



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

ESTIMATES

**(Supplementary Budget Estimates)**

TUESDAY, 20 OCTOBER 2009

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS****LEGISLATION COMMITTEE****Tuesday, 20 October 2009**

**Members:** Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Marshall

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

**Senators in attendance:** Senators Back, Barnett, Bilyk, Bishop, Brandis, Colbeck, Feeney, Fielding, Fierravanti-Wells, Fisher, Hanson-Young, Joyce, Marshall, McLucas, Parry, Trood and Xenophon

**Committee met at 9.00 am**

**IMMIGRATION AND CITIZENSHIP PORTFOLIO****In Attendance**

Senator Chris Evans, Minister for Immigration and Citizenship

**Department of Immigration and Citizenship****Executive**

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Peter Hughes PSM, Deputy Secretary

Ms Felicity Hand, Deputy Secretary

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

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

Ms Robyn Bicket, Chief Lawyer, Governance and Legal Division

Mr Craig Farrell, Acting Assistant Secretary, People and Executive Services Division

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

Mr Sandi Logan, National Communications Manager

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

**Outcome 1—Managed migration through visas granted for permanent settlement, work, study, tourism, working holidays or other specialised activities in Australia, regulation, research and migration policy advice and program design****Program 1.1 Visa and Migration**

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

Mr Kruno Kukoc, Principal Advisor, Migration Strategies Branch

Mr Peter Speldewinde, Assistant Secretary, Labour Market Branch

Mr Peter Richards, Assistant Secretary, Student Integrity Taskforce

**Outcome 2—Protection, resettlement and temporary safe haven for refugees and people in humanitarian need through partnering with international agencies; assessing humanitarian visa applications; and refugee and humanitarian policy advice and program design**

**Program 2.1 Refugee and Humanitarian Assistance**

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

**Outcome 3—Lawful entry of people to Australia through border management services involving bona fide traveller facilitation; identity management; document verification; intelligence analysis; partnerships with international and domestic agencies; and border policy advice and program design**

**Program 3.1 Border Management**

Mr Todd Frew, First Assistant Secretary, Border Security Division

Mr Michael Minns, Assistant Secretary, Border Operations Branch

**Outcome 4—Lawful stay of visa holders and access to citizenship rights for eligible people through promotion of visa compliance responsibilities, status resolution, citizenship acquisition integrity, case management, removal and detention, and policy advice and program design**

**Program 4.1 Visa Compliance and Status Resolution**

Ms Alison Larkins, First Assistant Secretary, Compliance and Case Resolution Division

Ms Lynne Gillam, Assistant Secretary, Compliance Resolution Program Management Branch

Mr Robert Illingworth, Assistant Secretary, Policy Framework, Evaluation and Analysis Branch

**Program 4.2 Onshore Detention Network**

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

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

**Program 4.3 Offshore Asylum Seeker Management**

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

Mr Daniel Boyer, Assistant Secretary, Irregular Maritime Arrivals Branch

**Program 4.4 Illegal Foreign Fishers**

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

**Outcome 5—Equitable economic and social participation of migrants and refugees, supported where necessary, through settlement services, including English language training; refugee services; case coordination; interpreting and translation services; and settlement policy advice and program design**

**Program 5.1 AMEP and Settlement Services for Migrants and Refugees**

Mr James Fox, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Mr Peter Templeton, Assistant Secretary, Settlement Branch

Mr Vincent Giuca, Assistant Secretary, Refugee Support Branch

**Program 6.1 Multicultural and Citizenship Services**

Mr James Fox, First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Ms Renelle Forster, Assistant Secretary, Citizenship Branch

**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

**Office of the Migration Agents Registration Authority**

Ms Christine Sykes, Chief Executive Officer

Mr Stephen Wood, Deputy Chief Executive Officer

**ACTING CHAIR (Senator Marshall)**—I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2009-10 and related documents for the Attorney-General's and Immigration and Citizenship portfolios. The hearing today is supplementary to the budget estimates hearings held in May. The committee has before it a list of agencies and outcomes relating to matters of which senators have given notice. The committee has set 11 December 2009 as the date by which answers to questions on notice are to be returned.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of those rules available. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
  - (1) If:
    - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
    - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the

public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

- (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
- (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

**ACTING CHAIR**—The committee will commence examination of the Immigration and Citizenship portfolio and will begin today's proceedings with the Migration Review Tribunal and Refugee Review Tribunal; it will then follow the order as set out in the circulated program. Proceedings will be suspended for breaks as indicated in the program.

[9.02 am]

### **Migration Review Tribunal**

#### **Refugee Review Tribunal**

**ACTING CHAIR**—I welcome to the estimates hearings the Minister for Immigration and Citizenship, Senator the Hon. Chris Evans; officers of the Migration Review Tribunal and Refugee Review Tribunal; and Mr Metcalfe. Mr Metcalfe or Minister, do you have any opening statements you would like to make to the committee before we commence?

**Senator Chris Evans**—No, I do not, thank you, Mr Acting Chair, other than to note your punctuality.

**ACTING CHAIR**—Thank you. Mr Metcalfe?

**Mr Metcalfe**—I do. I am happy to either make a short opening statement now or leave it until the department formally appears after the tribunals.

**ACTING CHAIR**—It has been indicated that now would be appropriate.

**Mr Metcalfe**—Thank you for the opportunity to deliver a short opening statement. I understand from the secretariat to the committee that in addition to the overall program there are a few issues of particular interest to senators. I thought it might be useful to the committee if I briefly take you through where I see those particular issues falling within our outcome structure. In program 1.1, visas and migration, we will be able to cover questions that I understand the committee has relating to visa issues, including ministerial intervention in migration cases with exceptional circumstances. Programs 2.1 and 3.1 cover refugee and humanitarian assistance and border management respectively. Issues relating to the displacement of people, efforts to combat people smuggling and Australia's obligations to provide protection to refugees who arrive in our country fall across these two programs. Offshore asylum seeker management, including community and detention services on Christmas Island, falls under program 4.3. Given that these issues are interconnected in some ways, it might be helpful to address all of those issues at the one time, perhaps when we come to program 2.1. We will ensure that relevant officers for those programs are available at that time to address particular issues as necessary.

We will be able to address other issues relating to protection and humanitarian visas at 2.1 and can cover other immigration, border security and traveller facilitation issues as part of program 3.1. Immigration law enforcement and compliance issues are dealt with when we get to program 4.1. This includes the budget measure to fund the New Directions in Detention policy as well as issues relating to returns and removals and people trafficking. Onshore detention in detention centres on the Australian mainland falls under program 4.2. We can cover issues relating to the detention service providers under that outcome.

In program 5.1 we can address issues relating to settlement, including funding for settlement services and the particular concerns of a committee member around settlement services for persons who may have been child soldiers. In program 6.1 we can deal with issues relating to citizenship, the new citizenship test and the resource book and can also address issues in relation to multicultural affairs. We will of course assist the committee to identify the appropriate program for discussion of particular issues through the hearing.

Given the extent of media and public commentary around the issue of potential and actual irregular maritime arrivals, many of whom are asylum seekers, I wanted to make a couple of contextual remarks if I may. The management of these issues is a complex and challenging piece of the department's work and indeed of public policy. Of course the department has around three decades of experience in managing issues associated with the movement of people in this way in the Asia-Pacific region. The level of resources that we have dedicated to this aspect of our operations is commensurate with the tempo of irregular maritime arrivals. We are working very, very closely with the other agencies that have responsibility for various aspects of the management of these issues. Overseas, departmental officers are closely engaged with governments and officials throughout the region as well as the Office of the United Nations High Commissioner for Refugees in Geneva and the International Organisation for Migration.

Within Australia we currently have many staff currently working on Christmas Island both on the longer term and shorter term rotations, including specialised teams that conduct entry and refugee status assessment interviews and staff involved in the provision of accommodation and other services to people who are detained upon arrival at Christmas Island. In assessing the claims of people who, prima facie, engage Australia's obligations under the refugees convention and protocol, highly trained officers from my department, applying the principles of procedural fairness, make a careful assessment of the person's claims against the most up-to-date country information to assess whether a person is in fact a refugee in accordance with the refugees convention and protocol.

Where a person has been found to be a refugee and has completed all the relevant health, security and character checks and the minister agrees to lift the relevant legislative bar under the Migration Act 1958, the person is granted a permanent visa and arrangements are made for their settlement in the Australian community. For people who have no claims to remain in Australia, arrangements are made for their return home. This work of the department is supported by a significant number of people across many parts of the department both in Canberra and in our state offices including detention services, onshore protection, case management, refugee support, settlement, removals, border security, people, legal and financial services, information and communication technology services, executive support, our departmental liaison officers in the minister's office and our national communications area. I am very proud of the highly professional way that my department staff are handling these very complex tasks. It is my view that they are exhibiting the best values of the Australian Public Service and I congratulate them for their hard work and ongoing commitment.

Finally, I wanted to make mention of the *Malu Sara* tragedy. Committee members will recall that on 15 October 2005 the immigration response vessel the *Malu Sara* sank in the waters of the Torres Strait resulting in the avoidable death of five people including two departmental officers. The Queensland coroner and the Australian Transport Safety Bureau reported on this tragedy earlier this year and we now await the conclusion of Comcare's investigations. I would like to again acknowledge the department's deep sadness at the loss of life and to record the department's condolences to the families, to the friends and to the colleagues of those who were lost and also to the wider Torres Strait communities. The department is deeply sorry that the tragic sequence of events, as described by the coroner, occurred and for the losses suffered by all those affected by this avoidable tragedy. The department has since made changes and improvements to its procedures to ensure that such a tragedy could never occur again and that the welfare and wellbeing of staff will always be a paramount objective in our operations.

Last week I was on Thursday Island to meet with our movement monitoring officers and other staff while they were all together for training. Our movement monitoring officers—all Indigenous Australians who are local to the Torres Strait—play an incredibly important role in protecting Australia's border to the far north. I am very impressed by the way they are able to apply their deep understanding of the area, its people and its diverse cultures in applying migration laws associated with monitoring the movement of traditional visitors between the Torres Strait islands and Papua New Guinea.

On 15 October I joined our staff in the Torres Strait for a private memorial service to mark the fourth anniversary of the *Malu Sara* tragedy. We will, in consultation with our staff and the families, continue to explore ways to honour and remember those who died: Ted Harry, Wilfred Baira, Valerie Saub, Flora Enosa and Ethena Enosa.

**Senator McLUCAS**—As a North Queenslander, I am very impressed with the words you have just said about the tragedy that we know as the *Malu Sara*. I am sure that the people of Torres Strait will take great comfort from the words that you have just spoken. There is still more to do, as you have indicated in your opening statement. I look forward to being able to work with the department to find some resolution for the families and all the families of the Torres Strait who are still mourning the loss of those five people.

You would be aware that the ATSB has put out an additional report to the tragedy, which refines and corrects some of the earlier commentary that the ATSB undertook. I am sure you are aware of that, and that is part of your deliberations as well. I will talk more with your officers about the other work that you are undertaking to ensure that the MMOs in the Torres Strait can be provided with the material support that they require to deliver the amazing service that they have done for many years to Torres Strait Islanders, Australians and visitors from PNG. I do appreciate the words you have just put on the record.

**Mr Metcalfe**—Thank you very much.

**Senator Chris Evans**—On behalf of the government I would also like to reinforce the remarks that Mr Metcalfe made. We obviously express our great sorrow to the families of those who lost loved ones in this tragedy. While it is a few years ago now, the pain is still very real for those people, and I think the processes that have played out have at least helped to explain in some way what occurred. But we do extend our deep sympathies to those families and friends of those who died. As Mr Metcalfe indicated, two of them were officers of the department. I had the advantage of visiting the Torres Strait last year and seeing the work Indigenous officers do in the Torres Strait. It is a remarkable model of what can be done in a very different way to traditional immigration service delivery, and I would back our officers there against the best of the AFP, ASIO, FBI and CIA in terms of knowing what is going on in the Torres Strait.

**Senator McLUCAS**—Hear, hear.

**Senator Chris Evans**—It is a fantastic service, and one we are very committed to maintaining. But we did have an awful tragedy, and there have been lessons learned. I think the department, in particular, has been very proactive in trying to learn those lessons and also in supporting the families. Some of the other government agencies could lift their game in that regard. We will have a chat about it separately.

**Senator BARNETT**—Just to confirm that the coalition would associate our remarks with those of the minister and of Mr Metcalfe with respect to the tragedy and the sorrow flowing through to the families concerned.

**Senator FIELDING**—Family First would also support the same comments.

**Mr O'Brien**—I also have a brief opening statement as a separate agency within the portfolio.

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**ACTING CHAIR**—Thank you. Now would be the time for that.

**Mr O'Brien**—Senators, I would just like to highlight some of the more significant developments since our last appearance before the committee in May. Most of these developments are largely covered in our annual report, which was tabled in the parliament last week.

First of all, I will highlight the workload statistics for last financial year. For RRT we had 2,538 lodgements, which was an increase of 11 per cent over the previous year. We made 2,462 decisions, which was an increase of six per cent over the previous year. Seventy-three per cent of RRT cases were decided within 90 days, with the average time taken to decide reviews being 86 days.

On the MRT, in terms of workload, last year, 2008-09, there were 7,422 lodgements, which was an increase of 17 per cent over the previous year. There were 5,767 decisions made by my members, which was an increase of 11 per cent over the previous year. At the end of the year, however, we had 6,295 cases on hand, which was an increase of 36 per cent over the previous year.

Just focusing on the first quarter of this year, the statistics are: on the RRT, we have had 506 lodgements, which has been a decrease of 17 per cent over the first quarter of the previous year, and we have made 530 decisions, which was consistent with the reduced lodgements—a decrease of four per cent over the first quarter of the previous year. So the RRT is pretty much under control in terms of decisions and lodgements.

Moving on to the MRT, we have had 2,453 lodgements, which was an increase of 48 per cent over the first quarter of the previous year, and we have made 1,732 decisions, which is an increase of eight per cent over the first quarter of the previous year. As at the end of the September, we had 7,018 active cases, which is an increase of 50 per cent over the first quarter of the previous year.

Despite the growth in numbers on the MRT, a good sign is that lodgements for the first quarter are tracking down, while decisions are tracking up. This suggests that the steps we have taken to address the backlog are working. Some of those steps have been that members are now allocated cases, allowing groups of similar cases to be batched to members with the expertise and experience to deal with them efficiently, and we have directed staff resources to providing more detailed analysis of cases in our compactus to ensure more focused case allocations.

Additionally, the government has played its part. We have had reappointments of 31 members and appointments of 12 new members from 1 July, and the government has increased the number of tribunal members who work full time from six to 24. I should also mention that recruitment action is underway for the positions of Deputy Principal Member of the MRT and the RRT. Advertisements were in the press over the past weekend. It is understood that the government is likely to cross appoint a person to both positions.

I will briefly mention new policies. At the end of July I published a Principal Member Direction on case load and constitution arrangements, and this document was prepared taking into account expected lodgements this year of 10,000 or more cases. The document sets out

strategies to enable us to reduce the substantial backlog of MRT cases—and I have mentioned some of those strategies.

Also in the new policy frame, we are in the process of developing a stakeholder engagement plan to support improved stakeholder engagement on a national level, consistent with the government's policy for better access to justice. I have a meeting in Victoria this week where I will be discussing with community representatives that draft stakeholder plan. Finally, I might mention that the 10th anniversary of the MRT occurred on 1 June this year.

**Senator Chris Evans**—Happy birthday!

**Senator FIERRAVANTI-WELLS**—You are going strong!

**Mr O'Brien**—Thank you. I am happy to elaborate on any of these matters or answer any questions that you may have.

**ACTING CHAIR**—I am sure there will be some questions, Mr O'Brien.

**Senator BARNETT**—Thank you for your opening remarks, Mr O'Brien. It is appreciated, as it was last time. Also, we congratulate you on tabling the annual report in advance of the estimates. With respect to this committee, you are the only agency that has tabled the annual report, which I understand came in last Friday, 16 October—so we have not had much time to squiz at it, but it is appreciated by this committee. I want to put that on the record for not only yourselves but also other agencies who may be listening and, indeed, the department.

**Mr O'Brien**—Thank you.

**Senator BARNETT**—Based on what you have said, it seems that there is a trend in terms of an increase in the number of applications and lodgements. I think that in May when you were here there was a 17 per cent increase and now, based on your annual report, we are looking at an 11 per cent increase and a 17 per cent increase respectively. Then you have indicated an increase of 36 per cent over the number on hand at the end of 2007-08 in terms of the number of cases. That is a pretty huge increase. We have seen a trend, so would you confirm that to us. I think I have got the figures right; I am referring to page 10 of your annual report. So could you, firstly, confirm those figures and then, secondly, tell us if that trend is the way I have described it. Then we would like to go into the reasons why that is.

**Mr O'Brien**—The trend is as you have described it broadly. The main areas of the MRT caseload where we have seen increases have been in the temporary business cases and in the skilled cases. If I can refer to the figures to 30 September—the more recent figures than those in the annual report—just over 20 per cent of our caseload on the MRT relates to temporary business cases, and about 28 per cent of the total relates to skilled cases. So we have seen increases in those areas particularly.

**Senator FIERRAVANTI-WELLS**—Mr O'Brien, is that page 33 of your report? Are you looking at those statistics?

**Mr O'Brien**—What I am referring to now is more recent statistics since then. I am covering the first quarter of this year. I am giving you giving you the figure as at 30 September.

The other point, to answer the query that you made, Senator Barnett, is that, as I mentioned in my opening comments, we are now seeing a greater number of decisions from the tribunal because of the steps we have taken to try and batch cases to members so that we can deal with cases more quickly. Because we have had some new members appointed, we have more full-time members. We are seeing an upward trend line in the number of decisions and, for the first quarter of this year, we are starting to see a little bit of a downward trend line in lodgements. So, touch wood, I am hopeful that with the steps we have taken, as long as lodgements do not continue to rise but perhaps do continue that downward trend, we are going to eat into that backlog that I have spoken about.

**Senator BARNETT**—Can you be more specific with that downward trend? I have not quite picked that up in your annual report.

**Mr O'Brien**—I am referring to the first quarter of this year. Let me give you lodgements versus decisions for the first quarter of this year. There were 962 lodgements in the first three months of the year. That is an enormous number. In August there were 777 and in September there were 714. That is lodgements.

With decisions, we started at a low number of decisions in July, with members away: 456 in July. In August it was 591 and in September 685. So you can see that, with that figure of 714 lodgements compared with that figure of 685 decisions, we are getting close to decisions equating to lodgements in September. I am hopeful that we can continue those trends of decisions rising and lodgements staying at the same level or perhaps even decreasing, which will give us a chance to get into the backlog.

**Senator BARNETT**—But that has only kicked in in the last three months.

**Mr O'Brien**—Yes, that is only in the last three months.

**Senator BARNETT**—But for the 12 months to the end of the financial year you have seen the opposite: the trend has been going exactly the other way—

**Mr O'Brien**—Exactly; we have.

**Senator BARNETT**—with 36 per cent of cases on hand, that being an increase from the previous 12 months.

**Mr O'Brien**—Yes, that is right. But with the strategies that, as I have mentioned, we have put in place we are hopeful of addressing those. With extra member resources and with batching of cases on the MRT, we are confident that we are going to make an impact on that backlog of cases.

**Senator Chris Evans**—The tribunal is doing very good work, but as always with statistics they sometimes do not reveal the whole story. What we see with the tribunal is impacts from various case loads and decisions or other events. For instance, we have seen an increase in applications relating to 457 visas, as I understand it. As we had the economy turn down, there were 457 visa holders who lost their employer and were no longer sponsored or were seeking to get permanency and could not get it et cetera. So there was an increase in applications from those people appealing against decisions. Equally, to be frank, we have made some changes in the student area in terms of job readiness tests. Sorry; I do not mean the student area. International students seeking to qualify for permanent residency will face some higher

barriers next year with the job readiness test being applied in many areas and some higher English standards requirements than previously existed coming into place on 1 January. So you may well then see an increase in numbers of students appealing decisions. I am just indicating that, while the overall figures tell you one thing, within that there is a whole lot going on that is sometimes impacted by government policy decisions or other things that drive up one set of applications. As I say, with the economic downturn we saw other sets of things emerge.

**Senator FIERRAVANTI-WELLS**—I have something to ask on that point, the nature of the breakdown of those applications. That is a lot of people applying in the last three months—962—considering that for 2008-09 you had overall lodgements of 7,400. So almost a thousand in three months is quite a spike.

**Mr O'Brien**—It was even more than that; it was 962 in July.

**Senator FIERRAVANTI-WELLS**—I beg your pardon. So we are really talking about 3,000 in a relatively short period of time. Can you break down the grounds for me? What are they applying for? Are they students? The minister talked about people who were on 457 visas.

**Senator Chris Evans**—I was just using that as an example. Mr O'Brien can tell you the case load.

**Senator FIERRAVANTI-WELLS**—Mr O'Brien, can you break down for me the sorts of applicants that we are seeing now. What is the nature of the applications?

**Mr O'Brien**—Overall, 24 per cent of our case load are skilled, as I mentioned. Sixteen per cent are partner or spouse cases, 15 per cent student refusals and 10 per cent student cancellations—so if you add cancellations and refusals on students you have 25 per cent there. Temporary business refusals were eight per cent, and then the numbers tail off. That is the sort of breakdown that we have. That is what we had for September.

**Senator BARNETT**—Minister, you mentioned the student visa arrangements. I am just wondering whether, while you are at it, you want to share your views with respect to Kelvin Thomson's recommendations to the parliament on putting an end to the rorts, as he calls them, threatening to derail the \$16.6 billion education export industry. Do you have a response to that? Do you support that?

**Senator Chris Evans**—I would certainly be happy to respond at some stage, but not here. It would not be appropriate.

**Senator BARNETT**—It is just that you raised it.

**Senator Chris Evans**—I did that to explain that within the broad figures there are different things going on; that it is much more complex. But I would be happy to talk about it when we get to student visas, 1.1.

**Senator BARNETT**—Let's do it then. We want to look at these trends which, apart from these last three months, have been going up. If you look at them from last year and the last estimates, the figures have been going up significantly. I am interested to know the reasons behind that. You have just touched on it, so can you flesh out the reasons for us. In May estimates we talked about the global financial crisis, and I think the minister referred to some

of the changes in the laws that impacted that, but from your perspective what are the reasons for the substantial increase?

**Mr O'Brien**—I am not sure that I am able to throw light on it much further than what I have indicated—namely, that there have been increases in those skill-linked categories and increases in the business categories. What has driven that probably has to do with the sorts of considerations that the minister has mentioned. Those categories have grown and it is those categories that have driven the increase in the cases that we have before us on the MRT.

**Senator BARNETT**—In your report, on page 10, you say:

The Tribunals decided 8,229 cases, setting aside the decision under review and making a decision favourable to the applicant in more than 3,200 or 39% of the cases decided.

Obviously, nearly two in five of the cases were decided in favour of the applicant. Can you share with us whether that is up or down on previous years and the reason for that. It seems substantial.

**Mr O'Brien**—It think it is about the same as in previous years. On the MRT, our percentage set aside in 2008-09 was 48 per cent.

**Senator FIERRAVANTI-WELLS**—What page, Mr O'Brien?

**Mr O'Brien**—Page 39 of our annual report. For the MRT, 48 per cent of cases were set aside in 2008-09, 50 per cent were set aside in 2007-08 and 53 per cent were set aside in 2006-07. Those figures suggest that our set-aside rate is not as significant in 2008-09 as it was in previous years.

**Senator BARNETT**—Is there a reason for that?

**Mr O'Brien**—It might have to do with better decisions by the department.

**Senator BARNETT**—That is interesting. I wonder if Mr Metcalfe would agree with that.

**Senator FIERRAVANTI-WELLS**—Perhaps it might mean that the criteria were a bit looser, Senator Barnett.

**Senator Chris Evans**—One general point, Senator Barnett, is that certainly I have tried as a minister to encourage the department to be more flexible in its decision making. One of the things we do now, for instance, is to encourage officers to put a telephone number and the name of the officer on the letter. Rather than sending people eight pages quoting the regulations as to why they have been refused, they actually say, 'Why don't you ring Bill Smith on this number and have a chat about it.' Often we find that people have applied for the wrong visa or have an alternative route and that if they just sit down and talk to somebody they may decide to apply for a different visa.

So I think some of the department's processes have improved and I think that the fact that they engage more with the clients actually gets a better result. As we all know, when ringing automatic services or receiving correspondence one tends to get the formal response and not the capacity to solve the problem. I certainly think the department have got much better at solving problems and conversing with people about their issues to help them resolve problems.

The parliamentary liaison network is doing a fantastic job. I get a fewer ministerial letters, as I understand it, than in previous years in part because members of parliament are using that service more. They are actually resolving cases in a way that does not require people to write and go through the formal processes. I think we are doing that better, and hopefully that will see fewer appeals to the tribunal.

**Mr O'Brien**—There is probably one other aspect, and it is this: I have indicated that there has been an increase in our skill-linked categories and increases in the business categories, and proportionately those cases are now more significant than our partner cases. Historically, our partner and spouse cases were cases with the highest set-aside rates. We were setting aside—and we still are—about 50 per cent of partner and spouse cases because often by the time they come to us there is very little doubt that we have a genuine relationship whereas it might not have been so when the department was looking at the matter 12 months previously.

**Senator Chris Evans**—Or there are now three kids!

**Mr O'Brien**—Or there are children.

**Senator BARNETT**—Okay. I know there are time constraints so I just want to whip through a few of these questions. I may have missed this in the annual report but I think you indicate that 86 days is the average time taken to decide a case. Is that up or down on previous years and are you happy with that time period?

**Mr O'Brien**—That is on the RRT. I am broadly happy with that. As you know, 90 days is our requirement for deciding RRT cases. I think you will find in the report of our compliance with that 90 day requirement that is shortly to be tabled in parliament that we have slipped a little from about 70 per cent compliance with 90 days to a little below 70 per cent over the recent period.

**Senator BARNETT**—Is that because of the backlog and the workload?

**Mr O'Brien**—No, it does not have anything to do with the backlog. The reason, in an individual case, that we go over the 90 days has to do with compliance with the statutory procedural requirements—where we feel that, in order to accord procedural fairness and in order to comply with the procedural code that we are bound by, we need to hold another hearing or we need to give the applicant more time. They are the sorts of reasons that most commonly drive that.

**Senator BARNETT**—A lot of this is in the annual report, which was tabled on Friday, so we can gather a lot of that information from there. I notice that in terms of your appointment of new members, the government appointed on 1 January a range of new senior members, including former Labor Senator Linda Kirk. That is noted. On page 12 of your annual report you made a couple of—

**Senator Chris Evans**—I also note for the record that she was recommended by a selection panel chaired by the secretary and was selected on merit. Former senators are allowed to pursue careers. She has, I think a PhD and a long interest in migration. She was regarded by the department as an outstanding candidate. It was a recommendation from the selection panel.

**Senator BARNETT**—Very good. On page 12 you have made two recommendations to the government; a comprehensive review to be undertaken of the procedures and structures of the MRT and the RRT and of the judicial review framework in which the tribunals operate. Can you expand on your recommendations to government?

**Mr O'Brien**—This has been a bit of a personal hobby horse, I will admit that.

**Senator BARNETT**—You are entitled to a hobby horse or two.

**Mr O'Brien**—We find that the procedural code that we operate under is very restrictive for us. The act says that the requirements of that code supplant the common law or the procedural fairness hearing rule. So it means that we must follow the provisions of that code to the letter in terms of notification, how we put adverse information to applicants and so forth. Occasionally, we trip up. When we trip up the courts have said that, because the parliament has said that this is a code that must be followed to the letter, if we err it is a jurisdictional error and our decision needs to be set aside irrespective of any injustice to the applicant. I think that whole area of the code needs to be looked at. It does seem to me to result in unnecessary litigation at times.

**Senator BARNETT**—Have you put anything in writing to the government?

**Mr O'Brien**—Yes, I have from time to time spoken to the minister about this and written to the minister.

**Senator BARNETT**—When did you last speak to the minister about it?

**Mr O'Brien**—I think I wrote to the minister a few months ago—about a range of things. I should say that the minister invited a range of comments on what I thought should be strategies going forward, and I included that amongst my wish list of things that the government might consider.

**Senator BARNETT**—Your views are very important and we appreciate getting your feedback and your views. We would like to have further particulars with regard to your views and your recommendations to improve the system. Can we have a copy of the letter?

**Mr O'Brien**—That is a matter for the minister.

**Senator BARNETT**—Perhaps the minister might assist us.

**Senator Chris Evans**—I am not sure that it is appropriate to give you a copy of the letter but I am happy for you to question Mr O'Brien about his views and how he thinks the tribunal can be improved. I asked him for information which included any views he had about reform, thinking that his views and the views of the tribunal members were important. He provided those to me and I am considering those. I have also sought other input. I am certainly not going to restrict Mr O'Brien from sharing those views if you want to talk to him about it here.

**Senator BARNETT**—You have said that the judicial and merits review process under which the MRT and RRT operate should be brought into line with the administrative law review process in mainstream Australia. Can you outline in further detail your views?

**Mr O'Brien**—Broadly, what I am referring to there is that I think our tribunal should be subject to procedural fairness under the common law in the same way that other tribunals are,

and not have a prescriptive code prescribing in detail how we should put adverse information, how we should notify and that sort of thing.

**Senator BARNETT**—So you think the law is currently too prescriptive in terms of what you can and cannot do as a tribunal member?

**Mr O'Brien**—I think that is a problem, yes.

**Senator BARNETT**—Can you detail the problems for us? Can you flesh out the problems with the current law and how we should fix it?

**Mr O'Brien**—One of the areas of difficulty is putting adverse information, either in writing or orally. The provisions there which spell out how we should do that, what is excluded from that and so forth are difficult. That does lead to some cases where, although broadly those provisions are there to ensure fairness, if we step one step outside those provisions we have our decision set aside in cases where, as I have indicated, the courts have said there was no real substantial unfairness to the applicant; it is just that we did not follow the procedure to the letter.

**Senator BARNETT**—A technicality?

**Mr O'Brien**—Yes. There are some cases where we have had our decisions set aside on the basis of a technicality.

**Senator FIERRAVANTI-WELLS**—There was a raft of changes in relation to technical notification type matters that I think has gone through in the last six months. Is that the sort of thing you are talking about, Mr O'Brien? I think that we have tried to deal with some of the notification issues through technical type amendments but are you saying that some of that should be looked at even more?

**Senator Chris Evans**—Yes, I know the ones you are referring to. I think Mr Metcalfe or one of the legal officers might be able to help. Some of those were designed to deal with some of these notification issues, which are the bane of the department's and the tribunal's life. As you would well know, it is a complex area of law. I think I am the most litigated against person in the country.

**Mr S Brown**—The tax commissioner is.

**Senator Chris Evans**—He beats me—good! My wife keeps insisting that we put the house solely in her name, when she looks at the court list. Perhaps Ms Bicket would be best placed to answer this.

**Ms Bicket**—Obviously, this area of the law to do with judicial review and the code of procedure has a very long history—

**Senator FIERRAVANTI-WELLS**—It does, and the question I am ultimately coming to is this: are you, Mr O'Brien, saying that we should go back to the sort of old body that used to haunt us in the 1980s of judicial review and effectively move away from the codification system of doing business, and be subject to much more the court procedures rather than the codified procedures that you as a tribunal have had imposed on you, if I can put it in those broad terms? Is that it in a nut shell?

**Mr O'Brien**—Broadly speaking, that is my view. I think our tribunals should be placed on the same footing as other merits review tribunals.

**Senator FIERRAVANTI-WELLS**—So what you are saying, Mr O'Brien, is that your tribunals are the exception rather than the rule. For example, the social security tribunal that goes up the ladder through the AAT is not the same and does not have the same prescriptive codification parameters that you do.

**Mr O'Brien**—Nor does the AAT. We are a final merits review tribunal just like the AAT.

**Mr Lynch**—Could I help here with one example of why—

**Senator FIERRAVANTI-WELLS**—Mr Lynch has a long history!

**Mr Lynch**—the prescription does cause us some headaches and why there is a cost to the community. For example, section 424(2) was recently legislated in terms of an amendment to simplify it to enable us to access information from applicants and third parties without having to put it in writing. The parliament made amendments to the act because of a case that was before the courts finding that we had not followed the letter of the law. That case went through to the High Court and we recently had an outcome favourable to the minister on that issue. There is Mr O'Brien's point which he has made in public fora and in papers spelling out some of the examples. The basis, the rationale, for his suggested changes is to be found in those papers, so there has been some public discussion about the issue and we can make that available to you.

**Senator BARNETT**—Seriously, that would be most helpful if you have a copy of one of your papers to give us more information and understanding of your views.

**Mr O'Brien**—I could supply that paper to the committee.

**Senator BARNETT**—You could? Thank you.

**Senator FIERRAVANTI-WELLS**—Mr O'Brien, the more things change, the more they might become the same. Ms Bicket, can I ask you, in the light of that, to comment and answer that previous question?

**Mr Metcalfe**—Senator, could I just jump in first and I suspect Ms Bicket will add to what I am saying. I think it is important in any policy discussion—and that is really what we are having here today—that there is an understanding of what has happened in the past as applied to the issue and, certainly, I am very conscious of the principal members views about the impact of the code of operations in certain respects. I do not know whether you have had the chance yet to read Paul Kelly's most recent book, *The March of Patriots*, but he actually articulates the issues that have been faced by successive governments in the eighties, nineties and this decade in relation to the search for certainty as to process as opposed to flexibility in particular situations.

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, I lived it!

**Mr Metcalfe**—I thought you may well appear in the book, Senator, for all I know! Kelly actually documents it quite well and in fact refers to the current Ombudsman who gave a number of opinions largely to the previous government and wrote about this in his capacity as a professor of law at the Australian National University. But to cut a long story short, of

course, there is the judicial review situation relating to immigration that derives from the Constitution, section 75(v) and the ability for the court in its original jurisdiction to provide for a certain property of writs to apply. There is also the referral of those powers to the Federal Court under section 39B of the Judiciary Act and of course the ADJR Act as well. Now of course the Migration Act has its own particular judicial review mechanism associated with that.

Indeed, some of the key cases on the development of natural justice or procedural fairness, Kioa's case you would be very familiar with, relate to immigration cases. The previous government I think introduced the code of procedures in the search for a clear statement as to what should occur in the relationship between the department or the tribunals in interacting with clients or their agents in assessing and deciding applications.

What we have seen though is what I regard as a literalist approach, a black-letter law approach, being taken by certain magistrates or judges and the fact there has been litigation. One of the complexities in administering public policy in this area is that we deal with often thousands of cases, and it may well be some time after a particular practice has been adopted that a court makes a ruling, which then has the impact of dealing with many hundreds or thousands of people, not just one. We have seen that. The government is seeking to respond to that through limiting the use of class actions in this area and whatever.

If the committee wanted to look at this issue, it is a fascinating area. While there are some considerable and proper frustrations associated with the interpretation of the method of application of the code of procedure, there is a reason it is there. Whether it should continue or whether it should be modified is obviously, ultimately, a matter for the government and the parliament, and there is a policy issue. But we have seen a long development in migration law that led to the introduction of the code of procedure. It has now been in place some time and possibly it is time for a review as to what is the best situation. Moving back, essentially, to a common law approach as to procedural fairness would in many respects normalise the migration jurisdiction. However, there are features associated with the jurisdiction that are of course unique, such as the fact that in some situations in the migration jurisdiction justice delayed and lengthy finalisation of cases can work as an incentive in itself.

**Senator FIERRAVANTI-WELLS**—As they did, and that was one of the faults in previous years.

**Mr Metcalfe**—Timely decision making right through the process is important. The department has sought to address that in a whole range of ways. Ms Bicket, as chief lawyer, has worked very closely with the courts to find ways to streamline our processes and their processes, and the result right at the moment is a historically low number of cases before the courts. That will vary depending upon application rates, primary applications and that sort of thing. Right at the moment, we have only got just over 700 administrative law matters in the federal courts compared to thousands some years ago.

What I am trying to say, in conclusion, is that this is a complex area of law where there is a deep history associated with setting the right balance between the overall administration of the program, the proper administration of justice and the relationship between administrative

decision makers in the department or the tribunals and the courts. I think that the full weight of that experience would be a useful thing to apply to bear in any policy considerations.

**Senator FIERRAVANTI-WELLS**—Ms Bicket, you have obviously done some work on this. If there was a change, if we were to go back to the old system—I am sure there would be some variations, but I think you know what I mean by the ‘old system’—would you see that ultimately leading to a reduction in litigation for the department?

**Ms Bicket**—Really, I think the decision about whether we would go back to an old format is really a matter for government.

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

**Ms Bicket**—I think there are a number of factors that operate on the numbers of litigants at any given time. The code of procedure and the way the tribunals deal with things is but one factor within that. It is very much determined by the individual incentives for the people, the nature of the cases coming through and things. Those would have a significant impact on whether the numbers are going up or down. The secretary mentioned the unique incentives that exist in our jurisdiction around delay. I think that is a critical factor. As we speed up the way in which cases move through the courts, we are seeing that decline. It is a supposition on our part that there is a relationship that the faster you do things then the less incentive there is to litigate.

**Senator FIERRAVANTI-WELLS**—Of course that would have an impact in relation to claims by potential asylum seekers in that body of law. That is an important distinction between onshore and offshore. Naturally that would have an impact as well, and I am sure that is one of the factors that you have been considering.

**Senator Chris Evans**—Can I just say, Senator: the early indications, with the reforms that we have made to the ministerial intervention processes, with trying to limit the number of times an applicant can make an application and to speed up that process, is actually showing similar signs. If you remove the incentive of the delay, if you like, then you can see a difference in behaviour. We are trying to speed the MI process to make it more part of the system so that there is not an incentive in continually lodging MIs or taking advantage of the delay in the processing. I think we are just starting to see some impact of that, and that may well be part of the cause—

**Senator FIERRAVANTI-WELLS**—Minister, we are going into policy a bit. To sum up, Mr O’Brien, if there are documents that you think would be useful to this debate—bearing in mind that it is a matter for the minister in terms of tabling that letter—and worthwhile to produce to this committee in relation to this, we would welcome that.

**Mr O’Brien**—Senator, as I indicated to Senator Barnett, there is a paper that I gave to the Australian Institute of Administrative Law Conference. Ms Bicket also gave a paper, and I think we had some slightly different views. I think that both of those papers are public documents.

**Senator FIERRAVANTI-WELLS**—Good. If you could take that on notice and provide those, that would be useful.

**Mr Metcalfe**—Could I add to the minister's comment as well. I think that a very important lesson that has been learnt in our jurisdiction over the years is the importance, where possible, of the earliest possible intervention to deal with the real issue, which is: should a person be able to stay in Australia or not? We have a multiplicity of rights and entitlements, whether they are merits review, or judicial review, or ministerial intervention. You would be aware—and I am sure we could talk about it later—that the previous government introduced a pilot about 3½ years ago to look at early resolution of cases, without us actually forcing people into a detention situation. That pilot was successful and the current government funded that arrangement relating to status resolution, whereby we the department seek to interact with people at the time that they are becoming unlawful in Australia. We seek to actually work with them to provide guidance, support and an understanding as to, 'Is there really the possibility of you staying in Australia because of your need for protection from persecution, or because of your relationships or other issues, or is the right situation for you in your life to go home and move on?' We have sought to introduce counselling services, including third parties such as the International Organisation for Migration, and we are very pleased with that, because that is really trying to deal with the real issue as opposed to an enormous investment of resources in seeking to deal with entrenched positions. It is seeking to deal with the issue of people simply using process, or being encouraged by agents to use process, to delay. The quickest possible resolution of the real issue is the real public policy issue here, and we are very pleased that we are now being given some resources to apply more time in that particular area. I am sure we can talk about that later, when we are actually in the department.

**Senator Chris Evans**—One final point from me, Senator. It is an important discussion. This is something that the references committee might to have a look at down the track, because it is very central to the whole debate. That is, one of the changes I made to the ministerial intervention process is that people may seek ministerial intervention only if they are lawful. Previously people could seek ministerial intervention when they were unlawful. My view is that they have to engage with the department and make themselves lawful before they can seek, if you like, those appeal rights. It is always about early engagement with the department, being lawful, being in the system, not being outside the system, and just taking any legal opportunities that arise. Small changes like that are, I think, making quite a difference. The previous government's case resolution trial was very successful, and we have expanded it. I think it will deliver good results over the years.

**ACTING CHAIR**—I am chuckling, Minister, only because I have been trying to get a word in for the last 20 minutes and have not succeeded.

**Senator Chris Evans**—You are surrounded by lawyers!

**ACTING CHAIR**—I might flick to Senator Fielding and then come back to Senator Barnett.

**Senator FIELDING**—Thanks for that, Chair. I am not a lawyer and it probably shows from time to time. I am just a humble engineer, actually. I wanted to ask some questions surrounding the process around Guy Campos. It has been a pretty public issue.

**Senator Chris Evans**—Mr Chair, Senator Fielding said he wanted to ask questions about Mr Guy Campos's case. We are happy to answer them, but they are actually not specifically for the tribunal, they are questions to the department. Would you like to finish with the tribunal?

**ACTING CHAIR**—We could call you back at the appropriate time, if that suits.

**Senator FIELDING**—That could be easier that way if that is preferable.

**Senator Chris Evans**—Mr Chair, we are happy to be cooperative. If you want to do it straight after morning tea, because it is a particular case, we could do that. I would probably notify Senator Brown as well, because he had an interest in it.

**ACTING CHAIR**—We will sort out a time, but we will make sure that you do not miss out, Senator Fielding.

**Senator FIERRAVANTI-WELLS**—I think it will be preferable if we follow the program as we have in the past. Some of us are programmed to follow the program.

**ACTING CHAIR**—We will be flexible enough to ensure that you get to ask your questions, Senator Fielding. On that basis, we will now move back to Senator Barnett.

**Senator BARNETT**—Thank you very much, Mr Chairman. Senator Fielding, thank you for that interlude. You had two suggestions or recommendations in your annual report, Mr O'Brien. I have asked you about the first one, you have answered it and a very useful dialogue and discussion has proceeded since then. I now want to go to your second one, which is that the RRT applicants have to FOI the information from the department. There is a certain procedure for the MRT applicants likewise. You have made strong recommendations that the department should make available to the applicant the information that is relevant to them. You have made a very persuasive case. Could the minister let us know if he has considered that recommendation and responded to it?

**Mr O'Brien**—I think it might have been one that I had also raised in the letter that I mentioned, that the minister had requested and where I dealt with what I saw as some of the strategic issues going forward. Whether that has had consideration within—

**Senator BARNETT**—Perhaps we should ask the minister. He may have an answer for us.

**Senator Chris Evans**—There is no determined view in response to what the principal member has raised. As I said, this is a long debate in this area. I am conscious of being fairly new to the area and some of the people at the table and Senator Fierravanti-Wells have a long history in this debate. The previous government made some changes. It is time for a bit of a look at that, and I have initiated some discussions with the Attorney-General's Department about these issues, because it fits into the broader legal framework, not merely in terms of what we are doing in the immigration field. If you are asking me whether we have come to a determined view to take any policy change, no, but it is a—

**Senator BARNETT**—It is an option that you are considering.

**Senator Chris Evans**—Yes. There are issues that the principal member quite rightly raises. We will have a look at it, but we are not anywhere down the track yet.

**Senator BARNETT**—Thank you. Mr Lynch, on page 14 of your report, it says at the bottom of that report that:

The Minister, Senator Chris Evans, issued new guidelines in December 2008 in relation to the Minister's powers to substitute a more favourable decision than that made by the Tribunals.

I might not be aware of that, but are the guidelines on the public record?

**Mr Lynch**—Yes, they are. They are certainly on the department's web site, and I am pretty sure we have them on ours as well.

**Senator BARNETT**—Thank you. In the second last paragraph it says:

I mentioned in last year's report that the Tribunals had been progressing a review of funding arrangements with the Department of Finance and Deregulation.

That has been going on for a long time. What is the status of that review?

**Mr Lynch**—It has indeed. We are at the stage where we are discussing a single price per decision with the department of finance officials. We have traditionally operated with two different prices per decision because of the separate nature of the two tribunals; they are differently constituted under the Migration Act. We are a single financial entity and have been since 2007. We have a funding agreement that was made in 2004 and was due for review during 2007-08. That review has been running for some time, as you say. Part of the difficulty is trying to get a handle, to get a fix, on the exact cost to the tribunals in its administratively amalgamated form of a single price per decision. We have made some headway with department of finance officials and I think we are pretty close to having an agreement that can be proposed to the minister and the minister for finance. The discussions are in the nature of budget-in-confidence, but we are pretty happy with where we are up to at this stage of the review.

**Senator BARNETT**—Notwithstanding that it has been taking forever.

**Mr Lynch**—It has been a long haul. In fairness to both ourselves and the department of finance officials, getting an exact fix on how the resource effort of members and staff—being co-mingled as it is, day to day; we are operating as a single tribunal—has been quite a difficult task. The good news is that we do have quite some reserves of capital even though we have been, with the current pricing arrangement, running at an operating loss. I think that is a fairly notional situation because we did have considerable reserves.

**Senator BARNETT**—Mr Lynch, when will you resolve this matter? Are we talking about weeks, before Christmas?

**Mr Lynch**—I believe it will be weeks. It will be before Christmas.

**Senator BARNETT**—Good. I want to go the balance sheet on page 87. I notice your liabilities have grown significantly and you have a little footnote, 7B, next to the entry for 'Other payables'. Other payables have gone from \$2.324 million to \$3.849 million, and I understand that is an appropriation owing to government. Can you explain why that has increased so substantially and if that is correct?

**Mr Jones**—Under our current funding arrangements there is a variable cost per case that is placed on the number of cases that are decided each year by the tribunals. These figures

reflect the adjustments in terms of 2007-08 and 2008-09 in relation to that formula for the tribunals' funding.

**Senator BARNETT**—Why has it increased from \$2.3 to \$3.8 million? That is a huge increase.

**Mr Jones**—The \$2.3 million is the figure for 2007-08 and the \$3.8 million is the increase that comes from 2008-09.

**Senator BARNETT**—I know. That is my question. Why has it increased so much? It is a very big increase.

**Mr Jones**—That is right. The formula is based on the number of cases we decide. The estimates for 2008-09 were in the order of the tribunals finalising more than 10,000 cases. In the outcome, the tribunals finalised 8,229 cases.

**Senator BARNETT**—So, are you on budget or below budget?

**Mr Lynch**—We are below budget. In terms of expenditure, we are ahead because we have had a shortfall of cases. This is the problem I mentioned a little earlier. We have a pricing arrangement that does not fit our current operations. We have an estimated case finalisation target—

**Senator BARNETT**—Of up to 10,000.

**Mr Lynch**—for 2008-09 of 10,550 and one for this current financial year of 10,750. These are targets that we hope to achieve, and it is quite possible in this financial year, for example, because we are tracking to reach perhaps 9,000 to 9,500 decisions. Last financial year we did not make as much progress as we had hoped. That unfortunately has had the undesirable effect of putting us into an operating loss situation. For example, we decided only 8,229 cases last year, and that outcome depended on a great range of variables including case law, the need to reconsider cases, new legislation, new regulations, the complexity of principles enunciated by the courts and taking on board new members—28 per cent of our current members have been with the tribunal for fewer than two years. So we have a great training and professional development effort going on at all times.

One of the things that we are looking at with the Department of Finance and Deregulation is establishing a broad band of decision outcomes—so perhaps 7,000 or 7½ thousand cases as a minimum for finalisations with an upper limit of, say, 10,000 or 10½ thousand, without penalty to our appropriations. The organisation has to run. We have a certain number of members now appointed for five-year terms, and it is not a simple measure to ratchet your resources up or down. It is easier with staff. We are tracking at the moment under board direction to reduce our staff costs by between eight to 10 per cent for each cost centre. That is a productivity measure to try to reduce the impost on the taxpayer.

**Mr Jones**—I would just add that this is an appropriation that has not been drawn down by us. This is an appropriation that is quarantined and just waiting for a formal reduction in appropriation for those years.

**Senator BARNETT**—So it is a book entry in that sense.

**Mr Jones**—It is money that we have not spent in that sense.

**Senator BARNETT**—I know that time is tight, so I will ask my last question. It relates to the membership of your tribunal, which is at the appendix on page 122 and following. It seems that you have a good gender balance there but that the bulk of the members are in Melbourne and Sydney. You have got a few from Adelaide and Brisbane and I think one or two from Perth. I cannot see any from Tasmania.

**Mr O'Brien**—No, there are not any from Tasmania. The volume of business, I have to say, from Tasmania is very small and it just does not justify the placing of a member down there. Tasmanian cases tend to be handled in Melbourne, to the extent that they arise. We do not have the volume of work in Tasmania to justify a member down there. The recent member appointment round has, though, substantially increased our resources in Adelaide, Perth and Brisbane. We increased by one member in Brisbane, giving us three.

**Senator BARNETT**—Have you only got one member in Brisbane?

**Mr O'Brien**—We have three in Brisbane.

**Senator BARNETT**—So you added one to Brisbane?

**Mr O'Brien**—Yes, we added one to Brisbane. We added two to Adelaide, which now gives us three part-time members in Adelaide.

**Senator BARNETT**—What about Perth?

**Mr O'Brien**—We added one in Perth but it was a full-time member. So we now have two members in Perth, one being full-time and one part-time. That was a response, which the government agreed with, that applicants in those cities were not as well catered for as applicants in Victoria and New South Wales, because often there were too many video hearings.

**Senator BARNETT**—And you do not have members in Darwin or Canberra?

**Mr O'Brien**—No.

**Senator BARNETT**—Not at all?

**Mr Lynch**—We used to have a Canberra registry for the MRT but, because of the centralisation of our principal registries of the two tribunals in Sydney, we closed that registry down in 2004. Again, the workload in the ACT did not justify it. Canberra members were doing cases from all over the country. Now we have put people into those centres and the applicants are more appreciative of that.

**Senator FIERRAVANTI-WELLS**—I have a few questions. I asked a question on notice in relation to the complementary visa and the new complementary visas that are going to be introduced.

**Senator Chris Evans**—Can I just correct you, Senator? There is not a new visa to be introduced; there are new grounds.

**Senator FIERRAVANTI-WELLS**—Well, complementary protections then. I will put it that way.

**Senator Chris Evans**—I am not being picky; I just want to make it clear.

**Senator FIERRAVANTI-WELLS**—Mr O'Brien, were you consulted about that?

**Mr O'Brien**—Indeed, Senator.

**Senator FIERRAVANTI-WELLS**—What is the general view of your membership about that scheme?

**Mr O'Brien**—Obviously it was a policy issue for the government to introduce complementary protection as an aspect of seeking a protection visa. At the moment protection visas only cover persons who have satisfied the refugee definition. The idea of complementary protection is to expand that category so that any person about whom it is found that Australia has non-return obligations under the conventions will be eligible for a protection visa. The bill, of course, is in the parliament at the moment.

Broadly speaking, our members are looking forward with some excitement to the start of the complementary protection scheme because we have in the past had cases before us where, unfortunately, the applicants have not come within the definition of a refugee but have been, in the member's view, deserving of Australia's protection. Those cases in the past had to be considered by the minister under ministerial intervention. This now gives us the opportunity to deal with those claims and to really get in and examine the claim that is being made as to whether the particular person really does fall within Australia's non-return obligations under the various international conventions.

**Senator FIERRAVANTI-WELLS**—In answer to my question on notice you said that comprehensive training on complementary protection issues will be required and is planned for all members. Can you expand on that?

**Mr O'Brien**—Yes. We have engaged Associate Professor Jane McAdam from the University of New South Wales, who is currently in Oxford. She is preparing a training manual for us as we speak. The idea is that when she returns from Oxford at the end of this year she will be rolling out some training for members, probably in February or March. It depends a bit on the progress of the bill and when the new law comes into force. On the assumption that it may be coming into force in April, we have broadly worked out that our training ought to be in February-March.

**Senator FIERRAVANTI-WELLS**—Has this been budgeted for?

**Mr O'Brien**—Yes. We have agreed on a price with Associate Professor McAdam and we can cover that within our existing training budget.

**Senator FIERRAVANTI-WELLS**—On the last occasion we talked about 457 related types of applications. The trend was up and I think that has been confirmed because we are talking a lot more—

**Mr O'Brien**—Yes, we spoke about that earlier.

**Senator FIERRAVANTI-WELLS**—Yes. On the last occasion we talked about protection visa scams. As set out on page 50, we discussed an Afghan scheme and a number of protection visa applications. What has happened with that?

**Mr O'Brien**—We observed last time that from time to time we do become aware of the possibility that there are particular classes of applicants who may be being coached. I do not think we are particularly conscious of that at the moment, but we know it does occur from time to time.

**Senator Chris Evans**—We are actually doing quite a bit of work on trying to improve our integrity measures and our capacity to pick up commonality of approach in applications as in common agent or common application. I had 10 ministerial interventions put before me the other day.

**Senator FIERRAVANTI-WELLS**—From the same migration agent with the same template?

**Senator Chris Evans**—They were from the same migration agents and were the same letter with 10 different signatures. It happens. To be fair, the department had improved the integrity measures so that they were able to group them and understand that there was a commonality of issues. Of course, I judged them all on the independent merits of the case, but there were a lot of similarities in the applications.

