking out citizenship.

**Senator BARNETT**—Could you give us the latest figures? Do you have those with you now?

**Ms Pope**—Yes, we can give you the current application numbers but it does not tell you how many who are eligible are not at this point taking it up, which is your question.

**Senator FIERRAVANTI-WELLS**—Yes.

**Ms Pope**—But we can give you the application numbers by month, if that is satisfactory.

**Senator BARNETT**—Put it on notice and detail that.

**Senator Chris Evans**—Senator, what we are saying is that we do not actually know how many there are who are eligible but have not applied. We do know something about the cohort including the British citizens who have not been as much to the fore—

**Ms Pope**—And New Zealanders.

**Senator Chris Evans**—And New Zealanders.

**Senator BARNETT**—Yes. When you do a response we are interested in the trends in terms of the numbers. Can you provide a breakdown from whence they came?

**Ms Pope**—In an estimated sense of those who have not yet applied, but who could?

**Senator BARNETT**—Yes.

**Ms Pope**—Yes, we can, and we can give you precise figures on the number of applications by month. We could do that now or on notice.

**Senator BARNETT**—No, on notice is fine.

**CHAIR**—We are up to 2.4 now, promoting the benefits of a united and diverse society.

**Senator FIERRAVANTI-WELLS**—My questions are in relation to approximately 100 grants for community relations. Are they listed on your DIAC website?

**Ms Pope**—Yes, Senator, they are.

**Senator FIERRAVANTI-WELLS**—But not per electorate.

**Ms Pope**—No, Senator.

**Senator FIERRAVANTI-WELLS**—Could you provide that information to me per electorate?

**Ms Pope**—Yes, we can, Senator, but we have to construct it. We can certainly take it on notice.

**Senator FIERRAVANTI-WELLS**—Could you also do that in relation to the previous item regarding community grants for service?

**Ms Pope**—The Similar Grants Program?

**Senator FIERRAVANTI-WELLS**—Yes, thank you, and likewise for the grants for multicultural. There is only one grant, and that is to FECA?

**Ms Pope**—That is right, Senator.

**Senator FIERRAVANTI-WELLS**—How much is that these days?

**Ms Pope**—I believe it is \$450,000 annually, Senator.

**Senator FIERRAVANTI-WELLS**—Is there any performance indicator associated with that?

**Ms Pope**—Yes.

**Senator FIERRAVANTI-WELLS**—Do we simply give them a straight grant?

**Ms Pope**—No, Senator. There is a work program that is negotiated between the department and the organisation, and there is a funding agreement that sets out activities that have to be undertaken and time frames. The payments are made on a milestone basis throughout the year. It is not a matter of handing over of the lump sum on 1 July and that is the end of it.

**Senator FIERRAVANTI-WELLS**—And that is available presumably in their annual report?

**Ms Pope**—It is an agreement. I do not know for certain, Senator. But we have a copy of the document that sets out our expectations of the organisation.

**Senator FIERRAVANTI-WELLS**—Can I have a copy of that?

**Ms Pope**—I think so, Senator, yes.

**Senator Chris Evans**—Can we take that on notice just to double-check?

**Senator FIERRAVANTI-WELLS**—Of course, subject to privacy and other commercial considerations.

**Senator Chris Evans**—Yes, but I hope to be able to make it available.

**Senator FIERRAVANTI-WELLS**—With the national action plan to build on social cohesion, harmony, security and community engagement and the grants of \$10,000 to \$20,000, could you also give me an outline? Are they also on the DIAC website?

**Ms Pope**—Yes, Senator. All discretionary grants are on the website and on the register.

**Senator FIERRAVANTI-WELLS**—Thank you. Could you also break those up?

**Ms Pope**—Yes.

**Senator FIERRAVANTI-WELLS**—With these grants, do you have some sort of performance indicator subsequent to it?

**Ms Pope**—Yes, Senator. The same applies as to the description I gave for the FECA grant. Each grant has a work plan and a funding agreement, with milestone payments for the achievement of certain outcomes that are negotiated between departmental officers and representatives of the organisation. That applies to the settlement grants, the citizenship grants and to the national action plan grants.

**Senator FIERRAVANTI-WELLS**—Thank you, Madam Chair. That concludes my questions.

**CHAIR**—Totally?

**Senator FIERRAVANTI-WELLS**—Yes. You said seven o'clock, and it is three minutes past seven.

**CHAIR**—And Senator Barnett and Senator Trood, you do not have any others?

**Senator BARNETT**—Completo!

**CHAIR**—We are finished.

**Senator Chris Evans**—On that basis, the Chair will take you all out to dinner.

**Senator FIERRAVANTI-WELLS**—Do not get too excited.

**CHAIR**—On that basis, that is right. I thank you, Mr Metcalfe, and all of your officers. There are quite a few new faces here today, I notice. I hope they were not too nervous and managed to get through to the end of the day in one piece. I think it has been quite good, actually, and cooperative. Thank you very much. This meeting of the Senate's Standing Committee on Legal and Constitutional Affairs is adjourned.

**Committee adjourned at 7.02 pm**