**Mr O'Brien**—Could I say that where we do become aware, for example, that there are particular applications made to us that are emanating from the same post office box somewhere and they appear not to be genuine applications in the sense that—

**Senator FIERRAVANTI-WELLS**—This sounds like a political party, Mr O'Brien, branch stacking!

**Mr O'Brien**—I will not comment on that, Senator, but where we become aware of those sorts of things, particularly in those cases where the applicants just do not front before us when we invite them to a hearing, our liaison arrangements with the department are such that we let the department know just in case there is an issue that needs to be investigated by the department.

**Senator FIERRAVANTI-WELLS**—At this stage, Mr O'Brien, with some of the changes that been effected in the department—for example, the abolishing of the 45-day rule and those sorts of things—you are not starting to see any of that flow-through yet because the processes have not happened yet and they have not come to your neck. Minister, in terms of whether we have seen an increase in the number of visa applications after the abolishing of the 45-day rule, it is probably too soon for Mr O'Brien to see any increase.

**Senator Chris Evans**—Obviously I will deal with that when we get to the section on the department's responsibilities, but I am not sure why you are saying that the MRT would see more applications.

**Senator FIERRAVANTI-WELLS**—I am just asking in terms of—

**Senator Chris Evans**—The sorts of applications?

**Senator FIERRAVANTI-WELLS**—the sorts of applications. It is about seeing down the pipeline if there are any sorts of applications that—

**Senator Chris Evans**—The effect of the change—

**Senator FIERRAVANTI-WELLS**—Anyway, we will deal with that later and I will ask the MRT. I think it is too soon now for there to be any changes.

**Senator Chris Evans**—Just to make the point, Senator, what the change does is widen in a quite small degree the eligibility for work rights and access to Medicare. I think under the previous government two-thirds of people got it and we expected that about 600 more would

be eligible, so it is a quite minor change in many ways in terms of numbers. The department will give you the numbers on applications but I think they are a bit less than what we had thought. Of course, they are unlikely to get applications at the MRT if more people have been granted work rights because there will be fewer people appealing, one would have thought, the failure to get work rights. But there may be other aspects to it. As you know with these things, you never know, but one of the things I make clear with all of these changes is that we will monitor them and we will make changes if there are intended consequences. The one thing I have learnt about the portfolio is that there are always unintended consequences of everything you do!

**Senator FIERRAVANTI-WELLS**—There are always unintended consequences.

**ACTING CHAIR**—Thank you, Mr O'Brien and the other officers, for your appearance before these estimates hearings.

**Proceedings suspended from 10.23 am to 10.43 am**

**ACTING CHAIR**—The committee will resume with questions for the Department of Immigration and Citizenship in outcome 1.

**Senator FIERRAVANTI-WELLS**—As I understand it, we are going to start with MARA first?

**Mr Metcalfe**—I think we now move to the Office of the Migration Agents Registration Authority. Can I introduce Ms Christine Sykes, the Chief Executive Officer of the Migration Agents Registration Authority. I understand she may have a short opening statement, particularly because the arrangements she is heading up are new. Ms Sykes and her colleague, Mr Wood, have moved in as the new managers for the registration authority.

**ACTING CHAIR**—You are right, sorry—I skipped over some of the program. Welcome Ms Sykes and Mr Wood. I invite you to make some opening remarks to the committee and then we will have some questions for you.

**Ms Sykes**—As indicated, on the first occasion of my appearance before you I would like to provide some information about the office. The office of the MARA commenced as a discrete office attached to the Department of Immigration and Citizenship on 1 July 2009. The role of the office is to regulate the activities of the Australian migration advice profession to ensure that consumers are provided with adequate information and protection. In his press release of 1 July, the minister stated that the new body would be established after the 2008 review, as statutory self-regulation of the migration advice profession found dissatisfaction amongst consumers and potential conflicts of interest under the old arrangements.

In order to address any concerns about the department's role in administering the MARA function, a comprehensive review of potential and perceived conflict of interest was undertaken by an independent probity adviser. That adviser was Professional Service Integrity Asia Pacific. The strategies developed to manage these risks were assessed by an eminent jurist, Sir Laurence Street. Sir Laurence Street found that they were both comprehensive and sound. The strategies are outlined in a probity document. There is also a protocol document which sets out the relationship between the Office the MARA and the department. Both of these documents are publicly available on the website.

Some of the strategies put in place include the physical separation of the Office of the MARA from the department and the use of separate business systems to carry out its key functions. There is also a policy and procedures manual to guide staff in undertaking their statutory obligations. This has also been placed on the website. There are also clearly defined accountabilities and delegations for decision making.

In the first weeks of operation all Office of the MARA staff undertook probity and conflict of interest training and completed conflict of interest declarations. Independent probity audits will be done on a regular basis. The first one will occur on 22 and 23 October.

In the first three months the focus of the Office of the MARA has been on continuity. We have put strategies in place to ensure minimal disruption to day-to-day functions as a result of the transition. One example of this was the website. Departmental IT staff found that the former MARA website, which had been developed in conjunction with an external service provider, posed significant security, privacy and accessibility issues. A transition website was immediately deployed. It contains the essential information for migration agents and consumers. We are working to remedy the issues with the former website so that it can be operational as soon as possible.

We have engaged with stakeholders to explain the functions of the new office. This has included the professional bodies, universities, ethnic community representatives and registered migration agents. At the end of September 2009 there were 4,148 registered migration agents, compared to 4,097 on 1 July 2009. This increase is consistent with the trend over the last three years. There were 222 registered migration agents working in the non-commercial sector.

The Office of the MARA have put in place governance systems and controls. As part of our business planning, we have revised the staffing profile to reflect the workload and the priorities of the office and we have commenced recruiting staff to permanent positions. We expect this recruitment to be complete by the end of the year, which will provide staff with certainty and sufficient time to find alternate employment should they be unsuccessful. We recognise that this is a difficult time for staff. We have provided a range of support, including a range of training—induction training, specialised training, and training in applying for positions in the Australian Public Service. We have also seconded a highly experienced officer from the Australian Public Service Commission to assist with the recruitment process and to be available to provide advice to individual staff. In addition, we have engaged the department's employee assistance program to help staff through the process.

On 3 August 2009, the minister announced the appointment of an advisory board to guide the Office of the MARA. The advisory board is chaired by former secretary of the Attorney-General's department and lawyer, Mr Robert Cornall AO. The chair reports directly to the minister. Other advisory board members are Jenni Mack, who is also the deputy chair and represents consumer groups; Sonia Caton, representing the not-for-profit immigration assistance sector; Glenn Ferguson, representing the Law Council of Australia; Robert Stirling Henry, representing the Migration Institute of Australia; Andrew Holloway, representing the university sector; and Jim McKiernan, former senator, representing the community sector.

The advisory board's terms of reference are available on the website. They include providing advice on procedures, policies, strategies, organisational directions, plans and any emerging issues in the sector of relevance to the regulation of migration agents, as well as consumer issues. At its inaugural meeting on 2 September 2009, the advisory board was also briefed by the probity advisers.

Now that we have gone through the initial establishment phase, our priority is to review and improve our processes and procedures. In addition, we will work with the advisory board and other stakeholders to implement the recommendations of the 2007-08 review. This will include developing a communications strategy with a key emphasis on consumer protection, implementing a higher level of English language requirement for initial applicants for registration from 1 January 2010, giving consideration to the implementation of this English language standard for re-registering migration agents and taking forward the development of a revised code of conduct. I am happy to answer any questions from the members of the committee.

**Senator FIERRAVANTI-WELLS**—As at 30 April, there were 4,069 migration agents registered with MARA. You are now keeping that register. Have we got an update on that figure?

**Ms Sykes**—Yes. At the end of September, there were 4,148 registered migration agents.

**Senator FIERRAVANTI-WELLS**—The Migration Institute of Australia is sort of freelance, if I can put it that way. It is sort of out there doing its own thing. What is your relationship with it like now? You obviously still have a relationship with it, but it is now basically an industry body, if I can put it that way, and no longer has any responsibilities under the Migration Act.

**Ms Sykes**—That is correct. The Migration Institute of Australia is a professional body. It claims to represent about 50 per cent of all registered migration agents. We have a very close working relationship with the Migration Institute of Australia as a key stakeholder. For example, I addressed the Migration Institute of Australia conference just last week.

**Senator FIERRAVANTI-WELLS**—Yes, when former Senator Bartlett was given some very honorary award, I gather. Oh well, there is hope yet!

**Senator Chris Evans**—Obviously they are recognising the former role of the senators on this committee.

**Senator FIERRAVANTI-WELLS**—Is that what happened? Do they have an award ready for you too, Minister Evans?

**Senator Chris Evans**—I do not think so!

**Senator FIERRAVANTI-WELLS**—You have obviously gone back and done a bit of an audit. We know that there were problems with MARA, and so you have obviously gone back and looked at the areas where there have been problems. What about the numbers that were struck off last year? Since we have met, do you know how many were struck off as part of the takeover? Do we have figures on that? Please take it on notice if you want and can produce those figures for us.

**Ms Sykes**—My understanding is that 38 complaints last year resulted in sanction action: five agents were cautioned, 10 agents were suspended, two agents were cancelled and four former agents were barred. That was in 2008-09.

**Senator FIERRAVANTI-WELLS**—What is the average processing time for applications? You obviously have a steady flow. From April to September you have had 100 extra applications. How long does it usually take to process those applications? In the takeover, are you going to be a bit more stringent in who we are giving registration to?

**Ms Sykes**—Firstly, Senator, it is a little bit early for me to give you a credible average processing time. What we have done to date is to adopt the service standards of the former MARA, and those are that 95 per cent of complete repeat registration applications will be finalised within four weeks and 95 per cent of complete initial registration applications will be finalised within eight weeks. In the first three months we have reached a position where we are meeting those service standards. We are looking at the registration process and hope to improve that service standard. In doing that we are certainly maintaining all of the integrity measures that were in place with the former MARA and looking at what additional integrity measures we can put in place. In addition, initiatives like the increase in the English language standard should go to increasing the overall standard of registered migration agents.

**Senator FIERRAVANTI-WELLS**—I think one of the real problems with the former MARA was in that area. Therefore, as I understood, part of the reason why we are having the transition to the department is to try and bring some sort of order to the house. So I look forward to seeing what more stringent measures you are going to be adopting there.

**Senator Chris Evans**—One of the things that we have asked the board we have appointed to do is to provide some policy advice as well as administration. I want them and the new senior officers to grapple with some of those issues. You share my concern. We have some very good agents and we have had far too many bad ones and far too much unregulated or poorly regulated activity. A lot of the agents are very keen to see it cleared up as well, because there has been too much below-standard or inappropriate practice. So that will be one of the focuses, and it is one of the reasons why I thought the MIA's conflict of interest—in being both the body that represented the agents and the regulatory authority—was untenable, which is one of the reasons why we changed those arrangements.

**Senator FIERRAVANTI-WELLS**—Ms Sykes, perhaps you would take this on notice. Perhaps you could go back over recent developments and take, say, the last five or six years. I am interested in seeing the average length of time that people stay as agents. I think one of the problems in the industry has been that, although there are very good agents and some who have been in the profession for years and years, we have seen the fly-by-nighters. It would be interesting to see some statistics in relation to those that come and go and the length of time that people have been agents—perhaps a profile of migration agents. I think you understand what I am asking for.

**Ms Sykes**—I do. I do have some statistics that might be of help, and I can provide more on notice. Sixty-one per cent of agents have been registered migration agents for less than five years; for six to 10 years it is 25 per cent; and over 10 years it is 14 per cent.

**Senator Chris Evans**—That is quite a stark figure, isn't it?

**Senator FIERRAVANTI-WELLS**—It is.

**Senator Chris Evans**—Sixty-one per cent under five years; I did not realise it was that high.

**Senator FIERRAVANTI-WELLS**—That is where I think part of the problem has been. I think it is important that in doing that we look at the underlying reasons for that sort of figure, because it ties in with other aspects; we have discussed this before. How many cases are currently before you? How many cases are you looking at at the moment? I think you said there were 38 complaints at the moment.

**Ms Sykes**—Do you mean complaints or registrations?

**Senator Chris Evans**—This is active complaints, I think.

**Ms Sykes**—At the end of September we had 184 active complaints.

**Senator FIERRAVANTI-WELLS**—What is your assessment of the nature of those complaints? Can you give us a bit of an overview of the sorts of complaints that you are getting.

**Ms Sykes**—The majority of complaints are about breaches of the code of conduct. They go to things like their knowledge or competency, record keeping, withdrawal of information, timeliness of application, accuracy of information and behaviour. Then there are a small percentage around fees and charges, terms of service and obligations to the clients.

**Senator BARNETT**—Ms Sykes, we have previously had an annual report from MARA. Do you have an annual report or is your report part of the department's annual report?

**Ms Sykes**—We will have an annual report, which will report on the current financial year, and it will be available next year.

**Senator BARNETT**—Right. So we will not have one this year.

**Ms Sykes**—My understanding is that the Migration Institute of Australia is responsible for providing an annual report for 2008-09.

**Senator BARNETT**—Let's make it clear. The Office of the Migration Agents Registration Authority, of which you are the CEO, will deliver an annual report on the next financial year, 2009-10.

**Ms Sykes**—That is correct.

**Senator BARNETT**—Before 31 October next year, in accordance with the law.

**Ms Sykes**—In accordance with the law.

**Senator BARNETT**—We want you to talk about, if you could, the transition from MARA to the office. Clearly it has been a very sensitive, difficult, challenging period for yourself and, as you have already indicated, the staff. I have a range of questions to ask about the transition. First of all, there are the funds. There is the issue regarding the fidelity fund and the issue regarding the \$3 million to \$4 million which was, I understand, in trust and which is essentially migration agents' money. At the last estimates, in May, there was a view that that would be transferred to the department. Of course, that money is not the department's money

but migration agents' money. I am interested to know exactly how much there is, where it is and what has happened to that money.

**Senator Chris Evans**—I think that is a policy issue that is with the department rather than with the Office of the MARA, but I think Mr Vardos has come to the table and he is probably the best one to answer that.

**Senator BARNETT**—I am more than happy for Mr Vardos to answer that question.

**Mr Vardos**—The final figure was in the order of \$4.46 million and it has been transferred to consolidated revenue. The Office of the MARA has been provided with a forward budget through the department's annual appropriations, and the funding will be in the order of \$24.4 million over the next four years, which sits against a budget of about \$16.4 million over the previous four years. There are two or three issues to be resolved, which will go to how much that final amount is, and they are being worked through. But in broad terms—

**Senator BARNETT**—You say 'the final amount' but didn't you just say \$24.4 million over four years?

**Mr Vardos**—In terms of the surplus being transferred from the MIA to consolidated revenue—

**Senator BARNETT**—The surplus being the \$4.46 million?

**Mr Vardos**—Yes. That has gone into consolidated revenue.

**Senator BARNETT**—That was within MARA, was it not?

**Mr Vardos**—That was generated under the previous arrangements and it has been transferred to the Commonwealth. But what I am saying is that there is still a small amount of money held in reserve pending resolution of two or three issues.

**Senator BARNETT**—How much money, Mr Vardos?

**Mr Vardos**—I would need to check but I think it is in the order of less than half a million dollars.

**Senator BARNETT**—You could take that on notice.

**Senator Chris Evans**—It is because there is still some toing and froing between MIA and the department about the final settlement; that is all.

**Senator BARNETT**—That is understandable. The question is: what is going to happen to the \$4.46 million?

**Mr Vardos**—There is no requirement or legislated basis for the Commonwealth to use these funds specifically for the purpose of administering migration agents. Through the budget allocation processes the minister for finance allocates funding to the operation of the OMARA. The funds generated from the registration fees go to consolidated revenue.

**Senator BARNETT**—I am not interested in what you believe to be legally appropriate or within the law. Let's go back a step. Ms Sykes may be able to assist. What was that money used for previously? Would you be able to answer that question? Under the old regime, this money—registration fees from migration agents and, I understand, other sources—was, I was

advised, in the order of \$3 million to \$4 million. We understand it is \$4.46 million. Can you tell us what it was used for in past years.

**Mr Metcalfe**—I will take that—and, if I need to correct the facts, I will. My understanding is that the Migration Agents Registration Authority was intended to be self-funding and that therefore the fees collected under the Migration Act were applied to the operation of the registration authority. Over time, it would appear that the amount of fees collected exceeded the costs of running the agency, and the amount of \$4 million that Mr Vardos has just described was generated essentially as a surplus to requirements.

The previous Migration Agents Registration Authority, the Migration Institute, proposed that it be used as a so-called fidelity fund. But that was a proposal; it was never sanctioned or agreed or indeed covered by the legislation. Upon the termination of the delegation to the Migration Institute of Australia, to be the Migration Agents Registration Authority, all funds and proceeds were transferred back to the department—and, indeed, this \$4 million surplus was properly placed in consolidated revenue. It is essentially money that was in excess of that needed to run the agency. The department does not have a call on that.

The issue of whether a so-called fidelity fund should be established is not something for the Migration Institute to make a decision about. The issue around whether the industry should generate a fidelity fund for itself is a separate issue, and one issue that the Commonwealth will need to examine at some stage is what the appropriate fee level is for the services provided by the Migration Agents Registration Authority.

**Senator BARNETT**—Has the institute expressed a view as to what should occur with the funds?

**Mr Metcalfe**—I think they expressed a view to these estimates.

**Senator BARNETT**—I have the transcript of the estimates. I am fully aware of their views at that time. Since then, have they expressed a view to either the department or the minister with respect to what should occur with the funds?

**Senator Chris Evans**—They wrote to me with a suggestion about how we might apply the funds. But let me make it clear: this is Commonwealth taxpayers' money—full stop. From all our legal advice and our financial advice, this is Commonwealth taxpayers' money. They have requested that we might apply that money to a fidelity fund they wanted to establish. I have not taken up that suggestion from them. All my advice is that this is Commonwealth taxpayers' money that has been returned to the Commonwealth because of a surplus to requirements for financing the MARA, which is an Australian government authority. The MIA have a suggestion that they would like to establish a fidelity fund and they suggested to me that we might use Commonwealth funds to establish that. I have declined that invitation.

**Senator BARNETT**—Minister, can you table the advice?

**Senator Chris Evans**—I am happy to take that on notice and check. We can certainly get you something, but I do not think—and if I am wrong I will correct the record—MIA suggested that they are not Commonwealth funds; they just have a suggestion as to how they would like to see it applied. I do not think it is in dispute. They do not say that it is their money.

**Senator BARNETT**—At the May estimates, you will recall, we had quite a discussion about the fidelity fund and these excess funds and the view put was that the fidelity fund should be used at least in part as some sort of insurance for consumers.

**Senator Chris Evans**—Who was that view put by, Senator Barnett?

**Senator BARNETT**—I have an interaction here with Ms Horder and Mr B Jones.

**Senator Chris Evans**—I think that interaction highlighted the concern I had about their conflict of interest. When they were expressing that view, they were expressing it as the MIA—the organisation representing agents. They were appearing at this committee as the MARA—the regulatory authority. That is why they were before the committee. That reinforced my serious concern at their inability to delineate between their responsibility as a regulatory authority and their responsibility as the advocate organisation. This money is Commonwealth money. They have put to me a suggestion, and I have not taken that up.

**Senator BARNETT**—Minister, with respect, and to protect their interests: they were here; they presented evidence. As you know—they sat to your left—they presented as representatives of MARA, and they are on the record as representatives of MARA.

**Senator Chris Evans**—Yes.

**Senator BARNETT**—Whether they were expressing views which you do not agree with one way or the other—

**Senator Chris Evans**—No, this is quite different. You might recall that I raised this issue with them—

**Senator BARNETT**—You did.

**Senator Chris Evans**—and they conceded that they were expressing the views of MIA, which is a private organisation that was not appearing at estimates.

**Senator BARNETT**—I am not sure that concession was as you interpret it. I am reading the *Hansard*—I have got it in front of me, and I am happy to check it. Nevertheless, there are the surplus funds, there is a fidelity fund, and you are saying—

**Senator Chris Evans**—I gather there is a proposed fidelity fund.

**Senator BARNETT**—There is a proposed fidelity fund.

**Senator Chris Evans**—There is not an established fidelity fund?

**Senator BARNETT**—No, there is a proposed fidelity fund. All I would like to know, and I think others would like to know, what specifically you have in mind for those funds, whether there will be some sort of trust fund for—

**Senator Chris Evans**—Let it be clear: there is no fidelity fund—there never was. There was a proposition, so it is not a question of distributing fidelity funds. There is no fidelity fund and there is no money.

**Senator BARNETT**—There were surplus funds.

**Senator Chris Evans**—There were surplus funds that were Commonwealth taxpayer funds. They have been returned to the Commonwealth and returned to consolidated revenue. I have subsequently received a request from MIA to establish a fidelity fund using some of that

money. It was suggested that I might like to use some of the Commonwealth taxpayer's money to support their proposition for a fidelity fund. I have declined that invitation.

**Senator BARNETT**—What is your plan for the \$4.46 million, and perhaps the extra nearly half \$1 million? What is your plan for that money? Is it to go into consolidated revenue or to other purposes?

**Senator Chris Evans**—It is in consolidated revenue.

**Senator BARNETT**—What are you planning to do with it?

**Senator Chris Evans**—I am afraid the finance minister does not consult me about what he does with consolidated revenue!

**Senator FIERRAVANTI-WELLS**—The Finance Minister has squandered it. He has absconded.

**Senator Chris Evans**—It is not mine, it is Commonwealth taxpayer's money that has been returned to the finance minister to dispense with as he sees fit.

**Senator BARNETT**—So it has gone into the big black hole in Canberra?

**Senator Chris Evans**—I would like to have it in immigration funds but I cannot.

**Senator BARNETT**—I wanted to get it on the record and I wanted to know what plans you had for that, which are clearly contrary to the views of Ms Horder and Mr Jones and, I presume, the institute. I have asked you whether there are communications between you, and you have answered that.

**Senator FIERRAVANTI-WELLS**—Ms Sykes, if the advisory board comes to you and says, given the history in this area, 'We think that something should be done, irrespective of what MIA may, or may not, have proposed,' et cetera, then of course that would be a proposal that you would put to Mr Metcalfe and then ultimately as part of a budget consideration for allocation of future funds. Is that the case?

**Mr Metcalfe**—I think that is a good way to describe it. There are really two issues running here: firstly—and I have just gone back and checked the *Hansard* of 27 May at page L and C 75—where it was very clear from the interaction between Senator Barnett and Mr Jones, and then Ms Horder, that the MIA were basically saying that they were undertaking at that stage—very late in the day as far as their administration of the registration authorities was concerned—a feasibility study as to how the surplus funds that had been generated through a fee-for-service established in the Commonwealth legislation could be applied. The words were 'feasibility study' and 'we need to do actuarial studies'. It was very much an idea; it was not a proposal. On 1 July, when the function passed to the department, funds surplus to the running of the authority quite properly were provided back to the Treasury and are in consolidated revenue. They are taxpayer's funds.

I think it is a separate issue if there should be some sort of fund established. Clearly the MIA were undertaking feasibility studies, and they were looking for the source of funding to be the application fees made by agents. It really becomes thus a policy question as you describe, including whether the source of that funding should be a dividend associated with overcollection of the fee. Should the fees remain where they are or should they in fact be

reduced, depending on the level of service provided? Or, indeed, should the authority be given more resources to undertake greater levels of investigation and registration? These are all policy issues.

There is a related issue as to should the industry itself establish a fidelity fund as private colleges have, for example, to provide should there be any issues? One of the areas that the advisory committee council that the minister has established, chaired by someone that you would know well, Mr Cornall, is to look at these sorts of issues. In time, I am sure it will provide advice as to the most appropriate forms of consumer protection.

**Senator FIERRAVANTI-WELLS**—Ultimately, Ms Sykes, if in the transition and restructure, if I can put it in those terms, there is a decision to impose greater obligations and parameters on the operations of migration agents on a much more professional basis that is similar to lawyers—and I think we have canvassed this in the past—that opens up different avenues for potential opportunities and requirements for those people in terms of their coverage. It is just like lawyers being sued for negligence.

**Senator Chris Evans**—I also make the point that, as has been indicated, the former Secretary of the Attorney-General's Department Mr Robert Cornall was made chair of the advisory board, but we also deliberately made Ms Jenni Mack, who has a background in consumer issues, deputy chair in order to deal with some of these concerns about consumer protections and to make sure we had that expertise on the board.

**Senator FIERRAVANTI-WELLS**—Ms Sykes, can you please undertake to give us a progress report on what is happening in that area? It is clearly the font of quite a bit of discord and problems in the industry. It would be really good to see some movement in that area.

**Ms Sykes**—I certainly will.

**Senator Chris Evans**—I extend an open invitation. I have not been down to the new MARA as yet, although I have indicated a desire to go and will hopefully do so in the next few weeks, but I am very happy for members of the committee to come down if they want to and have a tour and a chat to the staff. We could do that formally or informally. People are more than welcome.

**Senator BARNETT**—Thank you for that. To clarify the fees raised, are they on a fee-for-service basis? What is the policy regarding the fees of agents?

**Mr Metcalfe**—I will check and correct myself during the course of the morning if I am incorrect. I have some briefing on it. The registration fee charged is specified in the Migration Agents Registration Application Charge Act 1997 and the regulations that flow from that act, which were established in 1998. The legislation basically permits the collection of the fee, but it is silent as to how the fee should be applied, apart from a general expectation that it would contribute towards the cost of running the registration process.

**Senator BARNETT**—That is the question I would like answered, without going into too much detail if possible.

**Mr Metcalfe**—It is certainly quite clear under law that any surplus is to be returned to consolidated revenue.

**Senator BARNETT**—Can you understand the concern here? If we do not have a strict policy, that is fine, but we will come back to it in February at the next estimates. If it is cost recovery, we would like to know. If the government is going to be making more surplus money out of these fees, we would like to know the reasons why. There is \$4.46 million plus a bit that has gone into consolidated revenue. That is relevant. We would like to know for future planning purposes what your policy is. I put that on the table for you if it is not overtly clear.

**Senator FIERRAVANTI-WELLS**—Mr Vardos, what is the fee at the moment?

**Mr Vardos**—I cannot answer that question.

**Ms Sykes**—I have that information before me. For initial registration?

**Senator FIERRAVANTI-WELLS**—Yes.

**Ms Sykes**—For commercial agents, it is \$1,760; for non-commercial agents, it is \$160; for repeat registration, it is \$1,595 for commercial agents; and \$105 for non-commercial agents.

**Senator FIERRAVANTI-WELLS**—In tightening up the industry, are you going to be looking at potentially raising those sorts of fees? There is a professional component. It is pretty cheap registration, considering. Let us be blunt. This is an industry that has had a lot of fly-by-nighters that have come along. It is pretty cheap to get registration. They probably stay in the industry for a couple of years, make money and then move on.

**Senator Chris Evans**—I think it is fair to say that this is a policy issue for government. As you know, we have only established the new office on 1 July, so there are a lot of issues that they are dealing with. The transition has gone very well. We have employed most of the staff that were on the previous MARA, but we need to consider some of these policies. I am pleased to see that you have an even harder line than me and I will look for your support when we start dealing with some of those policy decisions.

**Senator FIERRAVANTI-WELLS**—I just notice that you are getting 100 new agents a month. Is that the average? There is money to be made. That is the point I am making.

**Senator COLBECK**—It is a growth industry.

**Senator FIERRAVANTI-WELLS**—Thank you, Senator Colbeck. For reasons we will come to later in the day, it is a growth industry. I will leave it at that.

**Senator BARNETT**—The question was raised in May regarding the audit of agents and the code of conduct. At the time, there was a draft code of conduct. Can you provide us with a status report on the code of conduct and your process for auditing agents?

**Ms Sykes**—With regard to the code of conduct, we are still waiting for the Migration Institute of Australia to provide us with the final version of that and their recommendation to government. We are looking forward to that and we would look for that to be something to put to the advisory board to see how we take that forward.

**Senator BARNETT**—When will that occur?

**Ms Sykes**—I am advised by the end of the year.

**Senator BARNETT**—We will have a code of conduct by the end of the year, is that correct?

**Ms Sykes**—Sorry, I mislead you there. No. The Migration Institute of Australia has advised me that they will provide us with their recommendation about the code of conduct by the end of the year. We will then need to consider that and see whether or not we fully adopt it or whether there are parts of it that are adopted.

**Senator BARNETT**—Is it likely to be mandatory?

**Ms Sykes**—My understanding is that the proposal by the Migration Institute of Australia is to have a code that includes ethics as well as behaviour. I think there is a question as to how much of that you can make mandatory as compared to how much is aspirational.

**Senator BARNETT**—We will watch this space. Can you table the draft code that you have been given?

**Ms Sykes**—If I can take that on notice, I will check with the Migration Institute of Australia if I am able to do that.

**Senator BARNETT**—Thank you. We know from last estimates that, with regard to the transfer, the issue of staff is very sensitive. Can you indicate to us a status report as to how many staff were offered a job, how many transferred over and your current staffing levels? We don't have an annual report, so we have to ask these questions.

**Ms Sykes**—I can do that. On 1 July, 18 MARA staff commenced in the office of the MARA. You may recall that, at the last Senate estimates, it was indicated that offers were made to 19 former MARA staff. One of those declined the offer, so we commenced with 18 MARA staff and 10 staff from DIAC. At that stage, we had two vacancies: one because of the MARA staff who declined and one because a DIAC officer did not take the offer up. We started with 28 staff and two contractors. As at 20 October, we have 16 former MARA staff and 14 DIAC staff, which makes a total of 30 staff. We also have four people on contracts. One is working on IT. One is helping us with the website. As I said before, one has been seconded by the Australian Public Service Commission to assist us with recruitment. We also have an officer from AGS seconded to assist with revising our quality assurance processes around our complaints.

**Senator BARNETT**—That is a good summary. Thanks for that. You mention the website. Could we get an update on that? You have said that it is to become operational. Can you tell us the cost incurred under the previous regime for the website establishment?

**Ms Sykes**—I am sorry, I do not have the cost for the previous MARA.

**Senator BARNETT**—I wonder if a department official might know.

**Mr Vardos**—I do not. I have to take it on notice. It may well be that that was information held only by the old MARA.

**Senator BARNETT**—There was considerable excitement expressed at the previous estimates regarding this new fantastic website that would be put in place and there was an indication by the officers at the table that they expected it would be taken over by the department, which you have obviously done, and then reviewed. I think you mentioned some glitches regarding security and privacy problems. When was that found? Has the website been closed down? Are you now starting up a new one? Can you please give us an update?

**Ms Sykes**—I might ask my colleague Stephen Wood to give you an update on that.

**Mr Wood**—We are intending to bring forward the former website once we have addressed the security issues. What we did was put in place an emergency website, the purpose of which was to make sure that the key information that we were required to provide on our website was available whilst we were addressing the issues.

**Senator BARNETT**—When was that established?

**Mr Wood**—On 1 July.

**Senator BARNETT**—So you had an emergency website established on 1 July and the previous website was closed down on 1 July?

**Mr Wood**—It was closed down at midnight on 30 June.

**Senator BARNETT**—and since then?

**Mr Wood**—We have been working on addressing security issues. We expect to have the former website restored with the security issues addressed by the middle of November.

**Senator BARNETT**—So it will only take four-and-a-half months to re-establish the previous website?

**Mr Wood**—That is right.

**Senator BARNETT**—It sounds like a long time, with respect.

**Mr Wood**—It is a long time. We had to re-establish contract arrangements because they were with the former organisation. We had to review the site from a security perspective to comply with government standards, so it required specialist IT people being able to do penetration testing and other security tests in order to identify what needed to be done. We needed to then specify the work. There is a lot of content on the former website. We had to review all of that content to make sure that it was appropriate in tone and language for a government website. There was a lot of work involved and you must remember that, at the same time, we were managing the transition of new staff into the organisation, training people and looking at procedures and documentation.

**Senator BARNETT**—So you were lacking the resources to do it within a swift timeframe?

**Mr Wood**—There was a competition for resources, yes.

**Senator BARNETT**—Can you advise the committee on notice the cost incurred in dealing with: (1) establishing the emergency website; and (2) transferring from the emergency website to this new upgraded website?

**Mr Wood**—I will.

**Senator BARNETT**—And Mr Vardos is going to give us the figure for the establishment of the previous website on notice.

**Mr Wood**—We can take that on notice.

**Senator BARNETT**—You must be deeply disappointed that it has taken four-and-a-half months to get up a new website. You have an emergency website in existence and it is going to take so long and all those resources. It is mind boggling.

**Mr Metcalfe**—It is disappointing that the website that was inherited had serious security concerns. That was not of the department's doing; that was a situation we found ourselves in in the transition to the new arrangements. I make absolutely no apology for saying that a Commonwealth website should be highly secure and tamper and hacker proof, given the importance of the services that we provide. I have certainly congratulated the officers on the work that they did with our information technology division in very rapidly establishing a website presence that was secure, provided basic information and ensured continuity and that contact arrangements were able to occur. I have not heard of any particular complaints associated with the emergency website but, if the real website had been brought down because of security issues, I am sure we would have had—quite properly—complaints.

**Senator BARNETT**—We had the Prime Minister's website brought down for about 30 minutes, notwithstanding he had notice in advance.

**Mr Metcalfe**—Lots of people enjoy attacking government websites. We receive thousands of attempted incursions to our website every day. We take security very seriously. Because of the outsourced contractual and other arrangements, it is taking a while to bring the website back. I think the main point is that there has been continuity of service through this period. The senior officers and indeed all the staff of the MARA have done a very good job in ensuring that we provide a good start to the new arrangements, which I am sure will provide better services to agents and consumers into the future. We will be happy to update you on progress with establishing the website in a secure form.

**Senator BARNETT**—Thank you. When you take that on notice I would like you, if you could, to include full particulars of the terms and conditions of the contractors involved, consultancies to establish the new website, the human resources involved and the cost of the new website.

**Mr Wood**—Okay, Senator.

**ACTING CHAIR**—Thank you, Mr Sykes and Mr Wood for your attendance at estimates today.

[11.30 am]

**ACTING CHAIR**—We will now proceed to the department on outcome 1. I intend to go straight to Senator Fielding.

**Senator FIELDING**—Thank you, Chair. How does the department vet individuals entering the country?

**Mr Metcalfe**—At the very broadest level, people applying to come to Australia who are not Australian citizens must obtain a visa. Those arrangements very substantially depend upon the intention of the person in wanting to come to Australia. There are some quite specific arrangements, for example, in relation to New Zealand citizens, who simply apply in a legal sense but do not have to fill in a form, right through to very significant application forms

being required if a person, for example, is seeking to come to Australia as a permanent migrant.

A visa is a universal requirement for noncitizens to travel and stay in Australia lawfully. The particular conditions will vary very much depending upon the circumstances of their desired stay. There are certain common elements to processing applications. For example, all noncitizens coming to Australia have their details electronically checked against the movement alert list, which is an electronic database of several hundred thousand persons and aliases and a substantially higher number of documents of concern—passports that we know to be stolen et cetera. Those checks are undertaken quite often at several stages through the process from application, through boarding an aircraft, to actually arriving at our border.

The movement alert list, in very broad terms, contains information that we have as to persons who may be of immigration concern because they have been here previously and not complied with requirements, information provided to us by the Australian Security Intelligence Organisation as to people who may be of terrorist or security concern and information provided by the Australian Federal Police as to people who are known criminals or on Interpol alert lists. We also work closely with other immigration authorities and indeed have memorandums of understanding in relation to some of these issues with key counterpart agencies in Canada, the US and the UK for persons who might be recognised internationally as being war criminals.

Essentially, we have an alert list that attempts to pull as much information in as possible, so that if a person might be of concern we can intervene and look at their circumstances in particular and in detail to ascertain whether they should be allowed to come to Australia.

**Senator FIELDING**—Thanks for that. I appreciate the broad look at it. What resources does the department use to place people on a ‘not to enter the country’ list. Is there such a list and how does it work?

**Mr Metcalfe**—There is a list. As I said, the movement alert list, MAL—

**Senator Chris Evans**—It’s called Mal.

**Senator FIERRAVANTI-WELLS**—Does he turn up at the airport?

**Senator FIELDING**—I am not on that list, I hope.

**Mr Metcalfe**—No, I am sure—

**Senator Chris Evans**—I would not be so sure.

**Mr Metcalfe**—In very broad terms, Senator, we employ extensive resources. Indeed, the bulk of the department’s resources is dedicated to assessing applications from clients to travel to Australia, assessing their eligibility. We have a network of over 60 posts overseas and employ around a thousand people overseas in relation to the consideration of visas for travel to Australia. About 130 or so of those are Australia based officers. The balance of our staff are recruited locally at our overseas posts. In addition, we employ literally thousands of people here in Australia. We have a complex processing model these days that means that some applications are processed in Australia even though the applicant is overseas because we have efficiencies associated with that.

In relation to the movement alert list, we have a specific group of people here in Canberra who are involved in the liaison with other agencies and authorities and indeed some of those authorities can directly enter data onto the alert list. So if there is a person who is of concern to some of those authorities I have mentioned they are able to upload that data directly onto our alert list. It is not a decision-making tool; it is an alert list. If a person's details match or are a close match with someone whose details are on the alert list then that case is pulled aside for more careful assessing and checking. As I have said, we seek to ensure that we have a broad approach to including information on that list so that a person who is known to be of concern is in fact identified.

What I think is important is that in no way could our alert list or indeed any other country's alert list be a list of all the people in the world who you may not want to enter your country. It is part of a layered approach to border security that is involved with asking questions of people as to their intentions and their background and undertaking checks, often overseas but including when people arrive at airports in Australia. So we employ a whole range of different devices to try and ensure that people who want to come here and have a holiday or study or migrate and have eligibility to do so move through the system as unimpeded as possible by red tape. But at the same time we want to ensure that we have a system that does try and pick up those people whom we know to be of concern.

**Senator FIELDING**—Is the department aware of the East Timor Commission for Reception, Truth and Reconciliation report?

**Mr Metcalfe**—I am aware of that, yes.

**Senator FIELDING**—Does the department use that report by the East Timor Commission for Reception, Truth and Reconciliation to vet people from the country?

**Mr Metcalfe**—I will ask Mr Frew to answer any detailed questions about this.

**Mr Frew**—We refer to that report, as we refer to a wide range of information about individuals where there may be concerns. That is the answer to the question: yes, we refer to that report.

**Senator FIELDING**—When you say you refer to that report, what do you do with that information? There are some people tagged through that process.

**Mr Frew**—The report provides a range of information with an authoritative base. There are issues within the report where interpretation and the matching with other information holdings is material to an assessment.

**Senator FIELDING**—This is where it could get tricky. I am interested in the process, but how come a guy like Guy Campos, a known war criminal, was allowed to enter the country, given that you use that particular report? It is a worry. I thought you were going to say that you did not use it. I am a bit concerned that you do use it.

**Mr Frew**—We refer to that report, as we refer to a wide range of other information. But there are areas in that report that are single source assertions, if you will.

**Senator FIELDING**—So who interprets that stuff?

**Senator Chris Evans**—I think Mr Frew or someone else may be able to explain the nature of it, but it is not a list of people convicted of particular crimes. It is not as if the United States of America would give us a list or part of the MAL would be to list those who are suspected terrorists or whatever. It is not of that sort of authority; I think that is the key point Mr Frew is trying to make.

**Mr Frew**—Correct.

**Senator Chris Evans**—It is used more as a background source. Is that right?

**Mr Frew**—Correct.

**Senator FIELDING**—But there are obviously names of people linked through that particular—

**Mr Frew**—There are names of people linked in the report, but it is nothing like the movement alert list, where there is information that is collated from wherever and it is definitive insofar as it is incumbent upon us to further investigate individuals who appear on the movement alert list. There is much information in open-source media about human rights abuses and war criminals. The Carver report is a piece of information of that nature. As I say, it is a reference journal rather than a definitive list.

**Senator FIELDING**—How is that reference journal used, then? It is there, isn't it? You are aware of it.

**Mr Frew**—Yes.

**Senator FIELDING**—You must look at it.

**Mr Frew**—Yes.

**Senator FIELDING**—You are aware of names that are associated with that. What was it called? Did you call it a list of the people tagged in that particular referral?

**Mr Frew**—It is a report.

**Senator FIELDING**—Was someone like Guy Campos tagged in that way and not through the movement alert process? Does anyone know?

**Mr Frew**—He was not on the movement alert list.

**Senator FIELDING**—But was he on any other lists that you had?

**Mr Frew**—There was no information at the time that we granted the visa that led us to believe that he was of concern. Otherwise the visa would not have been granted.

**Senator FIELDING**—Given what you know now, would someone like Guy Campos get in through the system again?

**Mr Frew**—As Mr Metcalfe said before, the movement alert list—which is the definitive tool that we use—cannot incorporate everyone of concern. The issue with Mr Campos was that information was not known at the time the visa was granted. Once information became known, we referred it immediately to the Australian Federal Police. Could it happen again? If there is no information known or available to us at the time of visa application and no reason not to grant a visa then, yes, the visa would be granted.

**Senator FIELDING**—If you had known at the time the information on Guy Campos that you said you now have, would Guy Campos have been given visa entry?

**Mr Metcalfe**—It is hypothetical, but if there were a concern that we were aware of then we would investigate that fully and seek the assistance of the Australian Federal Police in providing advice to us.

**Senator FIELDING**—Just go through that again, if you can.

**Mr Metcalfe**—In this particular case there were allegations concerning Mr Campos that we only became aware of after he came to Australia. Had we had those allegations made to us before he came, we certainly would have sought further information and followed up on those issues. We would certainly have sought advice from our posts in Dili and possibly Jakarta and asked the Australian Federal Police to provide advice to us as to whether or not there was any veracity according to the investigations they might be able to undertake as to whether or not this person would be of character concern and fail to meet the character test applicable to people who come to Australia.

**Senator FIELDING**—Thank you. I may come back to that, if I can. Does the department use the International Court of Justice to vet people trying to enter the country in some way?

**Mr Metcalfe**—Is that the ICJ in The Hague?

**Senator FIELDING**—Yes.

**Mr Metcalfe**—Again, that is a possible source of information.

**Senator FIELDING**—So it is just a source? It does not get people on the movement alert list if the International Court of Justice at The Hague has them listed?

**Senator Chris Evans**—To be clear, are you saying that they are being mentioned in a court case or that there is some list coming out of The Hague? Within the department there is a question of the authority of the information. If you have a criminal conviction then that is easily entered on a mail list as being a concern. There are other bits of information that float around that are not necessarily as authoritative.

**Mr Metcalfe**—As I said in the general conversation we had earlier, we place a very significant value on material that might be available from cooperation we have with other countries. Canada has, in particular, done a lot of work in relation to alleged war criminals. It might be preferable, given the gravity of the questions you are asking, if we were to do some preparation and come back soon today and provide advice as to precisely what information we have in relation to war criminals or alleged war criminals, how we source that, what decisions are made as to whether that is included on Australian alert lists or not, and what is the standard of proof that might be required. My general expectation is that if a person was convicted of war crimes through The Hague that would certainly be of concern. Those people would normally be the subject of an Interpol red alert and would be brought to our attention and listed on the movement alert list. But I suspect there are different classifications of material, as to whether there is a proven allegation or a single-source allegation. With your agreement, I would prefer to give you a definitive answer rather than not be able to rely upon the full facts. The officers that have that information are in Canberra. We should be able to provide that to you after lunch.

**Senator FIELDING**—That would be useful. Obviously there was a lot of public concern about one particular case. What I am trying to do is not overly focus on the individual per se but on the process—whether that can be repeated and whether we need to change what we are currently doing. I am certainly not the minister or the Prime Minister, but I am just wanting to ask some questions and get some answers.

**Senator Chris Evans**—We share your concerns, and we are constantly trying to improve our knowledge base. We are moving into exchange of biometric information where we can. We are constantly having to deal with people coming in with false papers, passports et cetera. Also, we have people who do not declare criminal convictions. You are supposed to tick the box. If you tick the box for, ‘Yes, I’ve been convicted for murder,’ we have a look at you. Sometimes they do not give you the full information, so you have to have other backup systems. We obviously are keen to ensure we get as broad a scope as possible. We have had a couple of rap stars who have had the character test applied. For controversial visitors or people of concern you always have the character test.

The evidence of the department is that on the case you refer to there was nothing to trigger in the department’s process. Mr Campos was issued a visa for the World Youth Day event. That did not trigger anything. It was only after the issue became a public concern in Australia that the department became aware of the concerns they might have with Mr Campos. Having said that, of course, he applied for Australia’s protection and sought asylum in Australia. That was considered, firstly, by the department and rejected; secondly, by the RRT and rejected; and, thirdly, by me and rejected in a ministerial intervention. We had some dealings with him through those processes. The secretary’s offer is to come back on the issues you raise about the International Court of Justice notifications et cetera. The secretary is right to say that we will give you a better informed answer than the broadest indication we are giving you now.

**Senator FIELDING**—Thank you for that. I look forward to getting that today, if I can.

**Mr Metcalfe**—Yes.

**Senator FIELDING**—What was the nature of the information that you got on Guy Campos that you passed on to another agency? You mentioned before that you did not know the information when he arrived, so, post his arrival here, what was the nature of the information that you actually got?

**Mr Metcalfe**—Mr Campos arrived here as a tourist on 30 June last year to attend, as the minister said, the Catholic World Youth Day events. That was the basis for his visa. He was actually accompanied by 10 members of his family. This was not unusual; 100,000 people came to Australia for World Youth Day.

**Senator FIERRAVANTI-WELLS**—They just didn’t go home!

**Mr Metcalfe**—The vast majority did go home, Senator.

**Senator Chris Evans**—And I was in Melbourne the day they were all there too! It was hard getting on a tram.

**Senator FIELDING**—By the way, these questions are no reflection on that particular event.

**Mr Metcalfe**—No. It was a very successful event.

**Senator Chris Evans**—We have still got some left over from the Sydney Olympics too!

**Mr Metcalfe**—As I understand it, Senator, it was on 24 July that the department received contact from a person—I would prefer not to mention the name—who accused Mr Campos of being complicit in war crimes and crimes against humanity.

**Senator FIELDING**—That was on 24 July of which year?

**Mr Metcalfe**—24 July 2008. He arrived here on 30 June, and just over three weeks after he arrived we were contacted by a member of the public who indicated that Mr Campos had been a member of the military forces and had been involved in the torture of people in East Timor and a contributor to the death of a young boy. We referred that to the Australian Federal Police on 21 August. As the minister indicated, soon after that Mr Campos sought refugee status in Australia, which was refused.

**Senator FIELDING**—On what date did he seek refugee status?

**Mr Metcalfe**—On 9 September. He was refused that protection visa on 8 December. He sought a review, as was his entitlement, through the Refugee Review Tribunal, and the tribunal affirmed the decision—in other words, agreed that he should not be a refugee—on 23 March this year. Subsequently, he and his family sought intervention by the minister, using the minister's personal powers—

**Senator FIELDING**—What date was that?

**Mr Metcalfe**—That was on 22 April. The minister declined to exercise that power.

**Senator FIELDING**—And what date was that?

**Mr Metcalfe**—On 9 August.

**Senator Chris Evans**—I hasten to add that the file was not in my office from 22 April to 9 August.

**Mr Metcalfe**—No, it usually takes—

**Senator Chris Evans**—The department go off and research the case and then provide a brief.

**Mr Metcalfe**—Precisely. The department would have been involved in preparing advice—

**Senator Chris Evans**—The secretary might have left you with the wrong impression!

**Mr Metcalfe**—I certainly would not want to do that, Minister. Through this time, of course, the Australian Federal Police had been continuing to investigate the matter. On 4 September 2009, we the department interviewed Mr Campos and his wife, and we granted them bridging visas, which are temporary, very short term visas, which expired on 15 September.

The issue at that stage was: was there any information that would mean that they might be the subject of charges under Australian law or, in immigration terms, should they in fact depart Australia because they had exhausted all options to stay in Australia? We understand that Mr Campos, his wife and two grandchildren left Australia on 14 September, and other family members also left Australia on 14 September.

I would just emphasise here, Senator—because I know there has been some public comment about this—that there was absolutely no basis under Australian law for the Department of Immigration and Citizenship to prevent a foreign national from freely leaving this country. The only basis that would prevent their departure from Australia was if they were the subject of charges under Australian law and there was a court order in place preventing their departure. In the absence of any such situation, any foreign national in Australia who wishes to leave is perfectly free to do so, and that is what this family did.

**Senator FIELDING**—Thank you for that. If, for example, the Australian government—I have to be careful here—started proceedings for war crimes against this person, could Australia have kept him then?

**Mr Metcalfe**—That is a matter for the Australian Federal Police and the DPP. I would not want to offer a comment on that.

**Senator Chris Evans**—Broadly speaking, if law enforcement authorities wished to lay charges or have laid charges, as I understand it they would apply to a magistrate for withdrawal of the passport which would prevent someone from leaving the country. But from an immigration perspective, we can only prevent someone leaving if that sort of bar on their travel is provided. If that is not provided—they have a valid passport, they are a national of another country and they want to go home—the fact that they might be the subject of some controversy is not a reason for being able to intervene in their travel plans. So we had referred the matter of Mr Gui Campos to the AFP, but when he sought—we proceeded with our immigration processes because he had no right to stay in Australia. It is the other side of the coin, if you like, but he had no right to be here and we assisted him in advising him that he had no right to stay. He chose to leave, having sought our protection and been refused. The question about what the AFP did is obviously a question for them, but there was no capacity for the department to interfere in his travel plans. Quite the opposite: our obligation was to have him leave the country because we had him on a bridging visa that was due to expire because he had no right to be here.

**Senator FIELDING**—What has the department done to try to make sure that no individuals like Gui Campos are allowed to enter Australia again?

**Mr Metcalfe**—I will cover that in the statement that I will provide to you later today because it does raise the wider issue as to how we seek information about people who may be of concern and prevent their entry to Australia. It is something that I should include in that wider statement.

**Senator FIELDING**—I am happy to get that, but couldn't you outline broadly if anything has changed at all? I will get the detail later—

**Mr Metcalfe**—Certainly every time we have a case like this we reflect upon our procedures and see whether they should and could be improved.

**Senator FIELDING**—But has anything changed?

**Mr Metcalfe**—No, I have not said that. What I have said is that what I will do in my more comprehensive statement to you later today is reflect upon how we try to have the very best possible information about people who may be of concern, what sources we obtain that from

and the cooperation we have with other countries in exchanging that sort of information so that people who might properly be of concern in terms of their entry to Australia are detected and their cases examined in detail before a decision is made.

**Senator FIELDING**—I do not want to labour the point, I am sure I will get the detail, but I am just after: have any procedures changed at all because of this case?

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

**Senator Chris Evans**—Senator, your question, as the Secretary indicated, really goes back to the question of sources. The character test we apply is well established, but the character test is applied against what we know about the individual. So it goes back to what do we know about the individual. You raised the question about International Court of Justice and the East Timor report as potential sources. I assume you are saying that Mr Gui Campos is mentioned in both, but I am not sure to what extent he is mentioned and what is claimed about him, so if you have that, I would appreciate knowing that myself. The question goes to sources of information effectively. If we have any concerns, we have the character test applied and we take information from any source—anonymous, what have you—into consideration. The Secretary said he would come back on the sorts of sources you raised and what our access to those are and how we handle them, which is the key issue because arising out of this case the next question is: could we have handled the case better in terms of how we deal with those sources. I do not know what the answer to that is, but the Secretary will come back to you about that.

**ACTING CHAIR**—Just so that we can get some certainty to the program, I suggest that that mini presentation be given to us at the conclusion of the afternoon tea break, so at 3.45 pm.

**Mr Metcalfe**—I will just check, Chair, if you will bear with me.

**ACTING CHAIR**—Subject to you being available to do it, so then people who are interested in that can come back.

**Mr Metcalfe**—There is obviously a lot of detail about this, and the issue for me is ensuring that we provide something meaningful to Senator Fielding.

**ACTING CHAIR**—We will aim to do it at that time, unless you advise me otherwise in the interim.

**Senator FIELDING**—I have a question for a Sandi Logan—is he here?

**Mr Metcalfe**—The head of our national communications branch is Mr Logan.

**Senator FIELDING**—Did Sandi Logan ring and speak to a staff member at Channel 7's *Today Tonight* following a story aired on 5 August 2009?

**Mr Metcalfe**—I think he has actually been dealing with media today, so he might not be available at the moment. We can take that question on notice, if you wish.

**Senator FIELDING**—I would prefer to ask him when he comes back. He will not be far away, I think. He was certainly here before.

**Mr Metcalfe**—Senator, I have just been advised that Mr Logan is not here. He was here earlier but he is currently at the doctor. I can either take the question on notice or we could see when he might be available.

**Senator FIELDING**—Obviously he is not going to be back today. I think the department may already know about some of this anyway. I wanted to ask Mr Logan if he could tell us the nature of that conversation. As the department head, do you know the nature of the conversation?

**Mr Metcalfe**—Without wanting to go into Mr Logan's personal circumstances and the reason for his medical report, last year he actually lost an eye through a hockey accident and has a prosthetic. The medical appointment is one that took some time to get and it is quite a serious issue concerning his eyesight. I think it would be best, given that I do not know how long he will be required at the doctor and whether there are any subsequent appointments, if I took any questions on notice. I am aware generally of the issue as to whether there was contact between the department and Channel 7 following a show on *Today Tonight* relating to Mr Campos, but I think if you have particular questions I would rather take those on notice and we will answer them on notice.

**Senator FIELDING**—Generally as a department do you regularly phone television stations after something like that being aired?

**Mr Metcalfe**—We are in contact with the media dozens of times a day. We are a big, busy department which, for reasons you would obviously be aware of, receives dozens of phone calls a day. We support the minister's media adviser because he gets probably many dozens of phone calls every day and we have a relatively small group of people whose job it is to interact with the media, both in terms of answering the many questions about our operations or about what is happening or in working to provide information about the positive benefits of migration. For example, in the media today the citizenship test was quite a significant issue and we have been very closely involved with a number of television stations and others in responding to inquiries about that.

**Senator FIELDING**—In regards to that particular conversation, are you aware of the claims that were made about the swearing at and abuse of a Channel 7 staff member? Are you aware of those claims?

**Mr Metcalfe**—I am not aware of those claims. I am aware of claims, as aired on *Media Watch*, that there was contact with the department following the airing of a show on *Today Tonight*. I am happy to take any questions in relation to that on notice. I do know that Mr Logan had agreed to be interviewed by *Today Tonight* in relation to an entirely different matter, and *Today Tonight* chose to, for want of a better word, use that opportunity to raise with him the Campos case and indeed chose to use footage of him preparing for the interview that would not normally be aired. And any of us who are involved in providing media interviews would not normally expect that video that might be taken when preparing for an interview would ordinarily be aired as a legitimate means of media communication.

**Senator FIELDING**—Given that Mr Logan is not here and there is a serious claim about Mr Logan swearing at and abusing Channel 7 staff, I would rather put those on notice—

**Senator Chris Evans**—Where has that claim been made, Senator Fielding?

**Mr Metcalfe**—This is the first time I have heard of that claim. I personally as head of the department have had no contact whatsoever from Channel 7 in relation to this matter and I would expect that if there were a serious allegation of improper behaviour by one of my officers it would be drawn to my attention.

**Senator FIELDING**—All right. Thank you. Thanks, Acting Chair.

**ACTING CHAIR**—Senator Colbeck.

**Senator COLBECK**—I have a very quick item. I understand the department is currently seeking some call centre facilities; is that correct?

**Mr Metcalfe**—No, I would not say that. We operate a number of call centres both in Australia and overseas and we have very recently announced that, as part of the long-term client service strategy for the department, we will be seeking to essentially upgrade our call centre capability, and part of that will be considering whether we centralise and indeed diversify the location of those centres, taking into account issues such as time zone availability across Australia.

**Senator COLBECK**—That leaves me in a bit of a quandary, really, because I have got a representation from the owner of a facility in Launceston who claims to have been negotiating with the department for nine months on the possibility of establishing such a centre and has experienced continual deferment—when he believed he was getting close to a deal—contrary to what he claims are the pretty reasonable odds for the facility, which is a former Telstra facility that was closed down in 2007, I think.

**Mr Metcalfe**—Yes, I am familiar with that issue, Senator. In fact, I visited that facility last year, I remember, when Community Cabinet was held in Launceston. I was there on other departmental business. I can check to see what negotiations may have taken place. It was not my understanding that there had been any sort of suggestion that the department was committed to that location. We were certainly interested in ascertaining what might be available across Australia. It certainly is an impressive facility, part of a network, I think, of three or four call centres, from recollection, on the outskirts of Launceston.

**Senator COLBECK**—Correct.

**Mr Metcalfe**—But I do not have any direct knowledge of what discussions may have taken place at more junior levels in the department with the owner. I do recall a year ago us saying, ‘Yes, this is interesting; it’s nice to know that there is this facility available.’ What has happened since then is that we have done a great deal of thinking about our overall contact centre arrangements, and I think I can say that it is extremely unlikely that we will be taking up that offer of a call centre in Launceston, because we do not have a departmental presence in Launceston. It would be a new location for us to operate in, and indeed—

**Senator COLBECK**—We would be happy to have you, Mr Metcalfe.

**Mr Metcalfe**—I am sure. Indeed, my family come from there, many generations ago.

**Senator FIERRAVANTI-WELLS**—That is the second Tasmanian—

**ACTING CHAIR**—Shameless.

**Senator BARNETT**—You should have an office there.

**Mr Metcalfe**—Well, if my forebears had had greater foresight, perhaps we would have. But we do not have a presence there; we have a presence in Hobart. Our strategy around call centres is very much global. We have millions of clients around the world, and one of the things that I have asked Ms Hand as deputy secretary to advance is a client service strategy which truly understands that our business is a global business. One of the key issues for us is how we might ensure greater hours of contact. We currently have call centres in Sydney and Melbourne which are very much an organic part of our state offices and which, while they provide good service, we believe could provide better service were we to actually develop them further and deal with many more and simple inquiries quickly.

But there is actually a strong business case for us to get a presence elsewhere in Australia that takes advantage of time zone differences so that we can provide services to our two biggest markets, which are China and India. In terms of the volume of visa inquiries, that is where our work largely is. There are language skills issues associated with that as well. We also have call centres in London and Ottawa, as well as a number of other call centres that do quite small and specialised tasks. So we are actually in the process of appointing a senior manager for our call centres to adopt a global strategy. Certainly the presence of the facility in Launceston is something we are aware of, but I think it would be unreasonable or improper of me to indicate that that is something we are actively looking at now.

**Senator COLBECK**—Can you indicate whether you have any conversations with the Tasmanian government in relation to the site?

**Mr Metcalfe**—I will have to check on that. There may have been conversations, but I suspect they were some time ago. I think that the exploration of alternative call centre sites in regional Australia is something that actually stopped some time ago, but I will check with the staff who have been working on that.

**Senator Chris Evans**—Senator Colbeck, I did receive some representations a while back from the Tasmanian government about the availability of that site and whether we could use it, but I think the secretary has explained how those processes have moved on. But the Tasmanian government certainly made representations to me that they had a good site and people with skills, and they were looking to utilise that—I will not say when, because I am not sure; I would have to go back and check, but it was some time ago.

**Senator COLBECK**—Okay. Fine. Thanks very much.

**Mr Metcalfe**—But, certainly, I can confirm, Senator, that I did visit that site. I met with the representative of the owner. It was a very impressive facility. One of the many things that we will consider in contact centres is skill in languages other than English, and those sorts of things, so that we actually can provide services that, as I said, are relevant to our applicants, who quite often speak languages other than English.

**Senator COLBECK**—Thanks very much.

**ACTING CHAIR**—Senator Back.

**Senator FIERRAVANTI-WELLS**—Acting Chair, can I just ask a question about order. We are in general questions to the department now, and then we were going to proceed, as I

understood from the program, on a program by program basis. So are we varying that? Are we just doing everything in one?

**ACTING CHAIR**—I do not have any general questions on the agenda at all. We have moved straight into the department and we are going through outcomes.

**Senator FIERRAVANTI-WELLS**—Well, on that basis, we are still sort of at general questions. Normally what we do is have a series of general product questions for the department which carry right across the spectrum rather than going into more specific issues—

**Mr Metcalfe**—That is right. It was my understanding that Senator Colbeck's question, for example, was a cross-portfolio services type of question.

**Senator FIERRAVANTI-WELLS**—In that case, then, are we just going to have people throughout the day just coming in and asking questions across the board? Is that how it is going to work today?

**ACTING CHAIR**—I am in the hands of the committee. I do not mind.

**Senator FIERRAVANTI-WELLS**—Senator Crossin would be very upset with you, Senator Marshall.

**ACTING CHAIR**—Well, Senator Crossin is elsewhere.

**Mr Metcalfe**—Chair, it does assist the department—we largely do have officers sequenced through the various programs.

**ACTING CHAIR**—I am the one sticking to the program, Mr Metcalfe! I am suggesting we are in outcome 1 and we should proceed on that basis.

**Senator Chris Evans**—Yes, I took it that Senator Fielding's questions were in outcome 1 under visas and Senator Colbeck's was a broad question that covered a wide range of outputs. But I think we could broadly stick to the outputs.

**ACTING CHAIR**—And Senator Back has indicated that his questions are about visas, and he may have other areas later on in the day. So, Senator Back, you have got the call.

**Senator BACK**—I want to ask a number of questions related to 457 visas and the changes that came into effect on 12 September. Could you give me some understanding as to the reason for the changes and which particular employment areas the changes apply to?

**Senator Chris Evans**—I will get one of the officers to answer in detail, but the changes in the 457 visa class were across the board in the sense of occupations. There has been a substantial amount of reform in this area and legislation carried by the parliament in terms of obligations. We have had a major consultation process involving industry, state governments and unions that has underpinned that.

**Mr Vardos**—There are a range of measures that have been introduced, most recently commencing in early to mid September under the broad banner of worker protection legislation. We can work through the series of measures and address each one in turn, and I will start with market salary rates. Fundamentally, market rates are the terms and conditions, including salary, which are provided to employees in the Australian labour market. What this measure seeks to do is to ensure that an occupation in a workplace receives the same level of

remuneration irrespective of whether it is a foreign worker here on a temporary basis on a 457 or an Australian doing that job, and when we use the term 'Australian' we mean either citizens or permanent residents. In essence, it is equal pay for equal work so that there can be no attempt to use foreign workers to undermine the terms, conditions and remuneration of Australian sourced labour. That is fundamentally what market rates are about. Clearly it gets complex in terms of regional differences, and the onus of proof is on the sponsor to demonstrate what an appropriate market rate is.

**Senator BACK**—I really want to focus more on the international English testing system and which trade occupations and countries the changes particularly apply to, as they relate to the Australian Standard Classification of Occupations, the ASCO.

**Senator Chris Evans**—The changes to the English standards for those classifications?

**Senator BACK**—Yes.

**Mr Kukoc**—As part of the reforms there was an increase in the English language requirement from 4.5 IELTS to five IELTS for subclass 457 visa applicants in trade occupations and chefs from 14 April 2009. The main policy rationale for that was to address the concerns about the exploitation of workers from countries of non-English-speaking backgrounds and generally to align the subclass 457 visa English language standard with that of the permanent sponsored visa for trade occupations, because quite a few of them apply for permanent sponsored visas at the end of their temporary 457.

**Senator BACK**—Previously, I understand, it was an average of five over the four. It is now a minimum of five. What was the rationale, if previously it was an average of five over the four?

**Senator Chris Evans**—I think it was 4.5.

**Mr Kukoc**—It was an average of 4.5 and it is now five across all criteria.

**Senator BACK**—So it is now a minimum of five across them all, whereas previously it was an average.

**Mr Kukoc**—That is my understanding.

**Senator BACK**—Is this simply a tightening up of the language requirement?

**Mr Kukoc**—Yes. It is strengthening the language requirement to address the concerns about exploitation and also to align the requirements with the permanent ENS sponsored category.

**Senator Chris Evans**—There are two aspects to this. We have had great success with the 457 visa, and it has grown enormously in the last five or six years. But there has been some exploitation both in terms of underpayment or exploitation of foreign workers and in terms of foreign workers being used to undercut Australian wages and conditions, because the previous minimum salary level mechanisms were fairly clunky and not very responsive to market rates. Part of that has been concern both at the bottom end in some of the regional industries and at the top end in some of the more highly paid areas.

I say, though, that there were two real motivations. One was that if you did a risk analysis of who had been exploited and where the problems were one of the most common features

was poor English skills. People are more easily exploited if they do not have good English skills, if they do not understand their rights et cetera, and they are more isolated in the community. So there is a very strong correlation between exploitation and lack of English skills. The second issue was one of the great failings of our migration system and one of the concerns that has occurred in western Europe and other places: you allow people to come into the country temporarily who want to stay permanently. They work hard and many of them, if they do not have a pathway to permanent residency, get very frustrated and are in a sort of limbo.

One of the things we have been trying to do is more closely align the rules around permanent migration and temporary migration so we do not have this situation where, quite frankly, we have hundreds of meat workers who have come to the country in recent years who will really struggle to ever qualify for permanent residency. Many of them brought their families. Many of them would make good citizens. I have been exploring for some of them how we might be able to find a pathway for them. Some of them have been here for six or eight years, but their English standard is such that they would never make the permanency, so one of the things we have been thinking about is saying that if you bring people in who cannot qualify you are creating a problem. If you have a lot of people in country who cannot qualify, how do you manage that? We are trying to bring those two rationales a bit closer together and try to ensure that there are pathways for people, because many of them we want to keep but they come in with a level of English that is so low. It often improves, but there is a real situation. We have the same problem with international students.

**Mr Vardos**—To supplement an earlier answer: there was reference made to bringing the English language level for 457s into line with ENS. ENS is the employment nomination sponsored visa.

**Senator BACK**—Yes, thank you. You gave us figures in documentation. From July to December of last year, there was an average of about 700 applicants a week. It dropped in the first three months of this year down to 430, and we understand why. Can you give me some idea how the weekly application rate was for 457 visas before September—for example, April through to, let us say, the end of August? If you cannot tell me now, can you take it on notice?

**Senator Chris Evans**—I think you will find they are all published on the website now. We have overturned previous government policy and have been much more transparent with such things. We can certainly provide them for you, but they are all on the website.

**Mr Kukoc**—They are all on the website, but I am happy to take this on notice.

**Senator BACK**—I am particularly interested in knowing what the change may have been subsequent to 12 September as a result of the new conditions.

**Senator Chris Evans**—To be helpful: that will have a lag effect, obviously, because it applies to new visa applicants. Someone who has an existing visa may only have been here three months and have a four-year visa, so you are not likely to see a big impact in the short term.

**Senator BACK**—You think there may be a lag, so we might not yet have those figures?

**Senator Chris Evans**—We have the figures. What I am saying is that if you look at the impact of the measure—

**Senator BACK**—There could be a lag effect.

**Senator Chris Evans**—you probably could not make a full assessment for four years but you will be able to make a better assessment in the coming time.

**Senator BACK**—Was there some transition arrangement for people who had put applications in prior to 12 September? How were they processed and treated? Were they treated according to the conditions prior to 12 September or after?

**Mr Speldewinde**—There are transitional provisions in place. In the main, the way the arrangements are being implemented is that there is a provision in place for those existing 457 visa holders, who were being paid prior to 14 September under the MSL, to go through to 1 January before they move to market rates. In the case of something like the monitoring under the worker protection there is a transitional provision in place for that as well whereby our inspection teams are operating more in an advisory capacity up until January, so that where employers are found to be in breach of their obligations there is a discussion and there is an educational process in place. Unless it is a very serious breach they are given a period to rectify the situation and then we intend to re-monitor them. So there are transitional arrangements in place for most of these measures.

**Senator BACK**—I was also seeking advice on the transitional situation for people who had actually applications in which had not yet been approved or processed.

**Mr Speldewinde**—As I understand it those transitionals—I am happy to correct myself later—would not apply for those people who have applied as at 14 September.

**Senator BACK**—If they had applied prior to 14 September they would be dealt with under the provisions that pertain prior to 14 September?

**Mr Speldewinde**—If they have applied and their applications have not been finalised at that point they would be subject to the new requirements, but I will check that.

**Senator Chris Evans**—I think you will find the new requirements were applied, Senator Back. One of the issues in Immigration is that, if you do not do that, you find there is a huge spike in applications the day before the closing date for the changes. As I understand it—and I think my view is the same as Mr Speldewinde, but we will double-check—an application that was not processed at the time of the change would be processed under the new rules.

**Senator BACK**—In the case of somebody applying for and being successful with a 457 visa to do some, perhaps, offshore dredging work, they come for a period of time, the contract finishes and they leave. If and when they make a further application under the 457 scheme to come back into Australia, perhaps to do a similar type of project, do they go through the entire process again or do you have some mechanism whereby, as they were acceptable in the past and have met previous conditions, there is a fast tracking? Do you have such a mechanism?

**Mr Speldewinde**—Each application is a separate and new application and it is treated as such. One of the initiatives that we are looking at is to actually introduce a system whereby with a sponsor, once they have established a track record of compliance, we are looking to fast track the sponsorship part of the process.

**Senator Chris Evans**—Effectively we are trying to move to a sort of accreditation type system and faster processing.

**Senator BACK**—So a trusted employer effectively.

**Senator Chris Evans**—Yes. I always use the example of, if BHP want to bring in a mining engineer and pay him 400 grand, what do I care other than that he is not a security risk, he has not got TB and he has a valid passport. It seems to me that those are the ones that we ought to be doing quickly. If there is an employer who we have not had dealings with before in a high-risk occupation, et cetera, then you would give them a more fulsome approach. We have brought processing times down enormously. The new act does provide some new sponsorship obligations, but we are very committed to try and facilitate business to move quickly. A lot of people use these sponsors, particularly in my home state, and these visas for, as you say, refits and all sorts of things. Dredging is probably not the right example because we have had a problem in that area, but I will talk to you privately about that if you want. Your point about trying to have a light touch for repeat customers and accredited employers is very much part of the approach we are trying to develop.

**Mr Kukoc**—The government's reference body for 457, the consultative skill panel comprising of business, union and state representatives, is currently looking at a number of options for introducing the accreditation model before the options are put to the minister.

**Senator BACK**—Just returning to the question I was asking previously. The English language requirement now, the five points needed, how does that relate to the requirement for international students coming into Australia? Is it the same; is it higher; is it lower?

**Mr Kukoc**—It is the same test. I understand that there is a difference between the IELTS level required for international students to apply onshore for permanent residency and the IELTS that international students are required to meet before enrolling in a course.

**Senator BACK**—They would presumably be higher than someone coming in on a trade application.

**Mr Kukoc**—Yes.

**Senator Chris Evans**—I think we have lifted to six.

**Mr Kukoc**—It is now six for international students applying onshore for permanent residency.

**ACTING CHAIR**—This might be an appropriate point to suspend, given we are scheduled for our lunch break.

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

**ACTING CHAIR**—We will resume this estimates hearing. We are in outcome 1.

**Senator BACK**—I have been told time is against us and I am going to try to get the remainder of my questions that I want to ask in and the others on notice. The first of them relates to the \$81,040 that is allowed to be paid to an income earner under the 457 visa which then precludes them from the English test. Is that correct? The English-language test is set at a gross base salary rate of \$81,040 excluding deductions and this then precludes them from having to undertake or pass the English proficiency level.

**Mr Kukoc**—There is a certain income threshold.

**Senator BACK**—The \$81,000 is not of interest. What is of interest to me is that if English language is necessary from an occupational health and safety point of view, which everyone would say it was, why does it suddenly cease to become of importance when somebody is at an income level where they can earn \$81,040?

**Mr Kukoc**—I assume the rationale at the time was that the market itself will make this distinction. People who are paid high levels of salary are assumed to have been tested by the market and the employers in terms of their higher level of skills and English-language capability.

**Senator BACK**—Do we then have a precedent that the market has some capability to actually influence government in this decision making?

**Mr Kukoc**—Can you repeat the question?

**Senator BACK**—Your answer was along the lines that if someone is worth \$81,000 somehow or other the market has made a determination in terms of their need to be competent in the English language.

**Mr Kukoc**—Yes, I would say so. The decision was made at the time when the Treasurer introduced it, I believe, a few years back.

**Senator Chris Evans**—Senator Back, are you talking about this capacity to exclude the English-language requirement?

**Senator BACK**—Yes I am. The \$81,040.

**Senator Chris Evans**—This is a policy issue that I am turning my mind to now and has not been a major part of our considerations. It is a bit fraught. For instance, I remember getting into a lift where the Commonwealth Parliamentary Offices are in Perth. I forget the name of the building—you are probably living in it at the moment, are you?

**Senator BACK**—I do not, no, but I think it is Exchange House.

**Senator Chris Evans**—INPEX were in there and there were a lot of Japanese drafters and engineers planning their projects in the lift. I tried to engage them and they had very little English.

**Senator BACK**—And you had very little Japanese.

**Senator Chris Evans**—Yes. It brought home to me that they are part of a company investing an awful lot of money in Australia and they are working professionally, but they would fail the English test. It shows the complexity of the issues is all I am saying.

**Senator BACK**—Minister, I am delighted to learn that you have picked this up because both being Western Australians I can understand where the 457 background came from with these changes. They are probably east coast centric. You and I are both aware of the tens of thousands of skilled jobs that are coming up now. Because of the time constraint we cannot address it really—but I am very concerned, I imagine you are and I certainly know industry is in WA, that these 457 changed conditions are going to make it very much more difficult to bring people in. These are not people who want to remain permanently. They are people who

want to do contract work. I just trust that the department is actually examining this in the context of the overall 457.

**Senator Chris Evans**—I do not think the assertion is right actually and I am happy to have a chat to you about that. The consultative panel I set up includes all the major industry chambers, ACCI, mining and minerals et cetera and the state governments including the Western Australian state government. They have been providing advice on these matters. I met with the Western Australian Chamber of Commerce and Industry last week or the week before. We talked about some of these issues. I do not think it is going to be a problem. I have also said to a number of the major companies that the labour agreement path may provide some flexibility for some of those big projects where we might need to bring people in. In no way are we trying to stop bringing in overseas labour. I am a great advocate for it. We are going to need it. In fact, I have been leading the argument that we are going to need overseas unskilled labour at some stage—

**Senator BACK**—Yes, we are.

**Senator Chris Evans**—But that is a debate we are going to have to have in Australia. What we needed to do was improve the integrity of the scheme because the public was losing confidence in it, and good employers and people who needed labour were going to pay the price of that exploitation and failures of the scheme. To be fair to the previous government, it grew like Topsy. It went from a high level of doctors and engineers right down the trade scale, and the protections were not good enough. It needed reform.

**Senator BACK**—I will put questions of formal skills assessment on notice because time is against us. The final question is one, again, that you and I would be well aware of, and that is the well leaking on the Montara field. Those workers on the West Triton rig would—those of them who are not Australians, Australian citizens or permanent residents—be on 457 visas, and I think those would have been dealt with prior to September. Can anyone tell me what the status will be of those would-be crew members who will replace the existing people on the West Triton when their work schedule comes to a close, that is, the ongoing work? Do we know whether they are applying for 457s? Do you have a mechanism for actually shortening the process under emergency circumstances to ensure that there is not an interruption of that work?

**Senator Chris Evans**—As the secretary would say, people are our business. If you want to refer the company to my Perth office, if there are any concerns, we will deal with them.

**Senator BACK**—No, I am using it simply as an example. Is there an opportunity for expediting applications in emergency circumstances?

**Senator Chris Evans**—Yes. If that particular company has any concerns, send them across to me and we will have a chat to them.

**Senator BACK**—The rest of the questions will go on notice.

**Senator FIERRAVANTI-WELLS**—I will go back to the beginning, which is an outcome on internal general product. Can I start on our usual first question about staff. What are the current staff levels? At the end of June did we end up where we thought we were going to be or was it plus or minus? What are we at now?

**Ms Hand**—By the end of June 2009 we had seen a 1.1 per cent decrease in our headcount for that previous 12-month period, down from 7,106 to 7,027 on 30 June. We have, since then, continued to see quite a sizeable decrease. I think we flagged at the last Senate estimates that we were pursuing a range of measures to help the department deal with its current budget restrictions. We have been quite successful, through measures like voluntary redundancies—where it suits the employee as well as us—natural attrition and a range of other measures, in reducing the size of the department by a further 3.1 per cent in the last three months to the end of August 2009 without in any way impacting on service delivery or our ability to deliver on core policy objectives.

**Senator FIERRAVANTI-WELLS**—Given the recent events and the greater focus in the people-smuggling area, have you had to do some internal shifting to meet this demand? It is one thing to reduce the number of staff to meet commitments, but, if you have had increased commitments in some areas of the department, have you had to do some shifting?

**Mr Metcalfe**—The answer is yes. I might give two or three examples. We constantly move resources depending upon need. In relation to the recent increase in the irregular maritime arrivals, part of the funding arrangement in place with the department of finance is that we are fully funded for any activity that results from that particular task.

**Senator FIERRAVANTI-WELLS**—Is that in addition to the moneys that you flagged? Is it \$654 million that has been flagged?

**Mr Metcalfe**—From memory, the figure you have used is probably the new policy that was announced by the government in the budget across all departments. But something that sits there, just as a constant, is that we are resourced to manage people in immigration detention—

**Senator FIERRAVANTI-WELLS**—Like an overdraft.

**Mr Metcalfe**—with refugee status. Essentially, providing we spend money on that function, we are paid for that particular function.

**Senator FIERRAVANTI-WELLS**—Do I understand this correctly, Mr Metcalfe, that outside the budget processes you have a standing—‘overdraft’ is not the word—

**Mr Metcalfe**—It is called a resource agreement. This is a long-standing arrangement and the department has a significant amount of its budget each year determined by activity levels, whether it is the number of visas we receive, the number of citizenship applications or the number of irregular maritime arrivals, the number of people in detention and so on. So our budget for many years now has been adjusted depending upon the actual amounts that need to be spent on those tasks. There are a couple of other areas, apart from irregular maritime arrivals, that have meant readjustments within the portfolio. The Office of the Migration Agents Registration Authority has come into the department and so that is a net increase in staff. Also, we have been adopting a strategy for quite some time now in relation to information and communications technology of progressively shifting to employing more staff as public servants rather than securing their work as independent contractors. It costs less to employ specialists in that area, and as we are now moving towards the final parts of our very large business transformation strategy Systems for People, Mr Correll and others are carefully managing how we move into the long-term ICT support for the department. Part of

that is, consistent with the recommendations made by Sir Peter Gershon in his major review of Commonwealth IT in the last year or so, that we are progressively employing more people but spending less because we are spending less on contractors. We are constantly making adjustments, but, as Ms Hand said, we have had a requirement to reduce our overall staffing numbers and we have been doing that through a range of natural attrition and voluntary redundancies.

**Senator FIERRAVANTI-WELLS**—That was going to be my next question: the number of people on contract. It would be interesting to see a snapshot. Ms Hand, could you take that on notice. I think there may be a previous question on notice about it, and you might just need an update of that just to give us a snapshot.

**Mr Metcalfe**—Yes, we will do that.

**Senator FIERRAVANTI-WELLS**—You mentioned my favourite topic, the Systems for People project: how are we going there?

**Mr Metcalfe**—We keep winning awards.

**Senator FIERRAVANTI-WELLS**—That is very good, Mr Metcalfe, but is it fully in place?

**Mr Metcalfe**—No, it is not. Fairly soon, and Mr Correll can provide details, we will be moving to the tenth release under Systems for People. This is a four-year project.

**Senator FIERRAVANTI-WELLS**—Are there 12 releases?

**Mr Metcalfe**—There are 12 releases, and the final releases, releases 11 and 12, will occur in the middle of next year. It has been a huge and very ambitious technology project. The department's capabilities have been and are being transformed, but there are still some important areas to move. The first releases, for reasons that you would very much understand, focused on ensuring that we had nationally consistent business support around our decision making in the areas of immigration compliance and detention because it was really the reform of the department that came out of the Palmer report that led to the identification, the establishing of a single account for a client, so we could actually see all of it. Those aspects have been largely implemented and we continue the training and business support that our technology now enables.

The latter part of Systems for People, we are doing as much as we possibly can to provide much more modern platforms for visa processing and for our interface with clients. I will give you one example. One of our recent releases fundamentally changed the front page of our website. If you look at our website now, you will see right at the front there are big colourful boxes there about visiting Australia or coming to Australia, Australian citizenship and living in Australia. Sitting behind that is a very sophisticated business rules engine that contains all of the data about the 140 or so visa subclasses we have and the hundreds of business rules which support that. This capability, the so-called visa and the citizenship wizard, allows you as a client to simply answer some questions. It will keep asking you questions—where do you come from, why do you want to go to Australia, how long do you want to stay et cetera—and that will lead you through to the answer as to what type of visa you need, how you go about applying for it, how much the fee might be et cetera. The visa wizard won the gold prize in

the e-government awards in Australia this year and also, just last week, won a major international award for Asia and the Middle East. It is seen very much as a good practice model of technology supporting clients and more efficient business services as well.

**Senator FIERRAVANTI-WELLS**—We are going to come to overstayers later in programs, and I would be interested to know precisely how our new systems are going to help us to better track people and overstayers.

**Mr Metcalfe**—We can certainly talk about that.

**Senator FIERRAVANTI-WELLS**—From previous information, we have talked about the 25 million movements.

**Mr Metcalfe**—Twenty-six million last year.

**Senator FIERRAVANTI-WELLS**—And what are we talking about—4.6 million visas roughly?

**Mr Metcalfe**—Yes.

**Senator FIERRAVANTI-WELLS**—So we are really talking about a system that captures, if I understand correctly, a lot of information about comings and goings and presumably some fairly detailed information about the people—certainly current as at that time when the application was made. I am interested to see how that is going to help us reduce that number of 48,000 people who have overstayed.

**Mr Metcalfe**—Yes, we can certainly talk about that.

**Senator FIERRAVANTI-WELLS**—We will talk about that later, but I just thought that—

**Mr Metcalfe**—Certainly Australia has, frankly, if not the best then close to the best systems in the world because of the fact that we do have a universal visa requirement, we do track who comes and goes. Moving beyond Systems for People, what we would like to do, funds permitting, into the future is to significantly deepen understanding of our clients by capturing more information that they provide to us. That will all be about ensuring we remain right at the forefront of international immigration services.

**Senator FIERRAVANTI-WELLS**—All right. I want to ask about staff. What about stress leave? Have you had many—I thought the minister might be on stress leave, but he seemed to be quite chirpy.

**Mr Metcalfe**—Ms Hand or others might have more detail. Like all organisations, we do have—

**Senator FIERRAVANTI-WELLS**—Given the things that are happening in your department at the moment, I would have thought that there would have been a higher than normal percentage.

**Mr Metcalfe**—We are particularly mindful of the potential. Indeed, one of the things I am very proud of—in part it flows from us having a root and stock look at our internal occupational health and safety practices following the *Malu Sara*—is that we have fundamentally overhauled our internal management both in responding to incidents and, more particularly, in preventative strategies. We have a service, as do many departments, that provides assistance to employees in relation to issues they may have a work or elsewhere that

may impact on their work. We very actively promote that. For example, our staff who work in particularly difficult and stressful situations from time to time, it may be overseas or in immigration compliance or detention, we make sure we are on the front foot about ensuring that people are aware and access those. We look out for each other. But having said that, I would be very happy to get others to provide more detail about what we have done because, frankly, we are pretty proud of what we have done, Ms Hand or others might be able to provide you with some detail on what is happening at the moment, relating to compensation claims and others associated with stress.

**Ms Hand**—Despite the high tempo that we are facing, we have seen a fall. I do not have the precise numbers, but I can give you some general information now. Part of that is because we have put in place a number of measures that Mr Metcalfe just talked about, one of which is a lot more about education. In the past 12 months we have launched a mental health toolkit to really help managers identify people who may be at risk of stress and other such illnesses. One of the reflections of the fact that we have reduced significantly in this area in the past 12 months is our Comcare premium. It fell to the lowest rate it has been for a long time—a 22 per cent reduction in 2008-09—which has had significant savings for the department.

**Senator FIERRAVANTI-WELLS**—How does that compare? You have had fewer staff, so therefore there would be proportionately—

**Ms Hand**—No, proportionately we have dropped, too. There are two areas where we have had claims; one of them is stress and the other is overuse of limbs in manual processing and that sort of thing. But the number of actual stress claims has reduced proportionately, too. I can give you the number.

**Senator FIERRAVANTI-WELLS**—If you could take that on notice, I would be interested. Last time, we talked about overseas staffing. Obviously, you are Australia based and have overseas based staff.

**Mr Metcalfe**—Yes.

**Senator FIERRAVANTI-WELLS**—You answered some questions on notice. Thank you for those. Are we looking at any changes there since we last spoke?

**Mr Metcalfe**—Not other than small numbers. There is no particular plan at this stage. We continue to focus on ensuring—for example, we recently received some additional resources as part of our overall work in the broader, whole-of-government activity relating to people smuggling. We were provided with an additional five Australia based staff to be posted to a number of posts in our region to further increase our capacity to work with local immigration services. Jakarta, Colombo, Kuala Lumpur and a couple of other posts received additional staff. Broadly, in relation to that grand total of about 1,000 staff overseas I should add that the number Ms Hand gave you before—that 7,000 or so figure—was the direct employees of the department. Our local staff overseas are formally employed by the Department of Foreign Affairs and Trade, as I am sure you know, but we see them as ours. We have continued to make adjustments relating to workload and other pressures, but there are no significant plans to vary from the normal regular management of applying resources to workload around the world.

**Senator FIERRAVANTI-WELLS**—Ms Hand, in your answer to the question were you saying there was a relative increase in the amount of stress leave?

**Ms Hand**—No.

**Senator FIERRAVANTI-WELLS**—It has basically stayed the same?

**Ms Hand**—It has actually fallen slightly in the last 12 months.

**Senator FIERRAVANTI-WELLS**—I was saying, minister, that you might be on stress leave, but you are not!

**Senator Chris Evans**—I am very relaxed!

**Mr Metcalfe**—This is obviously a serious issue. I should say that a number of us were in senior management positions 10 or 12 years ago when the department was under a great deal of stress and, indeed, under a great deal of criticism in some areas. A number of staff, some of whom I know very well and some of whom are still with us, frankly, had to deal with some very difficult situations. It was not just around boats and detention; it related to a number of other very high pressure areas.

**Senator FIERRAVANTI-WELLS**—I am aware of that. I think on the last occasion we trawled through your average 12 years—going off the top of my head, that was the average stay of your permanent staff.

**Mr Metcalfe**—Having been appointed to this job four years ago, I came being very mindful of the impact that work can have on the very best of staff, let alone any staff members. We were determined to ensure that we provided a better support than we had—that we came to really understand ourselves as an organisation that was dealing with difficult situations, to be aware of that and to ensure that our staff were supported through either rotating people through those more difficult jobs more quickly or ensuring that they were getting the support, counselling, additional resources or whatever it might happen to be. As I said earlier, only a couple of months after I became secretary—Mr Correll had just joined the department as well—we had the tragedy of the *Malu Sara*, where our occupational health and safety practices, by any admission, were clearly deficient, because five people died on a departmental vessel. By any standard, there were terrible mistakes made.

That is why I and other senior people in the department said we were not going to let this happen again. I am very pleased to see—while you will never eliminate stress from the workplace; sometimes there can be very localised issues between particular people or whatever—that we were up-front about saying: ‘We are an organisation where staff may experience stress. We want to prevent that happening and where it does happen we want to support you.’ As Ms Hand indicated, we are quite pleased with the progress we are making, but it is something we will always need to keep a focus on.

**Ms Hand**—Indeed. It is worth noting that for the last two years we have been nominated for OH&S awards because of the progress that has been made. The other point I would make is that in the employee assistance program, which we obviously actively promote with our people who might be suffering from stress, in really high stress environments—for instance, on Christmas Island—we have dedicated counsellors available to staff at any time.

**Senator FIERRAVANTI-WELLS**—I am going to come more specifically to staff issues on Christmas Island when we deal with that part of the program.

**ACTING CHAIR**—Output 2.1?

**Senator FIERRAVANTI-WELLS**—Yes. You gave me an answer to a question about recurring complaints at overseas posts. With the increased activity and the surge in numbers, have we seen any increase in those alleged corruption complaints in our overseas posts?

**Ms Hand**—No, we have not. Further to the advice we gave you last time, the department has received 45 allegations of corruption relating to staff in overseas posts from January 2009 to 14 October 2009. The majority, like last time, relate to alleged requests for money in return for visas or to expedite the visa process. Most of those allegations, once investigated, like last time, are frankly from vexatious complainants or perceptions of bias or poor customer service. So, no, we have not. Like last time, the vast majority of our staff overseas are very well meaning, long-serving people who want to do the right thing. We obviously do get the occasional person who is vexed because their visa application has not been approved.

**Senator FIERRAVANTI-WELLS**—I want to touch on another area. I understand that at about this time you start looking at the migration numbers program for next year. Have you started the planning for 2010-11?

**Senator Chris Evans**—I can answer the question. The program is determined by a cabinet submission. That will not go to cabinet till late this year or—

**Mr Metcalfe**—Early next year.

**Senator Chris Evans**—early next year. I have not even seen a draft yet.

**Senator FIERRAVANTI-WELLS**—I understood from the last estimates that the planning process starts in about October.

**Mr Metcalfe**—For the last few years it has actually been linked to the budget process. It is seen as a new policy process considered through that particular mechanism. That has been the case for quite a few years now. It is towards the end of this year that the initial work on that occurs and it formally is considered by ministers early next year.

**Senator FIERRAVANTI-WELLS**—The reason I ask is that on the last occasion—I think in answer to some questions that Senator Hanson-Young asked—it was said that one of the factors that goes into that is the cost in relation to refugees. As I understood is, she took issue on the last occasion with the costs and financing component of costs of refugees. I saw the answer to the question on notice, but I ask in the context of our increased numbers and prospective increase in numbers whether that is going to have a determinant factor in that process.

**Senator Chris Evans**—I will just be clear that we understand each other. People found to be refugees who have come here as unauthorised boat arrivals are counted against the program. So there is no increase in the number of refugee places. They come out of the 13,750 places.

**Senator FIERRAVANTI-WELLS**—I appreciate that. I am now coming to the next question, which is—

**Senator Chris Evans**—I just want to make that clear for the record, because I occasionally read about these things such as floods, increased numbers and increased costs. I just want to make it clear that they are part of the already budgeted number. The second thing is that I think I agreed with Senator Hanson-Young—and, if not, I will now—in stating that we still do not necessarily agree with Treasury's costings. We think they overstate the cost given that many of these people end up in employment and paying taxes. But they are costed, and that is all part of the budget process.

**Senator FIERRAVANTI-WELLS**—That is the point I was getting to. At this point in time we are sitting at 13,750, I think.

**Senator Chris Evans**—Yes, that is the program.

**Senator FIERRAVANTI-WELLS**—Is it intended to increase that or has there been no decision made at this point in time?

**Senator Chris Evans**—There is no decision. We are a long way off that. As I say, that is a cabinet decision early next year. There will be a range of factors, as with the other program. Things like MYEFO, the general economic circumstances and all those things will be part of the consideration. But that program has been at roughly that sort of level under successive governments. It has increased, but there has been no dramatic movement in recent years.

**Mr Metcalfe**—Yes. There was a big increase in the late nineties, I think, but it has been around the 12,000 or 13,000 level for some years now.

**Senator FIERRAVANTI-WELLS**—I have another general question. You provided some information in relation to IT consultancies. I gather that most of that is tied up with your Systems for People and that progressively your IT consultancy costs should go down once your whiz-bang system is up and running.

**Mr Metcalfe**—That is the expectation, yes. We have a major contract with IBM for Systems for People, and there are other—

**Senator FIERRAVANTI-WELLS**—Providers.

**Mr Metcalfe**—consultants involved in that as well. But, as Systems for People comes to an end, it is our expectation that we will significantly reduce our expenditure in ICT. That said, it will still remain a very substantial component of our overall expenditure, because like many organisations we cannot do very much these days without technological support, and indeed our vision of immigration services in Australia looking into the future is that we need more support from technology so that we can adopt more efficient processes in terms of both client service and ensuring overall program integrity. But we will obviously need to make a business case associated with that and look for funding as funding might be available in the years ahead.

**Senator FIERRAVANTI-WELLS**—In terms of general ministerial discretion and ministerial intervention, you provided some answers to questions on the implementation of the Proust review and some areas where you are going to delegate even more to the department. I was going to ask for some statistics. Of course, there is the use of the ministerial discretion as far as program 2.1, the refugee and humanitarian area, is concerned. Minister, what about broadly across other areas of the department? Is your exercise of discretion

confined to that area or is there, buried in other parts of your department, a discretion to exercise in other areas?

**Senator Chris Evans**—There is quite a deal of discretion under the act. I would have to do a proper review to find them all, but for instance the decision as to which house someone can live in in community detention is something that I sign off on. I do not know if that is a discretion; it is to a ridiculous extreme. But there are a range of areas, and I could take that on notice for you. One of the places where we have made changes, which you are probably aware of—we certainly announced them—was in relation to the spouse applications. We made some changes there on 14 September. They came into effect to allow certain partners of Australian citizens or permanent residents, as well as New Zealand citizens who have had a visa refused or cancelled since they entered Australia, to apply for a partner visa onshore subject to their meeting certain criteria. It is quite a tight amendment, but it effectively deals with a group of people, mainly partners who have young children who would otherwise be forced offshore. Typically they would have to go to Shanghai for six months when they have a nine-month-old baby that may or may not go with them. It seemed to me to be ridiculous that the department did not have the chance to deal with those things. So that will, if you like, reduce in a small way some of the ministerial interventions, but it is not for that purpose; it is largely because it makes more sense in terms of decision making.

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

**Senator Chris Evans**—We had a figure of 10 to 15 per cent of MIs that might be cases in that area. They still might get MIs because the department might knock them off and they might still appeal but we have given greater capacity for the department to deal with what we see as reasonable cases. We analysed them and of this group most of them were approved but they were just having to go all the way through the process to me to get approval because we did not allow for them to be treated properly.

**Senator FIERRAVANTI-WELLS**—If you could take on notice, Mr Metcalfe, what would be useful is a document that sets out the areas where ministerial discretion is available. We talk a lot about ministerial discretion and usage of it. We understand in its broadest sense where it is used, but it is clear that it is used across a range of areas and it would be useful to know what those areas are.

**Mr Metcalfe**—We can certainly provide you with a list of the sections of the act where that personal non-compellable power exists. The two most obvious of course—

**Senator FIERRAVANTI-WELLS**—I was hoping to give you two more, Minister, but that did not quite work.

**Mr Metcalfe**—Obviously section 351, which is the personal non-compellable power that the minister has following the Migration Review Tribunal, and section 417, in relation to the RRT, are the two main ones. There are a number of other personal powers. The minister has mentioned one about determining the location that a person might live while they are in community detention which is, frankly, with respect to the minister, something that I think he probably does not need to be paid to do. There are other things he could do and he does. But there are other key powers such as the ability to allow a further application for refugee status under section 48B. We can give you a list of those, Senator.

**Senator Chris Evans**—Just to be clear though that it is a non-compellable power as to whether I tell you what my non-compellable powers are! I will exercise my discretion and give you the list.

**Senator FIERRAVANTI-WELLS**—Thank you. I notice the answer that you gave me was a very general one. Does that mean that some of these powers could ultimately form part of the body that you are going to delegate to officers in the department in the implementation of those recommendations?

**Senator Chris Evans**—Broadly, that is right. Equally, what we are doing is testing each of them and seeing what the most appropriate public policy response is. If we were going to legislate away the non-compellable powers or change them fundamentally, that would come before the parliament. What I have sought to do is to say, ‘Can we handle these better?’ It does not remove the right for a ministerial intervention request but—

**Senator FIERRAVANTI-WELLS**—If you are not happy with the house you have been given then you complain about it rather than having it go up to the minister to decide where you are going to live.

**Senator Chris Evans**—Yes, and I would like the department to be able to make those decisions to give them a bit more discretion in dealing with people. Often we find that a lot of the MI applications, for instance, are from people who have a compelling case—Dr Moeller was a classic example if you like. I do not think anybody in Australia would suggest that he should not get a visa but Mr Vardos in particular wore the publicity as being the uncaring face of the department. You could not find a more caring bloke, but he had to go out there and explain that he had been refused. Then the MRT had to say that they did not have any power and it was not until it got to me that we could fix the problem. I would like to think that the department can be reasonable and have the power to deal with those sorts of discretions in the first instance. The MI power will remain unless there is some legislation that goes through the parliament. I have no intention of bringing in legislation at this stage about MI powers, but I do not rule it out in the future.

**Senator FIERRAVANTI-WELLS**—All right. That answers that component of it. Just in terms of general questions I also have a series of other questions which I will put on notice, given that time is marching on, relating to various other aspects, but I will ask one. How much have you spent on advertising and marketing?

**Senator Chris Evans**—There are lots of glossy photos of the secretary all over the place!

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

**Mr Metcalfe**—There is new Photoshop imagery that makes me look a bit slimmer than I really am, Senator. It is very good. We spend very little on advertising. We have not had any campaigns—

**Senator FIERRAVANTI-WELLS**—You mean that you are not going to go to Saatchi and Saatchi and ask them to undertake a campaign for you in Sri Lanka.

**Mr Metcalfe**—I will let the Customs service deal with that, apart from saying that that is a serious issue as to information provision to dissuade people—but I am sure we will talk about those issues later. Largely, the advertising that we undertake is so-called non-campaign

advertising, the usual, and in recent times very minimal, advertising around vacancies for positions in the department. As you know, we are not filling many at the moment. There has been a very small amount of press advertising in relation to advising people of changes to the citizenship test. I do not know if we have a figure with us. We could take that on notice if you wish.

**Senator FIERRAVANTI-WELLS**—I will put a series of questions on notice in relation to—

**Senator Chris Evans**—I think the fundamental response is that we have a service which sells itself.

**Senator FIERRAVANTI-WELLS**—Absolutely, Minister.

**Senator Chris Evans**—Our problem is that we have more applicants than we can cope with.

**Senator FIERRAVANTI-WELLS**—The service is selling itself very well around the world.

**Senator Chris Evans**—Yes, that is right. We are seen as a desirable location for migration, and long may it be the case. But, as a result, we do not have to do too much work finding clients.

**Senator FIERRAVANTI-WELLS**—All right. Unless anybody else has any general questions, I might move to 1.1, migration. I would like to focus on international students for a moment. What are we doing there? There has certainly been a lot of activity in relation to that. Where are we with that now?

**Senator Chris Evans**—I might get Ms Hand to talk to you about some of this activity. As I think I indicated earlier, we have made a number of policy changes to address some concerns about student pathways to permanent residency et cetera in terms of English standards and trade testing. I think we discussed those last time. Those policy announcements were made some time ago. They will apply from 1 January. We have had a response to some of the concerns about integrity in the student case load—some concerns about what was occurring in marketing migration outcomes rather than student outcomes. We have made a concerted effort to try to address those concerns. Ms Hand has been responsible for that so she can give you some broad information about it if it is of interest.

**Ms Hand**—Yes, absolutely. What aspect do you want to delve into, Senator? Is it the integrity measures?

**Senator FIERRAVANTI-WELLS**—Could you start with the integrity measures. I am also interested in knowing how many students come here on a student visa then ultimately go on to permanency. I am also interested to know how many of our overstayers are actually students.

**Ms Hand**—On your first point about integrity, we have seen a significant increase in applications for students in the last 12 months across the board from a number of countries but especially in the vocational education sector. We have been looking at why that growth may have occurred. We are obviously very keen to ensure that applicants abide by the conditions and, as you probably know, we revised the English language assessment levels in

2008 from 3 to 4 for higher education post-graduate research and ELICOS, and the next time we are looking to revise the AL levels is early in 2010.

In terms of the specific measures we have taken recently, we have been looking at things like fraudulent document checking, particularly financial documents. We have also been conducting some interviews with students where we have concerns that they might not have the financial capacity to support themselves in Australia or they might not have the background for the course that they want to study—those sorts of things.

We have also been looking at analysing in quite some detail our agents who have e-visa access to see whether there seem to be fraudulent trends there and we have terminated e-visa access for a number of our agents. I would stress that the steps we have taken have been proportionate with the growth that we have seen. It has been very measured. Obviously we look at integrity on an ongoing basis across our programs and whilst we have seen a large increase in those not meeting criteria, it is not a disproportionate set of integrity measures that we have taken. It is quite proportionate and measured. I would also say that this has been across a number of countries, including Mauritius, India, Nepal, Brazil, Zimbabwe, Pakistan, China et cetera, so it is a number of countries and it will be work that we continue on an ongoing basis. I will let Mr Speldewinde answer in more detail your question about overall compliance when people get here. But one thing I would note is that compliance remains high and, in fact, in 2008-09 only 0.52 per cent of those in Australia were noncompliant versus 1.32 per cent in 2006-07, so overall compliance remains quite high.

**Mr Speldewinde**—If you will just bear with me for a moment, I will dive into my notes and pull out the relevant number for you.

**Senator BARNETT**—While you are doing that can you give us the numbers for that percentage.

**Ms Hand**—Yes, in 2006-07 one in 75 students became unlawful whereas it is one in 200 for 2008-09.

**Senator BARNETT**—Do you have the actual number?

**Ms Hand**—No, I do not.

**Senator Chris Evans**—I think Mr Hughes might be able to help you with an overstayer number.

**Mr Hughes**—As at 30 June 2009 our estimation was that there were just under 3,500 student overstayers which is a small percentage of the total overstayers and if you compare it to the student population even smaller. The actual student population in the country was around 400,000 on 30 June, so the 3,500 overstayers are a very small percentage of that number.

**Senator BARNETT**—What was it at June last year?

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

**Senator BARNETT**—And the total overstayers?

**Mr Hughes**—We estimate the total overstayers at 30 June to be about 48,500.

**Senator BARNETT**—How does that compare to the same time last year?

**Mr Hughes**—My recollection is that it is about the same.

**Senator BARNETT**—Do you have a breakdown of that 48,500?

**Mr Hughes**—We do, although we are getting onto a later output.

**Senator BARNETT**—Can you table that? Have you got it with you?

**Mr Hughes**—I can read it out for you or we can leave it to the later output at your preference.

**ACTING CHAIR**—Let's wait. We will need that, so prepare yourself for later on.

**Senator Chris Evans**—We will be armed and ready.

**Senator FIERRAVANTI-WELLS**—Minister, the issue is that there is a lot of talk about unauthorised arrivals and the point keeps being made that a lot of them are overstayers, and so I think it is really important that we do understand—

**Senator Chris Evans**—How can you be an unauthorised arrival and an overstayer?

**Senator FIERRAVANTI-WELLS**—Sorry. I am getting myself confused. In the end there are a lot of people who become unauthorised because they overstay, and so it is important to know the profile of these overstayers. That is the point that I am getting to.

**Senator Chris Evans**—That is right.

**Senator FIERRAVANTI-WELLS**—But we will come to that afterwards, Minister.

**Senator Chris Evans**—Quite frankly, a lot of people are confusing these issues. I think it is quite wrong. Visa overstayers are people who come on a valid visa who then become unlawful overstayers. Of the 400,000 students in the country we have about 3,500 overstayers currently. The total number of visa overstayers is currently 48,456. The secretary tells me it has been around the 50,000 mark for many years. It is all in the annual reports. There is very little movement in it. The other point I would make about overstayers—for instance, visitor overstayers—is that they are often young Englishman who have gone to a party and are a few days late because they are having such a good time in Sydney.

**Senator FIERRAVANTI-WELLS**—That is right. They are drunk on a beach or something!

**Senator Chris Evans**—Or they have met a young lady and are having a good time, but often they go home within a week of the visa. So again, you have got to drill down into it.

**Senator FIERRAVANTI-WELLS**—That is what I intend to do when we go into the overstayer component, because I just want to clarify some of this information and make sure that we all understand the type of people that we are talking about. Now, we are on international students; Mr Speldewinde, you were going to provide us with some statistics.

**Mr Speldewinde**—I think that Mr Hughes has already given you the statistics on the overstayers. I think you also asked about the propensity of people to move on?

**Senator FIERRAVANTI-WELLS**—No, I was also asking in terms of people who come here on student visas and then ultimately apply for permanency. What sort of figures do we look at annually? Do have a figure that you can give us?

**Mr Speldewinde**—Historically it has been in the range of between about 20,000 and 25,000—

**Senator FIERRAVANTI-WELLS**—Per annum?

**Mr Speldewinde**—Per annum. But we do know that, with the growth in student numbers over recent years, we would expect that figure to go up. The department does, to the extent that it can, try to do some propensity modelling around the characteristics—but it is essentially backward-looking—of people who come in on a student visa, complete a particular course and then move forward to permanent residency. The last time we did that modelling was in July this year. Based on data from 2005-06—because of the two-year requirement—that was 37 per cent.

**Senator FIERRAVANTI-WELLS**—Can you provide figures for me for 2006-07, 2007-08 and 2008-09?

**Mr Speldewinde**—We can certainly try, but—

**Senator FIERRAVANTI-WELLS**—Take it on notice.

**Mr Kukoc**—I have got a figure for 2008-09, if that would be helpful.

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

**Mr Kukoc**—In 2008-09, 19,534 persons who arrived on a student visa were granted a permanent residence visa onshore. In the first quarter of this financial year, to 30 September 2009, there were 5,590 permanent residence visa grants to people who arrived on a student visa. We also have a number of people who applied for a so-called graduate skilled temporary visa 485, and in the first quarter of this financial year we had 4,717 graduate skilled 485 visa grants to students onshore.

**Senator Chris Evans**—Could I just make the point: I do not make it as a political point, because I think was a reasonable decision, but I saw some of the coalition colleagues in the House of Representatives getting a bit excited about this the other day when debating the legislation. I would just remind them that these were changes introduced by the Howard government in 2001, and they provided the direct path—

**Senator FIERRAVANTI-WELLS**—That is why I asked for 2006—

**Senator Chris Evans**—The second point I would make, for information, is that it is very much my strong view that many of these students will make excellent migrants, because they have been trained in Australia to Australian standards to meet skills needs in the Australian economy. They are young, which combats our ageing profile, and so many of them make really good migrants. What I have a very strong view about—which I am sure you share—is that we ought to have a clear delineation between the needs of the education industry and the needs of the immigration industry. What I insist upon is that we have a right, as a department and as a government, to make a public policy decision about who we select as migrants—not necessarily just because they graduate from a course in Australia. But, where those two combine, it is a very good migration result.

**Senator FIERRAVANTI-WELLS**—There were obviously some changes to the critical skills list, and I think, Ms Hand, you said there was an increase in students especially in the

vocational areas. We have seen students come to this country, get a student visa and they do hairdressing, cooking, etc—whatever is on the critical skills list—but never actually—

**Senator Chris Evans**—No, it is not on the critical skills list, Senator. It is on the MODL. The critical skills list is a new list that I created a year or so ago, and those trades are not on the critical skills list, but they are on the MODL, and that is what has traditionally driven the demand.

**Senator FIERRAVANTI-WELLS**—Okay. Sorry. Ms Hand, you know the gist of that. Since those changes have been made, have we seen a bit of a shift in the sorts of areas that people are studying, particularly in the vocational training area?

**Ms Hand**—We have seen an increasing number try to go to occupations that are on the migration occupations in demand list, where they can get points. That said, some of the integrity measures that I talked about earlier have helped to combat that.

**Senator Chris Evans**—It might be worth while, though, if someone would explain the MODL review process. There is a critical skills list, which we introduced to make sure we were better targeting the skills Australia needs. That tends to be focused on medical and engineering qualifications. But the more broad list of the MODL is something that is subject to review. Mr Vardos, do you want to give a two-minute explanation of where that is at?

**Mr Vardos**—Yes, Minister. Our department, jointly with DEEWR, is reviewing the migration occupations in demand list, the MODL, M-O-D-L. There are two aspects to the way MODL operates. One is the methodology that is used to determine what occupations go on the list and the other one is an annual review of and updating of the list, depending on current economic and labour market circumstances. What is being reviewed is the methodology that is used to determine what occupations go on the list. Discussion papers have been released for wider consultation, so it is not an in-house review. Two discussion papers have been released. Option papers have been considered to, I guess in a sense, try and create a framework that tries to identify what occupations we are going to be needing, not look backwards at what was in need six months ago or whatever, because of the dynamic nature of the economy and the labour market. That review will be taken forward by ministers and considered by government before the end of the year.

**Senator FIERRAVANTI-WELLS**—So we are likely to have a new list?

**Senator Chris Evans**—This is obviously a decision for government and cabinet. But the reason I asked Mr Vardos to explain the process—and, as I say, it is a public process—was that I think it is important to say that any decisions in that regard may well drive some of the student enrolment behaviour by virtue of which courses are seen as pathways to qualifications that may lead to permanent residence. Not all students are seeking that—

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—but many are. As I say, that is not a bad thing provided we control that it is meeting our skills needs as a nation. I just wanted to alert you that changes to the MODL or the way it operates would obviously have some impact on people's decisions.

**Senator FIERRAVANTI-WELLS**—That is a mix of both vocational and tertiary skills?

**Senator Chris Evans**—Yes.

**Mr Vardos**—The occupations on MODL span a whole range of occupations that are theoretically in need.

**Mr Kukoc**—The MODL at present contains more than 100 occupations. It includes both professional occupations and trade occupations. As Peter Vardos mentioned, we are undertaking a very broad consultative process. There have been two discussion papers publicly released. We have gone through the consultative skilled migration panel and the Commonwealth-state working party. We are consulting with the international education industry as well. As Peter Vardos mentioned, it is important to know that MODL itself was created as an instrument to help skilled migration respond to quick, short-term changes in the labour market a few years back.

**Senator FIERRAVANTI-WELLS**—Yes.

**Mr Kukoc**—But it was realised that, given the process and the time lags involved between the decision to involve an occupation on the MODL and the arrival of the migrant and employment of the migrant—which can take two to three years—it was much better for demand driven categories, such as 457 employer sponsored visas, to respond to short-term needs in the labour market, while MODL and general skilled migration should be targeted more to the long-term needs of the country and the labour market.

**Senator FIERRAVANTI-WELLS**—What in general terms is the gist of the feedback that you have received?

**Mr Kukoc**—I would like to take this question on notice, because we have—

**Senator FIERRAVANTI-WELLS**—That is fine. Thank you.

**Senator Chris Evans**—It is in its fairly early stages, but I will ensure that the committee gets copies of the discussion papers, which will give you a good feel for the issues.

**Senator FIERRAVANTI-WELLS**—Yes, please. Thank you. That would be helpful. I want to ask some questions in relation to skilled migrants arriving in Australia.

**ACTING CHAIR**—Is that still in outcome 1?

**Senator FIERRAVANTI-WELLS**—Yes.

**ACTING CHAIR**—This is about the time at which we would like to move to outcome 2, but I am in your hands. I just draw your attention to the time and leave it to you.

**Senator FIERRAVANTI-WELLS**—Okay. I will put some questions on notice in relation to general skilled migrants. In answer to a question on notice on the last occasion you provided me with some figures in relation to skilled migrant arrivals from 2004 to 2009 and where they actually are at. I might ask that you augment that information with some additional information in relation to where we are at in terms of unemployment levels and those sorts of things, but I will put that one on notice for you.

**Senator Chris Evans**—I draw your attention to two things, Senator. One—and one of the officers will have the figure—is that in the migration program we have seen a large increase in permanent residence being awarded to people who are here working temporarily and transferring from 457s to permanency. It is something we encouraged on the basis of employers being able to retain those skills and on the basis that a good outcome for a migrant

is often connected to their employment. If you have someone in a job who has been here for four years, likes it, we like them and they have work it is a pretty good outcome. I think we have the statistics to give you on those.

**Mr Hughes**—Of those granted a subclass 457 visa in 2003-04, 52 per cent were granted permanent residence in 2008-09.

**Senator Chris Evans**—I was referring to the share of the program that has gone from those onshore versus offshore.

**Mr Kukoc**—Around 80 per cent of the employer-sponsored permanent resident visas are former 457 visa holders onshore. The employer-sponsored category has increased substantially in the last few years as a proportion of the migration program, but I would need some time to find those figures.

**Senator FIERRAVANTI-WELLS**—Could you do that. As I said, I will fashion my question to ask for more details in relation to that. I am conscious of the time.

**Senator Chris Evans**—Can I just make the other point. There was an article in the *Australian Financial Review* yesterday which tried to make the claim, based on research that did not support the claim, that somehow permanent migration to this country was taking the jobs of young Australians. Firstly, I would make the point that migration usually results in a net positive in employment because people who come as migrants demand services, housing et cetera. Even given that, the critical skills list has seen us largely recruiting health and engineering professionals and other highly skilled people in the last two years. Indian doctors, Irish nurses and South African mining engineers are not taking the jobs of 16- and 17-year-old Australian youngsters. What they are doing is creating demand in housing, retail and a whole range of other sectors that employ a lot of young Australians. I would just put that on the record.

**Senator FIERRAVANTI-WELLS**—One only has to look into our hospitals to see that they could not quite function otherwise. I had some experience of that recently.

**Senator Chris Evans**—It is true that we need to train more Australian doctors, engineers et cetera, but in the short term and medium term we are going to need those skills. As I said, they actually create jobs for young Australians; they do not take them off them.

**Senator BARNETT**—I asked a question earlier, Minister, and this may be an appropriate time to discuss it because we have been talking about students and overstays. I indicated earlier that I am interested in your views in response to those raised by Labor MP Kelvin Thompson, where he recommended that international students should be forced to return home for two years before they are able to apply again for permanent residency in Australia. It was in the context of the Education Services for Overseas Students Act. In his view, we need to clean up our act a bit here to stop the rorting. I think there was a view in a Senate committee report which was tabled recently. I am interested if you could share your views, (1) in response to Kelvin Thompson and (2) more generally about the need to clean up our act in this area.

**Senator Chris Evans**—I will make a couple of points. Mr Thompson is making a constructive contribution to immigration debates in a range of areas and I welcome that.

**Senator FIERRAVANTI-WELLS**—Sure you do!

**Senator Chris Evans**—No, I do. We ought to debate immigration more—obviously in a rational way—than we have previously in Australia and have a better examination of those issues, including on the population debate, and I am happy to be part of that. I do welcome his contributions. The next thing to say is that he was making those remarks in the context of the Howard government's 2001 changes, where they made it much easier for students to apply onshore for permanent residency. If you like, it is a critique of that decision. I make the point that I made earlier—that is, where we have gone wrong is that we have allowed a development which says education has been driving our immigration system for the last five or six years or more, rather than immigration decisions driving the immigration process. In my view, we ought to have an immigration system that says, 'We need these skills; we will recruit young people who have these skills'. If those young people are trained in Australia, then that is all well and good because they will fit the criteria easily. What we do not want is the tail wagging the dog, which says that we have these people studying these courses and they have graduated from these courses and we ought to accept them as migrants. We have got to that situation, and so one of the reforms—

**Senator BARNETT**—You think we have got to that situation?

**Senator Chris Evans**—I think we have got to that situation—it is one of my criticisms of the current system—and we are making a range of changes to try to deal with that. The inquiry led by Mr Bruce Baird will deal with a lot of those issues. It is a complex problem. There is the Senate inquiry; there is Mr Baird's report. But if you ask me as the immigration minister do I think we have the balance right on immigration decisions and the public policy needs of Australia's immigration program, whether they are central enough to who is coming through the program, I would say, 'No, I think we have to rebalance that'. That is not to say we do not need good overseas students with the skills that we need, we will do. I think you will find we will be looking for more. I make this point in terms of India: India will be a source of Australian migration for many years to come and we will be looking for good Indian migrants with the skills we need, trained both here and there, because they have a large population, a highly-skilled population, and we will need those skills. But that is not to say that every student who qualifies from a VET course in Australia ought to be able to stay in Australia if their skills are not ones that we need. We have to rebalance that.

**Senator BARNETT**—But it is a matter of how to get the balance right.

**Senator Chris Evans**—Yes.

**Senator BARNETT**—Kelvin Thompson has proposed this two-year cooling-off period and I wonder if you support it or if you are going to consider it as an option.

**Senator Chris Evans**—It is not under active consideration and it is not before government. I found it interesting. I will certainly have a think about it, but that is not where my thinking is currently. The review of the MODL and the way we run the immigration selection process is the key so that is driving the choices for Australia, not who is studying what. As I said, we have a bit of the tail wagging the dog and I would like to get back to the dog wagging the tail. That rebalancing is something that we are starting to drive.

**Senator BARNETT**—Sure, but when you say that, you do accept that a \$16-plus billion education export industry is vitally important and we need to be growing that and supporting that.

**Senator Chris Evans**—That is right, but, quite frankly, we failed on the quality control. We saw a huge growth in sections of that industry that do not provide a quality education, do not treat people fairly, and the state governments and other authorities have been very slow to move in dealing with that. I have been warning for a long time now that the higher education industry and the good parts of the VET industry are at risk because of the failure to deal with the shonks. We are going to see that really bite us in the current environment.

**Senator BARNETT**—So with that space quality control, improved regulation and compliance, we will see more initiatives from the government?

**Senator Chris Evans**—Yes. We already have a lot of work going on—DEEWR is doing a lot of it, we are doing a lot of it—and we are getting, quite frankly, more focus from the states about standards with the colleges than we have had in the past. The quality issues have not been taken seriously enough previously, and a lot of students, quite rightly, feel aggrieved that they have not got what they paid for. But from my perspective, the key issue is: immigration decisions in Australia should be driven by Australia's immigration needs, not by who is coming out of Australian education institutions. Where they marry, that is great.

**Senator BARNETT**—When you say students have not got what they need, are you talking about Indian students or students in general?

**Senator Chris Evans**—No, in general. If you ask me do I need 10,000 hairdressing graduates next year, I would say the answer is no. Do we need people with IT qualifications, accountancy qualifications, metal trades qualifications, probably yes.

**Senator FIERRAVANTI-WELLS**—Nurses.

**Senator Chris Evans**—Nurses goes without saying.

**Mr Metcalfe**—For the sake of the *Hansard*, I should just say that when we refer to VET courses, particularly in the context of tails wagging dogs, it is not veterinary courses; it is vocational education and training courses. I think we got bitten by that at one stage as well, Minister.

**Senator FIERRAVANTI-WELLS**—Senator Back is not here, Mr Metcalfe, so we can be a little less restrained.

**ACTING CHAIR**—That is right. There have been a few misinterpretations along the way, like when you referred to me as 'Madam Chair' in your opening remarks.

**Mr Metcalfe**—I just do not want any complaints from the Australian Veterinary Association.

**ACTING CHAIR**—Are we nearly finished on outcome 1?

**Senator FIERRAVANTI-WELLS**—If I had gone there earlier, I would be finished by now.

**ACTING CHAIR**—It depends on how disciplined you want me to be.

**Senator Chris Evans**—Senator Crossin runs a much tighter ship!

**ACTING CHAIR**—Apparently so.

**Senator FIERRAVANTI-WELLS**—She does. Sorry, Senator Marshall.

**ACTING CHAIR**—We still end up staying until 11 o'clock.

**Senator FIERRAVANTI-WELLS**—We finished at 6.30 on the last occasion, I will have you know.

**Senator HANSON-YOUNG**—Does that mean she would have hurried you up by now?

**Senator FIERRAVANTI-WELLS**—No, she would have stuck to the program. Just on 457s. When is the review of the labour hire agreements involving the 457 visas going to be completed?

**Mr Speldewinde**—We are in the process of finalising the templates, which we will then pass to government for consideration. We would expect that ministers will have the recommendations in front of them within a matter of a couple of weeks. At that point, depending on the outcome of the ministerial considerations, we will then commence negotiating with the labour hire companies according to the new template. We would expect to be well and truly underway before the end of the calendar year.

**Senator FIERRAVANTI-WELLS**—Who is undertaking this review? Is it internal?

**Mr Speldewinde**—It is being done between ourselves and DEEWR, yes.

**Senator FIERRAVANTI-WELLS**—And the terms of reference of this review? I just sort of understand it in its general terms; are there terms of reference for it?

**Mr Speldewinde**—There are no formal terms of reference, but I will stand corrected if some turn up.

**Senator Chris Evans**—It is a bit of internal work, essentially, focusing on a question that, as you know, was quite controversial under the previous government: the role of the labour market, labour hire companies and temporary labour. The review of the 457 visas and the work we have done again highlighted some of those concerns. Quite frankly, the reality is that procedures and protocols were put in place in a time of large economic growth. Then when that slowed down you had to say, 'Were they the right protocols for the poorer times as well as the good times?' For instance, giving someone the right to bring in 500 workers in a particular trade in a particular state might have looked like a very good decision a year and a half or two years ago and would have looked like madness six months ago. So there are some issues there for us in terms of getting the balance right between providing labour to industry when they need it and making sure that Australians get priority for job opportunities. It is about getting that balance. Labour hire, I think, was an area where we just needed to have a look to make sure we got that balance right, as we did in the 457 area. We hope to bring that to a conclusion quickly.

**Senator FIERRAVANTI-WELLS**—Is it true that no labour hire agreement related applications have been approved in the last 12 months? Can you take that on notice.

**Senator Chris Evans**—I am pretty sure it is not true, because I seem to remember signing some, but I stand to be corrected. We will take it on notice.

**Mr Vardos**—I can actually confirm that as at 30 September there were 40 in effect with on-hire labour companies, and another 42 are under negotiation. But I cannot confirm what proportion of those in effect have been approved over the last 12 months; I just do not have that with me.

**Senator FIERRAVANTI-WELLS**—All right. You can take that on notice.

**Senator Chris Evans**—The DPM has to approve them as well, because it is a joint process, which is another one of the things that I am hoping to streamline. I am sure I signed one in the last three weeks.

**Mr Speldewinde**—You did, Minister.

**Senator FIERRAVANTI-WELLS**—In terms of these labour hire agreements, what is the role of the unions? Will the review include the role of unions in this?

**Mr Speldewinde**—Procedurally, labour hire companies are required to consult the relevant stakeholders, and those stakeholders do include the unions. Final decisions on whether a labour hire agreement is to be signed are not dependent on union agreement. They are done on the balance of factors, and that is a decision that the minister takes.

**Senator FIERRAVANTI-WELLS**—At our last hearings, the trends for numbers of 457 visas were down, for obvious reasons. Is that trend still continuing?

**Mr Kukoc**—In 2008-09, the last financial year, the total number of primary subclass 457 visa applications was 10.7 per cent lower than in 2007-08. This trend has continued in the first quarter of this financial year.

**Senator FIERRAVANTI-WELLS**—What about breaches? I know that when we had the inquiry we looked at the breaches as reported in your annual report, and of course the level of breaches of those agreements was very low. Is that still the case? Do you want to take some of those statistics on notice?

**Mr Kukoc**—Yes, I would like to take that on notice. We may have it here. We will give it to you.

**Senator FIERRAVANTI-WELLS**—That is fine; thank you.

**Senator Chris Evans**—There are some early signs that that may start to pick up. For instance, I have had approaches from a number of big WA mining companies talking about demand starting to re-emerge. I think projects like the Gorgon will be fine, but they will soak up labour out of other areas. At the moment we are still seeing very flat activity compared to last year.

**Mr Kukoc**—There has been a recent pick-up in applications in the last week or so.

**Mr Vardos**—Senator, I can give you some basic statistics in relation to 457 monitoring activity, comparing it year on year. There were 45 situations where a sponsor was sanctioned in the period July to September 2008-09 and 40 in the period July to September 2009-10—the current program year. So that is a decline of 11 per cent. Monitoring visits commenced for the same comparative period, July to September, were 1,061 in 2008-09 and 914 in the current program year. Site visits were 433 in July to September 2008-09 and 362 in July to September

2009-10. The number of sponsors formally warned was 294 in that period for 2008-09 and 153 in the period July to September 2009-10.

**Senator FIERRAVANTI-WELLS**—Just quickly in this area, I noticed an article in the *Age* recently on 10 October which referred to foreign agents ‘targeted in black market probe’. The first paragraph says:

AN UNDERGROUND network of labour agents is procuring illegal workers in Asia and India to supply Australia’s growing blackmarket for contract labour.

Could you take that on notice, Mr Vardos, and comment in relation to that. There was also a program, I think it might have been the *7.30 Report*, a few weeks ago which you probably saw? No, it might be worth while to go back and have a look at that because I will ask you a question on notice about that as well.

In terms of the overseas spouse visas, what is the trend with those visas? Are they going up or down?

**Mr Speldewinde**—When you ask about the trend are you talking about the application rate?

**Senator FIERRAVANTI-WELLS**—Yes, sorry.

**Mr Speldewinde**—Certainly, the application rate is going up and I guess you would expect to see that, given that we have been delivering successively larger migration programs for a number of years now. Our evidence suggests that people do tend to go back and marry from their own country.

**Senator FIERRAVANTI-WELLS**—I was about to ask where the countries are. Perhaps you might like to take that on notice.

**Mr Speldewinde**—I might need to take that one on notice.

**Senator FIERRAVANTI-WELLS**—If you could take on notice details in relation to how many visas have been issued from 2006-07 to date, the countries they are from, average age. I will put a question on notice in relation to a whole series of questions about overseas spouses.

**Mr Speldewinde**—Could I clarify one thing? When you say average age, are you talking about the average age of the application or the average age of the spouse?

**Senator FIERRAVANTI-WELLS**—Average age of the spouse. I will put those on notice. I am conscious of the time. I have some questions in relation to the Pacific Seasonal Worker Pilot Scheme. After the first season what has been the outcome? I know that DEEWR was the agency that ran this but from a DIAC perspective I think it had some issues.

**Senator Chris Evans**—Mr Vardos is looking very knowledgeable! Sorry, I was wrong he was not looking very knowledgeable!

**Senator FIERRAVANTI-WELLS**—I am not surprised.

**Senator Chris Evans**—He was knowledgeable that he would flick past it.

**Senator FIERRAVANTI-WELLS**—If you have done an evaluation of it—

**Mr Kukoc**—We have not.

**Senator FIERRAVANTI-WELLS**—You have not yet, okay. If you would like take it on notice and get me more details I was asking for a general overview comment now and I am happy for you to provide me with a more detailed answer on notice.

**Mr Kukoc**—Thank you, Senator. You would properly be aware that we had a pre-pilot trial with about 56 Pacific Islanders, 50 from Tonga and six ni-Vans from Vanuatu. All 50 Tongans have now returned to Tonga. In terms of remittances we had a very successful outcome, they have earned much more in net terms than we modelled or expected. Given that we have a 100 per cent return rate at least on the two indicators of remittance and compliance it looks good. We have six ni-Van workers who are due to depart I believe on 11 November, after six months of work.

**Senator FIERRAVANTI-WELLS**—Your component from memory was the briefings beforehand and the visa component of it, but the rest of it, the running of it, was from DEEWR. You can say that your component of it worked. That is what you are saying: from your perspective that part of it worked.

**Mr Kukoc**—Certainly this pre-pilot trial was conducted during a very difficult time in an economic downturn with labour demand being very weak. In a sense that has given us and the government an opportunity to test this pilot and the design in very difficult circumstances, so we have learned a lot of lessons.

**Senator Chris Evans**—If you were going to pick a time to run the trial, we picked exactly the worst time. When we planned it, six months earlier, it looked good. Then we had the downturn, the drop-off in demand for labour, alternative labour sources—all those things. We will make the proper evaluation, but it is the case that it was smaller than intended and what have you. We will give it another year or two, a three-year trial, and make—

**Mr Kukoc**—The first interim evaluation will be conducted mid next year, I believe, and then after the three years there will be a final evaluation.

**Senator BARNETT**—I have some questions. Let us just clarify: do you have an interim report on the trial as yet? Have you received it?

**Mr Kukoc**—No, we have not. The interim report and evaluation is currently being conducted, and it will be delivered to the government by mid next year, 18 months after the commencement of the pilot. The formal commencement of the pilot was 1 July this year.

**Senator BARNETT**—It is a three-year trial, and you have just about completed year one. Is that correct?

**Mr Kukoc**—No. We have completed a pre-pilot trial. The formal pilot trial commenced on 1 July this year, and it will go on for three years. This was just a pre-pilot trial with around 56 workers.

**Senator BARNETT**—Have we got the terms of reference for the forthcoming trial?

**Mr Kukoc**—We do, but I would suggest that you asked the Department of Employment, Education and Workplace Relations.

**Senator BARNETT**—Have you received it?

**Mr Kukoc**—We have seen the terms of reference.

**Senator BARNETT**—If you have seen it, do you have a copy in your possession?

**Mr Kukoc**—I do not. I can take this question on notice.

**Senator BARNETT**—Could you take this on notice and provide us with a copy.

**Mr Kukoc**—Will do.

**Senator BARNETT**—In terms of your pre-pilot trial, can you advise—and I am happy for to take this on notice—the work undertaken, the dates of arrival, dates of departure and the cost of the trial.

**Mr Kukoc**—Yes, I will take that on notice.

**Senator BARNETT**—When you take the cost of the trial on notice, can you advise the cost to the department of your involvement and describe the department's involvement and the total cost of the trial, for which I assume you will need to liaise with DEEWR.

**Mr Kukoc**—Yes. The cost of the trial was formally published in the budget papers last year. I think it was about \$23.6 million. I will provide this in more detail in response to the question on notice.

**Senator BARNETT**—So you came in on budget?

**Mr Kukoc**—This is a work in progress. We are working within the budget.

**Senator BARNETT**—That is what we need to know. You have a budget—and then what the actual costs were.

**Mr Kukoc**—Yes, we will provide that.

**Senator FIERRAVANTI-WELLS**—Can I ask some questions on working holiday-maker visas. Overall, is this working quite well? How many countries do we have a working holiday visas with? Fifteen or so?

**Mr Hughes**—I think that is about the right number, Senator. I will just confirm that for you.

**Senator FIERRAVANTI-WELLS**—Are there any plans to expand to other countries?

**Senator Chris Evans**—There are ongoing negotiations with a range of countries wanting access to the work and holiday and working holiday programs.

**Senator FIERRAVANTI-WELLS**—Are they approaches made to us from other countries or from us to them or a bit of both?

**Senator Chris Evans**—It is fair to say that there tends to be more use made of overseas persons coming here than the other way, but that is partly by virtue of our population. If we do an agreement with a country—

**Senator FIERRAVANTI-WELLS**—Italy.

**Senator Chris Evans**—Yes, then the population means that likely exchanges tend to be a bit more their way than ours. But there are a range of countries where these things are part of improving bilateral relations et cetera and will be discussed. There is a lot of interest in South America, and we are starting to see more international students from South America as well. There are a range of countries where there are discussions going, but obviously they are not

talked about much until you get to the end of the negotiations. They are mainly done by DFAT, anyway.

**Senator FIERRAVANTI-WELLS**—But your department, Minister, issues the visa and you have the direct running on the negotiations to establish them?

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—Are you the lead department—

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—for example, if you want to establish a working holiday visa with a new country?

**Mr Hughes**—We are, and obviously the Department of Foreign Affairs and Trade has a serious foreign policy interest because often it is part of a parcel of improving relations with governments to get people to people contacts, particularly amongst young people, so the Department of Foreign Affairs and Trade has a vital interest. Of course, we conduct the core of the negotiations with their support. Just to confirm the numbers we mentioned before, we currently have 19 working holiday arrangements and seven work and holiday arrangements, which are the much more controlled arrangements with caps on the numbers of visas that can be granted.

**Senator FIERRAVANTI-WELLS**—Could you take on notice to provide a list of the countries they are from and how many working holidays visas were granted in 2006-07, 2007-08 and 2008-09?

**Mr Hughes**—We can provide that.

**Senator Chris Evans**—I suspect they are in the annual report, but we will give them to you anyway.

**Senator FIERRAVANTI-WELLS**—Thank you. How many of them apply for other visas? Once they have been here for a while, they think it is a great place. I assume there would be a number of them.

**Mr Hughes**—I will take that on notice. Obviously, young people coming out to Australia form attachments here—

**Senator FIERRAVANTI-WELLS**—They do.

**Mr Hughes**—and do also find it an attractive country, and in many cases might qualify for permanent visas. Historically, working holiday arrangements have also been a source leading to permanent migration. It is possible my colleagues may have the numbers with them.

**Senator Chris Evans**—They also sweep young Australian girls off their feet who then become princesses, don't they?

**Mr Hughes**—For some it goes the other way.

**Senator FIERRAVANTI-WELLS**—I am happy for you to take that on notice.

**Mr Kukoc**—I do have some figures.

**Senator FIERRAVANTI-WELLS**—We do not want any stories!

**Mr Kukoc**—Briefly, around 3,842 working holiday visa holders were granted permanent residence in 2008-09, a 21 per cent increase from the previous year; 5,457 working holiday visa holders were granted student visas, a 26 per cent increase from the previous year; and 5,826 working holiday visa holders were granted subclass 457 visas, a 3.6 per cent increase from the previous year.

**Mr Vardos**—The top 10 source countries for working holiday visas has not varied much between 2008-09 and 2009-10. I can give you those countries, if you wish.

**Senator FIERRAVANTI-WELLS**—Just take it on notice. Thank you. Are there any compliance problems with these visas? There is now a metropolitan and a regional component.

**Mr Vardos**—I am fairly confident that there is a compliance issue, but I do not know the magnitude. Perhaps my colleagues in a later program can respond to that question.

**Senator FIERRAVANTI-WELLS**—Okay. Perhaps you could take that on notice.

**Mr Vardos**—Sure.

**Senator FIERRAVANTI-WELLS**—I presume we keep statistics of those Australians who permanently depart Australia. How many Australians are living overseas?

**Mr Metcalfe**—I think the Department of Foreign Affairs and Trade would have the definitive answer on that. My feeling is that there are roughly a million, or about five per cent of our population, who are living overseas at any time.

**Senator Chris Evans**—We have some figures about how many go overseas.

**Mr Metcalfe**—We will do Foreign Affairs' job for them as well and help you out. I hope it is a million!

**Mr Hughes**—This is not the figure for the total number overseas, but I agree with Mr Metcalfe, not just because he is my boss, that the figure is about a million Australians residing overseas. In July 2008 to June 2009, 165,000 Australian residents left either permanently or long term. That means that on their way out they said they were either leaving permanently or leaving for a year or more.

**Senator FIERRAVANTI-WELLS**—Do we have statistics on where they went?

**Mr Kukoc**—The net number of Australian citizens exiting Australia as resident population has been declining since the end of 2008 and is continuing to decline, which means that more expats are coming back than those who are departing. Actually, the rate of increase in expats who are leaving permanently long term is lower than the rate of increase of those who are coming back, but still we have a much larger number of those who are departing on a permanent and long-term basis.

**Senator FIERRAVANTI-WELLS**—It just goes to show that the song was right.

**Senator Chris Evans**—No, it goes to show the impact of economic issues. The fact is that you could get a job in London very easily two or three years ago, and now it would be much more difficult. I have personal friends who were doing a lot of agency work as accountants, et cetera, who have come back because the work was drying up.

**Senator FIERRAVANTI-WELLS**—In terms of those statistics, do we also have the skills and qualifications of these people?

**Mr Kukoc**—No, unfortunately we do not. We collect this information based on the departure card that they complete. We do not ask for skills.

**Mr Metcalfe**—There is quite a lot of information in a publication we put out each year called *Population Flows*—

**Senator FIERRAVANTI-WELLS**—I was waiting, Mr Metcalfe! I have not got my copy right in front of me at the moment.

**Mr Metcalfe**—I think we are fairly close to publishing the 2008-09 version, but certainly the 2007-08 version, which I have—

**Senator FIERRAVANTI-WELLS**—I am sure you will send me a personal copy!

**Mr Metcalfe**—Page 5 talks about emigration by birthplace. So this is not just Australian-born persons. It is persons who may have been born overseas but, of course, many of those might have become Australian citizens. It contains information there, and on page 6 it talks about emigration by occupation. Again it may not be necessarily dealing just with Australians; it might be permanent residents of Australia who are emigrating as well. But it does provide some information about the top five occupations of emigrants: managers and administrators, school teachers, building and engineering professionals, accountants and sales representatives. There is some recorded material here—

**Senator BARNETT**—When is that report due out?

**Mr Metcalfe**—This is last year's version. I am not too sure when we might have the next version out—the 2008-09 version.

**Mr Kukoc**—Actually, there was a recent release, I think, two to three months back.

**Mr Metcalfe**—We will check and let you know.

**Senator BARNETT**—Is this information on the website? You mentioned the 2008-09 figures. Is that on your website?

**Mr Kukoc**—No, it is not. Most of the information is in the *Population Flows* publication, and that is on our website.

**Senator BARNETT**—Just for my reference, can you tell us for 2008-09 what the net migration was?

**Mr Kukoc**—The ABS preliminary estimate for the March quarter 2009 was 278,000. That is a preliminary estimate. The actual estimate will be released in about nine months time. The next preliminary estimate for the June quarter of 2009 will be released by ABS in late December this year.

**Senator BARNETT**—Do you have the latest information on your website?

**Mr Kukoc**—That is the ABS product, and they do have that on their website.

**Senator BARNETT**—Thank you.

**Senator FIERRAVANTI-WELLS**—I do not have any other questions on outcome 1.

**ACTING CHAIR**—Then let's move on. Thank you to those officers who were here for outcome 1. We will now move to outcome 2.

**Mr Metcalfe**—Acting Chair, could I advise that we will be in a position to brief the committee as requested immediately after afternoon tea in relation to questions raised by Senator Colbeck about the Launceston call centre. We have a little bit more information about that.

**ACTING CHAIR**—He will be here, and so will Senator Fielding.

**Mr Metcalfe**—Senator Fielding has asked about the Guy Campos matter and war crimes issues, and we will be able to provide more information to Senator Fielding. Senator Fierravanti-Wells earlier raised issues relating to stress claims in the department. We have some more detail there. There are one or two other issues we are hopeful to be able to bring back. We might be able to bring all of those to the committee at the same time.

**ACTING CHAIR**—That would be helpful. Thank you.

**Senator Chris Evans**—Mr Acting Chair, does that mean there were no questions on 1.2? Oh, there is no 1.2 now.

**ACTING CHAIR**—Yes, you can safely assume there are no questions, given there is no 1.2, but if you make the suggestion I am sure we could find some.

**Senator BARNETT**—Good try! We are happy to oblige, Minister, if you want us to come up with some.

**Senator Chris Evans**—I am here till 11 o'clock—whichever way you want to play it.

**Mr Metcalfe**—Acting Chair, 2.1 is refugee and humanitarian assistance.

**ACTING CHAIR**—So in outcome 2 there is only 2.1. Is that what you are telling me?

**Mr Metcalfe**—That is correct.

**ACTING CHAIR**—Let us just do 2.1 then.

**Senator HANSON-YOUNG**—Can I start?

**ACTING CHAIR**—Yes. Senator Hanson-Young, you have three hours!

**Senator HANSON-YOUNG**—I will not take three hours! In fact, some of these questions might go over to outcome 3, because it is a little bit of a blended area.

**Mr Metcalfe**—We indicated at the outset this morning that there are a variety of issues related to refugee status determination, irregular maritime arrivals, measures to combat people smuggling, international cooperation and, indeed, the operations of Christmas Island. The view was that when we got outcome 2 they would all come together.

**Senator HANSON-YOUNG**—You obviously know what I want to talk to you about! This is the regular time for us to meet at estimates and talk about these issues. The first lot of questions I have touch on the current situation. There are discussions going on between Australia and Indonesia about the boat that is holding Sri Lankans at the moment, rather than having them come to Australia. Then there is also the Australian ship the *Oceanic Viking*, which we have not heard a resolution about yet. Can you outline the current working

relationship between Australia and Indonesia and the current protocols? That might help us to understand where we can go.

**Ms Keski-Nummi**—It would be best to talk about the regional cooperation arrangements with Indonesia. The working relationship is between the Department of Immigration and Citizenship and Imigrasi, the Indonesian immigration authorities. I can only talk about that particular relationship, and it is a very strong and cooperative relationship. Under those particular arrangements, we work very closely with Imigrasi as well as with IOM and UNHCR. That involves support, assistance, maintenance and housing for people who have been intercepted in Indonesia. IOM provides the accommodation, support and assistance for people while they are going through any refugee status determination processes, which are undertaken by UNHCR. The work with Imigrasi is in relation to capacity building and supporting Imigrasi to develop a stronger institutional framework around the management of people who have been intercepted.

**Senator HANSON-YOUNG**—In terms of processing their claims or returning them to their countries?

**Ms Keski-Nummi**—No, it is more broad than that. It is about developing a proper, managed migration system. It relates to support in terms of facilities, such as the additional accommodation for asylum seekers, detention centre arrangements and upgrading some of those facilities. Asylum processing is currently undertaken by UNHCR, but UNHCR has also been doing capacity-building work with Imigrasi in relation to developing capabilities around how to look at people who raise protection issues. To recognise whether protection claims or protection issues are being raised would require referral to UNHCR.

**Senator HANSON-YOUNG**—When somebody steps off a boat—say the boat that is currently housing Sri Lankans, which we have had all the reports about in the last week—onto Indonesian land, what is the process from there? Do they get referred through the UNHCR process or will they be detained by the Indonesian government?

**Ms Keski-Nummi**—I cannot talk for Imigrasi on how they do their particular work, but I do know that IOM is working with Imigrasi at the moment in finding accommodation and housing the people when they do come off the boat. Some may well go into detention centre arrangements, some may go into accommodation; I cannot be sure. I am really speculating, but that is what I would expect to happen.

**Senator HANSON-YOUNG**—Given that Indonesia has not signed the refugee convention, what is the difference between the rights that somebody would have if they were brought to be processed, say, on Christmas Island as an Australian offshore applicant and the rights of somebody processed in Indonesia? What are the rights that they have as asylum seekers in Indonesia as opposed to the rights they have in Australia?

**Ms Keski-Nummi**—First of all I will talk about Indonesia. The Indonesian authorities, through an Imigrasi directive some years back, have made it very clear that people who raise asylum claims must be treated like asylum seekers and referred to UNHCR. The regional cooperation arrangements, particularly the work that we do with IOM, ensure that people get appropriate care and maintenance while they are there. That means they have proper housing, medical assistance, sustenance and all the sorts of things that people would normally get.

What happens on Christmas Island in terms of a person who is in the offshore entry process is that, as Australia is a signatory to the convention, we make sure that we process people under our normal framework in relation to the refugee status assessment guidelines that we have for our officers. So the key difference is that Australia would undertake the refugee status assessment on Christmas Island whereas UNHCR at the moment does it in Indonesia.

**Senator HANSON-YOUNG**—What is the time frame for that? We have heard reports that there is a wait of up to nine or 10 years for that application process.

**Ms Keski-Nummi**—No. I could dig through my numbers at the moment but I will give you answer and then look for it. Essentially, there are no people who have been waiting for an RSD process in Indonesia for in excess of nine years. What I can say is that—

**Senator HANSON-YOUNG**—But there have been people waiting nine years?

**Ms Keski-Nummi**—No.

**Senator HANSON-YOUNG**—For up to nine years?

**Ms Keski-Nummi**—With UNHCR and other members of the international community, we have been resettling over the last 12 to 18 months what are called the protracted refugee cases. They are people who were in Indonesia, had been found to be refugees and were mandated before 2003. Of that group, Australia is considering about 120 people and we have already granted visas for about 88. There are about 64 who were referred to other resettlement countries. They are currently under active consideration and most have in fact been resolved.

I think, when you are talking about a group waiting for nine years, there were some people who had been refused refugee status determinations by UNHCR some years back. They were reviewed several times over the last few years and were found not to be refugees. UNHCR did another review earlier this year, at which time they mandated that group. We are currently in the process of also resolving those particular cases.

**Senator Chris Evans**—They are better known here as the Lombok group, which has been an issue in Australia for a while. There has been interest in that group. The point to make in relation to those people is that they were found on more than one occasion not to be refugees by the UNHCR, and that is why they were not resettled. I think some people have used them as the example of how long it takes for settlement, which is wrong. The UNHCR have looked at the cases again, with some encouragement from the Australian government.

**Senator HANSON-YOUNG**—My understanding is that there is a family who has just been granted visas to Australia—a family of seven or eight, I think—who have been in Indonesia for up to nine years.

**Ms Keski-Nummi**—That is correct and it is part of that particular group.

**Senator Chris Evans**—They have not been UNHCR refugees for nine years, and as always in Australia someone made the claim about nine years. The next morning it was 10 years and it has become accepted wisdom ever since and repeated on every news channel. It is just not true.

**Senator HANSON-YOUNG**—The difference is, though, that people who are detained in Indonesia are processed through the UNHCR.

**Ms Keski-Nummi**—That is correct.

**Senator HANSON-YOUNG**—They are not processed by Indonesia itself because it is not signatory to the convention and do not go through that process the way we do here in Australia. Can you enlighten us as to what you know about the conditions of detention in Indonesia? What types of facilities are people detained in and what are the conditions? We hear a lot about our conditions. I would like to know what their conditions are.

**Mr Correll**—There is a range of different facilities in Indonesia. I have physically seen and visited one of those facilities, and that is a detention centre in Tanjung Pinang. It basically provides reasonably secure accommodation, although some of the facilities are quite mixed in the type of facilities that are available in Indonesia. The overall accommodation tends to be more dormitory style than individual rooms as we would have in our detention facilities. But generally the approach that seems to be taken is largely consistent with what you would expect in maintaining a sound detention base. I think the issue that is faced in Indonesia to the greatest extent has been a shortage of detention accommodation. There has been pressure on the availability of their accommodation and training up their people in operating detention facilities has been an issue as well.

**Senator HANSON-YOUNG**—Would it be fair to say that the detention conditions in Australia are better?

**Senator Chris Evans**—It depends. If you have been the management unit at Villawood—

**Senator HANSON-YOUNG**—Yes, and I have.

**Senator Chris Evans**—Then I would suggest to you that there is an arguable case, which is why we have a major redevelopment of Villawood occurring.

**Senator HANSON-YOUNG**—So that is on par with what you have seen?

**Senator Chris Evans**—Sorry, I was half being flippant, but we have had some pretty poor detention facilities in the past ourselves. I think the officer would say—and it is my understanding—if you ask if their detention facilities as good as—it is funny we are having this debate. We usually talk about how horrible Christmas Island is.

**Senator HANSON-YOUNG**—I am going to get to that. That is outcome 4.

**Senator Chris Evans**—Our people are very keen to say how good Christmas Island is and how preferable it is to alternatives. It is a nice reversal of the debate. But if you are asking whether the conditions and the facilities are as good as Christmas Island—clearly not.

**Ms Keski-Nummi**—I want to make a couple of observations. Many of the asylum seekers are not kept in detention. Many of them are in what are more open community accommodation arrangements and people who are in detention who have had their refugee status determination completed and have been found to be refugees are not kept in detention. They also move into IOM community care and support until a durable solution is found for them, so refugees themselves are not kept in detention once they have been mandated.

**Senator HANSON-YOUNG**—My next question is about the detention facilities in Malaysia. Can somebody give me a bit of an insight into detention facilities in Malaysia?

**Mr Correll**—I am not familiar with those. I have not visited any of the detention facilities in Malaysia—unless any of my colleagues have—but I do not think we have great familiarity with those facilities.

**Senator HANSON-YOUNG**—In terms of the types of detention and the treatment of refugees in both Malaysia and Indonesia what are the protocols surrounding children?

**Ms Keski-Nummi**—I understand that in Indonesia children are usually not detained, but I would have to take that on notice and come back in relation to understanding all of the protocols. In relation to Malaysia, I would have to take that on notice and get some responses to you.

**Senator Chris Evans**—I have been a bit concerned about the debate about this in the last couple of days. I will just make the point which Ms Keski-Nummi made at the start: that Indonesia, while not a signatory to the convention, actually has a very good record in terms of non-refoulement. In fact there is a group of Vietnamese asylum seekers who have been found not to be refugees and who have been in that country for many years. Quite frankly, if they had been in Australia, I would have returned them to Vietnam, but the Indonesians are very tolerant and have made no attempt to compulsorily return anyone. They certainly have a commitment to non-refoulement of asylum seekers. So, while it is a developing nation and living conditions for both the populace and those seeking asylum in the country tend to reflect that level of development and wealth, to be fair to the Indonesians they have supported the UNHCR and have allowed us to support the UNHCR and IOM to ensure that they have high-quality processing and access to those things. As I say, there is no record of the Indonesians seeking to refole people. In this year's budget we provided additional funding to the UNHCR to support their operations. As I indicated, in terms of the Lombok group we have made it very clear to Indonesia that we will help them with protracted situations but will also be part of an international effort to assist them in that regard. New Zealand has certainly been playing its part, as well as some of the other nations. That will continue. That was also the case under the previous government.

**Senator HANSON-YOUNG**—Are you aware that in Malaysia there are 3,000 refugee children being detained arbitrarily?

**Senator Chris Evans**—I am not. Are you saying they are people who have been found to be refugees or that they are asylum seekers?

**Senator HANSON-YOUNG**—They are asylum seekers.

**Senator Chris Evans**—I just think we need to be careful.

**Senator HANSON-YOUNG**—Yes. I am not sure where their processes are up to, and that was going to be my next question. They are people who are being detained seeking asylum—3,000 children.

**Senator Chris Evans**—I cannot help. I am not aware. Are any of the officers able to—

**Ms Keski-Nummi**—Yes. It is correct that there are large populations of asylum seekers in detention, but as I said I would have to take it on notice if you want me to get some more information on some of those protocols.

**Senator HANSON-YOUNG**—Could you. I would like to know whether the figures I have are correct; they show that there has been an increase in refugee and asylum seeker children being detained over the last four or five years. The figure I have is now over 3,000, and I would like to know if that is correct. Leading on from that, obviously that is quite a concerning situation. In light of a discussion about Australia working with our regional neighbours about ensuring that we have proper programs and processes for giving people the avenue to seek asylum and lodge a claim, how are we working with Indonesia and Malaysia to ensure that we are not in a situation where we are allowing 3,000 children to be detained in one country? If it is happening in Malaysia, where else is it happening? It is not good enough just to push boats back if we are not going to work and ensure that those people have their rights upheld as well.

**Senator Chris Evans**—I do not have any specific knowledge of the conditions inside Malaysia that you refer to, but it is true that we have been working very hard by reinvigorating the Bali process to get much better regional engagement. Part of those objectives is to get more countries to sign up to the refugee convention. Part of it is to ensure that we have common legislation about prosecuting people smuggling and making it an offence. Those are all objectives of the Bali process. I think it is fair to say that countries like Malaysia are becoming more aware of the issues relating to people smuggling. They have had a particular focus on people trafficking and activities in their country and region in relation to those things.

The Bali process is starting to engage the region in understanding that this is a regional/global problem and that we all need to do more and work together. Each country has a slightly different focus, that was clear at the Bali process meeting I went to, but we are getting much better traction and engagement. The reality is that no single country is going to be able to deal with all asylum seekers or economic migrants. When I talk to the Malaysian minister he mentions the one million Bangladeshis he has inside his country who are no longer finding it easy to get employment due to the economic downturn. And I think I have problems! When I talk to him about people smuggling, he has to match that against a range of other immigration related problems that he has.

**Senator HANSON-YOUNG**—Minister, if I could just interrupt—

**ACTING CHAIR**—We are going to go to the afternoon break now.

**Proceedings suspended from 3.30 pm to 3.45 pm**

**ACTING CHAIR**—The committee will now resume. I understand the department has some answers to some questions that were taken on notice earlier in the day and some further information. Over to you Mr Metcalfe.

**Mr Metcalfe**—Thank you. Firstly, Senator Fielding asked me some questions earlier about screening arrangements in relation to war crimes and more specifically the case of Mr Guy Campos. I have, as promised, some information about how we go about those checks. There is quite a bit here, but I will read through it.

**Senator FIELDING**—Are you able to table that as well?

**Mr Metcalfe**—I think it might be best if I physically put it on the record, if that is okay.

**Senator FIELDING**—Could you table it as well.

**Mr Metcalfe**—I will table it as well.

**Senator FIELDING**—Thank you.

**Mr Metcalfe**—Australia has arrangements in place to identify people suspected of war crimes and prevent them from entering Australia. This includes a layered approach to border management, effective systems to identify persons of concern and a screening process to assess character issues relevant to human rights violations. Indeed, the department has a specialised unit that conducts war crimes screening on citizenship and visa applicants.

As I said this morning, individuals of war crimes concern are identified where we know about them via the movement alert list, or MAL. Additionally, automated profiles may identify an applicant with particular characteristics for further checking. Individuals may also be identified during the visa application process as well as through information provided by the community. Those who are identified as being of war crimes concern are referred to our war crimes unit for detailed screening procedures. That process includes comparing the information provided by the applicant with information from a range of open, and sometimes classified, sources about conflicts, military operations, human rights abuses and individuals indicted by international tribunals.

Information sources include: credible, fully verified reports flowing from national courts; the ad hoc criminal tribunals established by the United Nations, such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda; or tribunals established in cooperation with United Nations, such as the Special Court for Sierra Leone, as well as the International Criminal Court set up under the Rome Statute. Sources also used in war crimes assessments include ad hoc reports by organisations such as Amnesty International and Human Rights Watch. These provide valuable collateral information, especially where no other information exists.

The Commission for Reception, Truth and Reconciliation in East Timor, the so-called CAVR report, was established by the United Nations Transitional Administration in East Timor as an independent authority inter alia to inquire into and establish the truth regarding human rights violations committed in the context of political conflicts during the 1974-1999 period in East Timor. Allegations about individuals have not been tested in the courts. Without a formal conviction of an individual from a recognised court or tribunal, the department is obliged to use information cautiously, particularly so as not to assume the role of a court or tribunal in coming to a definitive conclusion about a person's guilt or innocence. I should note that the International Court of Justice, the ICJ, does not produce the kind of information needed for war crimes screening purposes. It is not a criminal court and it has no jurisdiction to try individuals accused of war crimes or crimes against humanity. Each case is considered on its merits and after consideration of all the relevant information and circumstances relating to the case.

In relation to the movement alert list, as I said this morning, MAL is a key tool used by the department to apply the legislation governing the entry to and presence in Australia of noncitizens who may be of character concern. The MAL is derived from Australian immigration compliance national and international law enforcement, security and other

sources. In terms of war crimes, people may be listed on MAL when they have been indicted by international criminal tribunals and similar bodies or when people of war crimes concern come to the notice of the department. Currently we hold more than 8,000 records relating to persons who may have committed war crimes. The department also uses the so-called safeguards system, which is an automated profiling system, to monitor visa applicants and to alert our processing staff should applicants match predetermined risk profiles. There are currently active profiles for nationals from around 10 conflict zones around the world, and the department continues to develop profiles as information becomes available.

In April 2007 the department and counterpart agencies in Canada, the United Kingdom and the United States of America signed a memorandum of understanding to assist each other in investigations relating to war crimes, crimes against humanity, genocide and identifying suspected war criminals. Regular information exchanges occur, including inquiries about an individual's participation in a conflict and their association or membership of a group that directly or indirectly has been involved in genocide, war crimes or crimes against humanity. Other information is sourced through the memorandum of understanding from working aids, specific country studies and topical reports or research projects. In addition to the memorandum of understanding that I signed over two years ago, my department has conducted several personnel exchanges with its Canadian counterpart. These have led to improvements in information exchanges and procedures.

I am advised that Mr Campos was not listed in the Commission for Reception, Truth and Reconciliation report. I understand that he is not listed by any war crimes tribunal, nor is there a warrant for his arrest. Following checks conducted after he arrived in Australia, the Ministry of Justice in East Timor advised there was no record of his having been convicted or sentenced to any term of imprisonment in East Timor. He was listed on the Movement Alert List a few days after community information was raised in relation to him, but that was only as a warning and there is absolutely no suggestion that there is strong evidentiary material behind it. Senator Fielding, you asked also whether we had made any procedural changes following the Campos case. I can advise that we have not changed our procedures, but we will continue in the most thorough way possible to monitor the international scene for any credible information sources on any convicted or indicted war criminals.

**Senator FIELDING**—I am led to believe that Guy Campos was charged and convicted but subsequently acquitted. Are you aware of that?

**Mr Metcalfe**—That is not the information I have, but I will certainly follow that through. If there is anything to add on notice, I will do that.

**Senator FIELDING**—I am also led to believe that, when the Commission for Reception, Truth and Reconciliation report was handed over, court documents were also handed to the embassy in East Timor, so it is worth checking to see whether that has been picked up somewhere.

**Mr Metcalfe**—I am certainly happy to do so.

**Senator FIELDING**—Thank you.

**Mr Metcalfe**—Acting Chair, Senator Colbeck asked some questions this morning about the call centre in Launceston. Ms Hand, who you will be pleased to know is a fellow Tasmanian, is able to provide a little bit more information.

**Ms Hand**—I can confirm that there have been no formal negotiations between the department and the property owner for the contact central call centre in Launceston. In February this year there were some very exploratory discussions about the price, if we were interested. In the middle of calendar year 2009 Mr Shane Hawkes, who is the senior manager of investment attraction and business services in the department of economic development and tourism in Tasmania, sent us an email wondering whether we would be interested and advising us that the call centre was ready to be put to market because it had been refurbished. We indicated through our contact centre national manager in Canberra, David Arnold, that we were in no position to make any decision and that they should proceed in terms of putting that contact centre to market. Of course, we have just got the endorsement from the minister and a number of other people on our long-term client service delivery model and global strategy, so I can commit from here that we will go back to the landowner and formally advise them of the results of that and the fact that we have a global strategy and probably will not be proceeding with that call centre in Tasmania.

Acting Chair, there were two other questions that Senator Fierravanti-Wells asked me earlier that I would like to respond to. One question related to stress leave. I can confirm that what I said earlier was true, that there has been a very significant drop in stress related leave in the last three years. In financial year 2007, we had 755 weeks equivalent of that type of leave; in 2008, 480 weeks; and in 2009 year to date, 19 weeks. In terms of mental stress claims, we had 14 in 2007, six in 2008 and one in 2009 year to date. So the measures that we have put in place to date are absolutely beginning to result in quite a significant drop.

Senator, you also asked about contractors. I can confirm that we have seen the number of contractors drop in the last three years. On 30 June 2007, we had 686, the majority of whom were located in the IT areas. By June 2008, the number dropped to 665. As at 20 October 2009, we have 612. We also have some quite detailed plans over the next 12 to 18 months, through Mr Correll's area when the SFP program ceases on 30 June 2010, to see those contractor numbers drop even more. That is the situation.

**Mr Metcalfe**—Senator Fierravanti-Wells earlier today also asked if we could provide information about the various noncompellable powers that the minister has under the Migration Act. I have a short document here that sets out those various powers and I would be very happy to table that.

**ACTING CHAIR**—Thank you. Is that all the outstanding information?

**Mr Metcalfe**—I think we are up to date.

**ACTING CHAIR**—Okay. Back to Senator Hanson-Young.

**Senator HANSON-YOUNG**—Thank you. In the current situation where we are working with our regional neighbours and if we are going to continue down the path that the Prime Minister is indicating, what guarantees have we got that people on board boats that are pushed back from Australian waters or not allowed to reach Australian waters will have their claims

processed fairly and that they will be treated fairly, and that there will be no children in detention?

**Senator Chris Evans**—Before I ask Ms Keski-Nummi to respond to the question of the arrangements with Indonesia in more detail, no boats have been pushed back. I am not sure what you are referring to in that regard. The boat that had been at port in Merak in recent days that has been subject to a great deal of publicity was intercepted in Indonesian waters by Indonesian authorities.

**Senator HANSON-YOUNG**—I did say pushed back or not given time to reach Australian waters.

**Senator Chris Evans**—Sure. I want to deal with the push back, given you put it on the record. As you know, there was a distressed safety at sea issue and we dispatched an Australian Navy vessel and a Customs vessel to assist a vessel in distress, which was, as I understand it, and I am no expert in these things, in international waters but in the Indonesian rescue zone. In relation to the agreement with Indonesia and how they deal with asylum seekers, I will ask the officers to respond.

**Senator HANSON-YOUNG**—Just to reiterate. What guarantees have we got that people will have their claims processed fairly, that they will be treated fairly and humanely and that, above all else, children will not be held in detention?

**Mr Hughes**—Ms Keski-Nummi will speak shortly about Indonesia and the record that people have been given the space there to have their claims heard and to get a durable solution if they need it. I want to say something about the broader aspects of the Asia-Pacific region, going back to an earlier question you asked before the break. Broadly speaking, the Asia-Pacific region has, I think, about a third of the world's refugees—I will correct that figure if I am wrong—stretching from very large numbers in the largest protracted situation, that of Afghans in Pakistan, through to large numbers of people in Thailand, Malaysia and Indonesia and some residual populations still in Papua New Guinea. There will no doubt continue to be displacement in the future in the Asia-Pacific region. Those situations of displacement will be resolved largely in the territory of other countries in the Asia-Pacific region. The Indochinese refugee situation was the classic example of that and the classic example of very large numbers.

We have a situation where governments in the region have been responding in an ad hoc way to each particular flow of refugees or circumstance of internally displaced people rather than responding through what might be called an enduring protection framework, where we have an understanding with burden sharing and responsibility sharing throughout the region. That is really the long-term objective we are trying to work to, and obviously it would be highly—

**Senator HANSON-YOUNG**—I assume that is a sharing of resettlement as well.

**Mr Hughes**—It is responsibility sharing across the board. That is the long-term situation we are trying to work to. It would obviously be ideal if all the countries in the Asia-Pacific region were signatories to the refugee convention. We are a long way from that at the moment, but I think that what Ms Keski-Nummi was speaking about before was working with our regional partners through the Bali process and through a series of other processes. We are

injecting protection dimensions and cooperation with UNHCR into the management of irregular flows in the region, including of asylum seekers. To get to the ideal of a long-term framework in the region, we should recognise the reality that most protection situations will be handled in the region. They will not end up in Australia; they have not historically for the last 40 years, and they will not in the next 40 years. They will have to be managed within the region and with a responsibility-sharing framework. I think that was the point that Ms Keski-Nummi was making before. I think we have already made very significant progress in Indonesia in terms of acceptable arrangements, and I think that is what Ms Keski-Nummi will elaborate on.

**Senator HANSON-YOUNG**—I accept that that is the long-term objective, and I think you are absolutely right; taking an ad hoc approach based on who can thump their chest the hardest at that particular time is not an appropriate way of managing the movement of people, particularly asylum seekers. But in the short term I want to know what guarantees we have for the people that are arriving in Indonesian waters by boat, before they have reached Australian waters. If they are going to be processed in Indonesia and not allowed to come or be brought to Australia, what guarantees do we have that they are going to be protected, that we will not have children in detention and that their case will be processed in some timely manner?

**Ms Keski-Nummi**—I think I mentioned to you in my previous response that there is a directive from the Director General of Immigration that was put out in 2002. It is very specific about a number of things. One is that no asylum seeker will be deported, another is that people who raise protection or asylum issues must be referred to UNHCR and a third is that the rights of asylum seekers who are issued with an ID card and registered by UNHCR must be respected. I think those three particular elements of that directive provide the assurance that you are looking for on how people will be treated and processed and the assurance that their dignity will be respected while they are going through the asylum process. That directive has been in existence since 2002, and to my knowledge there has never been an instance where an Imigrasi officer has not abided by those particular directives of the director general.

In relation to children, my understanding is—and, as I said, I will give you a more fulsome response in relation to this—that children and families are not detained. They go into community accommodation and they are supported by IOM. There may be a short period of time when they may be in more secure arrangements, and I would have to find out that. But that is before an assessment is made that they are raising protection or asylum issues. My understanding is that women and children in particular are housed in community accommodation while waiting for their status determination to be processed.

**Senator HANSON-YOUNG**—This is in Indonesia.

**Ms Keski-Nummi**—This is in Indonesia.

**Senator HANSON-YOUNG**—And you will get back to me about the Malaysian situation.

**Ms Keski-Nummi**—That is correct.

**Senator HANSON-YOUNG**—Moving along, in light of the current situation with the *Oceanic Viking*, what are our legal obligations when we have people on board an Australian

ship in international waters asking for protection—asking to have their claims for asylum heard—what are our legal obligations under international law to deal with that cry for help?

**Senator Chris Evans**—Senator, the questions about international law and rescue at sea are not expertise within this department. I understand that Mr Bill Campbell, from Attorney-General's, answered questions on this matter last night at estimates. I am not sure if the secretary is able to add anything, but this is not our core business, if you like—

**Senator HANSON-YOUNG**—Surely the department has some knowledge about what our obligations are in granting asylum to people, if they are on an Australian boat.

**Senator Chris Evans**—You are talking about the law of the sea. We do not grant asylum to people on a boat. Maybe if you could be more specific—

**Senator HANSON-YOUNG**—In terms of giving them an opportunity to have their claim assessed and processed. Surely the immigration department has some view about what our legal obligations would be when you have somebody on an Australian ship in international waters asking for a claim to asylum.

**Mr Metcalfe**—Senator, we do not have particular legal expertise on those matters. We would always take advice from the Office of International Law in the Attorney-General's Department on those issues. Indeed, I think it is fairly well understood that Mr Campbell is probably Australia's leading expert on issues associated with the law of the sea and public administration, so there is nothing I can add to what he may have said last night.

**Senator HANSON-YOUNG**—Okay. Moving along, but still talking about the region, the role of UNHCR has been mentioned numerous times in relation to our partnership with Indonesia. Is it your understanding that the UNHCR has been refused access to Tamil refugee camps by the Sri Lankan government?

**Ms Keski-Nummi**—Tamil refugee camps in—

**Senator Chris Evans**—In Sri Lanka?

**Senator HANSON-YOUNG**—In Sri Lanka. Are you aware of those reports?

**Ms Keski-Nummi**—I am not aware of those reports, so I would have to take that on notice.

**Senator HANSON-YOUNG**—Could you please take that on notice—the reports that the UNHCR has been refused access to these internally displaced camps by the Sri Lankan government. Thank you.

Moving on to more general issues, can you tell us what the figures are for people who seek asylum once they have arrived via plane, and therefore go through the onshore process, as opposed to people who arrive by boat? I am thinking of the 2008-09 calendar.

**Mr Hughes**—Senator, just to clarify: are you talking about unauthorised air arrivals—in other words, people who apply without a visa—as opposed to onshore protection applications, most of whom by definition would have arrived by air?

**Senator HANSON-YOUNG**—Which figures are the clearest?

**Senator Chris Evans**—I think the evidence will be that most people who arrive and then claim asylum come in on some sort of visa—a tourist visa, et cetera. We have very few who effectively come in without a visa, because we do the border check at the previous border. Are you able to give both figures, Mr Hughes?

**Mr Hughes**—I do not have both figures with me.

**Senator HANSON-YOUNG**—Which figures do you have? Ideally what I am—

**Senator Chris Evans**—Asylum claims onshore, effectively.

**Senator HANSON-YOUNG**—Asylum claims onshore as opposed to those people who seek asylum and have been intercepted and have to go through the offshore process.

**Mr Hughes**—The figure I have is a combined one, although I am sure we have more detail in other numbers and we will check them shortly. In 2008-09 there were 5,304 protection visa applications lodged, but that actually includes protection visa applications that resulted from irregular maritime arrivals. We will check our other figures and give that to you shortly.

**Senator HANSON-YOUNG**—Could you? That would be great. When the Joint Standing Committee on Migration was writing its report on the issues of detention, including detention facilities and alternatives to detention, one of the key questions that we wanted to discuss was the cost of detention. At that stage we were not able to publish the full costs of running the various detention facilities both onshore and on Christmas Island because of where the contracts were up and the changeover between G4S and Serco being finalised. Now that that has been done, can we have a discussion about the daily cost of running the Christmas Island detention centre and the annual cost as well?

**Mr Metcalfe**—Just before we respond to that, I should say that we are still in a transition from one provider to another. I think you were on Christmas Island recently and would be aware that Serco has only just taken up work there and is yet to transition to taking over from G4S in the mainland centres. We are still in contract negotiations in relation to the provision of services at immigration transit accommodation centres and residential housing complexes, so there is still a significant transition process underway.

**Mr Correll**—I can, however, comment on the costs in relation to Christmas Island. The contract for services there has been entered into with the new provider, Serco. The overall costs on the island have a fixed and a variable component. The fixed component—basically that assumes there are no people involved in the services; it is just the process of maintaining the various sites—is an overall figure of \$9.98 million. That is per annum. That covers fixed maintenance costs, security and variable fixed costs, if you like—when I say that I mean for ongoing things like utilities.

Then there is a component that relates to the costs that are driven by the number of clients we are servicing. That goes to things like detention services, interpreting services, charter and freight costs, health services and departmental staff costs. The overall figure for the period of the last 11 months, 2 October 2008 to 31 August this year, is \$32.5 million. That is in addition to the fixed cost component.

**Senator BARNETT**—Sorry, what period is that for?

**Mr Correll**—From 2 October 2008 until 31 August 2009. It is very much a cost structure that is driven by the client numbers arriving on the island and is based on invoices for services provided. It is therefore slightly lagged, which is why I cannot give you the figures to the end of September at this point. But the total figure for that period of time, 2 October 2008 to 31 August 2009, was \$32.5 million, which is in addition to the fixed component of \$9.98 million.

**Senator HANSON-YOUNG**—Does that include the transport of staff on a three-week rotation?

**Mr Correll**—That covers staff costs and allowances. It also includes costs associated with aircraft charter, health services, interpreting services as well as the direct detention services cost.

**Senator HANSON-YOUNG**—Are you able to give us the per client amount?

**Mr Correll**—No, not easily. As you would imagine that would require quite a calculation to try to determine that. The client numbers have varied significantly over that period of time, so it does not work quite as easily as that.

**Senator HANSON-YOUNG**—Are you able to give us the same breakdown for the mainland detention facilities, the IDCs? I understand you have not finalised the contracts for the transit centres.

**Mr Metcalfe**—We have finalised the contract, but we are still transitioning the service provider. We will see what we can do to help.

**Mr Correll**—I can comment on the detention centres but not, as Mr Metcalfe indicated, the transit accommodation or residential housing. I would also emphasise that where we use an average variable cost per detainee per day, it will be greatly influenced by the number of clients that have been in the particular centres concerned. If the numbers there have been very low, it pushes up the average unit cost.

**Mr Metcalfe**—In saying that, you would be aware, Senator, that very few people are in immigration detention in mainland centres these days for a range of reasons, including the very strong drive to resolve cases quickly and before people need to go into detention. Those numbers have come down sharply in the last several years.

**Mr Correll**—The broad figures are as follows: Darwin immigration detention centre, \$4.6 million fixed costs and \$1,836 per day. That is on an average variable cost and that per day figure is relatively high because Darwin has been used predominantly for illegal foreign fishers and there have been very few illegal foreign fishers.

**Senator Chris Evans**—I am a bit concerned about the per day figures not because we cannot work them out; we have had an average of two foreign fishers a day in, say, a 400-bed detention centre. Therefore, the average per day cost is ridiculous, in the sense that it does not mean anything. The total cost of the centres is better. What it costs the department, I think, is the better figure.

**Mr Correll**—The total overall costs for 2008-09 are: Maribyrnong, \$8.2 million—

**Senator HANSON-YOUNG**—Just to clarify, are you giving me the totals now, not the fixed and variable?

**Mr Correll**—I am giving you the straight fixed costs. For Perth, \$4.6 million—

**Senator BARNETT**—Is there something you could table?

**Senator HANSON-YOUNG**—You could table it.

**Senator BARNETT**—We have been through this. We had the Senate committee report from two months ago where you provided that information. If you could just table it, I am sure we would all appreciate that.

**Senator HANSON-YOUNG**—That is fine.

**Senator BARNETT**—We are constrained by time today.

**Mr Metcalfe**—Certainly, we are very happy to table it, but I would prefer to do it on notice because we do not have a document that actually indicates the total cost. We have a document that indicates the fixed cost and the variable cost per client, and that becomes a meaningless figure if you only have one or two clients. I think we need to produce a figure for the committee that indicates the cost of running each centre over the course of the year, and we might provide some information as to the average number of people who may have been in any particular centre.

**Senator HANSON-YOUNG**—Thank you. Does the variable cost for Christmas Island include the fee that is used to service the independent legal assistance in the initial stages of somebody's application?

**Senator Chris Evans**—Do you mean whether the IAAAS costs are funded separately or not?

**Mr Correll**—From a quick examination, I do not believe the IAAAS costs are in there.

**Senator HANSON-YOUNG**—Can you take that on notice as well.

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

**Senator FIERRAVANTI-WELLS**—From my memory, I think that was all covered in the report by the joint standing committee. In fairness to this committee, Senator Hanson-Young, I really think that a lot of this was traversed. We have gone up hill and down dale over this.

**Senator HANSON-YOUNG**—My point is that it may have been given to the committee but it was not on the public record, if you remember. So now that we have got through a stage of the contract I would like it to be publicly available. So, if you could give it to me on notice, that would be great.

**Senator Chris Evans**—We are happy to make it publicly available. We will get all that together and table it as quickly as possible.

**Senator HANSON-YOUNG**—Thank you. I have some questions about Christmas Island, but I am happy to yield to you if you want, Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS**—That is all right, Senator Hanson-Young. That will cover all your areas, so I would assume that you will have finished your questions after you have finished questions on Christmas Island. You have been at it for about an hour now.

**Senator HANSON-YOUNG**—Yes, and I did wait all day till 2.30. I think everyone needs to show a little bit of grace in the committee process. I will continue with my questions.

Firstly, I just want to say thank you to the department for hosting me last week. It was a really insightful visit as a result of being able to have the access to the facilities that I had. I just want to extend thanks to the department and also to the minister. It was very helpful.

**Mr Metcalfe**—Thank you, Senator; it is very gracious of you to say that.

**Senator HANSON-YOUNG**—Obviously it brought a lot of questions to mind, and I will not give them all to you today, but I will lodge a number on notice. One of the areas I wanted to look at and get some feedback from you on was the access to interpreters on the island, because that was an issue of concern to me. There seemed to be a shortage of appropriate interpreters. The rationale that staff explained to me was that it is hard to get people over to the island. What is the process for reviewing the ongoing need for interpreters, and how quickly can gaps be filled if everybody knows what is going on?

**Mr Correll**—There is ongoing active management of the operations on Christmas Island. Every week we have an overall management review of how processing is performing, whether any bottlenecks to the processing of claims on the island are being experienced and whether there are any gaps in resourcing. We take action in that way. We use our TIS service for interpreters on the island. Sometimes we find when there is a boat arrival that we have to swing interpreters who have perhaps been used in interviews in one area across into another area at short notice. That is a function of the irregular activity that occurs. Generally we keep it very tightly monitored and draw on overall TIS and other independent services for interpreters. I might ask my colleagues to comment further.

**Ms Wilson**—Senator, thank you for that feedback about your visit. I heard that you got to see and do quite a bit while you were on the island. We currently have 41 interpreters on Christmas Island, across a range of language groups. They are usually there for three to six weeks, and we manage them proactively on a forward program, making sure they also get rests and breaks. We get early advice of boats likely to be intercepted, and we respond proactively to upcoming needs to ensure we have interpreters arriving on the island in time for the reception of boats to the extent that we can.

**Senator HANSON-YOUNG**—I have one specific concern. There are two Somalians, a female and a male, being detained in the construction camp, and there is no Somali interpreter on the island at the moment. The woman cannot speak any English, so she is obviously very isolated and, from what I saw, quite disengaged and not quite clear on what is going on. I just give you that on notice. It would be good to get that rectified.

**Ms Wilson**—We will follow up.

**Senator HANSON-YOUNG**—I have two final questions. This one may need to be answered by the minister. We will see how we go. It is about the need for legislation to deal with the claims of stateless people and what the update is on managing the cases of stateless people, understanding that the complementary protection legislation does not cover them. I am wondering whether there is going to be any movement and whether there is a commitment to dealing with that situation.

**Senator Chris Evans**—I will ask Ms Keski-Nummi if she is able to help in the detail, but certainly in broad terms I have commissioned some work on that and we are looking at how we can advance it. One of the first things we did was to have a look at international

experience, which was uninformative in the sense that no-one seems to handle it well. I thought we could have a look around for international models, and the feedback I got from the department was that there was not much around that provided much help. So we have been doing some work on it and trying to look at how we might progress it. As I said, with these things you think, 'I'll see who does it best and have a look at it,' and the feedback was, 'We probably do it as well as anybody does it.' But Ms Keski-Nummi is probably better able to answer in detail.

**Ms Keski-Nummi**—Currently, as with some other areas, if there is an issue of statelessness and there is not a protection dimension it is usually handled through the ministerial intervention process. I do not recall over the last few years having to deal with an individual who was stateless where there was not some other way of being able to resolve their status in Australia.

What we are doing currently, as the minister said, is looking at international practice and, as he noted, there is not much around. We are looking at and working with some groups in the development of a document that will look at the options we have to deal with statelessness within the current visa framework. Not everyone who is stateless necessarily has a protection dimension, and we need to look at whether there are other visa options we can use rather than using the protection visa, which would probably not be an appropriate visa to use where statelessness is the issue but where protection is not an issue. We are preparing some documentation around that and some options for the minister with a view that before April there will be options we can actively pursue to resolve that particular issue prior to the commencement of the complementary protection arrangements.

**Senator HANSON-YOUNG**—Thank you. Could the minister update us on the situation relating to the two Kenyan women who are reported to be facing, in the absence of any complementary protection legislation, deportation and the threat of female genital mutilation if they are returned home. Have you dealt with their case yet or are we still waiting for a resolution?

**Senator Chris Evans**—I will ask the officers to double-check. My recollection is that they have not come back up to me. I would also make the point that claims made in the press are not necessarily the best guide to all the detail of a case. I will deal with the case on its merits when it comes to me and I do not want to comment on it. I have seen one of the files previously I think. I got a lot of feedback and emails from people who read about it in the paper and were instant experts. I have always found that every immigration case is much more complex than that and usually much less black and white. I indicated, and I think the department indicated, that we would not be removing anyone until they had had the chance to place their case and, as far as I know, they have not come to my office yet.

**Ms Keski-Nummi**—We are currently assessing an intervention request, and I think that that is where it is at the moment. We received one in late September and one in late August. The two will be assessed together and will go to the minister. That is really as much as I should say about those cases.

**Senator HANSON-YOUNG**—What would the general time frame be for how long something like that would take once you have the claim?

**Ms Keski-Nummi**—It depends on what documentation has been provided as to what we need to assess and verify, and I do not have those details. Because they are individual cases I would not really talk more broadly about them anyway.

**Senator Chris Evans**—The notes I have just been made aware of indicate a repeat request was received on 22 September 2009, so the actual request has only been with us for a few weeks and the department will then work up and assess the claim and then if it meets the guidelines it will be forwarded to me. But given the notoriety and any indication that we would not deal with it first I am sure the brief will come to me at some stage.

**Mr Hughes**—I want to provide the answer I agreed to research for Senator Hanson-Young—that is, that the number of onshore protection visa applications in 2008-09 minus those resulting from irregular maritime arrivals was 5,098. That is not the figure for those resulting from unauthorised air arrivals. I will attempt to find that out for you separately on notice.

**Senator HANSON-YOUNG**—And the offshore claims in that period?

**Ms Keski-Nummi**—The figure that Mr Hughes is quoting to you is for the protection visa applications and as you would know we have a non-statutory process, so there were 206 in the program year to 30 June that were granted a protection visa, who had been through the RSA process and the bar had been lifted and were then granted a visa. That is why the numbers correlate there. The others would then be in this program year or were still being processed through the non-statutory process prior to 30 June.

**Senator BRANDIS**—Mr Metcalfe, are you aware of evidence given to this committee last night by AFP Commissioner Negus concerning a document prepared as he told us within the AFP entitled *Strategic intelligence forecast—transnational criminal trends and threats to Australia*?

**Mr Metcalfe**—I am to the extent that I heard it on *AM* this morning.

**Senator BRANDIS**—Is that the only extent to which you are aware of it?

**Mr Metcalfe**—It is. I have been here all day and I doubt if a transcript of the evidence given last night is even available now. I woke up to hear you and Commissioner Negus talking about the issue.

**Senator BRANDIS**—Pausing there, I just do not want there to be any confusion at all here. I wanted to know not so much whether you heard the exchange yesterday but whether you are aware of the document that was the subject of the exchange.

**Mr Metcalfe**—I thought your question was about whether I was aware of the discussion that you had.

**Senator BRANDIS**—That is my fault. Please excuse me. What I am trying to get to is the document itself. Are you familiar with that document?

**Mr Metcalfe**—My longstanding position on any issues that relate to possible intelligence matters is not to publicly comment about them.

**Senator BRANDIS**—I am not asking you to comment about the content of the document. I am asking you whether you are familiar with the document.

**Mr Metcalfe**—My response is the same.

**Senator BRANDIS**—Commissioner Negus told us last night that the document or a version of the document is distributed to your department, so that is a matter placed on the public record by the commissioner himself. Given that, I am at a loss as to why you would feel reluctant to confirm what the commissioner himself has told us.

**Mr Metcalfe**—As you would expect, we receive many reports from different agencies on all sorts of things. I am obviously aware of public discussion about the document. If you are asking me to confirm Commissioner Negus's evidence which I have not had the opportunity to review other than hearing media reports, I am aware of the document but beyond that I do not think it is appropriate for me to comment.

**Senator BRANDIS**—The AFP in a written answer to a question I placed on notice during the last estimates round said:

A classified document titled 'Strategic Intelligence Forecast - Transnational criminal trends and threats to Australia' was being prepared within the timeframe of the Senator's question.

I asked him about the document of that title being prepared in September/October 2008.

This document included a component relating to people smuggling. The document was finalised on 27 March 2009 and subsequently disseminated internally within the Australian Federal Police and externally to a number of Australian Government agencies.

That is the entire written answer provided by the Australian Federal Police. I am able to favour you with a copy of it if you like. When last night I asked Commissioner Negus which of the Australian government agencies were referred to in the written answer, he told this committee—and there were other senators, including the chairman, who was there at the time, who will remember the answer—that your department, DIAC, was one of the Australian government agencies on the distribution list of that document. Commissioner Negus has put that without any reservations into the public arena, so we know, unless Commissioner Negus is to be disbelieved—which, of course, he is not—that your department received that document. I am merely, in almost, as it were, a preliminary way to what I am next going to ask you, asking you to corroborate what Commissioner Negus has said.

**Mr Metcalfe**—I have already done that.

**Senator BRANDIS**—Have you? Okay. You corroborate that. Thank you. Commissioner Negus also told us that there were two versions of the document. The word he used was 'sanitised': there was a sanitised version and a version from which no material had been redacted—'redacted', I should say, is my word—the document in its original form was distributed to about 20 senior officers of the Australian Federal Police and the document in its sanitised form was distributed to agencies, including yours. Without going to the content of the document, was it apparent to you that the copy of the document distributed to your agency had been sanitised—had had material taken out of it?

**Mr Metcalfe**—That is not my personal recollection, but I would need to check to see if there was any marking or other information on the document which indicated that it was in some form of amended or altered form from some original document.

**Senator BRANDIS**—I do not know where we got this word ‘redacted’ from. It is obviously one of these American words.

**Mr Metcalfe**—People use it a lot these days. I think lawyers have given it to us.

**Senator BRANDIS**—I think American lawyers!

**Mr Metcalfe**—Quite possibly.

**Senator BRANDIS**—All right. Would you kindly take that question on notice?

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

**Senator BRANDIS**—In view of the answer that has come from you, let me rephrase it very carefully to make sure that we are both talking about exactly the same thing. I would like to know whether the copy of the document—that is, the document referred to in written answer No. 57 to my questions in the May estimates—entitled ‘Strategic intelligence forecast: transnational criminal trends and threats to Australia’ was, in the form in which it was received by your department, evidently redacted or sanitised in any way or whether it was apparent from its face that material had been withdrawn from it.

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

**Senator BRANDIS**—To fully inform you: Commissioner Negus told us this document is produced every two years. Has DIAC been on its distribution list for as long as you know?

**Mr Metcalfe**—To be honest, I am just not sure.

**Senator BRANDIS**—Can you take on that notice, please.

**Mr Metcalfe**—I will take that on notice. We receive lots of reports from lots of people. I would have to check as to that particular document and whether we received it or had received it in the past.

**Senator BRANDIS**—Given, as Commissioner Negus was at pains to point out last night and as Mr O’Connor was at pains to say in the House of Representatives about 2½ hours ago, this is a highly sensitive document, I think you will want to take the next question on notice too. Can you tell us what handling procedures are required of you as a recipient of the document by the Australian Federal Police to preserve its security? And, if those handling procedures are in the form of a written instruction that accompanies the document, would you be able to produce to the committee the instruction—not the document itself of course but the instruction in relation to the handling procedures for the document?

**Mr Metcalfe**—I will take that on notice in relation to the particular document, but it would be my usual expectation that documents that relate to classified criminal intelligence or national security intelligence would generally fit under the handling requirements of the protective security manual, a document issued to Commonwealth agencies. Our department is cleared and some officers are cleared to receive material that is classified up to the highest levels of national security classification, and we take every proper step to ensure it is appropriately protected.

**Senator BRANDIS**—Did the document, in the form it was received by your department, deal with people-smuggling?

**Mr Metcalfe**—I believe that starts going into issues as to the contents of the documents and I would prefer to return to my original answer: I do not think it is appropriate in a public forum such as this for me to respond to questions that go to intelligence matters.

**Senator BRANDIS**—All right. Fair enough. Let me come at this in another way. Does your department receive advice from agencies, including the Australian Federal Police, from time to time in relation to people-smuggling?

**Mr Metcalfe**—Yes.

**Senator BRANDIS**—Without going to the substance of that advice, can you tell us what form that advice takes? I am sure there is a variety of different ways you receive such advice. Can you just take it us through it—whether they are documents, verbal briefings, meetings or other forms of communication? Just take us through the sources of advice to your department from the AFP concerning people-smuggling.

**Mr Metcalfe**—Just the AFP?

**Senator BRANDIS**—For the moment, just the AFP. And then I will ask you about other agencies.

**Mr Metcalfe**—I will correct this on notice if I do not answer the question completely. It is my expectation that from time to time we would receive written material. Certainly, my officers are involved most often in interagency discussions, which may involve more than one agency, in oral briefings, and indeed I participate in meetings of agency heads in which these issues are discussed verbally from time to time. Other officers at other levels would also participate in oral briefings on these issues. We obviously work very closely with the Federal Police and other agencies in overseas posts as well—Australian embassies and consulates—and my expectation would be that there would be a similar exchange of information in those locations.

**Senator BRANDIS**—Dealing with the first category of types of information you mention—that is, written information—can you be more specific? Presumably written information runs the whole gamut from reports to alerts or warnings about an imminent or urgent situation, which may come by way of email or some other more immediate form of communication, is that right?

**Mr Metcalfe**—That is correct. My expectation is that ordinarily this communication would come to a specialised area within the department.

**Senator BRANDIS**—What is that area called?

**Mr Metcalfe**—It is the intelligence branch, where we have staffed with appropriate clearances and access to appropriate secure communication methods. That type of information, as we have previously discussed, could take the form of more formal reports or more informal communication which might come through via secure email or some other form of written material.

**Senator BRANDIS**—Is the document that I have been asking about, ‘Strategic intelligence forecast—transnational criminal trends and threats to Australia’, at the highest level of classification of documents your department receives from the AFP?

**Mr Metcalfe**—I am not sure; I will take that on notice.

**Senator BRANDIS**—Has the department received advice—I will not go to the content of it—from the AFP in relation to the recent increase in the number of unauthorised boat arrivals and the increased activity of people smugglers in Indonesia?

**Mr Metcalfe**—Yes.

**Senator BRANDIS**—Is it possible for you, in your own professional judgment, to identify to the nearest month when people-smuggling activity and boat arrivals began to increase most markedly?

**Mr Metcalfe**—I think it is a matter of public record as to when we started to see an increase in boat arrivals: around 12 months ago.

**Senator BRANDIS**—About last October. All right. At or shortly before that time, presumably you were alerted to the imminence of this increased level of activity by partner agencies, including the Australian Federal Police.

**Mr Metcalfe**—We had been aware for quite some time of the global increase in asylum trends. My department participates in significant international exchanges, particularly in Geneva through the United Nations High Commissioner for Refugees and through the intergovernmental consultations on asylum and refugees, which were clearly pointing to a growing trend globally of displaced persons and people who may be seeking protection. We had of course been aware of the very significant numbers of people moving to Europe and North America. Of course, we were aware of the fact that we were seeing people coming into our region as well.

**Senator BRANDIS**—I am not going to get into a debate with you, Mr Metcalfe, about the so called push and pull factors. I think Senator Fierravanti-Wells may have some questions along those lines. I am trying to establish the manner in which your department engages with other agencies, most particularly the AFP, in making itself aware of these trends.

**Mr Metcalfe**—As I have said earlier, we go to the whole range of agencies and the AFP is but one. There are other Australian agencies involved in this issue. We work very closely with counterpart agencies in the region such as Indonesian, Malaysian, Thai and Singaporean immigration authorities and so on. We work particularly with the UNHCR and the International Organisation for Migration, which had been pointing for quite some time to increased numbers of registrations at UNHCR offices in the region and the movement of people more generally in the region.

**Senator BRANDIS**—Mr O'Connor, the Minister for Home Affairs, told the House of Representatives a little earlier this afternoon, speaking of the document which I have identified—I am quoting from the green of the *Hansard*:

... intelligence documents are produced for operational use by the AFP ... They guide the operational decisions of the AFP and its partner agencies.

Presumably DIAC is a partner agency of the AFP when it comes to the issue of people smuggling; I do not think that is controversial.

**Mr Metcalfe**—No, not at all.

**Senator BRANDIS**—Your operational decisions in DIAC, as Mr O'Connor said, are guided by, among other things, intelligence reporting from the AFP.

**Mr Metcalfe**—They are one of several components that go to our strategic decision making in these areas, yes.

**Senator BRANDIS**—And the AFP warned you of a marked spike or an imminent spike in these activities I think you said about 12 months ago.

**Mr Metcalfe**—No, you are putting words in my mouth, Senator.

**Senator BRANDIS**—I am sorry, I did not mean to do that.

**Senator Chris Evans**—I think you did, Senator, to be honest.

**Mr Metcalfe**—I think you were seeking to verbal me there, Senator.

**Senator BRANDIS**—I did not mean to put words in your mouth, Mr Metcalfe. I thought you said that 12 months ago marked the point at which the imminent increase in people-smuggling activity was notable or marked and that the AFP had given you some advice in relation to that matter.

**Mr Metcalfe**—You are linking the two issues. I certainly agreed with you that about a year ago we started seeing an increase in unauthorised arrivals by sea, irregular maritime arrivals in Australia, but I have not linked that to a specific warning or advice from the AFP. It is not my practice to discuss intelligence matters in a public domain.

**Senator BRANDIS**—All right. Is it right to say that at or shortly before that time you had received advice—do not go to the content of it—in relation to people-smuggling activities from the AFP?

**Mr Metcalfe**—We receive advice from many agencies a lot of the time and we did receive advice from the AFP, as I have confirmed, but as I have said that would be one of many pieces of information we received.

**Senator BRANDIS**—Sure. About how frequently do you receive advice from the AFP in relation to people-smuggling activities?

**Mr Metcalfe**—I will take that on notice because as we said earlier there are a variety of means of conveying that advice. I, from personal perspective, would usually see material from other agencies more frequently, but that is not to say that other people in my department might not see operational information from the AFP. For example, they have been active in relation to investigating people smugglers and I am sure we are kept briefed in relation to that. It is not my usual expectation to see or experience of having seen regular high-level reports from that organisation.

**Senator BRANDIS**—I do not want to take this out of context but the reason I am focusing these questions at least in the first instance on the AFP is because the AFP have identified a particular document containing particular advice in relation to this issue, they have given it a date and said that you are on their distribution list. So this is a specific piece of information that the parliament has been made aware of by the AFP and that is why I want to concentrate on it. How many boats have there been in the last 12 months—is 41 the latest figure I heard?

**Mr Metcalfe**—I will check on that, Senator, but that is about the right figure.

**Senator BRANDIS**—Senator Fierravanti-Wells reminds me that there have been 82 interceptions.

**Senator Chris Evans**—Senator, by way of clarification, certain persons in the public debate use a particular date when they are discussing these figures to suit their own argument. If you are asking for an annual rate or for the last 12 months, I am sure Mr Hughes can help you with those figures.

**Senator BRANDIS**—I am perfectly happy to take the date Mr Metcalfe has put on it, not prompted by me, of about 12 months ago.

**Mr Metcalfe**—In calendar year 2009 to date we have received 33 vessels.

**Senator BRANDIS**—Thank you. I think Senator Fierravanti-Wells might ask some more questions to tie down the specific numbers. Let me go back to other partner agencies. Other than the AFP, what are the other agencies from whom you receive intelligence product concerning people-smuggling and unauthorised or potential unauthorised boat arrivals?

**Mr Metcalfe**—Could I take a short adjournment just to ensure that in naming those organisations it does not take us beyond what would normally be undertaken at estimates? Alternatively, I could answer it on notice.

**Senator BRANDIS**—I would rather pursue this, so with the chair's indulgence, could we have a short adjournment?

**ACTING CHAIR**—We will adjourn for a short time.

#### **Proceedings suspended from 4.54 pm to 5.04 pm**

**Senator BRANDIS**—I think the question I had asked you before you requested the short suspension was about what agencies other than the AFP were consulted by DIAC or DIAC worked with in relation to obtaining intelligence concerning people-smuggling operations and unauthorised boat arrivals?

**Mr Metcalfe**—The answer to that is that we work closely with the Customs and Border Protection Service, the Department of Foreign Affairs and Trade and the members of the Australian intelligence community.

**Senator BRANDIS**—The members of the Australian intelligence community meaning, among others, ASIO, ASIS and DIO, presumably?

**Mr Metcalfe**—That is correct.

**Senator BRANDIS**—Is there a joint body on which DIAC is represented—like an IDC or a joint task force—in which representatives of all those departments and agencies come together to address this issue face to face?

**Mr Metcalfe**—There are a number of such coordination bodies.

**Senator BRANDIS**—Can you run us through them, please?

**Mr Metcalfe**—I will take you through them from top to bottom and Mr Correll will assist. At the most senior cabinet level, the National Security Committee of cabinet is involved in these issues. The Minister for Immigration and Citizenship, Senator Evans, chairs the Border Protection Committee of cabinet, which comprises a number of ministers and which a number

of agency heads also attend. There are then a series of other groups on which Mr Correll or his staff participate. I should also add before handing over to Mr Correll that the Secretaries Committee on National Security, which supports the National Security Committee, also of course considers these issues from time to time.

**Senator BRANDIS**—Before we go to Mr Correll, what I want to focus on particularly—and I do not want to take too much time on this—is the point at which intelligence is received from the intelligence agencies. Which of the various committees or bodies you have just described is the initial recipient of intelligence?

**Mr Metcalfe**—As I said earlier, within the department that receipt point is our intelligence branch. But, as we have been discussing, some of these issues are either received as new information or discussed as issues within interagency groups—and Mr Correll can provide more detail on that.

**Mr Correll**—There is the Homeland and Border Security Policy Coordination Group which has a number of agencies represented. There is also the National Intelligence Coordination Committee. However, neither of those bodies is focused on receipt of intelligence; they are more focused on broader framework and policy considerations.

**Senator BRANDIS**—Presumably, they make policy and operational decisions on the basis of, among other things, intelligence?

**Mr Correll**—Yes, but processes of intelligence dissemination occur outside those committees.

**Senator BRANDIS**—This is a hypothetical question, but I think it is a proper question. Let us say that an Australia agency, whether it be ASIS, the AFP or whoever it may be, receives credible evidence of imminent unlawful unauthorised boat arrival—a people-smuggling boat is being marshalled somewhere on the southern shores of Sumatra and is imminently to set sail for Australia. In that case—I dare say, a commonplace case—what would be the reporting chain whereby that intelligence were passed up to you and your partner agencies?

**Mr Metcalfe**—Normally the chain of information dissemination is that material is collated, analysed and then disseminated by the Customs and Border Protection Service.

**Senator BRANDIS**—And is it the Customs and Border Protection Service that alerts DIAC to that information?

**Mr Metcalfe**—That is correct. We receive regular reports from Customs and Border Protection Service. We still do, quite properly, receive material direct from some of the originating agencies, but the overall picture is put together by the Customs and Border Protection Service.

**Senator BRANDIS**—If a decision is made to engage in interdiction activity, either by asking the Indonesian domestic policing authorities to engage in interdiction activity or, if it is too late for that, by making a decision to ask Customs or the Navy to interdict the passage of the vessel, by whom is that made?

**Mr Metcalfe**—Firstly, it is not an issue for, nor a decision made by my department. My understanding is that operational responses to particular emerging situations are made at a very senior level within the Australian Customs and Border Protection Service, and they

would do so in consultation with, as necessary, other senior agencies, such as the Department of Prime Minister and Cabinet and quite possibly the Department of Foreign Affairs and Trade, given the offshore location of the activity.

**Senator FIELDING**—What advanced information does the department get from whatever sources with regard to intelligence of boats potentially coming in? There must be a process.

**Mr Metcalfe**—As I described to Senator Brandis earlier, we receive quite regular reports coordinated by the Australian Customs and Border Protection Service, whose duty it is to bring together the sources of information—which may be many and varied—and analyse and present those in terms of possible or known ventures which may be underway where people may seek to come to Australia by vessel. That is material that we receive on a regular basis, as do other agencies involved in this issue. We use that and, amongst other things—as Mr Correll described earlier when you were not in the room—we constantly calibrate our own responses, including issues such as if we are operationally able to receive a vessel should it be interdicted by the Customs and Border Protection Service, and the people brought to Christmas Island.

Ultimately, it is the authority that provides for the accommodation and care of people who may arrive in Australia in this way on Christmas Island, and which is responsible for determination as to whether they in fact do have an entitlement to stay in Australia or should go home. Of course, we are very interested in what might be coming our way and ensuring that we are planning as far ahead as we can.

**Senator FIELDING**—Do you get notification of when they are either in Australian waters or not in Australian waters? I am just trying to make sure this is very clear.

**Mr Metcalfe**—We certainly have information if there is an apprehension of a vessel in Australian waters, because that is a real fact that we have. I have been associated with this issue for many years, and it is the case, of course, that intelligence is a quite imprecise science. While we certainly do quite often have good information about planned and possible voyages and actual departures, that is not to say that we would ever believe that we knew everything that was happening in foreign parts of the world. Frankly, we receive a good service from the intelligence community.

**Senator FIELDING**—Was the intelligence any different on this boat of 260 compared to other intelligence of boats coming? You would have the same—

**Senator Chris Evans**—Can I just intercede here. I let Senator Brandis question the secretary because I knew there was an issue of public notoriety about a particular report and I did not want to be seen to be cutting off that inquiry. He has pursued it before and I am very relaxed about him pursuing that. I am not trying to be difficult here, but I just do not want to have a discussion about intelligence which leads to information being available about our knowledge of and how we might have obtained that information. Because that could impact on our capacity. One of the things I have learned since being in this job is that people smugglers watch Senate Estimates. They log on to the ABC news sites. They make a lot of use of mobile phones et cetera. That is not to say we in any way should not provide information to the Australian public, but I am very wary about too much discussion about anything that leads us into an operational matter of how we operate in terms of the intelligence we gather on

departures. I am happy to answer questions but if you could just bear in mind that I am a little concerned that we do not get too far into an area where it would impact on our capacity to gather information.

**Senator FIELDING**—I am very conscious of that.

**Senator Chris Evans**—I know you are.

**Senator FIELDING**—And if they are listening, I do not think we should return to the barbaric ways we used to treat them but I certainly think something has to be done. We have an unintended consequence of the changes, and there is a flow coming in and we have to address that issue. What I want to get to is: what was different about this boat? Obviously we had advanced intelligence—I am not going to ask how we got that—that there was a boat coming to Australia, and we seemed to have a different process of addressing this particular boat, with the 260 asylum seekers, versus all the other boats. Obviously you must have had the same intelligence. That is what I am getting at. Was it the same intelligence on the previous ones—or of similar nature. It will not be the same, because each one is different.

**Mr Metcalfe**—Being mindful of what the minister has just said, I think the obvious difference in relation to this boat—and this is well known; it is on the public record—is that this boat was in fact located in Indonesian waters by the Indonesian navy. It had not come into waters adjacent to Australia. But, beyond that, I do not think it is appropriate to comment on matters that go to sources and methods or intelligence assessments for two reasons—

**Senator FIELDING**—I am not asking for that, though. I make that clear. I make that very clear.

**Senator Chris Evans**—No one says that you are, Senator. I just want to make sure we keep the conversation where it should be.

**Senator FIELDING**—so can I just focus on what I am getting at, which is that, obviously, Australia had advanced intelligence on that particular boat. For the Prime Minister to pick up the phone and ring, there must have been advanced intelligence. And what I am trying to get at is: has there been advanced intelligence on other boats that are coming, and I am wondering why a phone call was not made about those boats.

**Mr Metcalfe**—I understand your question; I just do not think it is appropriate for me to go any further in what I have said here this afternoon. The other aspect, of course, is that my department does not have any operational responsibility in these issues. As I mentioned to Senator Brandis before, those are issues that fit within other departments and portfolios. What I would normally suggest in these circumstances is that, if you are seeking a briefing on issues that may be classified, you make a request to the relevant ministers, and the minister would normally respond to that.

**Senator FIELDING**—It is a question the public has as well. It is a question about whether the intelligence was, in its nature, any different for this boat. Because we had obviously advanced notification. It was not in Australian waters.

**Senator Chris Evans**—Senator, I am very wary of where we go here, but I think the answer to that is: the intelligence we receive on unlawful boat departures from Indonesia, Malaysia, Sri Lanka and anywhere else varies from nothing to good-quality intelligence

verified by a number of sources, and anywhere along that spectrum. The intelligence agencies analyse that intelligence and make judgments about that; we do not do that. We get some report into that. We are not expert in that area. They provide us with reports. Our role is limited to dealing with those persons who arrive.

I cannot help you in terms of what level of intelligence there was on this particular venture compared to others, because the simple answer is: I do not know. The Prime Minister has made it clear he is not discussing the nature of the conversation he had with the President of Indonesia. I know there is a lot of focus in the media on this 'Indonesian solution', so called because it sort of rhymes with 'Pacific solution', but the reality is that Australia has had engagement with Indonesia on disrupting people-smuggling for many years, under the previous government and under this government, and it is across all agencies—police intelligence, immigration et cetera.

That engagement has deepened over the years, and we certainly have a very strong relation with the Indonesian imigrasi. They have been assisting in disruption of people-smuggling operations for many years. That goes from intercepting people at the borders who are trying to enter Indonesia unlawfully, through to trying to get on a boat and depart for Australia. It runs across the gamut of those things. On this occasion, the Indonesians chose to intercept a vessel in Indonesian waters. We regard that as a good thing, because it extended the interference with the people-smuggling operation.

**Senator FIELDING**—I appreciate your fairly lengthy response to the issue. I am genuine. You know me; I do not pursue things unless I am genuine. There is a general public issue here, and I am covering it from this department's point of view. What did the department do that was different for this boat—

**Senator Chris Evans**—In terms of this department: nothing.

**Senator FIELDING**—compared to the others, that it led to the Prime Minister on this occasion ringing, when on previous occasions boats coming in—

**Senator Chris Evans**—I was trying to give you a whole-of-government response. If you are asking what this government ministry did definitely, the answer is: nothing. Because the intelligence agencies and Australian Customs and Border Protection Service manage those responses to people-smuggling ventures. We do not. We get briefed on the intelligence.

**Senator FIELDING**—Did the department provide a report on what would happen if this boat of 260 people came to Australia—the impacts of that as far as the capacity to handle it?

**Mr Metcalfe**—I do not think we provided the report as such. But we are obviously mindful of the capacity of our detention accommodation and have been continuing to make adjustments to that in view of arrivals. But I do not think Mr Correll has any particular report that we would have made in relation to this particular matter. It is more that we have an ongoing contingency planning capability because of the numbers of people that we have seen recently.

**Mr Correll**—There was no separate report.

**Senator FIERRAVANTI-WELLS**—Mr Chairman, can I just make a point of order here. We have traversed this same grounds about protocols and procedures about dealing with

unauthorised arrivals, not just in this estimates but today and yesterday as well. Minister, might I suggest—

**ACTING CHAIR**—Well, no. That is not—

**Senator FIERRAVANTI-WELLS**—No. Can I make it—

**ACTING CHAIR**—No. If you want to raise a point of order, you raise a point of order to me, and then you do not go on suggesting things—

**Senator FIERRAVANTI-WELLS**—Mr Chairman, might I suggest that, if the minister is willing, he could provide some factual document that can be distributed to senators so that everyone understands on a factual basis, so that we do not go through the same process time and time and time again at this estimates. I am just trying to be helpful here.

**ACTING CHAIR**—Thank you.

**Senator FIERRAVANTI-WELLS**—We have heard the same questions over and over.

**Senator Chris Evans**—Groundhog Day is part of the estimates process.

**ACTING CHAIR**—Let me say this: I sit here as chair and I listen to senators from across the board traversing ground that we have traversed time and time again, and if you are suggesting now that I should apply that standard across the board I think I would hear howls of protest from many of your colleagues.

**Senator Chris Evans**—But it would be a nice, short hearing! The government would support you.

**ACTING CHAIR**—So I am not going to take up your offer. I encourage all senators to be as brief as they can with their questions, but Senator Fielding is entitled to ask these questions and he has the call.

**Senator FIELDING**—The final question I had was: was there no advice from this department?

**Senator Chris Evans**—No. I will clarify. I said that we did nothing. For the completeness of the record, we of course have immigration officers at the Jakarta embassy and they would have been involved in whatever activity was occurring at the Jakarta embassy. That is for completeness in terms of any engagement the Jakarta embassy had in those activities. But if you are asking if we were providing different specific advice on this particular boat, we are not at the operational level per se and in terms of our capacity issues we have been having contingency planning on these matters for a long time. It was not a specific focus.

**Senator FIELDING**—Final question: over the last year, has the department received similar advanced notice of boats outside Australian waters coming, most likely, to Australia?

**Mr Metcalfe**—Yes.

**Senator FIELDING**—Thank you.

**Senator Chris Evans**—For completeness again, they are not necessarily departing from Indonesia. We have had a few direct from Sri Lanka and from Malaysia.

**Senator FIERRAVANTI-WELLS**—Senator Brandis was asking some questions about this report before. Please feel free, given the sensitivity of it, to take this on notice.

Commissioner Negus indicated that the copies that go to agencies such as DIAC, if they are to be passed on, require the AFP's permission for that passing on. You have received a copy. Did you pass a copy on or did you seek permission from the AFP to pass a copy to the minister or to any other person?

**Mr Metcalfe**—The answer to the question is that we did not pass a copy on and we therefore did not seek permission of the AFP. Something I will do now that I have been given the precise name of the document that Mr Negus referred to last night is again ask my department to accurately confirm whether or not we ever did receive such a document. Commissioner Negus indicated that what was passed by the departments was in fact a 'sanitised' version. I will need to check what particular name that document was described as. Commissioner Negus and I have not had the opportunity to talk about this given that he was here late last night and I was here early this morning, but if it is appropriate I will reserve the right to come back on notice or in writing in relation to any of the issues I have discussed this afternoon.

**Senator FIERRAVANTI-WELLS**—I had assumed that you had done that, because on the last occasion I referred you to the evidence that had been given and the title of the document was quoted.

**Mr Metcalfe**—Yes.

**Senator FIERRAVANTI-WELLS**—I assumed, because that is part of the question and the answer that you provided to me, that after the last estimates you did go and check and that that was the basis upon which you provided me with an answer.

**Mr Metcalfe**—I thank you for that. I am just saying that, being a very careful person, I will check again, particularly in light of only having just seen the transcript—I have not had the chance to read it—of the discussions between Senator Brandis, the commissioner and other officers of the AFP last night. So I will check everything that has been said and ensure that my responses are as accurate as possible.

**Senator FIERRAVANTI-WELLS**—Thank you. Minister, previously we were having a discussion in relation to students and skills, and you were talking about the tail wagging the dog. You made an analogy about the importance of determining the end needs of Australia. I found that a very interesting analogy, considering that at the moment we are in effect outsourcing our humanitarian program, because it is really the people-smugglers who are determining the component of what is ultimately becoming our humanitarian program. Given what you said before, clearly what we are seeing at the moment is outsourcing to people-smugglers. I would like you to comment on that. Isn't it the same situation of the tail wagging the dog?

**Senator Chris Evans**—No, Senator. I do not get the comparison at all. At the moment what we are responding to is illegal activity by people-smugglers seeking to move people who then seek asylum in Australia. That is a crime in this country, and we are working closely with all our regional neighbours—as the previous government did—to try to combat that crime. In addition to trying to combat drug-smuggling, people-trafficking and other international crime, we are faced at the moment with an increase in activity which has seen increased unauthorised boat arrivals in this country. That is a reflection of an increased number of

persons in the region seeking safe haven and the activity people-smugglers. I could say that in 1999, during John Howard's government, when 86 boats arrived with 3,500 people, the tail was wagging the dog; but I just do not think it works as an analogy. We are seeing an increase in activity of people-smuggling in the region, and we are employing all our best efforts and increased resources to try to combat that. As I have said on many occasions before, we have had boat arrivals in 25 of the last 33 years, and to think that somehow the problem is going to be solved completely is, I think, naïve. We are in a constant battle, as we are with drug syndicates, with people-traffickers. At the moment we have got increased activity. We are putting in place new measures, extra resources and we are doing everything we can, and I think we will again have to look at other initiatives to deal with the changed tactics. Particularly concerning at the moment is the increase in people-smuggling involving Sri Lankan Tamils escaping Sri Lanka. I think that the threat posed by that section of the people movement through our region is going to be with us for some time.

**Senator FIERRAVANTI-WELLS**—I would like to take you to that. You are aware of the UNHCR's *2008 Global Trends*. I was interested to read there, and I think it is important when we look at that, that there has actually been a decrease. I will quote for the record:

In the Asia and Pacific region, the total number of refugees and people in a refugee-like situation was estimated at 3.4 million at the end of 2008. This is a decrease of 6 per cent during the year mainly due to the voluntary repatriation of more than 274,000 Afghans from Pakistan. In contrast to the other regions, in Europe the refugee population increased ...

The report goes on to look at the sources of refugees and where the main refugee areas are. We talk about push and pull. I am trying to break down the push factor. If push is the most important factor, and that is what you seem to be focusing on—we will come to pull in a moment—why aren't we seeing refugees coming from the Horn of Africa?

**Senator Chris Evans**—I will let Mr Hughes who is our international expert and who has been involved in this area for many years answer that particular question. But the simple answer in the first instance is geography. People tend to take routes that are easier geographically et cetera, so we have traditionally had flows from nations which may be generating asylum-seekers where they have easier access to us. We have traditionally had flows from Sri Lanka, Afghanistan and Iraq both under the previous government and this government, and Mr Hughes can take you through the broader picture.

I have a chart here of the time line of some of those refugee flows for you if you like, and I am happy to table these for the interest of the committee. If you want to deal with the question of push factors, the classic case is the Afghan refugee flows. The top line is the flows into Europe and the second line is the flows into Australia. They are different scales, of course. Our numbers are in the hundreds; theirs are in the tens of thousands. But if you look at the chart, the flow is almost exactly the same and this is around the time that the introduction of TPVs allegedly ended the flow of persons to Australia. It just so happened it was equally successful in Europe at the same time, which is remarkable. I would like to table these for the committee because they show the flows of Afghans, Sri Lankans and Iraqis both into Europe and here, a comparative chart and the numbers which I think will give you some understanding. While there are some differences and some of those relate to geographical and other factors, we have seen a change of the flow of Afghans, Iraqis and Sri Lankans according

to impacts of what is occurring in their countries, and the impact on our flows of asylum-seekers has largely but not exactly mirrored that. The trends are very, very close. Those are the major groups that we have dealt with over the years. You are right to say we are not receiving a lot of unauthorised arrivals from Africa. I suspect that is due to geography and access, but I will table those and let Mr Hughes deal with that specific question about Africa.

**Mr Hughes**—Looking at Africa, the Horn of Africa in particular and the latest trouble spot, Somalia, asylum seeker flows tend to be driven by a variety of things, firstly the desperate need to get out of an unsafe situation and the destination is often driven by geography, communications and community connections. With Somalis, in fact, the big numbers are going over the border into Kenya because it is there; it is the neighbouring country. Traditionally, however, communications and connections with Somalia are in Europe not in this part of the world; therefore, overwhelmingly, apart from the huge numbers immediately going into the neighbouring country of Kenya those Somalis who can go further afield to claim asylum are going to Europe simply because that is where the transport pathways are. If I look at the 12 months to August 2009, we find examples of asylum claims by Somalis in Europe: the Netherlands 4,100; Norway about 1,300; Sweden 3,200; Finland 871; Switzerland about 580; and Australia 16. It just reflects the fact that there are established pathways to Europe and that is where the established communications are.

**Senator FIERRAVANTI-WELLS**—Mr Hughes, my concern in this—and this is what I am getting at—is that one only has to look at the press at the moment, for example a letter to the editor that makes a comment about the war in Sri Lanka having ended and the Taliban have been being forced back to remote parts of Afghanistan and Pakistan, and we constantly hear these reports about the situation in—

**Senator Chris Evans**—The Taliban have been forced back to remote parts of Afghanistan?

**Senator FIERRAVANTI-WELLS**—And Pakistan.

**Senator Chris Evans**—I would just like to correct the record. My understanding of international affairs is that they are rampant in Afghanistan and have moved into Pakistan.

**Senator FIERRAVANTI-WELLS**—It is getting late in the day.

**Senator Chris Evans**—It is important when you repeat rubbish that we correct the record. One of the reasons we have a push on of Afghans is that those who took shelter in their millions in Pakistan are moving on because the Taliban have followed them and they are in fear of their lives now.

**Senator FIERRAVANTI-WELLS**—And they do not want to go back to Afghanistan and they have not been in Afghanistan for a long, long time.

**Senator Chris Evans**—Some of them have, Senator. Some of them actually went back after the fall of the Taliban, which was why the Howard government was able to return Afghani asylum seekers because it was deemed safe and millions of Afghans went back. But last year was the most violent year for many years in Afghanistan. General Petraeus, the US commander, described it as that and said that it was increasingly dangerous for civilians. People fled and what we found last year though was the Taliban moving more into Pakistan and many of those people fled for the second time. That is what I call a push factor.

**Senator FIERRAVANTI-WELLS**—Minister, you keep talking about push factors but the reality is that increasingly the Australian public and certainly my constituents want to know what you are going to do to stop this. One only has to look at the weekend press, Minister, to see. If you do not want to take it from me, take it from the commentators in this country. One only has to look at what Paul Kelly wrote on the weekend under the headline, ‘Rudds softer stance mugged by reality’. Just on the weekend alone there were 70 articles that pointed to this government’s change of direction, this government’s softening of its immigration policy, that is contributing to people coming to this country. One only has to look at what the asylum seekers themselves are saying. In the Glenn Milne piece on the weekend, I am sure you have read it, he quotes one asylum seeker saying:

‘I have heard that Australia would accept refugees and were sympathetic to refugees.’

The price has doubled from \$7,000 to \$15,000 to come to this country. Even the ABC minister is saying that this government has softened its policies but yet we seem to have this rhetoric from you, Minister, that you will not accept that it has been your policies that have greatly contributed to what is happening at the moment. You cannot solve a problem, if you do not admit there is a problem.

**Senator Chris Evans**—First of all, I have noticed a bit of press about immigration issues lately—

**Senator FIERRAVANTI-WELLS**—A bit of press—there were 70 articles on the weekend.

**Senator Chris Evans**—Senator Fierravanti-Wells, if you think it is necessary for you to tell me what is in the paper about my portfolio, I think it is gratuitous, don’t you?

**Senator FIERRAVANTI-WELLS**—I am not.

**Senator Chris Evans**—There has been a lot of media about immigration and unauthorised boat arrivals. Point well made. I hadn’t noticed. Thanks for bringing it to my attention.

**Senator FIERRAVANTI-WELLS**—Do not get stroppy with me, minister. I am stating the bleeding obvious.

**Senator Chris Evans**—That is exactly right and you have wasted five minutes doing that but now we have established the bleeding obvious, let us deal with it. Your first claim was that I have to admit there is a problem. Senator, I know there is a problem. This is a problem that has been with us for many years. There is an increase in activity at the moment. One of the reasons we know that it is a long-term problem is that the Howard government built a great new detention centre on Christmas Island, which we took delivery of in 2008. John Howard knew the problem was not solved. He knew the surge would come again and had made provision for that. It is to his credit that he made provision for that facility.

We do accept that there is a problem. We are working hard to deal with it. We are looking at policies and initiatives we can take and we have very much focused on the regional framework because we, as the previous government did, realise that only through cooperation with our neighbours can we better deal with people smuggling and the movement that that causes. If the opposition are serious in saying that it is our policy changes that have caused this they would of course immediately commit to reversing those changes. They have not. In

fact, they have done the opposite. When we abolished the Pacific solution, they provided no opposition to that—

**Senator FIERRAVANTI-WELLS**—Minister, we are not here to discuss the coalition's policy.

**Senator Chris Evans**—No, we are not, but—

**Senator FIERRAVANTI-WELLS**—We are not, Minister. We are to discuss what you are going to do to solve the problem. Do not keep going back and saying—

**Senator Chris Evans**—Senator, you may not like it but you have had your go and I am going to give you the answer. The answer is that we abolished the Pacific solution. I am absolutely proud of that. It was a blight on Australia and a blight on our international reputation.

**Senator FIERRAVANTI-WELLS**—Minister, we are not here to discuss the merits or otherwise of the coalition's policy.

**Senator Chris Evans**—You have got a choice. You either argue for it coming back or you do not. Have the courage. If you say that it is our policy decision that caused the problem, you tell us to reverse it.

**Senator FIERRAVANTI-WELLS**—Minister, we are not here to discuss the coalition's policy.

**Senator Chris Evans**—That is because there is not one. You do not have a policy.

**Senator FIERRAVANTI-WELLS**—The Prime Minister is talking tough at the moment, but—

**Senator Chris Evans**—You want to discuss policy and I am prepared to give you the answer.

**Senator FIERRAVANTI-WELLS**—Minister, I want to know—and the Australian public want to know—what you are going to do to stop the situation. It is as simple as that.

**ACTING CHAIR**—There was a question that was asked some time ago. Well, it was partially a question but mostly a speech—but there is a question in there. The minister is entitled to respond to many of the comments in the speech that finished with a question.

**Senator FIERRAVANTI-WELLS**—I am waiting to know what he is going to practically do.

**ACTING CHAIR**—If you would wait in silence the minister may be able to get to those points.

**Senator FIERRAVANTI-WELLS**—I have been waiting all day.

**ACTING CHAIR**—You have not been waiting all day and you have not been waiting in silence. I would ask you to do that now.

**Senator Chris Evans**—There are a number of policy options being advanced in the Australian debate at the moment. Neither your party nor mine want to return to the Pacific solution. You have made that clear. Your spokesperson, Dr Stone, said that it is no longer necessary. So that one is off the table. You have flirted with the reintroduction of the TPVs.

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**Senator BARNETT**—Point of order, Mr Acting Chair—

**ACTING CHAIR**—Yes, what is it?

**Senator BARNETT**—The minister is meant to be answering the question put by Senator Fierravanti-Wells. He is giving a speech in terms of his views of coalition policy. That is not answering the question. I would ask you to direct the minister to answer the question.

**ACTING CHAIR**—There is no point of order. Senator Fierravanti-Wells made a long speech and then peppered a couple of questions in amongst that. The minister is entitled to respond to those comments put to him by Senator Fierravanti-Wells and he is doing that.

**Senator Chris Evans**—In terms of the other policy option that is around—which, again, the coalition has not endorsed—which is the reintroduction of TPVs, I am happy to stand on the evidence that those did not work in deterring people and that 8,000 or so asylum seekers came in the two years following that. So I think that is discounted by most persons as being a viable solution.

We say that the answer to dealing with people smuggling is through measures in a law enforcement, intelligence framework that works in regional cooperation with our neighbours. The Howard government learnt that once the boats had departed it was very hard to do anything about it. The tow-back policy they had had to be abandoned. They had to deal with those that arrived. What we have focused on is working in source countries to try to stabilise populations, working in transit countries to try to assist transit countries to stop people moving onward and working with our northern neighbours to try to defeat syndicates of people smugglers who are also involved in other transnational crime in many instances.

We have reinvigorated the Bali process—an initiative of the Howard government that had, quite frankly, died on the vine a bit. We jointly chair that with Indonesia. That is now starting to deliver some real results. We are getting good cooperation from countries like Malaysia, who have been come seriously engaged in the efforts. We have put extra money into border security, into policy, into intelligence and into immigration as part of a suite of measures to try to tackle this problem. And we will continue to do everything we can.

We will also consider other policy options, and we are looking at ways where we can assist in all these areas with new policies that might (1) help stabilise populations, (2) increase capacity for transit countries to deal with the issues and (3) make sure that we can identify and prosecute people smugglers. All of those things are going on. There is a full court press by the government and other government in the regions to deal with these issues. There is a problem. We admit there is a problem. There has been a problem for many years. It is on the rise again at the moment throughout the world. We are doing everything we can to try to defeat people smuggling and we will continue to do so.

Quite frankly, Senator, it is not as simple as pretending that one simplistic notion of a change in domestic policy is going to end people smuggling in the world. It is just not going to happen and it has not happened in the past. As those graphs I have produced for you show, our experience has tended to mirror the experience of other nations that receive refugees from the same source countries. I think all countries in the world now understand that international cooperation and quite sophisticated policy responses are necessary to try and deal with this problem.

**Senator FIERRAVANTI-WELLS**—But, Minister, in the end, since you came to power and since you gave your speech last year ‘New directions in detention’, and through this estimates and through a whole series of other things, we have seen changes in your department. We have seen changes here and there. Mr Metcalfe has given us some and your various officers have given us some. Bit by bit, throughout your department you have changed many different aspects of your department. The point that I am making is that surely you have to admit that there is a certain perception now, rightly or wrongly. Due to the cumulative effect of all those changes in your department and the new way that you are doing business is giving rise to a perception that our immigration system is much softer than it used to be. I am not arguing the merits or otherwise, I am just simply saying that that is the reality now.

**Senator Chris Evans**—I think it is a sign of cowardice on behalf of the opposition. You have to debate the policies. The best you can do is call for an inquiry and argue, ‘You are creating a perception.’ Go through each of the measures and tell me which ones you are going to reverse and which you think will fix the problem. Quite frankly, my view is that the changes have been beneficial, they better reflect the values of Australia and on most occasions you, the opposition, have endorsed them. When I announced ‘New directions in detention’, the opposition claimed it was an extension of the Howard reforms of 2005. Now, out of political opportunism, you want to say that you oppose them and that somehow they have caused the increase in people-smuggling activity. Well, that is fine, say that you will go back to running camps on Nauru and leaving people locked up, and failing to meet our international obligations. Say it, that’s fine. Do it! Let us then have the debate, but do not talk to me about perceptions and inquiries. You are not serious and no-one is treating you seriously.

**Senator FIERRAVANTI-WELLS**—Minister, I really do think that is gratuitous.

**Senator BARNETT**—Acting Chair, call him to order please. We do not need those sorts of speeches.

**Senator FIERRAVANTI-WELLS**—The reality is that—

**ACTING CHAIR**—It is a standard you should apply to your colleagues as well then.

**Senator BARNETT**—Acting Chair, you know it is way out of line.

**Senator Chris Evans**—I am happy to answer any relevant questions.

**Senator FIERRAVANTI-WELLS**—Let us take another tack. In 2003, the then shadow minister for population immigration and a series of other things, and now Deputy Prime Minister, made the comment to the effect that two boats was policy not working. Surely, when you look at what is happening at the moment with the absolute flood that we now have, clearly, your policies are not working. My concern is that before the election you all jumped up and down and made commitments about what you were going to do. In fact, the Prime Minister even told us, ‘We should be turning them back,’ as quoted in the *Australian*, 23 November 2007. My question now is—

**Senator Chris Evans**—Ah! A question.

**Senator FIERRAVANTI-WELLS**—what part of your commitments and the commitments of your Prime Minister are you going back on? Are you going to honour those commitments? You gave a whole raft of commitments before the election. You were going to stop people smuggling. What are the practicalities of how you are going to stop it?

**Senator Chris Evans**—Senator, I think you are making claims up as you go along.

**Senator FIERRAVANTI-WELLS**—I am not.

**Senator Chris Evans**—I will tell you what we have done—

**Senator FIERRAVANTI-WELLS**—Are you denying that Mr Rudd said that?

**ACTING CHAIR**—You have asked your question.

**Senator Chris Evans**—What we said before the election was that we would retain the excision of offshore islands; we have. What we said before the election was that we would maintain mandatory detention; we have. We said we would maintain offshore processing on Christmas Island; we have. We also said we would treat asylum seekers in this country more humanely, and we have. I am very proud of that. I do not think that treating people inhumanely is an appropriate public policy response. I do not think it is something that Australia wants to go back to. I think it is a great shame on the Howard government that they went down that path, but I also do not believe that that was the reason for a drop in the numbers arriving following 2001. I do not, for instance, claim that John Howard was weak on border security when 86 boats arrived in 1999. I do not claim he was weak on border security when 51 came the following year. He was dealing with the upsurge in the push factors of people fleeing Afghanistan and Iraq. Funnily enough, around 2002 they stopped flooding into Europe and they stopped flooding into Australia because, quite frankly, the situation in Afghanistan and Iraq had changed. We have got to have a more mature debate about this, Senator.

**Senator FIERRAVANTI-WELLS**—Don't be patronising to me.

**Senator Chris Evans**—We do have to have a more mature debate about it—

**Senator FIERRAVANTI-WELLS**—Does that mean that the Deputy Prime Minister does not agree with you now? She thought that the policy was not working when two boats were coming. What the hell does she think about this now?

**Senator Chris Evans**—What I am saying to you is that I think the debate this time has been better; but, quite frankly, the opposition have to make up their mind about this.

**Senator FIERRAVANTI-WELLS**—What is her view on what is happening at the moment? If she thought that your policies were not working when two boats were coming, what about 41 boats and almost 2,000 arrivals since August last year? What is her view on it? She seemed to fluster and flounder when Laurie Oakes asked her. She did not give him a straight answer.

**Senator Chris Evans**—When there were 12,000 people in three years under John Howard, what did you say the problem was then? Was that because he was weak on border security?

**Senator FIERRAVANTI-WELLS**—Minister, I am asking you the question.

**Senator Chris Evans**—The other argument you can make, quite frankly, is that the number of boats arriving started going up following 2005, after John Howard softened his policies. Do you make that argument? Of course not. It is a nonsense. We all know it is a nonsense. This is about fear rather than dealing with the real public policy challenge that we face—

**Senator FIERRAVANTI-WELLS**—We will come to that in a moment—

**Senator Chris Evans**—We are doing everything we can to do that. The point I make is: all the border security measures that were in place under the Howard government remain. What we are arguing about is how you treat the people who seek asylum in this country. When you talk about the Pacific solution, when you talk about detention policies, when you talk about TPVs, you are arguing about how you treat people, and you are too afraid to go back to the policy of treating people badly. And that is to your credit. But do not pretend you can have it both ways.

**Senator FIERRAVANTI-WELLS**—Minister, okay, on that point, since you are lecturing us, why don't you outline to us what the difference is, in terms of assessing of asylum claims, when a person is on a TPV and when they are not. Tell us. What is the difference?

**Senator Chris Evans**—I am not sure I understand the question, Senator.

**Senator FIERRAVANTI-WELLS**—I was actually going to come to this in a separate part of the program; but, for example, if you are on a temporary protection visa, tell us what the conditions are that that person was under. What was the framework of that visa?

**Senator Chris Evans**—The former TPV?

**Senator FIERRAVANTI-WELLS**—That is right. What was the person entitled to?

**Senator Chris Evans**—The main difference between that and permanent visas—and the officers can take you through the details—were the inability to leave the country and re-enter, the inability to have a sense of permanency and their future, and particularly the failure to be able to have family reunion. It is interesting to note not only that 8,000 people arrived in the two years after TPVs were introduced but that more than 90 per cent of the people who were on TPVs were then granted permanent visas and are still in this country. So as a deterrent it did nothing, but it did make life harder for them while they were here. They had the uncertainty about their future. They had uncertainty about their status—that it may not be resolved permanently for them. They had the uncertainty about when they could potentially see their family again. There were a few other things like lack of access to English language.

They were punitive measures that said to them, 'We're going to make it more difficult; we've assessed you and found you to be refugees, but we're going to make your life tougher in the hope that that sends a message back that your friends should not come.' That was the strategy; I do not think any of those who advocated it deny that. What we have said is that we do not think punishing people who have been found to be refugees is a rational or humane policy for Australia. I am happy to debate that. If you want to say it is, let us debate it. I am happy; bring it on.

**Senator FIERRAVANTI-WELLS**—Minister, an answer to a question that was provided to me—it is an answer to question 21, which Senator Feeney asked—shows that the average processing time was between 2.4 and 3.8 years, depending on the nature of the visa.

**Senator Chris Evans**—Do you mean processing time? I am just not sure whether you are talking about processing time or the time they were here before they had a permanent visa.

**Senator FIERRAVANTI-WELLS**—It was answered in the context of how long TPV holders were separated from their families and whether there was a minimum time. The answer to the question first of all tells us that TPV holders were joined by their families through sponsorship or other arrangements, but it is not held in a reportable format.

**Mr Metcalfe**—Certainly there was no eligibility to sponsor family members until the person had gained a permanent visa.

**Senator FIERRAVANTI-WELLS**—That is right. The answer to the question is that there was a period of time. This was the gist of the question that was asked by Senator Feeney—the period of time that had to expire before a permanent visa could be granted.

**Senator Chris Evans**—Some of them were three years and some were five years.

**Senator FIERRAVANTI-WELLS**—Here it says 2.4 years. That was the answer that Senator Feeney got. We are comparing 2.4 years, as I understand when I read—

**Senator Chris Evans**—I think you are talking about the visas that we applied, Senator. You are looking at the last part of the question, which I think refers to what happened on my abolition of the TPVs. I think you misread the answer. The answer to your question is about TPV holders who proceeded to a grant of a permanent visa. It was 3.8 years, the minimum was 30 months and there was also a TPV that was applied to people for 54 months, which is in the second paragraph of the answer.

**Senator FIERRAVANTI-WELLS**—I read that in conjunction with the answer that was given to question 33, on the process that was happening on Christmas Island. That was how the original question arose. We might come to that a little bit later.

**Mr Metcalfe**—In broad terms, a person was not eligible to apply to sponsor a family member—a spouse or child—to join them in Australia until after they had become a permanent resident. As the minister indicated, that could have been a period of either three years or five years. That, of course, was only the start of an application process. There would then have been probably quite long periods from when that application was first received until that family member was ultimately approved to travel to Australia.

**Mr Hughes**—I will add to that, having been involved in the processing at the time. There were occasions when the total elapsed time that people were separated from their families was extremely long. These were cases that were reported to us where people had been separated from their families for a while before coming to Australia and there were delays in processing the initial temporary protection visa application because of changes in country information at the time. There were various processing pauses, as I recall. The times for some people could be quite extensive when a series of events interrupted processing of the initial temporary protection visa application and then their subsequent application after their initial temporary

protection visa neared expiry. There could actually in some cases be very long delays before refugees had access to family reunion.

**Senator FIERRAVANTI-WELLS**—I was just talking with Senator Barnett. We are conscious of the time, so we might at this point move to questions on Christmas Island and then come back to this path.

**CHAIR**—This is still outcome 2, though?

**Senator FIERRAVANTI-WELLS**—Yes.

**CHAIR**—Okay.

**Senator FIERRAVANTI-WELLS**—What are the capacities in the various facilities in the detention centre on Christmas Island? Could you give us the latest on what is being used on Christmas Island?

**Mr Correll**—The overall numbers at the moment are an overall capacity of just under 1,400—

**Senator BARNETT**—Can you be specific?

**Mr Correll**—1,380.

**Senator BARNETT**—That is the capacity?

**Mr Correll**—Actual capacity, yes. That comprises 1,088 at the North West Point detention centre, 48 at the Phosphate Hill facility, 200 at the construction camp and a further 44 in duplex accommodation in the community.

**Senator BARNETT**—That is the capacity.

**Mr Correll**—Yes, that is the current capacity.

**Senator BARNETT**—What are the current numbers?

**Mr Correll**—Current numbers on the island as at 16 October were 1,088, and they were spread across that accommodation, with 867 at the North West Point, 42 at the Phosphate Hill, 125 at the construction camp and 44 in the duplex accommodation.

**Senator BARNETT**—Do you want to break that down for us in terms of adults, men, women and children?

**Ms Wilson**—Can I verify what you mean by that? I do not think I have a breakdown by facility. Clearly the clients at North West Point IDC are all men.

**Senator Chris Evans**—You just want the total figure?

**Senator BARNETT**—Total is fine. Of the 1,088, how many are men, women and children please?

**Mr Correll**—The number of men is 942; women, 35; and minors, 91.

**Senator BARNETT**—That is under 18, correct?

**Mr Correll**—Correct. And there are a further 20 crew as part of the 1,088.

**Senator BARNETT**—Twenty crew? All right.

**Mr Correll**—That is as at 16 October.

**Senator FIERRAVANTI-WELLS**—Could you also tell us about families? You have said single men, women and children. Do we have any family groups?

**Mr Correll**—Yes, there are family groups. As we delve down with the questions, that gets a little tricky to answer, so I will see if we have that readily to hand. We can probably get that out; it will just take a moment or two.

**Senator FIERRAVANTI-WELLS**—Do you have a sketch or a map of the island? I have an old briefing with photos of the island. If you could plot where people are that might make it a little bit easier.

**Mr Correll**—The majority are located at North West Point, which is—

**Senator FIERRAVANTI-WELLS**—I know where that is on the island.

**Mr Correll**—You know where that is located? The duplexes are located in an area called Drumsite, which is quite near to the Phosphate Hill precinct, and the construction camp, of course, is adjacent to the Phosphate Hill precinct. The duplex units would be a relatively short distance from Phosphate Hill and the construction camp.

**Senator FIERRAVANTI-WELLS**—You must have a diagram of something? In your papers and all the stuff that you have got on Christmas Island you must have a—

**Mr Correll**—We have many maps of Christmas Island.

**Ms Wilson**—We do not have it with us, but we can provide it.

**Senator FIERRAVANTI-WELLS**—It just makes it easier on a more visual basis.

**Ms Wilson**—In relation to the question you asked about families: as at 9 October there were 21 families of 52 adults and 26 minors in alternative detention, which is in the construction camp, along with 30 unaccompanied minors. As at the same date there were six families in community detention on Christmas Island, consisting of 11 adults and eight minors.

**Senator BARNETT**—Where were they? They were somewhere else, were they?

**Ms Wilson**—They were in community detention.

**Senator BARNETT**—Sorry, 11 adults?

**Ms Wilson**—Eleven adults and eight minors.

**Senator BARNETT**—You have still got just around 30 minors. Where are the other 30 minors?

**Ms Wilson**—I mentioned before that there were 30 unaccompanied minors.

**Senator BARNETT**—Yes, I have got that.

**Ms Wilson**—There are also two unaccompanied minors in community detention.

**Senator BARNETT**—It does not add up to 91 children.

**Ms Wilson**—The dates are a bit different. I had the breakdown on families as at 9 October, but there was actually some movement between the ninth and the 16th—which are the numbers that Mr Correll gave you earlier.

**Senator BARNETT**—Are the children anywhere other than with the families or in the other site you just referred to, with the unaccompanied children?

**Ms Wilson**—The children are either in the construction camp while their health, identity and security are being assessed, or in community detention with their families or in a foster care arrangement.

**Senator Chris Evans**—We keep the kids with their families all the time if we can, but we do have unaccompanied minors—generally 16- or 17-year-old boys, who obviously do not have family with them. Occasionally they have got a brother or something, but we have unaccompanied minors as well.

**Senator FIERRAVANTI-WELLS**—At this point have you had to rearrange your normal way of keeping people because of the recent surge and influx at the island? I mean, you can probably take one or two more boatloads and then you will be at full capacity.

**Mr Correll**—We are continually looking at increasing the accommodation capacity, particularly at North West Point. There is additional land available there and we are constantly alert to opportunities, including use of demountables going into that location.

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

**Senator Chris Evans**—The other thing that needs to be remembered, which does not seem to be used in people's calculations is that people also come off the island, either because they are granted refugee status or because they are removed. So it is not a one-way thing, it is a two-way thing. Again, that is not even, so in terms of processing—

**Senator FIERRAVANTI-WELLS**—I appreciate that it can vary from day to day.

**Senator Chris Evans**—usually the last thing to get is the security clearances, but we do not move people off without those, obviously. We tend to be able to do the health and identity a bit quicker. It is not a zero sum game, as it were.

**Senator FIERRAVANTI-WELLS**—I accept that. That is why you cannot assess the costs; you can give an approximate cost in a range but you cannot do that. What is your contingency when the island is full?

**Mr Correll**—In the first instance we are looking at ensuring we make full use of accommodation options on the island. We still think there is a way to go yet. The accommodation capacity we have on the island that I mentioned is 1,380. We think there is the capacity for further accommodation options on the island yet. We would look at that as the first consideration, and that, as I flagged, gives us still some quite significant capacity before we would be full up, if you like.

**Senator FIERRAVANTI-WELLS**—What is significant? Can you put a figure on that?

**Mr Correll**—We would be thinking several hundred. It would be associated with the use of demountable facilities going in. There is space available for additional demountables to go into North West Point.

**Senator FIERRAVANTI-WELLS**—There has been some media coverage about moving housing that has been identified for Aboriginal housing. What is the situation there? There has been some contradictory media about that.

**Senator Chris Evans**—I will let the officers provide you with the detail. We have sourced some demountable housing from FaHCSIA which was in storage in Alice Springs. As I understand it, it had been in storage since 2007. The minister for FaHCSIA provided an answer in the House of Representatives yesterday that dealt with it comprehensively. They were not using it for Aboriginal housing because it was not suitable for the sort of accommodation they were looking for for families. It is largely single men's accommodation and it suits our needs, so the department have sourced that. Mr Correll, do you want to add anything to that?

**Mr Correll**—Yes. Those have been identified and agreements reached for their transportation to Christmas Island. We are working on that at present.

**Senator FIERRAVANTI-WELLS**—So we can get to about 1,600 on your contingency?

**Mr Correll**—Potentially even further than that. That would not fully utilise the land available in the North West Point area, so it potentially could go even beyond that, subject to sourcing further appropriate demountables.

**Senator BARNETT**—Can I interpose here, through you, Chair. Mr Correll, you gave evidence to our committee on the immigration detention reform bill, the report of which we tabled in August 2009. You gave evidence to our committee which is reported at page 22 of the report, which says:

A departmental officer informed the committee that moves are afoot to increase capacity and that if fruitful, 'several hundred additional beds' would become available on Christmas Island over 'something like a three to six month horizon'.

That was a few months ago. No doubt you would have done your figures and reviewed your papers since then. Can you try to be more specific and confirm, firstly, the exact number of beds that you are looking at and, secondly, the time frame in which you will have those demountables or whatever you would call them established.

**Mr Correll**—The first point is that there have been additional beds established at Christmas Island since that time through the use of facilities within North West Point at the present stage. There were also some additional demountables, 22 demountables, that went into the construction camp area. That has increased the bed capacity by several hundred since that time. In addition to that, the demountables that we were commenting on earlier, which were in storage in Alice Springs and are now been moved to Christmas Island, will provide in the order of 200 additional beds. But we have the capacity to put in more demountables which, subject to sourcing those additional demountables, could provide potentially 400 to 600 more beds with the appropriate demountable accommodation going in.

**Senator BARNETT**—On top of the 1,380 capacity that you currently have?

**Mr Correll**—Yes. Bear in mind that the 200 additional I referred to, the demountable units from Alice Springs, have not yet arrived. So the 200 would be on top of the 1,300 and then potentially there would be 400 to 600 on top of that figure as well.

**Senator FIERRAVANTI-WELLS**—What about the Darwin option? Minister, there was a quote in the *Australian* of 1 October which said:

If additional accommodation is required, single men who are nearing the end of their processing may be transferred from Christmas Island to the secure Northern Immigration Detention Centre (in Darwin) for the final stages of processing.

**Senator Chris Evans**—Yes. I have been saying that for about six months. That is an immigration detention centre that is available to us onshore and if we need it we will use it.

**Senator FIERRAVANTI-WELLS**—So that is the only site in Darwin that you would be looking at?

**Senator Chris Evans**—What I am saying is I have a detention centre with a 400 bed capacity at Darwin that I can use if we need to. Our preference is to process on Christmas Island. We are increasing the capacity there. We have the whole established system, if you like, there. We equally made it clear that persons when they first arrive will be processed on Christmas Island; therefore, they will be offshore excised place persons and will have the regime that applies to those arrivals, so if anyone is accommodated in Darwin towards the end of their processing they do not get the mainland arrival full suite of legal rights. I have made that very clear for some time. So our first contingency is to increase capacity at Christmas Island. The second contingency is to use Darwin immigration detention centre.

**Senator BARNETT**—I want to clarify whether it is a contingency or a plan regarding Christmas Island. Can we finish off on Christmas Island? You have 200 on the way and you said you have capacity for 400 to 600 on top of that. So you have 1,380 plus the 200 that are on the way and then, you say, you have another 400 to 600 on top of that. Is it a plan that you intend to implement or is it what some people would say is a contingency? It is different.

**Senator Chris Evans**—It is different but the same in the sense that contingency planning has been put in place for some time. We have sourced some extra capacity. We can source more. Some of those decisions in terms of finance and things have not yet been made. I have not ticked off on them. But the department is on top of the situation in terms of what they can do. Mr Correll comes to me and says, ‘We have sourced something else would you like to put it there. Will we tick off or not tick off?’ I will be very clear to you: we have increased capacity at Christmas Island; we have plans to increase further; we are looking at other contingencies on Christmas Island if needed, and the Darwin immigration centre remains available to us.

**Senator FIERRAVANTI-WELLS**—That is the sort of immediate situation for Christmas Island. What is the long-term plan for Christmas Island?

**Senator Chris Evans**—This has been a bit of a debate among many of the island’s residents and I have met with quite a number of them on a couple of visits in recent times. There is a real desire on the island for a longer-term strategy for the island. They have been very concerned about the downturn in the phosphate mining operation there. It employs a lot fewer people than it used to and they have issues about leases. I will not go into all of that but clearly we have become a major employer on the island, a major source of income and economic activity. I see there was a chap in the *Australian* today saying it was great for him because the harbourmaster is making a quid.

**Senator FIERRAVANTI-WELLS**—Yes, the harbourmaster is quite pleased.

**Senator Chris Evans**—There is a range of business people on Christmas Island. The restaurants—

**Senator FIERRAVANTI-WELLS**—If the fruit vendor is to be believed, he is selling his lettuces at \$12.50, so I will come to that in a moment.

**Senator Chris Evans**—The one thing I warn you about Christmas Island and the vegetable price argument is to be very wary. I am just saying that argument has been going for about 20 years—long before we were there in any numbers. It is just one of those issues.

**Senator FIERRAVANTI-WELLS**—Maybe we should set up a vegetable patch.

**Senator Chris Evans**—We are very concerned about those sorts of impacts on the community, and Mr Correll can talk about those if you want. But there is no doubt the community is looking for some longer-term certainty about the economic prospects of the island. Mr O'Connor and I are focused on that and we have been talking to them and others about what we might be able to do there. Clearly, the nature of the detention centre business is that your flows of clients go up and down and while you will have some ongoing capacity—

**Senator FIERRAVANTI-WELLS**—Boom and bust

**Senator Chris Evans**—That has been the history of Australia in terms of detention.

**Senator FIERRAVANTI-WELLS**—It is certainly increasing now—very profitable.

**Senator Chris Evans**—But it is equally true that there are a lot fewer people in Villawood than there were under you, so there is a decline in Villawood and Maribyrnong and there is now increased activity at Christmas Island. But that is just the nature of the business. While we want to provide some long-term stability for the island and work through those issues, I do not want to kid anyone. The reality is if you have a thousand people in detention you have a lot more activity than if you have 50.

**Senator FIERRAVANTI-WELLS**—You have ruled out defence facilities in relation to Baxter. Have there been discussions with Defence about the use of Baxter or other defence facilities?

**Senator Chris Evans**—We made it very clear on the public record that we have had discussions with Defence about further contingencies if needed. That is just sensible government planning. But we have, in those discussions, ruled out using the Baxter site. Clearly, as the previous government had to with the Kosovars—and Mr Hughes is someone who would be better informed than me on this—you have to look at what other defence sites you may be able to use if you needed to.

**Senator FIERRAVANTI-WELLS**—So in summary there are potentially plans to expand or redevelop Christmas Island down the track?

**Senator Chris Evans**—I will characterise it in this way. We are extending our capacity on Christmas Island. What I am acknowledging is that there needs to be some longer term planning, not just of immigration facilities but of the economy of the island and sustainability of the economies of the island. That is certainly what is raised with me by the locals and Mr O'Connor and I have discussed that. If you are talking about longer term planning for immigration, yes, we are starting to do a bit of that, but that is mainly based on contingencies

at the moment. Again, that would have to be made on some sort of assessment of what our longer term prospects and numbers are and, quite frankly, as we have seen from the flows over the years, you could not necessarily predict with any great accuracy what you are dealing with.

**Senator FIERRAVANTI-WELLS**—Assuming that the flows stay the way they are, Minister, it is not going to take too long to get to 1,600 and beyond.

**Senator Chris Evans**—I have always—this is just logical—conceded that if the numbers of people seeking asylum increase then you have to expand your capacity to deal with them. It is simple logic. I have also made the point that we have contingency plans in place and have done for some time that seek to deal with any increases in numbers. We have applied those. It is a great credit to the department and the officers, there are two of them at the end of the table there, and Mr Correll that they have managed that very efficiently without incident and are still providing good quality and efficient care on the island. It is a credit to the department and those involved. We have had to increase capacity. We have contingency plans in place and it is prudent for us, as the previous government found when they had 5,500 arrive in one year, to have some contingency planning in place. That is done on the basis of dealing with worst-case scenarios.

**Senator FIERRAVANTI-WELLS**—My question is based on this concern: does that mean that, if the rate of arrival continues as it has or increases in pace, you are going to have to churn out more? Your processing times are now down to 78 days, that is what you said in answer to a question—does that mean that we are going to have to move people—

**Senator Chris Evans**—I am not sure that was a question on Christmas Island, I do not want to mislead you.

**Senator FIERRAVANTI-WELLS**—Let me just say that you are going to have to churn people faster through the system, that is the question that I am getting at. If you have more people arriving, does that mean that is going to put extra pressure on you and your department to churn out and deal with people a lot quicker, thereby increasing the risk management factor?

**Senator Chris Evans**—If the question is: will there be any lowering of standards in terms of health, identity and security checks, the answer is no, absolutely not. There will be no lowering of the benchmarks that we set for health, identity and security checks which are exactly the same checks which applied under the Howard government. There will be no diminution of those standards. Yes, we are trying to do it as efficiently as we can and we have made some improvements to our processes in working with other agencies et cetera. We are absolutely committed to making sure there are very good security checks and our fellow agencies are doing those checks as is the norm. The best response that we can make is to increase our capacity to deal with the numbers that we are dealing with but there will be no dropping in the standards required for assessment of refugee status or of health, identity or security checks. If we need more accommodation, we will provide it and if it will take more time, then it takes more time.

**Proceedings suspended from 6.29 pm to 7.30 pm**

**ACTING CHAIR**—We will resume proceedings. We are in outcome 2.

**Senator FIERRAVANTI-WELLS**—I was asking questions in relation to the long-term plans for Christmas Island and then we talked about defence facilities. I would like to now move to the legal status and ask a series of questions about that. When the island is full, what is the situation if you move people before their processing is complete? I raised a quote earlier, and the minister has been talking about moving them as they are nearing the end of their processing and transferring from Christmas Island to the mainland. What is their status of their legal rights? Do the legal rights remain unchanged, Mr Metcalfe?

**Mr Metcalfe**—That is my understanding. If a person first arrives at Australia without authority at an excised offshore place, they carry that status with them until they depart Australia or they are granted a visa.

**Senator FIERRAVANTI-WELLS**—So the excision status stays with them?

**Mr Metcalfe**—That is my understanding.

**Senator FIERRAVANTI-WELLS**—If their processing is completed on the mainland, does that affect their legal status?

**Mr Metcalfe**—Their legal status, as I have said, is that they remain an excised person. That carries with them if they are subsequently transferred to a nonexcised part of Australia, to the mainland. Indeed, we have seen over the years people brought to Australia who had been excised, including people brought to Australia from Nauru or medical treatment or other purposes. That has been a standard part of our operating procedures.

I think the minister has made clear that, in the hypothetical, were a person brought to Australia before a protection visa had been granted to them, it would be at the end of the processing, where they were clearly on the pathway to a protection visa—they had essentially been found to be a refugee through our refugee status determination process and health checking, security checking and identity checking issues would be extremely well advanced—and we would basically know that this person was going to be living in Australia and that the final checks were close to being completed.

**Senator FIERRAVANTI-WELLS**—And that is the category that those juveniles who were moved from Christmas Island—

**Mr Metcalfe**—That is exactly right. Those young men were always going to be living in Australia, because they are refugees. I think it was the case that they were actually granted their visas about two weeks after they came here, and it was convenient because of a range of issues for them to be transferred at that particular point.

**Senator Chris Evans**—The point I would make there, which did not necessarily get picked up in the media coverage, is that sometimes the department finds it easier to move a whole group, because if you want to move one or two for a particular reason—be it health or whatever—separating the group can cause anxiety and there are questions like, ‘Why have they been moved and we haven’t?’ Sometimes it is easier to move a small group together because of the management issues as well, so we took a decision to move that group together.

**Senator FIERRAVANTI-WELLS**—I want to move on to some issues regarding Christmas Island itself—and you alluded to this, Minister, when I asked about the price of

lettuce being \$12.50. What about the situation with the residents on Christmas Island? Obviously, as part of your consideration, there is the issue of how an increased immigration presence on the island has repercussions for them in terms of increased food prices and deteriorating roads. And, of course there is the tourism component and the lack of tourism accommodation et cetera—and I will not trawl through all that. Minister, have you given consideration to that? Is that part of the long-term planning for the island?

**Senator Chris Evans**—Sure, it is. People focus on the negative and the complaints, and they are right to say that these are legitimate issues. There are also lots of jobs and lots of economic opportunities. At the time I was there prior to the centre being operational, I think there was one restaurant open in town. There are a lot more now and they are full. I understand you have to book. There is a lot of staff on the island. There is a lot of economic activity going on. I also hear from a lot of people on the island who say things are going really well. We have to manage that and respond to the concerns. I might just make the point that the cost of vegetables on Christmas Island has been an issue for many years because of the tyranny of distance. We have the same issue in my home state of Western Australia in the remote communities. We are conscious of those things and I will get the department to run through a few of their purchasing policies and things. There are two things I will say. Firstly, we are very conscious of improving relations with the community and we are looking to fund a community liaison officer through the local government authority to make sure we are dealing with their issues. The officers can take you through the details of that. Secondly, I have made it very clear both to my department and to the contractors that we engage that we ought to give preference to local employment. There are a number of Chinese and Malay in particular who are Australian citizens who live on Christmas Island and do not have jobs. The unemployment situation there has got worse with the phasing down of the mines. It is a good opportunity to provide local jobs. There is a range of policies being driven there to make sure that the economic activity is of maximum benefit to the community, be that through stimulated economic demand as well as local employment. Mr Correll or others might take you through some of that.

**Senator FIERRAVANTI-WELLS**—The ratio of the immigration component on the island compared with the locals is probably about two to one.

**Mr Correll**—Not quite that ratio, but it is certainly more than one to one. This whole issue of the department being an extremely good community citizen on the island is very much uppermost in our thinking. We have a community reference group that meets every month where we sit down with community and business leaders, and work through the latest developments. It is about consultation on what is occurring and we give a picture of the latest developments. That happens every month. As the minister flagged, we are working with the shire council on the selection of the community liaison officer. That is particularly to build a bridge into the Chinese and Malay communities on the island. We are working with the shire council to set up a price watch arrangement to keep an eye on the price of goods and make sure—

**Senator FIERRAVANTI-WELLS**—Don't use GroceryWatch as a model.

**Senator BARNETT**—Don't go to the GROCERYchoice website. They are both down. They will not help you.

**Mr Correll**—Thank you for that. Also, we have arrangements where we encourage our staff to work on a voluntary basis. Our staff work in a voluntary capacity at the tourism centre for the island. Again, it is about developing a culture of being part of the community, not blow in, blow out. We have an overall strategy of having not just short-term postings for our people but longer term postings for staff on the island.

**Senator FIERRAVANTI-WELLS**—I was going to come to your staff in particular on Christmas Island. How many do you have there at the moment?

**Mr Correll**—I might ask Ms Wilson to give the latest statistics.

**Ms Wilson**—As at 7 October, there were 67 DIAC staff on island. I should explain that, as Mr Correll said, we have moved to six-month stints on-island, longer stints on-island, for about half of the positions. About 50 per cent of the positions would be on island for a period of about six months. The other positions that are for shorter periods are the people in the teams who fly in to do entry processing and refugee seeker assessment processing. They come in for periods to do their interviewing and write up their decisions, and then they fly back to the mainland to finish processing those applications.

**Senator FIERRAVANTI-WELLS**—Is this the highest number of staff you have ever had on Christmas Island? Are you at that point?

**Ms Wilson**—I guess this relates back to your previous question about how we manage to keep processing times at reasonable levels.

**Senator FIERRAVANTI-WELLS**—Yes.

**Ms Wilson**—We tend to respond by, to the extent we can, increasing the size of the teams going over so that people continue to go through their processing in a timely manner.

**Senator FIERRAVANTI-WELLS**—I see.

**Senator Chris Evans**—I think it is important, though, to make the point, so we do not mislead you, Senator, that we are not the major group there, with the security firms, the centre staff and some of the other departments' staff. The immigration staff are only a small part of the picture.

**Senator FIERRAVANTI-WELLS**—In fact, on that, at any given time how many Australian government officials would there be on Christmas Island, roughly?

**Senator Chris Evans**—In relation to immigration processing?

**Senator FIERRAVANTI-WELLS**—Yes.

**Senator Chris Evans**—Because there are obviously a lot there for the schools and other things.

**Senator FIERRAVANTI-WELLS**—You can take that on notice if you wish.

**Ms Wilson**—I can give you examples. Across all of our providers, including DIAC staff, we have 287 people on-island. For example, Serco, who is the new provider that took over on 30 September, has 89 people on-island; 39 of them are locally employed. The medical service has 13 people on-island. We have 41 interpreters. We have a facilities management group that

look after the facilities at North West Point; they have 36 on-island, 33 of whom are locally engaged. They are the kind of key big groups. I do not have the breakdowns of all the other—

**Senator FIERRAVANTI-WELLS**—If you would take that on notice—just to give me a profile of those who work on the island, so that we can get a better picture of that.

**Senator BARNETT**—Through you, Chair, just on that point, Ms Wilson, can you compare that to the previous 12 months, since 30 June last year, when you break that down. We obviously want to know what providers you are funding. You also mentioned health workers and interpreters and so on; if you could break that down, we could compare that to 30 June last year.

**Senator Chris Evans**—Senator, that will not be of any value to you because, clearly, the numbers will directly relate to the number of clients. I can give you the figure for 30 June, but it will not tell you anything.

**Senator BARNETT**—I think it will, Minister. I hope it will. So long as we know the number of clients at the time—

**Senator Chris Evans**—All I am saying is that it is directly in relation to the number of clients, so if the centre was empty at some point we would have virtually no staff on the island.

**Senator BARNETT**—I understand that.

**Senator Chris Evans**—You can have the figure, but I am just saying it is not very helpful.

**Senator BARNETT**—But we need to compare apples with apples; that is why we want to have a look at that.

**Mr Metcalfe**—It will show we are employing a lot more people, because we have got a lot more work.

**Senator BARNETT**—Yes. And when you do that can you advise us of the total population of the island.

**Ms Wilson**—I understand the population of the island is about 1,500.

**Senator Chris Evans**—That is also a bit seasonal, though, as well.

**Ms Wilson**—It is, yes.

**Senator FIERRAVANTI-WELLS**—Where are the staff housed? What is the situation?

**Ms Wilson**—We have 162 bed-sits on the island which the department owns, and our staff are largely housed in those bed-sits. In addition, as Mr Correll mentioned earlier, we have put 22 demountables in the Phosphate area and we are actually using those for staff accommodation at the moment because of the increase in numbers. But also, to manage the transition from G4S to Serco, we needed staff from both organisations while we were doing the transition and we have been using that accommodation for them.

**Senator BARNETT**—Just quickly on that, the 162 beds—how many houses are there?

**Ms Wilson**—They are bed-sits. They are separate bed-sits. They have got a dining room, a kitchenette, a bathroom-shower, a double bed—

**Senator Chris Evans**—

**Mr Correll**—They are little units.

**Senator FIERRAVANTI-WELLS**—In a complex.

**Ms Wilson**—Yes, they are in several different complexes together around the island.

**Senator BARNETT**—My question is: is there more than one in a bed-sit?

**Ms Wilson**—There is one double bed in a bed-sit, so it is usually one staff member, because staff go by themselves.

**Senator FIERRAVANTI-WELLS**—They are not double-bunking. This is not a submarine!

**Ms Wilson**—Not to my knowledge!

**Senator Chris Evans**—We allocate one per staff member; after that we take no interest!

**Senator FIERRAVANTI-WELLS**—Thank you for that clarification, Minister!

**Mr Metcalfe**—We do have a lot of relationships within the department, though!

**Senator FIERRAVANTI-WELLS**—Thank you, Mr Metcalfe! Is that why the stress—

**Mr Correll**—No, no; everyone is married to each other!

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, is that why the stress levels have gone down in the department? Have you been fostering this—

**Mr Metcalfe**—I hope that nature is following its course.

**Senator Chris Evans**—I think we had better move on.

**Senator FIERRAVANTI-WELLS**—Yes, I think so. Obviously the accommodation is owned by DIAC and people just stay there. Do the staff who go to Christmas Island get allowances as well?

**Ms Wilson**—They do. They get a revised TA allowance—

**Senator FIERRAVANTI-WELLS**—Like a normal Public Service thing.

**Ms Wilson**—Yes, that is right.

**Senator BARNETT**—Can you detail the allowances on notice for us?

**Ms Wilson**—Yes, we can. We have moved in more fixed allowances for people on temporary transfer stints. For example—and my colleague will correct me if I am wrong—people at Executive Level 1 and 2 get a \$20,000 per annum allowance, which is reduced to the period they are on-island—

**Senator FIERRAVANTI-WELLS**—I see—as opposed to the Public Service rate of, say, \$200 or whatever it is per day, plus transport.

**Mr Metcalfe**—I think it is easier if we take it on notice, because there are bits and pieces.

**Senator FIERRAVANTI-WELLS**—Also, the rumours of taking over this casino: I have read various things in the press. Can somebody clarify what that is about?

**Mr Correll**—That is not a rumour I had heard—

**Senator Chris Evans**—There was a rumour. A journo put it to me once, and I said, ‘No,’ and I do not think anything has changed.

**Senator FIERRAVANTI-WELLS**—We are not taking over any casinos, or not at this stage?

**Senator Chris Evans**—The casino is not operating, as you know.

**Mr Metcalfe**—I do not think it is really in a condition to put people into.

**Senator Chris Evans**—So if you are visiting the island and someone offers you a bed at the casino, think twice about it. I am not sure it is that flash.

**Senator FIERRAVANTI-WELLS**—Minister, I am not sure that I will get to visit the island. I understand that Senator Hanson-Young has visited, but I understand that Mrs Stone has been trying to go as well—

**Senator Chris Evans**—Mrs Stone has been less than honest about that matter, Senator. I am happy to go through it chapter and verse if want. She has been given numerous opportunities and has not taken them up.

**Senator FIERRAVANTI-WELLS**—I have not asked yet, but perhaps I will.

**Senator Chris Evans**—Give me a call, Senator. I am happy to help.

**Senator FIERRAVANTI-WELLS**—Can I just go on, in terms of bonuses for work on Christmas Island. Is that all tied up now in what you are taking on notice?

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

**Senator FIERRAVANTI-WELLS**—Okay. You mentioned that the postings are now six-month stints, except for the people who are required to fly in, fly out for very short time periods. Tell us about flights. They come in once a week so that means that people have to stay there for a week, and that is the minimum stay anyway.

**Ms Wilson**—I understand there are now four flights a week. The airlines put on more flights. We use commercial airlines wherever possible but we are very conscious not to use all the available seats on a particular flight to provide opportunity for the local community as well.

**Senator FIERRAVANTI-WELLS**—And the staff who are on Christmas Island are across seniority levels? Could you give a breakdown of the levels?

**Ms Wilson**—We can give you a sense of that. The lead on the island is a Senior Executive Band 1 for DIAC. They are the lead for all of the Commonwealth agencies on-island. But we can give you a profile.

**Senator FIERRAVANTI-WELLS**—The average stay time was shorter periods for staff on Christmas Island but now they are six-monthly postings, if I can put it that way, on the island.

**Ms Wilson**—Yes.

**Senator FIERRAVANTI-WELLS**—We talked about costs of running the Christmas Island detention centre. Of course, that varies week to week. The cost of running the island

this week could be different from the cost of running the island next week, and we canvassed that.

**Senator BARNETT**—Can I quickly ask: Mr Correll, you indicated earlier in an answer to Senator Hanson-Young with regard to the fixed costs and the floating costs, as it were.

**Mr Correll**—Variable costs.

**Senator BARNETT**—You have outlined that, and you mentioned \$9.98 million and then \$32.5 million respectively for those costs. I have got that down. I am wondering if you are happy to take on notice, in terms of providing that breakdown for the capital cost, the fixed cost and the variable cost.

**Mr Correll**—Yes, we can provide that.

**Senator BARNETT**—Thank you. That would be useful, because then we get a better feel for how the island is operating.

**Senator FIERRAVANTI-WELLS**—You provided figures in an answer to a question on notice about the breakdown of the people on the island. Could you update those figures, which will vary with the date?

**Ms Wilson**—Document the different clients at the different facilities on the island?

**Senator FIERRAVANTI-WELLS**—The nationalities, the ages; that sort of breakdown. I think it is going to be caught up in the previous answer to questions that we discussed before.

**Senator BARNETT**—To confirm: Mr Correll, in an answer to Senator Hanson-Young, you said you would table the list of detention centres, not just Christmas Island—you mentioned Darwin and Maribyrnong. So you will provide a list of those detention centres and the fixed and variable costs for each?

**Mr Correll**—We will give the full costs figure for each of those items.

**Mr Metcalfe**—I think that we agreed that the variable cost could be quite meaningless if there were very small numbers of people there. I think we agreed on the total cost of operating the centre for the period.

**Senator BARNETT**—To the best of your ability, provide a breakdown of those costs per detention centre.

**Mr Metcalfe**—Yes.

**Senator FIERRAVANTI-WELLS**—On the last occasion we were here we discussed with Mr Hughes the questioning process. We talked about what happens on the island. You provided me with a processing chart for offshore arrivals, which was quite useful. How is that going? Are we getting better at putting together the intelligence that we draw from the interviews that we have with unauthorised arrivals in terms of eliciting information from them and the accuracy of that information? Last time we talked about the nature of it. I think we canvassed certain things and how you go about it. How accurate are we becoming?

**Mr Metcalfe**—I will start on that. Mr Correll and his folk are involved in the initial work around the so-called entry interview that occurs. Mr Hughes and Ms Keski-Nummi's staff are involved in the later interviewing associated with refugee status determination if the person

concerned has prima facie raised issues that possibly engage Australia's protection obligations. In relation to the entry process, which is designed to quite quickly establish who the person is, where they are from, why they may have come to Australia and the reasons they advance. I think it is fair to say that we continue to work to try to improve those processes. The timeliness is all a factor of the availability of interpreters and the number of people who arrive. But we do have a very strong desire to interview people very quickly and to ensure that that material is available to not only ourselves but also to other agencies who are working on these issues because that can inform information about further activities of people smugglers. As I was discussing with Senator Brandis earlier today, I am sensitive not to move into areas of intelligence gathering or intelligence issues. But I can give you an assurance that we are focused on constantly working to ensure that we get the best results through those processes, both in terms of understanding how people may have come here and their reasons but also to understand whether they are making indications that may engage Australia's protection obligations, in which case they are streamed further down the processing pipeline into more detailed interviewing, as we have discussed many times before.

**Senator FIERRAVANTI-WELLS**—Indeed, on the last occasion you kindly offered a briefing. Due to other circumstances I have not been able to avail myself but I am conscious of not going into that area. The 90 days was introduced by the previous minister at a time when there was a trickle of people arriving. Are we finding that 90 days and that limit are pushing? Are we achieving the objectives without compromising the standards, if I can put it that way? It is one thing to have a small number of people but if you have large numbers to deal with then the accuracy of the information that you want to elicit could be compromised.

**Mr Metcalfe**—That is right. Certainly we—

**Senator Chris Evans**—I think the assumption of the question is wrong. It was introduced for onshore as well, which involved much larger numbers.

**Mr Hughes**—It was introduced for onshore in 2005.

**Senator FIERRAVANTI-WELLS**—The question still stands. Is the 90 days sufficient to elicit the information?

**Mr Metcalfe**—I will get Ms Keski-Nummi to talk in more detail about that, but certainly we are very mindful of the general legal and, in some cases, policy commitments around the 90-day processing period. But we also have the view that we need to have robust processes; to ensure that applicants have access to advice if they are seeking to, prima facie, engage our refugee obligations; and to ensure that our processes of assessing those claims through interviewing people are robust, fair and legally correct. I mentioned that in my opening statement this morning. Ms Keski-Nummi might be able to provide a bit more detail.

**Ms Keski-Nummi**—I will just make a couple of points. First of all, the 90-day legislated PV processing is for protection visa applicants onshore. It does not cover the non-statutory refugee status assessment processes on Christmas Island. That said, we aim to do the RSA processing within broadly similar time frames. In terms of the onshore processing—

**Senator FIERRAVANTI-WELLS**—That is the 78-day average that you answered—

**Ms Keski-Nummi**—I do not know what the 78 days would be. As with all of these things, they move. We are probably at around 100 days at the moment on Christmas Island. With the 90 days onshore, we are maintaining a very similar proportion to what we have maintained up to now. There has been a slight slippage in the last few months, but we are continuing to have a look at ensuring that we are tracking well in terms of our 90-day processing for the protection visa case load.

In relation to the Christmas Island case load, we have set up a dedicated team in our Sydney office to work on the Christmas Island case load. They are the ones who fly in and fly out, if you like, to do the refugee status assessments and the interviews and then come back, do the research and write up their decisions. They are generally doing them within that period of time.

**Senator FIERRAVANTI-WELLS**—The reports on the asylum seekers who were sent back—I think there were nine or 10 of them—

**Ms Keski-Nummi**—That is correct.

**Senator FIERRAVANTI-WELLS**—One of them was subsequently found to have a criminal record. Could you give us the background to that.

**Ms Keski-Nummi**—Sure. That group were onshore arrivals.

**Senator FIERRAVANTI-WELLS**—Yes, they were onshore.

**Ms Keski-Nummi**—They went through the normal protection-visa-processing arrangements.

**Senator FIERRAVANTI-WELLS**—Yes. They would have gone through security checks, I would have assumed.

**Ms Keski-Nummi**—No, because they were refused. Normally security checking is done when it appears that a person will probably be found to be a refugee; then we activate the security process.

**Senator FIERRAVANTI-WELLS**—And they were found not to be refugees.

**Ms Keski-Nummi**—That is correct. They went through the RRT procedures.

**Senator FIERRAVANTI-WELLS**—They were deemed to be economic refugees?

**Ms Keski-Nummi**—They were deemed not to be refugees.

**Mr Metcalfe**—‘Economic refugees’ is not a term we use.

**Senator FIERRAVANTI-WELLS**—I remember economic refugees. It has this sense of *deja vu*.

**Mr Metcalfe**—You are a refugee or you are not a refugee.

**Senator FIERRAVANTI-WELLS**—I know, but it just has shades of it.

**Mr Metcalfe**—They had not established any grounds under the refugee convention for Australia to provide them with protection. That was tested on review through the Refugee Review Tribunal. They confirmed that decision. In relation to a couple there were some aspects relating to litigation, stays and applications, but removals occurred in a timely manner.

**Ms Keski-Nummi**—The only other point I was going to make was that, for the one person who was returned to Sri Lanka and detained, it was not because he had criminal convictions; he was charged with people smuggling.

**Senator Chris Evans**—I will not comment too closely on a particular case, but some suggestion was made by, I think, the opposition spokeswoman that somehow there had been failure to coordinate between police authorities et cetera. It was complete nonsense. The AFP interviewed all of the men, assessed its capacity to run a case about people smuggling and decided it did not have the capacity to successfully prosecute a case in that instance. People were assessed against the refugee convention, found not to be owed our protection, appealed, had ministerial interventions which were refused and were then returned in accordance with government policy. The Sri Lankan authorities then interviewed a couple of the men and have sought to charge one of them, but that is purely a matter for Sri Lankan authorities as to what evidence they have, what standard of proof they require and what their legal processes are. The fact that someone may be charged with a crime in another country is not a reason not to return them.

**Senator FIERRAVANTI-WELLS**—As an aside going back to the discussion, Mr Metcalfe, that we were having this morning about judicial review: it is interesting to compare the decisions in relation to these people and, in broad terms, the sorts of legal parameters that are available to offshore asylum seekers as opposed to those onshore. One can then look at the legal avenues and, perhaps, the severity or otherwise.

**Mr Metcalfe**—Bearing in mind that this particular group, of course, was onshore arrivals—

**Senator FIERRAVANTI-WELLS**—I appreciate that. They went through that system. I am just looking at the two systems.

**Mr Metcalfe**—And ultimately it depends upon their own personal desire to pursue matters and the advice they may receive from their legal advisers. The department will continue to take a proper role in responding to litigation we receive, and that is that we will abide by all of the relevant legal service directions and act as a model litigant. That does not mean that we will not defend decisions that we have taken and seek to put into effect proper decisions.

**Senator FIERRAVANTI-WELLS**—I know. I would be the last person to say that should not be done. It certainly was a feature in the past. I now look, if I may, at those people who are on Christmas Island. There have been some comments in the press about allowances and benefits. I wanted the opportunity for you to give us an outline of those, if you could, so that we can correct misperceptions and clarify the situation.

**Mr Metcalfe**—I am very happy to put that on the record. I will ask Ms Wilson to assist.

**Ms Wilson**—I think we started going through some of this last time as well. Families in community detention on Christmas Island receive 89 per cent of Centrelink allowances. For example, a single person living alone on the mainland would receive \$453.30 per fortnight. On Christmas Island that same person in community detention would receive \$403.

**Senator FIERRAVANTI-WELLS**—One of the comments that appears to be out there is, for example, to compare a person who is unemployed and what they get to a person who is on

Christmas Island. Leaving aside the merits or otherwise of this commentary, I think it would be useful if you took on notice and did that comparison. I have a copy of the Newstart. Of course it varies depending on if it is a single person, if there is rent allowance and those sorts of things, but I think it really would be useful if you could do that comparison. I think there is information out there. You have seen the various—

**Mr Metcalfe**—We have done that.

**Senator FIERRAVANTI-WELLS**—You have that?

**Mr Metcalfe**—Yes.

**Senator Chris Evans**—There are two points to make. Firstly, there is that email, which we think originated in Canada and was applied to Australian conditions, which keeps going around and around. We have had representations from offices of members of parliament and we have tried to contact them all et cetera. It is almost like an email virus that keeps circulating with claims as outrageous as they are false. Unfortunately, with modern technology it is very hard, once something like that starts, to actually kill it off. As I said, we think it originated in Canada and they just changed some of the words to suit Australian conditions.

It is the case that there have been only a couple of tinkering changes to the regime that applied under the Howard government. I think they are mainly to do with restricting the amount of cash available to people in detention. So we will give you the figures but we will also give you any changes that have been made since the change of government.

**Senator FIERRAVANTI-WELLS**—That would be useful. Why don't you just do one situation with, say, the various categories of people who are unemployed and then what the current situation is so that we have it in one document and we can compare apples with apples.

**Senator Chris Evans**—The key point to make is that those in detention at the detention centres, largely single males, are not in receipt of Centrelink equivalent payments or percentages. They get a small allowance.

**Senator FIERRAVANTI-WELLS**—I appreciate that. I do not want to criticise or otherwise; I just want to put it on the record. There has been some other commentary. I think yesterday evening there was a program—was it *A Current Affair* or something?

**Mr Metcalfe**—I have not seen that program.

**Senator Chris Evans**—That was actually about people brought in under the humanitarian program, as I understand it, under successive governments and how many of them are on welfare.

**Senator FIERRAVANTI-WELLS**—Right. We were busy here yesterday evening, so we did not—

**Senator Chris Evans**—We will get you the information, but I hasten to make the point that, firstly, most of those people are not in receipt of those sorts of benefits because they are in detention and, secondly, the same regime that applied under the Howard government is

applied except that we have actually tightened up on a couple of provisions which we thought were overly generous.

**Mr Correll**—Most of it is now in store accounts, so there is very little cash involved. But we will make that clear.

**Senator FIERRAVANTI-WELLS**—Sorry, it is in?

**Mr Correll**—Most of the allowance is in fact reflected in store accounts, not in handouts of cash. There is a very small amount of cash only. We will make that clear in setting that out.

**Senator FIERRAVANTI-WELLS**—And that includes, for example, the phone allowances. Senator Hanson-Young asked a question in relation to meeting religious needs. She focused on Muslims, but I gather there are not just Muslims on Christmas Island; there are other religions. I want to know, if we are talking about the religious needs of the detainees, that all needs are being met, not just those of one religion.

**Ms Wilson**—We certainly do try to do that. There is not a local Catholic priest, for example, on the island but when we have had visiting priests we have arranged for services to take place in the detention centre for those clients who are interested. We have a local imam who has visited the centre and provided spiritual guidance for the clients who are keen to participate. So we try to cover the breadth of religious denominations on the island.

**Senator FIERRAVANTI-WELLS**—In the profile that you are going to give us, it would be interesting to know the sorts of religions as well.

**Senator Chris Evans**—The men we returned to Sri Lanka recently were of the Catholic faith. I think Father Brennan provided a service or two for them. They were from the Negumbo area mainly, and they are Catholic. I understand that the Tamils are a mixture of religious beliefs.

**Ms Wilson**—That information is a bit harder for us to gather because it is only those who attend the event that we know are from those religions. We do not get them to fill out a form which specifies religion.

**Senator FIERRAVANTI-WELLS**—Do not answer this question if you think it is compromising, but does that mean that in terms of profiling we do not find out what their religious background is?

**Mr Correll**—Not for the purposes of the detention statistics that Ms Wilson is talking about.

**Senator FIERRAVANTI-WELLS**—I was aware that they were Catholic, because apparently the Saatchi and Saatchi campaign was specifically targeting the Christians. I did ask Mr Carmody yesterday evening why we were just targeting the Catholics.

**Senator Chris Evans**—I am sure he gave you the answer, which is that we were targeting that West Coast area—

**Senator FIERRAVANTI-WELLS**—That is what he said. It is basically a Catholic enclave.

**Senator Chris Evans**—where the Catholic Church is, because that is where the jump-offs have been. I visited it a few months ago when I was in Sri Lanka. It has been a fishing area

and has been a very strong Catholic area for many years. The Catholic community is actually on that strip, the Negumbo region, where we have had a lot of people-smuggling activity.

**Senator FIERRAVANTI-WELLS**—One of the media reports referred to it as a ‘little Italy’.

**Mr Metcalfe**—That reflects the fact that there has been a long tradition of immigration from that particular area to Europe and that a large number of folks from that place have ended up in Italy and had clearly been inspired by the architecture and sent money back home, which would appear to reflect columns and—

**Senator FIERRAVANTI-WELLS**—Those sorts of things.

**Mr Metcalfe**—Italian architecture.

**Senator Chris Evans**—In fact, I tried to meet the local cardinal or bishop when I was in the region. He was off in Rome at the time so I did not get the opportunity to meet him.

**Senator FIERRAVANTI-WELLS**—So you went to mass instead, Minister?

**Mr Metcalfe**—We asked Mr Fisher to catch up with him, which I think he did.

**Senator FIERRAVANTI-WELLS**—I have a quick question about the Ambassador for People Smuggling to Australia. I think that is Mr Woolcott’s title. He is housed in DFAT?

**Mr Metcalfe**—He is an officer of the Department of Foreign Affairs and Trade. I do not know if you would describe him as being ‘housed’ there.

**Senator FIERRAVANTI-WELLS**—I am going to ask where he is housed, but I—

**Mr Metcalfe**—Usually on an aircraft, I think.

**Senator FIERRAVANTI-WELLS**—I just wanted to ask from your perspective, Mr Metcalfe, and your department’s interaction with him, what is that interaction? Can you give me an outline of that?

**Mr Metcalfe**—I can, and others may provide more detail. The Ambassador for People Smuggling was a position created quite a few years ago and has been occupied by a number of different senior officers from the department of foreign affairs either on a full-time basis or a part-time basis. But the position is again staffed on a full-time basis. The senior foreign affairs position full time is responsible for coordination of our diplomatic efforts in this area. So the ambassador is very much involved in working with our missions throughout the region—in Indonesia, Colombo and many other countries—to ensure that the foreign affairs department is applying its full resources. The officer when in Canberra would be routinely engaged in some of the interagency meetings and discussions in support to the Border Protection Committee of cabinet on these issues. In a nutshell, it is a first assistant secretary level, division head level, position within the Department of Foreign Affairs and Trade, and it is their key point of significant activity at a practical diplomacy and a policy issue on these matters.

**Senator FIERRAVANTI-WELLS**—And your interaction is as require or—

**Mr Metcalfe**—Extensive.

**Senator Chris Evans**—Senator, I did a tour of South-East Asia last year and I went to Sri Lanka earlier this year to discuss people-smuggling issues and on both occasions the Ambassador for People Smuggling to Australia came with me as part of the delegation. So when we do something internationally focused—be it myself, Mr O'Connor or the foreign affairs minister—they tend to help coordinate part of that approach.

**Senator FIERRAVANTI-WELLS**—I will ask Mr Woolcott more specific questions.

**Mr Metcalfe**—We will let him know that you might be wanting to have a chat.

**Senator FIERRAVANTI-WELLS**—He knows that already. I bumped into him at an airport the other day.

**Mr Metcalfe**—That is where he is usually housed, I think.

**Senator FIERRAVANTI-WELLS**—He was very pleased to be seeing me soon in estimates. There are a couple of matters that I would now like to go to. One is the question of the Prime Minister's plan—and there are obviously discussions going on at the moment in Indonesia. I would like to get some clarification of what we are going to offer—if I can put it that way—and perhaps clarify some of the comments that have been made in the papers about what Indonesia expects to get in return.

**Senator Chris Evans**—I just want to make it clear that I am not going to be very helpful in this regard: I am not going to respond to what papers said might be the subject of negotiations.

**Senator FIERRAVANTI-WELLS**—Sure.

**Senator Chris Evans**—Just in terms of the government and my portfolio responsibilities, no decisions have been taken. But if they were, they would be taken internal to government. I saw the report in a couple of papers, but I cannot vouch for its accuracy. If we were negotiating on certain matters, we would not be discussing them publicly while we were negotiating them.

**Senator FIERRAVANTI-WELLS**—One question that I hope you can comment on is that the reports seem to reflect the sentiment—if I can put it that way, and correct me if the sentiment is wrong—that, of course, people smuggling is not a crime in Indonesia. As a consequence of that, is there a perception in some quarters that we are being too tough on people smugglers, and that this might be a quid quo pro that the Indonesians want for us to examine that? I make it in this context—

**Senator Chris Evans**—I am not quite clear what the implication of that is, but it is true to say that people smuggling is not specifically a criminal offence in Indonesia at this time. I think there is a bill before their parliament, or in their processes, which looks to deal with people smuggling as an offence. One of the officers can probably give you more detail on that. And it is a fact that one of the objectives of the Bali process is to try and get greater adherence, and countries signing up to, the refugee convention. But the second is to try and standardise and introduce people smuggling as an offence across jurisdictions. Those are objectives that we, and many others, are pursuing.

**Senator FIERRAVANTI-WELLS**—Can I just read this article? There were two articles on 15 October. One was in the *Age*, entitled ‘Focus on smugglers “may upset Jakarta”’. I just want to quote a comment by a Ms Sue Hoffman:

There’s already been little indicators that it will be a point of diplomatic tension ...

**Senator Chris Evans**—Who is Ms Sue Hoffman?

**Senator FIERRAVANTI-WELLS**—Perhaps you could have a look at this. Mr Hughes, are you aware of this?

**Mr Hughes**—There have been a lot of articles and I do not remember one by Sue Hoffman.

**Senator FIERRAVANTI-WELLS**—Yes, there was 70 just on the weekend. The minister got a little bit touchy when I reminded him.

**Mr Hughes**—I do not remember that one.

**Senator FIERRAVANTI-WELLS**—I have waded through all 70.

**Senator Chris Evans**—Are you saying that Sue Hoffman is the journalist, or has she been quoted?

**Senator FIERRAVANTI-WELLS**—No, it says:

Making people smugglers the villains in the asylum seeker debate risks damaging Australian diplomatic ties with Indonesia, an academic has warned. Indonesian fishermen were often the last link in the chain of people organising sea voyages to Australia and the penalty was not seen as commensurate with the crime, the researcher into people smuggling and asylum seekers, Sue Hoffman, said.

And then she says:

“There’s already been little indicators that it will be a point of diplomatic tension,” Ms Hoffman, from Murdoch University, said. “Indonesians believe these men have been treated too harshly.”

The article then goes on to talk about people smuggling not being a crime in Indonesia, and also says:

People smugglers fell into three categories, Ms Hoffman said: the “mum and dad” smugglers who have other jobs (including fishing), organised syndicates that also run prostitution rackets and other illegal trades, and loose networks that spring up with spikes in demand.

So, firstly, are you aware of her work and, secondly, do you see this as a point of tension, as she says?

**Mr Hughes**—I think I now do recall that article—I did not recall the name. I do think that through the Bali process there have been commitments through various communiques by governments who are participants in the Bali process to the process of criminalising people smuggling. Already, I think most countries in the region have criminalised trafficking, which has been more of a priority for them. Others are moving towards criminalisation of people smuggling. As Senator Evans mentioned, there has been legislation in the Indonesian parliament, but I have not seen a report lately on the progress of that, so I would have to take that on notice and check with the Attorney-General’s Department on the latest state of affairs.

**Senator FIERRAVANTI-WELLS**—Thank you for clarifying that there were 28 in the Australian delegation. I had been told there were 43 in the delegation. Can you tell me what

has been progressed since to the communique of the Bali process from the regional meeting in April? The communique sets out a series of general principles. It says:

Ministers underlined the importance of source, transit and destination countries increasing efforts to combat people smuggling and trafficking in persons, including by enhancing national legislation to criminalise these activities.

Where are we at with that?

**Mr Hughes**—There is a series of outcomes of the Bali ministerial meeting. In many respects when you are speaking to the Ambassador for People Smuggling Issues, you will find he has overarching responsibility and can assist you with that. One of the key outcomes was the reconstituting of an ad hoc group to look at specific irregular movement situations in the region. Ms Keski-Nummi has been involved in meetings of the ad hoc group and can help you with the progress that has been made so far.

**Senator FIERRAVANTI-WELLS**—The communique also states:

Ministers agreed that the Ad Hoc Group ... mechanisms used during the establishment phase of the Bali Process be retasked to develop regional responses to these current challenges.

It is up to a country to ask for an ad hoc group to be established.

**Mr Hughes**—Most affected countries do ask for the ad hoc group to do work on an irregular movement situation.

**Senator FIERRAVANTI-WELLS**—Have we asked for the ad hoc group to do work?

**Mr Hughes**—We have and Ms Keski-Nummi can talk about that.

**Ms Keski-Nummi**—There was a meeting of the first ad hoc group in July in Bali in which there were discussions around a number of various initiatives that regionally could be taken forward. The sort of work that we were looking at included understanding better population flows and establishing a couple of cluster groups from source through to destination countries, including transit countries, about mapping population movements and where people are moving to just to get a better understanding of those movements and where the vulnerabilities and the gaps may be.

**Senator FIERRAVANTI-WELLS**—Did we discuss this at the last estimates? Were these the matters that Senator Hanson-Young was asking about?

**Ms Keski-Nummi**—It can't have been because the meeting was in July.

**Senator FIERRAVANTI-WELLS**—Okay. We are contributing funds towards that research?

**Ms Keski-Nummi**—We are participating in that. What I mentioned last time was some funding we have provided to UNODC, which is much broader than that in relation to broader regional population flows. The cluster groups are country specific. We are working on Sri Lanka as the first cluster. There are discussions also in relation to a number of different areas. For instance, a workshop will be convened by IOM and with the support of New Zealand and Bangkok on information campaigns and how information campaigns work, and the sorts of things that you need to factor into the development of information campaigns.

**Senator FIERRAVANTI-WELLS**—The Saatchi & Saatchi example.

**Ms Keski-Nummi**—Just broadly, in terms of the many things that you need to take into account, yes.

**Senator Chris Evans**—I would not denigrate necessarily advertising campaigns. If you can sell Australians bottled water, it seems to me that some of them can be very effective.

**Senator FIERRAVANTI-WELLS**—I thought volleyball nets as the first line in the tough talk was really quite effective, and that was the basis on which I asked my questions.

**Senator Chris Evans**—I think you will find a suite measures aimed at various markets is the way to go.

**Senator FIERRAVANTI-WELLS**—If you recall, I raised this before at previous estimates. I am not denigrating it.

**Senator Chris Evans**—As I say, one of the things we have been keen to do in Sri Lanka and Negombo is to work with the Catholic Church, because they are hugely influential and are able to help make sure people understand the realities.

**Senator FIERRAVANTI-WELLS**—Perhaps Mr Fischer should be a little bit involved. Just as an aside, is he involved?

**Senator Chris Evans**—Because the senior church representative was actually in Rome when I was in Sri Lanka, we put a message through that, if Ambassador Fischer was able to catch up with him, we would appreciate it if he could just to have a chat to him. I am not sure whether that occurred or not.

**Mr Metcalfe**—I certainly was in a car with Mr Woolcott when we rang Mr Fischer from Negombo. Mr Woolcott spoke with Mr Fischer and asked that he contact the bishop and explain the issues. I do not know whether that contact occurred or whether the bishop was returning. Certainly it is an indication that we are leaving no avenue unexplored in dealing with this issue.

**Senator FIERRAVANTI-WELLS**—Going back to the question, you talked about enhancing national legislation. It would be interesting to know which countries are part of the Bali summit. Perhaps a table setting out the various provisions in each of those countries would be helpful.

**Ms Keski-Nummi**—We can certainly get that, yes.

**Senator FIERRAVANTI-WELLS**—Thank you. As far as that group is concerned, what sorts of concrete measures are being taken? Are we just at the talking stage?

**Ms Keski-Nummi**—We have a number of workshops, and Peter Woolcott will be able to take you through it in more detail, because DFAT is the lead agency in terms of the Bali process work. But there are a series of workshops that will be held in the coming months.

**Senator BARNETT**—Is that Peter Woolcott or Dick Woolcott?

**Ms Keski-Nummi**—Dick's son, Peter—the Ambassador for People Smuggling Issues to Australia, I suppose I should call him, to use his proper title. There are a series of workshops that are going to be held in the coming months, with a senior officials meeting towards the end of the year to review progress and what we will do in the first half of next year as well.

**Senator FIERRAVANTI-WELLS**—What are the—if I can put it this way—outcomes and objectives? Have you set yourself, or has this group set itself, any key performance indicators?

**Ms Keski-Nummi**—Again, I should defer to the ambassador for people smuggling issues as a member of the lead agency in relation to Bali process matters.

**Senator FIERRAVANTI-WELLS**—All right. I shall ask the ambassador.

**Senator BARNETT**—Following up Senator Fierravanti-Wells, does the department have officials in meetings this week with Indonesian officials during the Prime Minister's visit?

**Mr Metcalfe**—We certainly have a senior officer in Jakarta. To be honest, I am not sure whether he is directly engaged in meetings that might surround the head of government engagement. But certainly our regional director in Jakarta is a significant contributor to the work of the embassy, which I am sure would be supporting the Prime Minister's visit.

**Senator BARNETT**—So you are not sure if he is involved.

**Mr Metcalfe**—We have meetings all the time in Jakarta with Imigrasi, with the director general. Sometimes our senior officer there is involved in those meetings with the ambassador or with others. My observation of the—

**Senator FIERRAVANTI-WELLS**—A mobile has gone off. Somebody could be listening in, you know, Mr Metcalfe.

**Mr Metcalfe**—I think they are.

**Senator FIERRAVANTI-WELLS**—Goodness me! What will happen to me?

**Mr Metcalfe**—It shows you how insidious communication is. At dinner I received a text message from our regional director in Dubai saying that she was enjoying watching Senate estimates. I sent one back saying, 'That's interesting; get back to work.'

**Senator Chris Evans**—It says something about her social life in Dubai that she is watching estimates.

**Mr Metcalfe**—It is early in the morning there, I think. I do not have contemporaneous information as to whether my regional director in Jakarta is at this moment or has been today in meetings directly associated with the meetings between the Prime Minister and the President. My normal expectation is that those would be limited to the ambassador and very senior officials travelling with the Prime Minister. That is the normal process. But certainly our regional director in Jakarta is involved on a more than daily basis in exchanges with Immigration and I know has been involved in meetings with Imigrasi in recent days. Frankly, he is involved in meetings with them practically every day of the week. That is the nature of the relationship.

**Senator BARNETT**—So you have not sent any officials from here?

**Mr Metcalfe**—We have sent no-one as part of the Prime Minister's party.

**Senator BARNETT**—Could you say that again?

**Mr Metcalfe**—No-one from my department is accompanying the Prime Minister, and it would not normally be the case that we would.

**Senator Chris Evans**—Could I just clarify that the visit of the Prime Minister is a short visit to attend the President's inauguration ceremony. As I understand it, the Prime Minister and he are meeting but it is not a long trip or a trip where a lot of officials have been engaged. The Prime Minister and Minister Smith are both there, but the secretary rightly points out that, while our officer in Jakarta is senior, it is more likely to be a much more senior level with people closely associated with the Prime Minister and the ambassador.

**Senator FIERRAVANTI-WELLS**—Mr Metcalfe, you told us last time that the relationship was an hour-to-hour relationship. I am thinking it is now a minute-to-minute relationship.

**Mr Metcalfe**—Yes, and it is interesting that a lot of the contact—and it tends to happen not just in Indonesia but elsewhere—is by texting. Quite often the way to send information back and forth is through texting. We are fortunate that we have a regional director in Jakarta at the moment who is fluent in bahasa Indonesia and is clearly very comfortable. He has been posted there before. I should mention his name, Mr Jim O'Callaghan. He is a first-class officer who is doing an excellent job and is supported by some other staff doing some excellent work.

**Senator FIERRAVANTI-WELLS**—Thank you. I might just move on to the decision to grant permanency to the 42 asylum seekers from SIEV 36. Minister, can you give us the background to this? Surely this must be another indication. We have a coronial inquiry still on foot. Potentially one of these people could have blown up this boat, and here we are rewarding them by giving them permanent residency. Again, I hope that you are aware of the media on this and, in particular, the letters to the editor in relation to this. I have to say some of them have been most strident from our constituents in relation to this issue.

**Senator Chris Evans**—It is a question of whether you think I should listen to the media, should listen to the letters to the editor, or should apply due process and apply the law of Australia. I think I ought to do my duty as a minister, apply the law of Australia and discharge my duties appropriately. The men who were involved on SIEV 36 were brought to the mainland and many of them went through quite extensive treatment for burns when they first came ashore. The initial report given to me suggested that five of them might not live. They all did remarkably well, thanks to the various burns units around Australia, particularly in Brisbane and Perth. They received excellent treatment and their recovery has been remarkable. The health officials tell me they have been some of the best healers because they actually did what the doctors told them to do and did all their exercises and various things. But many of them suffered very serious burns and will require ongoing burns support for sometime.

The department sought to process their applications for protection in the same way we would for any other asylum seeker. Those processes, when completed, found them all to be entitled to Australia's protection. So the department provided me with a recommendation that they ought to be, in accordance with that finding, granted permanent protection visas.

I was concerned about ensuring that we did not in any way take a decision that interfered with the police inquiries and/or the coronial inquiry, which is to come. We certainly did not finalise these matters until the police had completed their inquiries and advised that they

would not be pressing charges against any of the men because they had not found evidence that would warrant a prosecution. That is the finding that they made, but they did draw attention to the fact that the coroner's inquiry would occur next year and that the coroner may well, through his inquiries, bring out other evidence et cetera that may or may not implicate someone who engaged in inappropriate or illegal behaviour on the boat. But they had found nothing against any of the men.

So we had a situation where no charges were to be laid against any of the men and, on that basis, we thought we ought to make a decision based on the consideration of their claims for protection. It is also the case, though, that we then sought to liaise with the Northern Territory Police to make sure that they were comfortable with us granting the visas. Ms Wilson, on behalf of the department, had a number of discussions et cetera with the Northern Territory Police to satisfy herself and me that they were comfortable with us proceeding in the way we planned to. On 7 October the Northern Territory Police's Commander, Crime and Specialist Support Command, wrote to Ms Wilson at the department, saying, 'I can confirm that the Northern Territory Police support the granting of permanent visas for the passengers.' So, on the basis of that advice, I took the view that there was no impediment to us proceeding to grant the visas. I hasten to add, though, that we also indicated to the Northern Territory Police that we would keep in contact with them to provide any information we had on the residential addresses of the men granted visas, as we would be keeping in contact with them, that we would assist in that way if we could, and that we would obviously help in any way we could with the coroner's inquiry.

The other point to make is that I sought advice as to whether a decision to grant a permanent visa in any way compromised our capacity to deal with someone who was later found guilty of a serious offence in relation to the fire. The advice was that there was no impediment to the granting of a visa because, if someone is charged and convicted in relation to that incident and successfully prosecuted, on completion of whatever punishment or jail term they are required to serve we have the capacity to assess their character under the Migration Act and remove the visa if so determined. So we still have the capacity, if you like, to deal with it if we think that someone fails the character test subsequent to any prosecution that might occur.

So, having satisfied myself, firstly, that the Northern Territory Police were supportive and, secondly, that we still had the capacity to deal with anyone who might subsequently be charged and convicted of a serious offence, there was no barrier to me doing what in my view is my role as the minister, which was to accept the advice of the department that these people had been found to be refugees. So they were granted permanent protection visas. There were two groups of them, in a sense. Some were offshore arrivals and some were mainland arrivals because of the way they were moved in, so we had two separate processes in a way, and the officers can take you through that. But effectively, at the end of the day, they were all found to be owed Australia's protection, the Northern Territory Police were comfortable and I had satisfied myself that I still had the capacity to deal with any character concerns that might arise as a result of the coroner's inquiry and subsequent prosecutions, and so they were granted visas.

**Senator FIERRAVANTI-WELLS**—Are any of them subject to reporting arrangements with either the Northern Territory or you, Minister?

**Senator Chris Evans**—No. As I said, they have been granted permanent protection visas. The police are not engaged with them at this stage. They have completed their investigations and have decided they are not going to charge anyone.

**Senator FIERRAVANTI-WELLS**—At this stage.

**Senator Chris Evans**—The letter deals with some of this. I will quote some more of the letter.

**Senator FIERRAVANTI-WELLS**—Can you table the letter?

**Senator Chris Evans**—I think so, but I will check before I do. I am happy to share the information. It goes on to read:

In addition I understand the following statement may have been misinterpreted by your department: ‘The criminal investigation has revealed information that suggests that a person or persons had intended to set a fire onboard the vessel. It is unknown whether the person or persons responsible for the fire intended to cause the explosion that resulted in the loss of the five lives.’ The statement means that we can confirm the fire was a deliberate act but we are unable to identify person or persons responsible.

So in terms of you then asking me whether they have asked me to provide information on particular people, their statement was, ‘We are unable to identify person or persons responsible.’ We indicated we would attempt to keep them informed of any information we have about residences, just in case people move et cetera. But they indicated to me that they supported the granting of permanent visas for the passengers. As you know, the coroner’s inquiry will not start till some time next year. To continue to delay the grant could not be supported on the basis of the police advice. Having been found to be owed our protection, they were granted visas.

**Senator FIERRAVANTI-WELLS**—But you obviously have some reservations, because you have placed a caveat, in effect.

**Senator Chris Evans**—What caveat?

**Senator FIERRAVANTI-WELLS**—‘Caveat’ is perhaps the wrong word, but you obviously have the ‘but’ clause. You have left open the possibility for one or any number of them to potentially, if they are found to be guilty of some—

**Senator Chris Evans**—That is not the way I phrased it.

**Senator FIERRAVANTI-WELLS**—‘Infringement’ is not the right word, but you know what I mean.

**Senator Chris Evans**—Yes.

**Senator FIERRAVANTI-WELLS**—If you were 100 per cent sure you would not have—

**Senator Chris Evans**—The point I have made to the media all along about this is that I am not sure of anything. I do not know what happened on that boat. My knowledge of it is no greater than that of any other person on the street. While the media and others hounded me to say what happened, I, Colin Barnett—you—do not know what happened. That is why we are having a coroner’s inquiry, and the coroner’s role is to get to the bottom of that. I make no

comment on what happened on the boat because I do not know. What I have said to you is I sought legal advice of a department counsel to understand what our capabilities and options were in the event that something arose out of that which saw someone to whom we were granting a visa charged with a serious offence and convicted. I assured myself that we still had the option to assess their character and make a decision to withdraw that visa. Based on that advice, I saw there was no downside, no impediment and no requirement for me to do anything other than grant the visa in accordance with the assessments the department had made.

**Senator FIERRAVANTI-WELLS**—Apart from the obvious and the medical costs associated, it would appear that these 42 were treated perhaps a little bit differently to the others. I appreciate that there were the medical issues that a number of them faced. Correct me if the reports are not right, but there have certainly been reports in Brisbane and Perth about whether they had unfettered access to recreational and various other facilities.

**Senator Chris Evans**—Senator, I think you have got to be a bit more discerning about what you believe of what you read in the papers—

**Senator FIERRAVANTI-WELLS**—I am asking you if that is true. If it is not true, you tell me.

**Senator Chris Evans**—The difference was that those who were unauthorised offshore arrivals were not removed to Christmas Island. That was mainly because we made a decision in the early days that because so many of them were receiving treatment and requiring trauma counselling, to pull a couple of them away who were, if you like, not receiving serious medical treatment, was not wise. And our capacities were much better at the burns units at the major regional hospitals than on Christmas Island. As that treatment took some time, in the end we decided to house these men at the Brisbane Immigration Transit Accommodation and at the Perth facilities. But they were treated the same way as any other detainees were, other than that they received a lot of medical support, which is right. Many of them were doing daily visits down to the hospitals. Royal Perth Hospital, who were fantastic, set up a sort of special almost clinic, because they were having to provide so much care to so many of them. Everyone was fantastic in their response. But their treatment was in accordance with our normal procedures. I suspect they were probably detained a bit longer than the average as a result of us making sure we covered off the police and other concerns. They were actually probably in detention longer than most other unauthorised arrivals.

**Senator BARNETT**—Minister, can I come in there and respond. You said that you did not know what happened on the boat, but, with respect, what you do know is that a tragedy did occur as a result of a fire being deliberately lit. I put it to you that there must be some doubt in your mind as to whether one or more people were responsible for the deliberate lighting of that fire. I put it to you that the police have made their decision based on the fact that they have not got the available evidence, through no fault of their own. They have obviously undertaken those investigations, and there may be a whole range of reasons that they cannot obtain that evidence, but what you do know is that a fire was deliberately lit, which did lead to a tragedy.

**Senator Chris Evans**—Yes, Senator, and there are two points in response to that. One, under Australian law there is a presumption of innocence. So for me to take action against 42 persons on the basis that the police think the fire was deliberately lit would be to take action against those 42 persons without trial, to deny them rights they would otherwise be entitled to under our legal and refugee systems. It seems to me that is a big call. But I was cautious about it, for the same sorts of sentiments that you raised—to be careful that we were not in any way providing comfort to someone who might have done the wrong thing—and that is why we liaised with the Northern Territory Police. When they advised me that they supported the granting of permanent visas to the passengers, that gave me some comfort that we could go ahead. As I said, I sought legal advice to make sure that I did not close off our options, if we later had character concerns about any of these men. We have section 501 available to us at any stage, and so in the event of someone being charged and successfully prosecuted, we can then reassess the decision and take action under section 501 in terms of the character assessment. So the decision to grant the visa does not prevent us from taking action at a time when we can identify someone who may have done something to cause us concern. At the moment, I have 42 persons, none of whom have been charged with anything, none of whom have been identified as a person of concern, and to punish all 42 of them for something on the basis of no evidence seemed to me to be not the sort of way that a minister should act.

**Senator FIERRAVANTI-WELLS**—Minister, in terms of that: let me take you back, and perhaps I misunderstood your answer. I understand that there are no reporting arrangements that have been imposed in relation to any of these 42. There are no reporting arrangements—or at least arrangements to stay in contact with the department? Potentially one or more of them may, down track, subject to evidence emerging, be charged with murder.

**Senator Chris Evans**—That is right, Senator. But, as we discussed in relation to the issue of Mr Guy Campos earlier, the department cannot act on the basis that someone might have a suspicion that someone might have done something wrong.

**Senator FIERRAVANTI-WELLS**—No, I am simply asking: is there some requirement for them to keep in contact with the department so that you know where they are?

**Senator Chris Evans**—It is not so much a requirement. The police have not put any reporting requirement on any of them. They have not made any conditions on those gentlemen. We will, in all likelihood, maintain contact with them, but in terms of legal hold over them there is very little—

**Senator FIERRAVANTI-WELLS**—Let me re-ask my question then. Is it not unreasonable to ask that the department, given the exceptional circumstances, at least has some continued contact with these 42 people, because at least you know where they are?

**Senator Chris Evans**—We do not have many legal avenues but I think it is fair to say we intend maintaining contact, maintaining engagement, with these men for a whole range of reasons, including, obviously, the particular circumstances but also the health concerns et cetera. We will do our best to maintain contact with each of them and we have indicated to the police that we would be giving any assistance they needed if they came to, for instance, requiring witnesses to attend at the Coroner's Court. But legally—

**Senator BARNETT**—How regular would your contact be?

**Senator Chris Evans**—It is not a formal thing but it is something the department will pursue. For instance, some of them are still going daily to health care and we are supporting that.

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

**Senator Chris Evans**—They are engaged with settlement services and a whole range of departmental operations. I want to be clear though: there is no legal hold the department or the police have over these people other than any other resident. But we have undertaken to cooperate with the police. They have been appreciative of that. We will keep in contact as much as we can with these men as part of those normal—

**Senator BARNETT**—Is that monthly, yearly or weekly?

**Senator Chris Evans**—I am saying to you that there will be engagement. There is settlement services engagement, there is health care. They are not required to report to us, if you like. They are not required to report to the police or to us.

**Senator BARNETT**—That says one thing, but we are interested in the intent of you and the department with respect to what regularity of engagement you intend to have with these 42 people.

**Senator Chris Evans**—There will be ongoing engagement, but if you are asking me whether we have arranged weekly reporting or something, or whether are we likely to know, there will be an ongoing relationship with the department. But I hasten to add there are no reporting requirements imposed by the police or by us.

**Mr Metcalfe**—I think it is important to draw a distinction here between immigration status and any criminal justice matters. The men have been granted protection visas which entitle them, as any other permanent resident of Australia, to go about their lives. As the minister said, we do expect them to remain in contact with the department or our service providers. Some are still in need of significant medical assistance. Others—indeed, many of them—would be receiving services through the department's service providers. We have no powers under migration law to require any reporting arrangements of a person who is here on a valid visa, unless that is a bridging visa associated with arrangements to depart.

Were the police to seek authority from the court through some form of charges and bail arrangements to require people to report for criminal justice purposes and the potential for trial, then that is a matter clearly for the police. There is no indication in the contact we have had from the police that they believe that that is possible at this stage. And the police have formed that view having interviewed everyone involved in the incident. I gather they have interviewed over 200 witnesses or people who may have been involved in some way or another. Should the Northern Territory coroner, in the fullness of time, understand more information or reach more detailed concerns, as the minister has indicated, there is the potential under migration law for a visa to be cancelled on the basis of character grounds. But ordinarily we would expect the criminal justice procedures to be the trigger—

**Senator BARNETT**—The only problem is you may not know where they are at the time.

**Mr Metcalfe**—I would be surprised—and you can hold me to this—if a person were able to disappear in those circumstances. It would be a difficult thing to do.

**ACTING CHAIR**—Can I just make an intervention here. We are going to have our break at nine o'clock for 15 minutes. We have now been on outcome 2 for seven hours. It is my intention to move to outcome 3 after the break, because there are other senators who have indicated they have questions for outcome 3 and they have been dutifully waiting for the last seven hours.

**Senator FIERRAVANTI-WELLS**—In fact, that is what Mr Metcalfe said at the beginning. That was the point that we raised.

**Mr Metcalfe**—I think we have been in outcomes 2, 3 and 4.

**ACTING CHAIR**—Have we?

**Senator FIERRAVANTI-WELLS**—Yes.

**Mr Metcalfe**—Yes, but only to the extent that they have dealt with a broad set of issues around people-smuggling and Christmas Island.

**ACTING CHAIR**—On that basis, the other senators who are waiting for the call to ask their questions in outcomes 3, 4, 5 and 6 ought to come down after the break, and I will give them an opportunity to ask some questions. So, please continue, Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS**—Thank you. In relation to these 42, they now have family reunion rights?

**Mr Metcalfe**—As does any permanent resident of Australia.

**Senator FIERRAVANTI-WELLS**—Sure. Have we started to activate those? Have they started to activate their—

**Mr Metcalfe**—I would have to check as to whether applications—

**Senator FIERRAVANTI-WELLS**—Could you please take this on notice: can I have a breakdown of all of the 42—

**Senator Chris Evans**—Senator, I think the answer will be no, because they have only had the visas for a week. I think they were granted late last week. The other point I make is that there is a lot of pressure on places for family reunion, and we have more demand than places. That is not to say they should not or cannot apply, but I make the point that there is a lot of pressure on the program in that regard. They have only had the visas for a week so I doubt very much that we have processed—

**Senator FIERRAVANTI-WELLS**—I would be interested to know, Minister, how long it does take, because I do not think it is going to take very long. There were reports that we have assisted them to find accommodation. I assume, Mr Metcalfe, that is part of the settlement.

**Mr Metcalfe**—That is an absolutely standard arrangement.

**Senator FIERRAVANTI-WELLS**—Sure. By the time the question is actually answered, it will be probably a couple of months down the track, so I want to ask: how many of them will be employed, English—

**Senator Chris Evans**—I just want to make one point. I do not think we ought to impugn the reputation or the motives of all 42 men on the basis that the police have found the fire was probably deliberately lit. As we have seen before, people can respond desperately in certain

circumstances. If criminal charges are required to be laid, I will support them being laid and I hope that successful prosecutions are made, if warranted. But I do not think we ought to impugn the reputation or the standing or the motives of all 42 men based on the possibility that something may come out of the coroner's court. The other thing I want to say is that, in the conversation I had with the men in Brisbane and in the media coverage I saw of the men in Perth, the only thing they were focused on was when they could start work. They are very keen to work. A couple of them were dismayed because their burns were so bad that that was going to prove difficult. I do not think you need to worry that they are focused on making good lives in Australia.

**Senator FIERRAVANTI-WELLS**—I am reflecting some of the sentiment that has been expressed in the public arena, so I think I am entitled to do that.

**Senator Chris Evans**—No, I would expect you to provide leadership rather than reflect sentiment if it is misplaced.

**Senator McLUCAS**—Can I just ask a question on this issue?

**Senator FIERRAVANTI-WELLS**—No, Minister, I am entitled to ask questions—

**Senator Chris Evans**—You are.

**Senator FIERRAVANTI-WELLS**—I think it is really unfair—

**Senator Chris Evans**—You said you wanted to reflect the sentiment. I am prepared to challenge the sentiment if I think it is wrong.

**Senator FIERRAVANTI-WELLS**—That is your perception. That is your view. The mere fact that you have reserved your position, if I can put it this way, in relation to these 42 people—

**Senator McLUCAS**—That is not accurate.

**Senator Chris Evans**—I have corrected that once already, Senator. I have not 'reserved my position'; I have sought legal advice and I have provided you with what that legal advice was.

**Senator FIERRAVANTI-WELLS**—Well, you have certainly reserved the situation—

**Senator McLUCAS**—No, there is no reserving. It is there and just sits there.

**Senator FIERRAVANTI-WELLS**—Do not interrupt me, Senator McLucas.

**Senator McLUCAS**—Well, do not mislead.

**ACTING CHAIR**—Well, you should not continue to misrepresent a position that has been clarified on a number of occasions.

**Senator FIERRAVANTI-WELLS**—I am simply saying that the minister has—

**Senator McLUCAS**—I have been quiet all this time; I have had enough.

**Senator FIERRAVANTI-WELLS**—I am fully entitled to ask questions, Senator McLucas.

**Senator McLUCAS**—So am I, and it is my turn.

**ACTING CHAIR**—I point out, Senator Fierravanti-Wells, that you tried earlier to raise a point of order about retrawling over ground that had already been covered. I must say to you: you are retrawling over ground you have covered in the last several hours.

**Senator FIERRAVANTI-WELLS**—Well, since you overruled in that instance, perhaps you will be consistent in ruling about me.

**ACTING CHAIR**—And I wish there was another point of order I could take about hypocrisy, because it is no good you actually raising something—

**Senator Chris Evans**—I think we all need a cup of tea and a biscuit, Mr Chairman.

**ACTING CHAIR**—I am just counting down to the last three seconds.

**Senator McLUCAS**—Can I ask my question?

**ACTING CHAIR**—You will have to wait until we come back, I am afraid, because it is now nine o'clock and we will have a break.

**Proceedings suspended from 9.00 pm to 9.15 pm**

**ACTING CHAIR**—The committee will resume. Senator McLucas, did you have questions?

**Senator McLUCAS**—Thank you, Acting Chair. Mr Metcalfe, I wanted to canvass with you your obligations in terms of these 42 people. Given that they are a small number, I suppose I want to get to the question of privacy. They are people who are in various stages of recuperation, and I would be concerned if we were to expose them further to media scrutiny in a way that would not assist them. Do you share my concern?

**Mr Metcalfe**—It is certainly our general practice that, although these proceedings are covered by privilege, we do respect the principles of privacy. Earlier today there was some significant discussion about a particular individual, but so much of that was in the public domain that I took the view that, frankly, it was in the public domain. However, subject to any views the minister may have, I would suggest that the department would ordinarily take the respect in answering questions on notice or providing information to ensure that information was aggregated, depersonalised and therefore respected the privacy of individuals so that it would not lead to further incursions upon their personal privacy.

**Senator McLUCAS**—Thank you, Mr Metcalfe.

**Mr Metcalfe**—Perhaps this is the right time for me to say on the record before this committee that I thought it was important that, as head of the department, I actually acknowledge the quite extraordinary public service that is being provided by a large number of agencies and people in responding to, all things aside, an extraordinary maritime tragedy in the vicinity of Australian waters at Ashmore Reef. And leaving aside issues as to how it happened, what is clear that five people were killed and many people were badly injured. There was an absolutely first-class response in the best traditions of Australian Public Service and Defence Force service to the tragedy from the crew of the two naval patrol boats, HMAS *Childers* and HMAS *Albany*; the Customs and Border Protection staff from the *Ashmore Guardian*; staff of the Border Protection Command and the Australian Maritime Safety Authority; the crew of the oil industry platform that some of the most seriously injured people

were taken to—the Front Puffin, who provided their facilities; the Department of Health and Ageing; Emergency Management Australia; medical authorities in Western Australia and Queensland, particularly Royal Perth Hospital and Royal Brisbane Hospital; and, of course—as head of the department—my own staff who were involved both in working on the immediate response and then in providing for the proper care of people, the engagement with the community, who were very anxious to establish contact with people, and in supporting the minister in his management of the issues as well. There were many people who provided quite extraordinary service and I think it is appropriate that we put on the record our thanks for that service.

**Senator TROOD**—Mr Metcalfe, I want to ask some questions about the *Malu Sara* incident. I want to begin by acknowledging your remarks at the start of this morning's proceedings. I think they are remarks that those involved in this sad situation will appreciate in many respects, although I have to say that, since this incident occurred four years ago almost to the day, the department's apology or your remarks about being deeply sorry for what has occurred have been unduly delayed in light of the very tragic circumstances that occurred here. So I wonder if you can tell the committee initially whether you had given consideration to an apology of this kind—a public expression of your sorrow—earlier than this, or whether this is a result, as you have said, of your own recent visit to the Torres Strait or some other intervening variables.

**Mr Metcalfe**—The department has on several occasions—including, I think, before this committee soon after the tragedy in October 2005—expressed its condolences and sympathy and used words to that effect. To be honest, while I have been aware of the continuing distress amongst the families, the co-workers and the broader Torres Strait community, it was really only when I went there last week for the memorial service that I became aware through conversations with people that there is anger amongst some people and a view that with several of the authorities that have been involved, including my department, no-one had ever formally registered their sorrow. I thought it was therefore appropriate that I did that in the best way I was able to both in the interview with the *Torres News* and before this committee today. We will also find ways to ensure that that expression of deep sorrow is able to be extended, even if it is by way of correspondence, to the family members of those who died.

What I was able to do in a memorial service that was organised by departmental officers for departmental officers last week was to talk about the fact that the department, as the employer and as the owner of the vessel on which the five people died, is determined that these events could never recur—of course, we do not operate craft anywhere, including in the Torres Strait—and that we are very mindful of our responsibilities as an employer for the safety and wellbeing of our staff. We talked about those issues this morning as well.

**Senator TROOD**—I am grateful for that further expression of the department's sorrow. This event has caused, as you have said, a great deal of grief amongst the families and community of the Torres Strait and I think you are accurate in recognising the anger that is a result of this situation. In my view, this is long overdue and should have been done many years ago.

**Mr Metcalfe**—I am not suggesting this was a factor but I am mindful that the coroner only reported earlier this year in February or March and the Australian Transport Safety Bureau

issued a further report once we had the full exposure of all of those issues through the coronial inquiry. We are still awaiting the finalisation of report by the Commonwealth's occupational health and safety authority, Comcare. But the personal experience of meeting with our own staff, including some colleagues who knew the deceased intimately in the sense that they were school friends and had grown up together, really brought home to me the very close connections, the remorse and the sorrow, and I thought that while the department had tried to do a lot there was more we could do. I think it is important to use the words 'we are sorry'. We are deeply sorry that these events occurred. There is nothing I can do or could have done that would have operated to break that tragic sequence of things that were done and not done that compounded upon each other and that ultimately led, as so graphically described by the coroner, to five people dying in the waters of the Torres Strait four years ago. Having had the opportunity to be there firsthand because our staff had come together for training and for a memorial service, I thought I should do everything I possibly could.

**Senator TROOD**—I am grateful for that. You are absolutely right, of course; the coroner was scathing—I think that is the only term that is appropriate—in his report. He made the point in his conclusions that 'the people lost when the *Malu Sara* sunk didn't die because of some freak accident'. He made the point that 'they died because several people dismally failed to do their duty over many months' and concluded, in what I regard as a very telling sentence from the report, that this was 'a totally avoidable disaster'. In the context of those scathing criticisms, I ask you what the department has done to date to respond to the criticisms which were made specifically of the department in the coroner's report.

**Mr Metcalfe**—There are two broad areas in relation to the coroner's report. Mr Correll or Mr Frew may provide some more detail in relation to one aspect and I will provide detail in relation to another. The first aspect was the department ensuring that such a tragedy would never occur again. That was a whole series of actions that took place immediately after the tragedy in terms of securing the vessels and getting them out of the water—because the *Malu Sara* was one of six vessels that had been commissioned. It was almost literally on its maiden voyage. It was very early on that its unseaworthiness became so tragically apparent, and there were five other vessels. While I was in Cairns last Friday, I went and physically looked at those vessels where they are currently being stored pending Comcare's inquiry so that I could see the dimensions and some of the issues that I had read in all of the reports.

We undertook a major review of our operations in the Torres Strait and adopted new procedures and new ways of ensuring that our movement-monitoring officers, who undertake such a critical job in terms of monitoring and enforcing the aspects of the Torres Strait Treaty that relates to the movement of people between PNG and the northern parts of the Torres Strait, have better communications in place through a radio network being established—an MOU with the Australian Customs and Border Protection Service—so that we do have access to vessels if we do, in fact, need to have our staff travel around the sea areas. I hasten to add that the concept of the movement-monitoring officers is largely to be on their own islands and to understand who is coming and going from their own island. We have continued to review issues of safety equipment such as the fact that a number of officers had access to four-wheel quad bikes and, because of an assessment that they themselves can be dangerous because of the potential to roll over, the provision of vehicles has been reviewed as well. There are a

whole range of things that have been put in place to ensure the continued effectiveness of our network and to do so under the safest arrangements we can possibly have. If you would like more detail we can happily provide that.

The second issue was whether there should be any disciplinary action taken in relation to any departmental officers. It was quite clear that we would need to await the coroner's inquiry before we would in fact be able to initiate any processes under the Public Service Act. That is an area that we explored early on and we quite quickly moved the department's former manager, Mr Chaston, from Torres Strait and located him in a different office doing completely different duties. But the issue of the factual basis as to whether there had been a breach of the code of conduct was a matter that essentially required full forensic examination by the coroner, and we of course cooperated as fully as possible with the coroner through his inquiry.

One of the coroner's recommendations was that I initiate proceedings under the Public Service Act in relation to Gary Chaston. I did that on the same day the coroner's report was handed down. The range of penalties, had Mr Chaston been found to have breached the APS code of conduct, ranged from dismissal at one end through to admonishment at the other and a range of potential sanctions, fines, demotions et cetera. Mr Chaston chose to resign from the Australian Public Service prior to the completion of the code of conduct inquiry—very early on, in fact, after he had been advised that the code of conduct inquiry would occur—and effectively the department was then *functus officio*. There was no action that could be taken, because the person was no longer a public servant. The only action we could take was in relation to his employment as a public servant, and if he was no longer a public servant then that was it.

**Senator TROOD**—And is it the case that he is no longer a public servant?

**Mr Metcalfe**—He has resigned. He is no longer an Australian public servant. He is just in the community. I understand how that has led to a view amongst some people in the Torres Strait that Mr Chaston was able to escape censure by the department, but essentially the maximum that we would have been able to do was to dismiss him, and he dismissed himself effectively by resigning.

**Senator TROOD**—May I just stop you there for a moment and ask whether or not Mr Chaston was given any advice as to the likely outcome of this code of conduct inquiry.

**Mr Metcalfe**—That is not my understanding in that it would have been improper for the delegate. We are in the process of appointing a senior person external from the department to ensure complete objectivity, but I would be very surprised if anyone involved in the public service inquiry had flagged a potential outcome. That would be improper. But Mr Chaston can read, and I am sure he would have read the coroner's report.

What I should just add for the record is that the Commonwealth's occupational health and safety authority, Comcare, is still finalising its report. We saw a draft report, from memory, in July. We were asked to comment on it and we made a number of comments. We have yet to see the final report. I had inquiries made on my behalf last week as to when I was likely to see the report and I was told that it was close to finalisation but that in fact Comcare were in

discussions with Mr Chaston, given that he is the subject of the report as well. That is the usual natural justice process that accompanies reports of this nature.

It is my understanding—and I will correct this on notice if I am incorrect—from conversations with the former chief executive of Comcare that the range of sanctions available to them in relation to the department and its employees can be as significant as criminal charges being laid because of a breach of work and safety obligations. That not only would apply to the department, and I imagine would be exacted, if the department were prosecuted, through some sort of fine, but would extend to people who may have been involved but are no longer departmental employees. In other words, I understand that there may be the potential—and I am speculating here—for Comcare to initiate action in relation to the former departmental officer. I will double-check that and I am not in any way speculating that that is what they may do but I understand that that is a potential outcome of their inquiry.

I should also add, just for the record, something I mentioned this morning: that one of the many results of the *Malu Sara* was that the department has embarked upon a very significant process to lift our standards relating to our occupational health and safety compliance. As I think we discussed with Senator Fierravanti-Wells this morning, we have seen very positive results from that in that our premium charged by Comcare has reduced markedly. Indeed, we have been a national finalist in their awards competition in the last couple of years for excellence in our approach to these issues. I would have hoped that that would have happened anyway, but sadly the *Malu Sara* really reinforced that as a departmental objective.

The final thing I will say is that we—and, I suspect, other agencies—are using the *Malu Sara* as a case study of exactly what not to do when it comes to purchasing goods and services. We are a department that has very big contracts in place for a whole range of services. For example, in relation to detention services, we have recently ensured that our contract managers have undergone significant training. Indeed, a large number have obtained diplomas in relation to contract management and tendering issues. I have seen firsthand that part of the coursework is looking at the coroner's report and saying, 'How could these things have happened and how would you ensure these sorts of mistakes do not happen again?' So out of that tragedy we have ensured that the lessons that need to be learnt are being learnt and will continue to be learnt.

**Senator TROOD**—I am grateful for that reassurance. It would indeed be a great tragedy if something like this occurred again. In relation to the Comcare investigation, was that triggered by the events themselves—

**Mr Metcalfe**—Yes.

**Senator TROOD**—or was that triggered as a result of a particular request for compensation that might have been made?

**Mr Metcalfe**—No. If there is any incident that involves damage or loss in a Commonwealth agency, there is an obligation under the relevant legislation to notify Comcare. Clearly in this situation we had a departmental vessel go missing. In a practical sense, many of us reached the conclusion quickly, but it took the coroner to finally legally confirm the deaths of the five people. Of course, only one body was ever recovered. So Comcare would always have investigated that matter, in the same way that, if someone slips

and falls on the department's premises, that is a notifiable incident. Sadly, this was the worst sort of notifiable incident.

**Senator TROOD**—Do you understand that there is any entitlement to compensation for which the department might be responsible to the families involved in this incident?

**Mr Metcalfe**—There are essentially two broad avenues, and Ms Bicket may assist me on this. Essentially there is the issue of workers compensation, which would be payable to directly affected family members of the two departmental employees who are deceased. There is a separate issue of common-law damages that would accrue not only to those families but also to the families of the three female passengers. We have been in conversation with the lawyers for the families. You have my assurance that, to the extent that it is possible for me to influence those matters, the department would be seeking to ensure speedy justice and proper compensation payable. I note that ultimately those decisions may fall to bodies such as our insurer, Comcover. Issues such as whether particular statutes of limitations may be lifted are formally a decision for the Attorney-General. But this department understands that, as a result of a tragic and avoidable series of incidents, five people died on one of our vessels. It should not have happened and we will certainly do everything we can to ensure that justice is done.

**Senator TROOD**—The difficulty, as you will appreciate, is a statute of limitations may well be applicable to some of these requests for compensation and indeed to civil claims. There has already been an incident in Queensland where the Queensland government has sought to invoke that statute. This only compounds the grief and the anger for those people affected by the situation. If I am understanding you correctly, you are making two points. The first being that some of these matters are probably not within your purview, given the fact that they involve the Commonwealth's legal jurisdiction. Insofar as the department has any role to play here, you are willing to undertake or assure the committee, at the very least, that it will seek to ensure that those kinds of technical legal impediments do not stand in the way of these families receiving their due compensation if they are entitled to it.

**Mr Metcalfe**—I will get Ms Bicket to add details, but I will do everything I can in my power and in the department's power to ensure that any decision making that occurs in these matters is as fully informed as possible, including ensuring that people who may be responsible for making decisions on these matters are fully apprised of the facts and fully understand the circumstances that the coroner only reported on well over three years after the tragedy actually occurred. You have my assurance on that. Ms Bicket might be able to provide a little more detail about those processes.

**Ms Bicket**—We have only received one formal compensation claim from families of the victims from the *Malu Sara* and that was received on 27 July this year, and that was a claim under the Queensland Personal Injuries Proceedings Act. It is on behalf of the parents and minor children of one of the victims from the tragedy. In relation to the children, my understanding is that there is no issue as to the statute of limitations because the period of limitations runs from their 18th birthday. The question revolves around the parents of the victim who are part of the claim. There are a number of parties who have been named as defendants in the claim: the department, the Australian Maritime Safety Authority, the Queensland Police Service, Maritime Safety Queensland and, of course, the boatbuilder,

Subsee Explorer. There is obviously a complicated range of different parties involved in the matter.

In relation to the Commonwealth's position, under the Attorney-General's legal services directions, the general position of the Commonwealth is that we would seek to apply limitation periods that can be waived in particular circumstances, and that is a matter that we have to take up with the Attorney-General's Department because it is only the Attorney-General who can make that decision to waive the limitations period. Comcover, our insurer, consistent with ourselves, and the lawyers representing the Commonwealth had written to the applicant's lawyers seeking some further information in relation to the limitations period. My understanding is that we have recently received some further information from those solicitors and it is currently being considered by the Commonwealth. As Mr Metcalfe indicated, we will certainly be pursuing resolution of the matter as fast as we can with the Attorney-General's Department.

**Senator TROOD**—It has been four years and the families, who are not employees who are in the most dire economic circumstances, have received no compensation for this four-year period. They are in particular need and I think there is an urgency about this matter that the Commonwealth needs to address. Insofar as the department has any capacity to rigorously pursue this matter with the Attorney then I would urge you very strongly to do that. It is unsatisfactory.

**Mr Metcalfe**—You have our assurance on that. We owe the people who died nothing less. We will also seek to ensure that, to the extent that we possibly can influence the conduct of any matters, they are settled quickly and reasonably. We would obviously seek to work cooperatively with the solicitors for the applicants in these matters.

**Senator Chris Evans**—I am obviously not central to the formal decision making, but I have a very strong view that one ought to be guided by one's moral obligations in these matters, not legal technicalities. I have no truck for legal technicalities in these matters. There are clearly some obligations on the department and the Commonwealth here that ought to be recognised. Certainly I am prepared to put that view very forcibly in any fora where this is considered by government. We badly let these people down as a department and that ought to be at the forefront of our considerations when we get into arguments that can sometimes be dominated by legal technicalities and devices rather than: is there a moral obligation? That should be at the forefront of the consideration.

**Mr Metcalfe**—Another point here is that, as Ms Bicket explained, there are several parties involved in this: us; the Queensland police, who were involved in the search; the Australian Maritime Safety Authority, who were involved in the search; and of course, very significantly, the company that was contracted to build the boats and to build them to an Australian standard, and you can read what the coroner has said in relation to that. We have had experience where those issues of multiple defendants can just result in a whole protracted series of issues which could impact upon the plaintiffs, the applicants. Minister Evans pressed us very strongly to take a certain approach in relation to another well-known compensation matter involving the department—that of Cornelia Rau, where there were claims also against the detention service provider—whereby essentially the Commonwealth sought to settle that matter and is proceeding to seek damages from the other party. It is not up to me as to

precisely how the litigation may be conducted. That is ultimately a matter for the insurer and the Attorney. But it is those sorts of approaches that we find the speediest way to proper monetary compensation for people affected, and if the defendants then need to sort it out between themselves that is something that might be the subject of subsequent proceedings. It is that type of approach that I would certainly expect Ms Bicket and our lawyers to be pursuing in discussions with people who will be making decisions on this matter.

**Senator TROOD**—When Ms Bicket was speaking, the horror of that complex litigation was the first thing that occurred to me. I can see how this might become a lengthy, protracted and unresolved matter. Have you given consideration to what might be called the ‘Rau solution’ in this circumstance? Have you given any thought to that?

**Mr Metcalfe**—We certainly will be urging that approach. As I have said, it is not within my gift to instruct lawyers for the Commonwealth to reach a speedy and reasonable out of court settlement with the solicitors for the plaintiffs. Indeed, we are yet to receive the initiation of legal proceedings for all the people concerned. We will use our best officers both to work with lawyers for the plaintiffs and to encourage the Commonwealth’s lawyers to undertake those sorts of speedy ways of providing proper justice to people. If there needs to be subsequent litigation between the various defendants as to what quantum of responsibility might be apportioned to the various parties—the boat builder, the department, the Maritime Safety Authority, the Queensland police—that is something that frankly those government authorities and that commercial entity need to sort out, rather than it impacting upon those people. So it is something we are mindful of and we sadly do have experience of these issues. I am very confident that Ms Bicket and her team will press that as strongly as they possibly can.

**Senator TROOD**—Minister, in light of your remarks on this matter I would be grateful if you would also be conscious of the need to try and address this issue, given the time since the incident, the difficult financial circumstances in which these families find themselves and the absolute absence of any blame on their part.

**Senator Chris Evans**—As I say, it is not formally before me, but as I have indicated on earlier cases, I do not see why victims should be denied justice as various Commonwealth and other parties fight over their share of the bill. I thought the sort of advice I got in relation to Cornelia Rau—not from Ms Bicket—was obscene. I made it very clear that I was not interested in haggling over the details of that woman’s treatment. It was horrific and a blight on our system.

I am certainly happy to make that clear to the Attorney-General. The secretary takes this very personally in terms of his obligations and responsibilities, even though he has no direct involvement. I think you can rest assured that we are of one view on this.

**Senator FIERRAVANTI-WELLS**—Perhaps the Attorney-General may have regard to his previous position in relation to the limitation period in the HMAS *Melbourne*-HMAS *Voyager* litigation, which I saw over long periods of time when I was at the AGS? Certainly, I think that on occasions there was regard had to limitation there. Frequently, limitation periods had to be extended; some were litigated and some were not. That is certainly a precedent.

**Senator Chris Evans**—Yes, and I had some involvement with that when I was shadow defence spokesman. I think our moral obligation ought to be at the forefront of the consideration. The various departments can argue about the bill as far as I am concerned.

**Senator TROOD**—I would urge some urgent consideration of these matters. It has been far too long. I understand the need to await the coroner's findings which, as you said, Mr Metcalfe, were only brought down in February this year. But we are now eight months on and I think it is time these families saw some action on this matter.

**Senator McLUCAS**—I just want to commend the department for the change of approach that I have observed today, which is quite different from the many occasions I have asked questions on this matter over the years. I want to go back to a question that I have asked previously which goes to your analysis of how the tender was let originally. Have you done an analysis of that process, which was obviously flawed in a range of ways? How was the tender awarded to Subsee, and was the process done appropriately?

**Mr Metcalfe**—I do not think you need to go any further than the coroner's report. I could talk for 10 minutes, but if you read the coroner's report it is very clear that there was a flawed process, that there were a range of mistakes made and I just cannot understand why the department did that. It is not as if the Commonwealth of Australia wanted to buy substandard vessels or was only interested in buying the very cheapest quote, and yet somehow that is what happened. The vessels that the *Malu Sara* and its sister vessels replaced had been commercial off-the-shelf vessels, clearly built to proper standards with all of the proper safety equipment and issues such as positive flotation. I think it was really only because of complaints around the engines and whatever that a decision was taken by the department at some stage to move from those original vessels to the new boats.

Leaving aside the decision to commission the building of specific vessels, rather than buying commercial off-the-shelf vessels which were properly tested and standardised for the particular conditions in the Torres Strait—which can be very difficult conditions—I think you read the coroner's report and wonder why.

**Senator McLUCAS**—That is exactly my point: has the department actually tried to investigate why that decision was made? That is what troubles me—a decision was made by someone somewhere to move away from an earlier decision to buy the off-the-shelf, tried and tested Torres Strait Holdens—which is what they call them—to go to these commissioned vessels from one supplier. That is what I would like to know the answer to.

**Mr Metcalfe**—I think the coroner's report documents fully—more fully than I could outline here—the chain of events that led to the department deciding to replace its original set of vessels and the tender process that was chaired by Mr Chaston. There are questions as to his competence in undertaking such a particular process, but there was advice provided to him. I take seriously the fact that the coroner recommended action in relation to the Commonwealth Public Service Code of Conduct only in relation to him and not other departmental officers. Mr Chaston has left and there are no code of conduct issues in which he or the department may have explored his behaviour in undertaking that process. I do note that Mr Chaston was, in terms of our North Queensland operations, a relatively senior officer and indeed had been a departmental officer of fairly short duration. Having been a member of the

Australian Federal Police for many years, there was a view that he was competent to undertake this task, and he did so. As I indicated to Senator Trood earlier though, the tender process associated with the *Malu Sara* is now used in training as an example of what not to do. The coroner obviously had a great deal of evidence put before him and support from counsel assisting and whatever. I think his description of what happened is the definitive description and I think the results, tragically, speak for themselves.

**Senator McLUCAS**—Thank you, Mr Metcalfe.

**Senator FIERRAVANTI-WELLS**—You provided an answer to a question from Senator Barnett about unauthorised arrivals by sea. Could you give me some details and take on notice unauthorised arrivals at the airport, noting that we have got 15 million movements across the border by nonAustralians, made up of 14.2 million movements at airports and 0.8 million movements at sea ports. We focus as we do on the unauthorised arrivals by sea but not by air. Could we have some details or do you want to take that on notice?

**Mr Metcalfe**—We will see if Mr Frew can help us.

**Senator FIERRAVANTI-WELLS**—I would be interested to look at those figures over, say, the last three or four years if you have got that sort of—

**Mr Metcalfe**—We may need to take that level of detail on notice, Senator. I would say that, in providing responses in this area, we would seek to stress the point that the number of unauthorised arrivals at airports is actually small because we have extremely good processes to make sure that people do not get on aircraft without a visa. There are a whole series of check-ins at check-in points and that sort of thing to make sure a person is visaed. Unless the person is able to arrive on a forged passport or whatever and that is identified at the airport then we would not actually detect that as being an unauthorised arrival by air. However, what we do see is a situation where people arrive by air on a visa and then enter the community, and they may subsequently seek asylum in Australia. That is a post-arrival asylum issue.

**Senator FIERRAVANTI-WELLS**—Perhaps part (a) of that question is that category of people. A lot of the focus is on the unauthorised arrivals by boat on Christmas Island, but there is a broader picture. I really want to get some more details in relation to that. If you do want to take that on notice, I am happy, given the hour, for you to do that.

**Senator BARNETT**—Thank you for your answer to question No. 39 that I put to you on 28 May, which was relevant to 15 June 2009. That was from 1 July 2008. I am wondering if you could take that on notice and update the chart you have provided me with. When you do so, could you please give us the totals. You have got the number and nationality, excluding the crew, and then you have got the crews. If you give us the totals, that would be appreciated.

**Mr Metcalfe**—We will undertake to do that on notice.

**Senator BARNETT**—Thank you very much. My second question is about the number of people-smugglers arrested, charged and then convicted.

**Mr Metcalfe**—Those are matters that the AFP would have to provide the information on.

**Senator BARNETT**—You do not have that information?

**Mr Metcalfe**—I do not think so, and I would want to make sure that we had checked it.

**Senator BARNETT**—I would be surprised if you did not retain that sort of information.

**Mr Metcalfe**—Mr Correll does have some figures, but I would stress that they are figures sourced from the Australian Federal Police.

**Mr Correll**—I emphasise that this is not our data. I am quoting this on behalf of other agencies. So far this year—

**Senator BARNETT**—Is that calendar year or financial year?

**Mr Correll**—This is calendar year. I will check that and, if it is wrong, I will let you know. In the calendar year, 15 people have been convicted and sentenced for people-smuggling offences in Australia, with sentences of up to six years imprisonment. There are another 30 defendants before the courts. I would emphasise that that is data we had provided to us.

**Senator BARNETT**—If we want more information, we can put it on notice to the AFP perhaps, because we would like to know the numbers arrested, charged and then convicted. But you have been helpful there. Thank you for that.

**Senator FIERRAVANTI-WELLS**—Can I ask some questions about overstayers? On the last occasion, Mr Metcalfe, we talked about ‘about 48,500’ but today we were very precise about the number of overstayers.

**Mr Metcalfe**—We do include this material in annual reports. I recall actually looking at this when we were talking about it earlier, but the figure did not come out. The annual report does contain a figure, as of 30 June, of our estimate.

**Senator BARNETT**—Is that last year’s annual report?

**Mr Metcalfe**—It is our annual report for 2007-08—

**Senator BARNETT**—Which is last year.

**Mr Metcalfe**—which is last year, so this is as of 30 June 2008. We are currently finalising our report for 2008-09.

**Senator FIERRAVANTI-WELLS**—It is okay, because they are the statistics you provided in answer to question 48. My question now is to drill down to get a profile of these overstayers. I really would appreciate it if we could. Please take this on notice. I want a breakdown of those 48,500. You have given me figures from 2003-04, when there were 59,800 overstayers, right down to 2008-09. I assume you have got that statistic.

**Mr Metcalfe**—One of the more important statistics we have, yes.

**Senator FIERRAVANTI-WELLS**—I am very pleased. It is something that is exercising my mind too. When you look at those figures, you have a figure which has remained roughly static over the last five or six years. But we are only locating a relatively small number of people compared to the figure. It varies. It was 23 per cent. It has now come down to 18 per cent, although it was the lowest in 2005-06. We obviously know who comes in and we know who goes out. You have these whiz-bang computers that you told us all about earlier—it is late in the day, Mr Metcalfe; I think you understand me.

**Mr Metcalfe**—We will call it a whiz-bang computer, Senator!

**Senator Chris Evans**—You are showing all the technical skills of the minister!

**Senator FIERRAVANTI-WELLS**—It is late in the day! Bearing in mind that our systems enable us to collect their visa details when they come in—and that is of course on the date that they come in—how are we going to produce this figure?

**Mr Metcalfe**—In a number of ways. Mr Hughes and Ms Larkins may provide some more detail about specific measures. The figure of overstayers in Australia is an important figure but, as the minister indicated, it does comprise various cohort, including some people who may have just overstayed a few days and others who may have been here for many years.

**Senator FIERRAVANTI-WELLS**—I appreciate that. That is why I would like a comprehensive profile of them, including the range of dates and the type, the profiling of them.

**Mr Metcalfe**—We should be able to provide information on notice as to nationality, length of overstay by cohort, and possibly—

**Senator FIERRAVANTI-WELLS**—Age? I do not know. Look at the information that you have and help to build a profile of them.

**Mr Metcalfe**—We will certainly try and assist there. The figure of overstayers in Australia is a product of several things. Several things can influence that number. The absolute number of foreign nationals coming to Australia is obviously a factor. We are very pleased that although we have seen a growth in foreign nationals visiting Australia over many years we have actually been able to keep the absolute number of overstayers at around 50,000—or just above or below that number—for some time now. I think on previous occasions I have contrasted that with our friends in the United States of America, who, we think, have an overstay population of around 12 to 13 million people—but no one is quite sure. Against their population, that is a high proportion—around three per cent—whereas our figure is much less than one per cent.

The absolute number of people coming into the country is obviously a determinant. That reflects our risk profiling and assessment processes in relation to who should come. How successful our visa officers are in detecting that people may in fact not abide by visa conditions and overstay their visa, for example, is a key factor. The department has a significant presence overseas and has a critical task in both facilitating the travel of genuine travellers. Seeking to understand those people who may not be genuine travellers, and preventing them from coming in the first place, is a clear factor.

In relation to action that occurs following arrival in Australia, there are a range of measures in place. One is in relation to the most common form of visa abuse which is people who do not have permission to work seeking work. We have done a great deal of work on this, and it has been underway for many years. I have worked with employers to try to make them alert to the requirement for foreign nationals to have permission to work. We have modern electronic means of providing support to employers, such as the so-called VEVO system, the visa entitlement verification online system.

**Senator FIERRAVANTI-WELLS**—Whiz-bang!

**Mr Metcalfe**—Another whiz-bang computer that we have. Many, many checks are run in relation to that these days. Ms Larkins will have more detail. Part of the department's overall

layered measures is to physically locate people. A lot of people come and visit us, and we work with them to secure their departure or, if they have an entitlement to stay, to get that sorted. We talked earlier about the early intervention model of trying to deal with more and more people at an earlier stage through this process. But some people are determined to avoid us. It is not only the resources of the department. We work closely with the various police forces around Australia and ensure that that broader network of law enforcement officials are alert to immigration issues as well. All of that in combination is such that we constantly look at how we deploy our resources. Whether we try and actively intervene at an early stage or whether we need to intervene in terms of what I would regard as field enforcement activities are all part of a calibration.

One thing that has been important in recent years, though—and this was brought home very clearly through the report by Mick Palmer over four years ago—is the fact that in undertaking field compliance activities, where we have quite extraordinary powers of search and entry, and you would be very familiar with these, Senator—

**Senator FIERRAVANTI-WELLS**—It is a bit like the tax commissioner and section 264.

**Mr Metcalfe**—That is absolutely right—very significant powers in relation to search and entry and powers of arrest without warrant. It is an area where the department has sought to significantly upgrade the skills, training and support for our staff. We established the College of Immigration in 2006 to provide a nationally standard curriculum, rather than what had been accepted practice for quite a long time, which was sort of on-the-job training and an almost ‘she’ll be right, mate’ approach. This is an area of significant government activity and we clearly need to provide staff who are well trained and well supported.

So we have quite deliberately ensured that our staff who are engaged in those field activities are well trained, well supported and that we use that particular method—which we do, and you will quite often see press releases from the department about locating workers in this place or that place. That is one of many aspects to how we go about seeking to ensure that Australia has extremely well managed borders and extremely small problems relating to illegal immigration.

**Senator FIERRAVANTI-WELLS**—Yes, I noticed at Sydney airport an immigration officer and a policeman talking to a taxi driver. I understand that is part of spot checks.

**Mr Metcalfe**—We do find some issues with some taxi drivers.

**Senator FIERRAVANTI-WELLS**—That is good to see. So we do have some proactive things that we are doing, and I know that the minister is going to say, ‘Yes, it’s gone up from 2007-08’, and that is because of World Youth Day.

**Mr Metcalfe**—A few people came to Australia and loved the place—

**Senator FIERRAVANTI-WELLS**—I understand that happens at each World Youth Day. It goes with the turf, apparently.

**Mr Metcalfe**—Yes. If you look at World Youth Day in Canada and Germany, I think far fewer people stayed in Australia afterwards. All of the big events, like the Olympics and the Commonwealth Games, mean that some people stay and their situation has to be dealt with.

**Senator FIERRAVANTI-WELLS**—In this profile is there a group of people who have been here for a long, long time and have just disappeared into the system and we do not know who they are or where they are?

**Mr Metcalfe**—Yes, there are some. There are some people who are very long-term overstayers. They may have almost forgotten the fact that they are overstayers and have become so embedded in a particular community that they have been able to establish an identity for themselves.

**Senator FIERRAVANTI-WELLS**—Business?

**Mr Metcalfe**—Quite possibly. We see all sorts of people.

**Senator FIERRAVANTI-WELLS**—They pay tax—

**Senator Chris Evans**—They pay tax, they have children going to government schools, they have a Medicare card, drivers licence—

**Senator FIERRAVANTI-WELLS**—And that is the question I was going to come to, Minister. What proactive activity do we have in terms of locating these people? These are the sorts of people we can locate.

**Senator Chris Evans**—There have been some developments on information sharing that have been quite useful—another whiz-bang computer thing.

**Senator FIERRAVANTI-WELLS**—Another one of Mr Correll's—

**Mr Correll**—I guess there are a few things in this area for people overstaying their visa. There are some cases where people overstay for accidental reasons. That is a matter of communication. Some people do not know when their visa expires. So there is a question of better communications, and the technology is putting in platforms to enable that. There are some people who deliberately overstay their visas—

**Senator FIERRAVANTI-WELLS**—We can send them text messages, Mr Correll.

**Mr Correll**—We could do that, and that has been looked at in some countries. The next area is the area of people who have an intention to overstay their visa in the first place, and that, I guess, is the area of greater concern. That is where the use of profiling techniques is more appropriate, and that is where the layered border system and the use of those techniques as early as possible in the border system are the most effective mechanisms.

When you look at the layered border system and the people who are denied entry to Australia, most of that occurs at the application for visa stage, not at subsequent passage through an airport, where there is an advanced passenger processing check, or through our border points. Most of it—by many, many times—occurs at the point of application for a visa.

There are also exercises that we do with other countries, as the minister has referred to, where we look to be able to match data across countries, particularly in the area of biometrics data where that is held in Australia. We obtain biometrics for some people. With those who are held in detention at any stage, their biometrics are taken and there is matching of those biometrics. That also helps in this area. So there are a range of different ways that technology and techniques can help in attempting to reduce this problem. That said, the scale of the problem in Australia is, as Mr Metcalfe has indicated, nowhere near as high as it is in many

other countries. That is a function of the fact that Australia already has a universal visa system and a much more robust control system in this area than many other countries.

**Mr Metcalfe**—The best meeting I go to each year is the meeting of my counterparts in the US, the UK and Canada. When I talk to them about our problem of 50,000 illegals, I get a wry look, particularly from my American counterpart. We certainly do not take our issues glibly—far from it; these are very serious issues and we are very keen to do as well as we can—but Australia actually does have a system that we should be proud of. We will continue to refine that and ensure it works better than ever as we have opportunities to do so. In international terms, Australia has extremely well managed borders.

**Senator FIERRAVANTI-WELLS**—You provided some information on question 89. It was on the proportion of entrants under the humanitarian program that remained unemployed. You gave me some statistics. You also said in there that you had commenced two research projects, one on settlement outcomes of new arrivals and one on the economic, social and civic contributions of humanitarian entrants. Can you tell me some details in relation to that—the terms of reference, the data you have, whether there is a difference between regional and metropolitan areas and whether that will include how many people are in full-time education or vocational training as well.

**Ms Keski-Nummi**—Sorry, Senator. I missed a little bit of that.

**Senator FIERRAVANTI-WELLS**—In answer to question 89, you provided some information in relation to entrants under the humanitarian program who remained unemployed at the end of their first year in Australia by country of origin. You provided some statistics for me.

**Ms Keski-Nummi**—That is correct.

**Senator FIERRAVANTI-WELLS**—They go from 1993 to 1995 and then 1999 to 2000. You then make reference to two research projects. Could you give me the progress of those research projects and outline for me the terms of reference, the intended outcome and any data that you have collected. I would take this on notice; given the hour it is probably easier if you do that. I am also interested in whether you have differentiated or have statistics in relation to regional and metropolitan areas and whether some of the people are in full-time or part-time education or vocational training.

**Ms Keski-Nummi**—I will take part of it on notice, but if you like I will give you some context around the research projects. We have commissioned, in one particular case, Professor Graeme Hugo to undertake research over several years in terms of the civic and economic contribution of humanitarian entrants. That study has commenced. We are expecting to see some early progress reports probably around November or December of this year, but they will only be very preliminary. He is currently working with a whole range of other organisations and has also been working at the Australian Bureau of Statistics on being able to collect the data.

At the moment it is very much in a data collection phase. It is a project that will go over a couple of years and is intended to give us a very strong evidence and research base in relation to how humanitarian entrants transition into the Australian community in all ways. That does mean in terms of participation in employment, participation in education and further

education as well as social contributions—participation in the Australian community. In that context, that research will give us some early indications this year, but they will be by no means complete research findings until probably towards the end of next year when we will have that strong base.

**Senator FIERRAVANTI-WELLS**—Perhaps we can have that progress?

**Ms Keski-Nummi**—It will allow us to start thinking about the program. More specifically, in terms of the project briefs themselves, I will take that on notice and we will be able to provide that.

**Senator FIERRAVANTI-WELLS**—Thank you. Mr Metcalfe, recently a former minister was ridiculed for saying there was a pipeline of up to 10,000 refugees coming through. What advice have you received from your various sources about the number of people who are in the pipeline today? Do you assert that the number is less than the 10,000 that the former minister, Mr Ruddock alleged?

**Mr Metcalfe**—I will ask Ms Keski-Nummi. I think we covered it this morning. The best information is what we understand from registrations by UNHCR. But I do make the point that the word ‘pipeline’ implies that all those people are actually heading towards Australia. We have obviously had a lot of discussion today about the fact that within the Asia-Pacific region there are many hundreds of thousands of people who might be displaced—the number of Bangladeshis in Malaysia or Burmese Rohingyas in Malaysia and people in Indonesia. It is always a difficult definitional issue as to what the pipeline is of people who have formed an intent to travel from where they are to Australia as opposed to those who may be in the region, and who may be susceptible to people smugglers, or who have some form of temporary permissive arrangements in a particular country. But Ms Keski-Nummi may be able to assist us a bit further.

**Ms Keski-Nummi**—I am working through my papers at the moment.

**Senator FIERRAVANTI-WELLS**—I know. We are a little bit all over the shop today, but that is the way it has gone.

**Senator Chris Evans**—After protesting against it, she has given up and joined in.

**Senator FIERRAVANTI-WELLS**—I tried!

**Mr Metcalfe**—We would certainly give you the elephant stamp for trying hard, Senator, to go through the programs. We will do what we can to assist.

**Senator Chris Evans**—I blame the chair.

**ACTING CHAIR**—It is not like the old one.

**Senator Chris Evans**—I suppose the best guide we have to what is occurring is the UNHCR registrations. We do not pretend they are in any way comprehensive, but I think when we are looking at patterns, traditionally we tend to look at UNHCR registrations.

**Senator FIERRAVANTI-WELLS**—Do you get updates on the UNHCR applications?

**Ms Keski-Nummi**—Yes. As the minister said, the best way of looking at this is through UNHCR registrations. We work very closely with UNHCR. For instance, under our arrangements the way we work in Indonesia is that we get a monthly update from them on

registrations so that we have a sense of what the trends are of people moving into the region. Similarly, with Malaysia we get a monthly update of registrations. That is not just people who have been mandated but also registrations. That then allows us to track a little bit, at least, for a small population in terms of the population trends moving into the region.

**Senator FIERRAVANTI-WELLS**—Are you able to look at those two sources and provide information in relation to that, say over the last two or three years?

**Ms Keski-Nummi**—I could certainly provide data for the last 12 months. I would have to have a look at just how far back we have it.

**Senator FIERRAVANTI-WELLS**—Okay. Just have a look what you can provide in relation to that. Staying with the UNHCR, there have been certain allegations about the UNHCR and some of its activities. I will not trawl through all that but can I ask, in relation to our relationship with it and also in relation to IOM: how much support do we give them? And, more to the point, how do we track moneys that we give over in terms of assisting in camps and places where they undertake work? For example, in the detention centres that Senator Hanson-Young was talking about before, can you tell me about the oversight in these centres and the oversight of where Australian monies or Australian funding goes to.

**Ms Keski-Nummi**—As I mentioned earlier on, in Indonesia we work very closely with both IOM and UNHCR. In relation to expenditure, the way that the funding flows to IOM for care and maintenance is that each month they must provide us with the statistics of people who are in their care at that particular time, invoices are provided, they are checked by us; we will often do field and site visits to the areas as well.

**Senator FIERRAVANTI-WELLS**—Spot checks, yes.

**Ms Keski-Nummi**—That is correct. We then do payments in that way. In relation to the work that we do with UNHCR, we have recently provided an additional \$2 million of funding over the next two years for additional protection officers, particularly in some of their suboffices in Indonesia. They are located in six different locations, and it is to enhance that capacity to be able to undertake status determination more broadly rather than just in Jakarta. That comes through formal funding agreements that we have with UNHCR and clear accountabilities. Also at the end of any of these funding periods we will do a formal evaluation of the way that the money has been spent. There are reporting requirements each 12 months from UNHCR in terms of what they have been doing with the positions.

**Senator FIERRAVANTI-WELLS**—Are you aware of allegations of, perhaps—bribery is not the word—allegations in relation to issues—

**Senator Chris Evans**—Do you mean the allegations made by the opposition spokesperson or more credible sources?

**Senator FIERRAVANTI-WELLS**—I am actually asking whether you are aware of any and if so, how do we actually—

**Senator Chris Evans**—Do you mean in addition to the ones made by Dr Stone?

**Senator FIERRAVANTI-WELLS**—I am just asking generally.

**Senator Chris Evans**—I just want to be clear. I have heard her make some, without any evidence being adduced, so I just wanted to check.

**Senator FIERRAVANTI-WELLS**—I am asking in relation to that one but I am actually asking more broadly. Other than allegations that have been made by Ms Stone, are you aware of any other allegations?

**Ms Keski-Nummi**—I am not aware of any allegations. Clearly if there were, and I think Mr Hughes could probably draw on some past experience about any allegations such as this, we would draw them to the attention of UNHCR. UNHCR has very clear protocols in place, including an inspector-general in its headquarters in Geneva who would undertake a proper assessment of it, just as our own department would undertake a proper investigation of any issues of misconduct if there were allegations. So UNHCR has that in place as well. In respect to recent reporting, no allegations have been made directly to me or to the office in Indonesia. If they were we would refer them to UNHCR.

**Mr Hughes**—I will confirm what Ms Keski-Nummi said, that the UNHCR is a reputable UN organisation with very robust internal processes for examining any allegations made against staff.

**Senator FIERRAVANTI-WELLS**—That is why I couched my question the way I did.

**Senator BARNETT**—I know you did not like the use of the word ‘pipeline’, and that you rely on advice from the UNHCR for the numbers coming to Australia. What is your best advice? Do you think the trend will continue? The number since August last year is nearly 2,000 with over 40 boats. What is your best guess for the next 12 months?

**Mr Metcalfe**—I really do not like getting into speculation because there are different factors at play here. Clearly, the government is making a very intensive effort, and we have spent several hours talking about it today, by engaging at all possible levels—diplomatic, law enforcement and immigration, and with international bodies, bilaterally and multilaterally—to address the issue of irregular maritime arrivals. It is an indisputable fact that the numbers of people estimated to be forcibly displaced in the world have increased significantly in recent years. The UNHCR in its refugees global trends report released in June this year estimated that at the end of 2008 a total of 42 million people around the world had been forcibly displaced. That figure compares to around 20 million people of concern at the end of 2001. For reasons we have canvassed extensively, sadly, there is a conflict in Afghanistan, Pakistan and of course the situation that has emerged since the end of the civil war in Sri Lanka.

We have seen an increase in people arriving by boat. That is an absolute fact. Other countries are seeing the numbers increase as well. A boatload of Sri Lankans was recently detected and apprehended by Canadian authorities, for example. Italy last year had a 122 per cent increase in the numbers of asylum applications—up to 31,000 people.

**Senator BARNETT**—I really do appreciate that. You have given very good evidence and background. You have referred to the global situation, You have referred to the international relationships that you have and the advice that you are getting from all around the world. The fact is that in 2007-08, we had about 25 boat people; now, 14 months on, we have around 2,000. Is the trend going up or down based on your best guess?

**Senator Chris Evans**—Australian numbers started going up again in 2005. Obviously we are seeing a larger number here. I am not one who advocates that that is a result of a softening of the Howard government's border security measures because that is clearly a nonsense, as is the argument used today. The point I was making to you is that, in terms of a reliable guide or the best indicator we have of people in the region, I referred you to UNHCR numbers of registrations in neighbouring countries. If you track the numbers of Sri Lankans registering in Malaysia, you get some sense of what is happening. It does not give the sort of answer that you want or, quite frankly, the simplistic assertions that have been made by a number of people about numbers—

**Senator BARNETT**—I am not making an assertion; I am just asking a question. Is it going up or down? Will the trend continue? This is not a trick question.

**Senator Chris Evans**—If you want to make a judgment about those things, if I told you—

**Senator BARNETT**—I am not making a judgment; I am asking a question.

**Senator Chris Evans**—I am saying to you there is no science to this. If you are looking for indicators, I suggested you have a look at the UNHCR registrations, which are an indicator to us. If you ask for my opinion, my opinion is that until there is some sense of a peace in Sri Lanka that has a future for the Tamil people that they are confident about, we will continue to see large outflows of Tamils from Sri Lanka, whether they come here, to Europe or anywhere else. What we have learnt from these situations is that it is not so much about winning the war; it is about winning the peace. If Tamil people do not feel safe or see a future for themselves in Sri Lanka then I think the world will be dealing with another outflow of Tamil, as occurred in the eighties when quite a large number left. We will get our share of that. In terms of being able to predict numbers, no-one is able to do that in any sensible way.

**Senator BARNETT**—Minister, I am not trying to tie you down to a number. I appreciate your feedback regarding Sri Lanka and totally accept that. One can say similar things, I am sure, about Afghanistan and no doubt other areas around the globe, and they will change from time. But you have the experts in the room—and I am looking at Mr Metcalfe, in particular—for the advice and the trends. I am asking whether the trend is continuing or whether it is going to go up or down, based on your best assessment of the advice that you have. It is a factual question. I am not making an assertion; I am asking a question, and I am wondering if you could answer the question.

**Mr Metcalfe**—What I was trying to say is that there are a range of things that will go into what will happen into the future. One will undoubtedly be, as the minister says, the presence of clear push factors in certain countries—the fact that some people will not feel that their safety is assured or that their economic circumstances are particularly fruitful. Having said that, there are huge populations of people around the world, as you know, who are not in the sorts of circumstances we find ourselves in and who are not motivated to move. The factors that I would be—

**Senator BARNETT**—I am not asking about the factors, Mr Metcalfe.

**Mr Metcalfe**—No, but you are asking for my professional assessment.

**Senator BARNETT**—I am.

**Mr Metcalfe**—What I am trying to say is that in reaching advice to government—and I do not proposed to go into the advice that I would be providing to the government on these issues—there are a whole range of factors. We have been looking at outflows of people in the Asia Pacific region now for 30 years. We have seen people come from Vietnam after the fall of Vietnam.

**Senator BARNETT**—Mr Metcalfe, I do not want to interrupt you but we have had a lengthy—I think five or 10 minutes—on this question, and I am asking it in different ways and I am trying to be fair and reasonable and I am hoping that you will see reason and provide an answer. Let me ask it another way. Based on all things being equal around the globe, based on the advice that you have received—the best UNHCR advice and other advice that you have received—can we anticipate that the current arrangements that have occurred over the last, say, 12 months will continue?

**Mr Metcalfe**—I see nothing to indicate that the movement of people from displaced populations to Western countries will abate until we see a substantial accommodation in Sri Lanka and a return to far safer conditions in Afghanistan.

**Senator BARNETT**—And Australia is one of those Western countries, so that would apply to Australia.

**Mr Metcalfe**—Australia is part of the world; however, Australia does have geographic differences. The activities of people smugglers and their ability to operate freely will be impacted by law enforcement activities and the sorts of measures that are put in place and have been in place for years, such as providing safe processing of people in transit countries, are all factors. I think it would be quite imprudent and disrespectful of me to give an opinion, because there are so many factors at play. But what I do know is that the factors that we can influence are the factors that we are working on very hard.

**Senator BARNETT**—I appreciate that, Mr Metcalfe. So what we can confirm is that there is an unlikelihood of any abatement unless there is a change in the global circumstances that you have referred to or a change in perhaps the policy settings or initiatives from the Australian perspective, which have been in operation for the last year or two years?

**Mr Metcalfe**—I quite deliberately made no comment in relation to those for two reasons. Firstly, I do not think it is appropriate for me to comment on government policy and, secondly, and to be very—

**Senator BARNETT**—Well, you are implementing it, Mr Metcalfe, with respect.

**Mr Metcalfe**—I have implemented policies under several governments.

**Senator BARNETT**—But you are currently implementing them under the current regime.

**Mr Metcalfe**—I also believe that, although we in Australia may like to think that adjustments to policy settings have a major impact, Australia is and has and always will be a vibrant Western democracy with a high standard of living and people in our region who are facing persecution will always see Australia as a place to come to, in the same way they see Canada, Europe and the United States as places where their lives will be better.

**Senator BARNETT**—And, in conclusion, that is one of the reasons why you would say it is unlikely that there will be any abatement?

**Mr Metcalfe**—No. You are trying to put words in my mouth. I am saying that there are a whole range of factors that will influence what happens. Some are within the Australian government's control and some are not. The ones that are within our control largely deal with the extent to which we can cooperate with countries in our region and, through diplomatic efforts, provide political accommodations for the countries people are coming from, as well as the practical law enforcement and intelligence activities that we have discussed here at length today.

**Senator BARNETT**—Thank you.

**Senator FIERRAVANTI-WELLS**—I have some questions in relation to illegal fishers. I take it that most of the illegal fishers who are caught are going to the Darwin detention centre. Are we providing medical assistance to them? Are some of them having procedures done here while they are in detention? Mr Correll, I am asking because there have been some assertions or allegations made about this; can you correct or advise the veracity of those.

**Mr Correll**—The first point is the number of illegal foreign fishers is extremely down—very low—at the present stage. Indeed, as I think you know, illegal foreign fishers are held at the Northern Immigration Detention Centre in Darwin before return. At the present stage we have, I understand, three fishers in the centre.

**Senator FIERRAVANTI-WELLS**—Do you keep them here until they are dealt with or do you send them back and then bring them back down again?

**Mr Correll**—Their initial health checks are undertaken. They are returned as quickly as possible—

**Senator FIERRAVANTI-WELLS**—They are returned to Indonesia? Say it is somebody from Indonesia; they are returned to Indonesia and then, if they face trial, they are brought back to Australia?

**Mr Correll**—Yes. The general practice is to return them as quickly as possible. There are circumstances where the police may seek to issue a certificate to hold them in the country. That tends to be rare. The standard practice is to return the fishers to whence they came as quickly as possible.

**Senator FIERRAVANTI-WELLS**—Can I just understand this correctly. They are arrested. But, before they are actually dealt with by the Magistrates Court or whoever they are dealt with by, they are sent back to Indonesia and then flown back to Australia to face proceedings?

**Ms Wilson**—Senator, it depends on the circumstances and the evidence that the prosecution might have. We are trying to facilitate very quick turnarounds. So 21 days is a sort of benchmark we are trying to set in terms of getting the Northern Territory prosecutors to make a decision about whether they are going to prosecute or not. Then they will get a sense from the Magistrates Court of how long the hearing might be and then they will make a decision about returning them and bringing them back for the hearings.

**Senator Chris Evans**—We are not prosecuting them, you see; we just provide the detention service.

**Senator FIERRAVANTI-WELLS**—Ms Wilson, can you take it on notice to give me a profile or an outline of how we have dealt with—

**Ms Wilson**—The process?

**Senator FIERRAVANTI-WELLS**—Yes, the process, the numbers we have dealt with over the last year and how we have dealt with them. Start with ‘X Bloggs’—do not give me the names, for privacy reasons—and then how we have dealt with them and whether they have been flown backwards and forwards to be dealt with.

**Ms Wilson**—That is fine. We have only had, I think, 176 illegal foreign fishers in detention over the 2008-09 financial year, and I am happy to take provide you with details of the process on notice.

**Senator FIERRAVANTI-WELLS**—Minister, I would just like to ask you some questions. We went through changes to the citizenship legislation. Were you aware that the Russian speed skater Tatiana Borodulina had been banned from the sport for six months for failing to be available for a drug test? Were you aware of that before—

**Senator Chris Evans**—Yes, it was brought to my attention and it was discussed with the Australian Olympic Committee, who advised me that they were satisfied in relation to the issues involved, and she was currently representing Australia in all other events other than the Olympics—

**Senator FIERRAVANTI-WELLS**—So you were aware of the news prior to the changes to the Citizenship Act?

**Senator Chris Evans**—There was an AAP report that was brought to my attention and my office sought to get clarification and reassurance from the AOC about the matters. They assured me that they were satisfied that there were no issues there and, as you understand it, the legislation works on the basis that people accessing that particular avenue have to be, if you like, sponsored by a reputable national organisation, so we received the reassurance from them.

**Senator FIERRAVANTI-WELLS**—Does she still meet that character test? We went through a lot on this. I want to be blunt on this, Minister. If there were an issue about it and it was in the public arena at the time and we missed it, I accept that. But I think in the discussion it would have been something that I would have liked to have been aware of. If I was responsible and missed it, well, that is my fault—

**Senator Chris Evans**—As I understand it, it had been raised previously. I can take on notice the details for you, but while this particular applicant for citizenship was a bit of a focus in terms of the changes to the legislation, the legislation stood or fell on the merits of the arguments of the legislation, not individuals applying for it. So the key issue—

**Senator FIERRAVANTI-WELLS**—She was with you at the press conference, Minister, and that became the focus of it.

**Senator CHRIS EVANS**—But I would also be very careful about impugning people’s character, Senator. All I can say to you is that the issue was raised and checked and there were no character concerns with the individual in terms of her citizenship application.

**ACTING CHAIR**—We are going to have to leave it there, I am sorry, Senator.

**Senator XENOPHON**—I have questions in relation to the issue of child soldiers in Sudan and Darfur and those child soldiers who come to Australia. I have had a bit to do with—

**Senator Chris Evans**—At 10.48 pm I do not welcome this intervention, Senator, but please proceed.

**Senator XENOPHON**—Interventions are not necessarily a bad thing, Minister. These children, some as young as eight years old, witness atrocities, and I think you are familiar with the traumas they face. What ongoing settlement support is offered to those children, some of whom are now young adults, who are given refuge in Australia? Secondly, given the extent of their trauma, is it fair to say that they may require greater assistance than that which is currently available, such as specific counselling or community programs, to successfully reintegrate them into society?

**Senator Chris Evans**—I will let the departmental officers deal with the specifics, but I just say that the Parliamentary Secretary, Mr Laurie Ferguson, and I have in recent times become concerned about whether we are doing enough extra support not just for child soldiers but some of the more recent arrivals who come in without father figures, often with just an elder sister in charge of a large number of children. We actually do a lot of work with women at risk as a large part of our program and we are concerned about whether or not we are providing enough support particularly for, as you say, young men, boys and teenagers, in terms of the adaptation they make. Even if they have not been young soldiers, many of these boys have been in camps where to survive you have to look after yourself in quite desperate circumstances and the sorts of experiences that many of them have had we could not contemplate, and certainly not contemplate for our own kids at the sorts of ages they dealt with them. So Mr Ferguson and I have been discussing how we might better meet some of those needs. While we run general services, I think the reality is that we have some really high-risk groups in some of the more recent arrivals and I am not convinced that we are necessarily doing enough, and we have been talking to the department about how we might be able to do more.

**Senator XENOPHON**—Do you have a time frame? Before the department speaks about it, could you give an approximate time frame of that review and if there will be changes?

**Senator Chris Evans**—I guess what we are saying is that we are asking that question of the department and pushing for solutions. I have been to a number of schools that do it really well. There are a number of schools where you have 14-year-old boys who are not literate in their own language and have very little English, and they are out in the schoolyard on their own or in a small group, totally alienated from the education system. Teachers are totally under-resourced to deal with what is a very different issue to having an extra teenager in their class. Do not get me wrong; there are some brilliant programs around. But, if you ask me if we apply it consistently, the answer is no. Maybe Mr Fox can add a bit more.

**Mr Fox**—As the minister said, the minister and the Parliamentary Secretary for Multicultural Affairs and Settlement Services, Mr Ferguson, have been very keen for the department to explore options for better settlement services for those groups who might ‘slip through the cracks’—I think was the phrase the minister used. Mr Ferguson made a speech on

25 September outlining some broad directions which will provide a much more client-centric focus for some of our settlement services needs. That is work we are using to form the tender for the new services under the Integrated Humanitarian Settlement Strategy, which will be attended later this year for services to commence in June 2010. That is the sort of time frame we are looking at there. In terms of the Sudanese children that you were referring to, unfortunately our records do not allow us to specifically identify the 'lost boys', the Sudanese child soldiers, specifically. What we do have is—

**Senator XENOPHON**—Do you think they should? Do you think it is appropriate they should?

**Mr Fox**—We assess individuals' needs for services on the basis of the individual rather than from the particular cohort they come from.

**Senator Chris Evans**—Senator, you are bringing someone to the country who is a very vulnerable person. If you start asking those questions, you have to wonder what sorts of answers you will get. We have problems with whether or not, for instance, these people answer census surveys. They come from countries where you do not answer questions from the government and you do not trust authority. So, if you were a child soldier coming to Australia as a refugee, would you talk about it? I am not sure.

**Senator XENOPHON**—No. Good point.

**Mr Fox**—Certainly we do have a broad range of services that we provide to all humanitarian entrants, as I am sure you are well aware. We also have some specific programs targeted at unaccompanied humanitarian minors where we provide more intensive support and care for them in conjunction with our state and territory counterparts. We introduced, in October last year, a program to assist clients who are particularly vulnerable and have a wide range of disadvantage, which might include people in that general cohort, like the child soldiers.

**ACTING CHAIR**—Mr Fox, I am going to have to ask you to wind-up actually.

**Senator Chris Evans**—Senator Xenophon, I am happy to offer you briefing and have a discussion with the relevant officers about it. If you have any ideas about how we might handle it better, we are very much open to them, because I think we have an emerging group where we are going to need to do more and better tailor our services.

**Senator XENOPHON**—Thank you.

**ACTING CHAIR**—Senator Fielding, you have two minutes.

**Senator FIELDING**—I have to cut down seven questions into one. It was reported in the *Herald Sun* and, I think, also the *Daily Telegraph*: 'Illegals get a cup of tea and new visas.' Basically it looks like visitors who overstay their visas are invited in for a cup of tea and coffee with the immigration officers and will eventually get temporary bridging visas. What penalty is there in place for people who come to Australia and overstay their visas? Those sorts of reports alarm a lot of people. It is tabloid—

**Senator Chris Evans**—Yes, and I can confirm for you that it is not right.

**Senator FIELDING**—My question is: what penalty is there in place for people who overstay their visas?

**Mr Metcalfe**—The most significant penalty is their forcible removal from Australia. It is not an issue of a criminal prosecution; it is an immigration action, which is to remove the person from Australia. That is the most significant penalty.

**Senator FIELDING**—But coming in for a cup of tea is not a penalty.

**Mr Metcalfe**—Sadly, that is where the media sometimes trivialises significant issues. We have talked today—and I am sure that the minister would be happy for us to offer you a separate briefing given the time—about the fact that Australia has extremely low numbers of overstayers compared to other countries. There are fewer than 50,000 people, compared to the United States which has well over 10 to 12 million. The department has been working for some years now to try to intervene far more quickly with people to determine whether or not they have any reason or rights to stay in Australia or whether they should go, and seeking to avoid the protracted litigation and appeals and things that just drag on for years. If part of that is actually just sitting down and having a talk with someone and out of normal courtesy you might offer them a glass of water or a cup of tea, then I would rather get results in that way.

**Senator FIELDING**—But there is no fine, though, is there?

**Mr Metcalfe**—There is no fine because it defeats the purpose if the intention is to resolve their immigration status. There are barriers to re-entry of people, so if a person does abuse their visa then they are basically making it very difficult to come back again in the future if they wish to do so.

**ACTING CHAIR**—Mr Metcalfe, if you think there is something that you need to provide extra to that answer, you can do that on notice.

**Senator BARNETT**—I have two questions. I am asking about the latest status report on the *Oceanic Viking*. I am aware that questions were asked earlier in the day and answers were given in the parliament by the Deputy Prime Minister. Have you received any communication from any authorities either within Australia or from Indonesia with respect to the likely destination of the *Oceanic Viking*?

**Senator Chris Evans**—As you know, I have been in the surreal world in here with you over the last few hours—

**Senator FIERRAVANTI-WELLS**—And loving every minute of it!

**Senator Chris Evans**—I have just received a note that some sort of public announcement is likely shortly.

**Senator BARNETT**—Can you advise us of that announcement?

**Senator Chris Evans**—No. The note said that there was likely to be some sort of public announcement shortly. I am sure that when we leave here we will find out.

**Senator BARNETT**—My second question is: does Australia have an agreement with Indonesia, or is it likely to have an agreement with Indonesia, for the return of boats that have emanated from Indonesia that may be in international waters? Does it have an agreement, or is it seeking to have an agreement to achieve that objective?

**Mr Metcalfe**—As far as I know, there is no agreement in place. But we clearly talked at length earlier about the regional cooperation arrangements and the arrangements for the processing of people who might be in Indonesia. In terms of what might happen in the future, I would not be able to speculate, Senator.

**Senator BARNETT**—How far away is the announcement, Minister? Are we talking minutes or hours—

**Senator Chris Evans**—I was just handed a note two minutes ago that said that there is likely to be a public announcement shortly on that matter. So you know everything I know.

**Senator BARNETT**—That is good to know. I appreciate it. That is an achievement, isn't it? We have achieved something.

**ACTING CHAIR**—I think that does bring us to the conclusion of these estimates. I would like to thank those senators that assisted with the smooth running—and it was generally smooth running—of the last two days. Thank you to them.

**Senator FIERRAVANTI-WELLS**—I think Senator Crossin—

**ACTING CHAIR**—Yes, I know most senators have a preference for the chair and she will be back for the next estimates. Thank you, Mr Metcalfe, and your officers for going through the process once again. Thank you, Hansard. Thank you, attendants, and certainly thank you to the committee staff and all those who assist in these proceedings. These estimates are now adjourned.

**Committee adjourned at 10.59 pm**