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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

WEDNESDAY, 27 MAY 2009

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

LEGISLATION COMMITTEE

Wednesday, 27 May 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, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senators Barnett, Bishop, Boswell, Brandis, Crossin, Feeney, Fierravanti-Wells, Fifield, Fisher, Hansen-Young, Heffernan, Humphries, Parry, Marshall, Pratt and Trood

Committee met at 9 am

ATTORNEY-GENERAL PORTFOLIO

Consideration resumed from 26 May 2009

In Attendance

Senator Chris Evans, Minister for Immigration and Citizenship

Attorney-General's Department

Management and Accountability

Mr Roger Wilkins AO, Secretary

Ms Renee Leon, Deputy Secretary, Strategic Policy and Coordination Group

Mr Miles Jordana, Deputy Secretary, National Security and Criminal Justice Group

Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—An equitable and accessible system of federal civil justice

Program 1.1—Access to Justice and Social Inclusion

Sub Program 1.1.1—Access to Justice

Ms Alison Playford, Assistant Secretary, Federal Courts Branch

Ms Toni Pirani, Assistant Secretary, Family Pathways Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Ms Cathy Rainsford, Acting Assistant Secretary, Family Law Branch

Ms Sandra Power, Special Adviser, Federal Courts Branch

Ms Catherine Fitch, Acting Assistant Secretary, Administrative Law and Civil Procedure Branch

Ms Vicki Parker, Assistant Secretary, Intercountry Adoption Branch

Mr Matt Minogue, Assistant Secretary, Access to Justice Taskforce

Sub Program 1.1.2—Social Inclusion

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division
Dr John Boersig PSM, Assistant Secretary, Human Rights Branch
Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch
Ms Joan Jardine, Acting Assistant Secretary, Indigenous and Community Legal Services Branch
Mr Kym Duggan PSM, Assistant Secretary, Indigenous Policy and Service Delivery Branch
Mr Jeffrey Murphy, Acting Assistant Secretary, Claims and Legislation Branch, Native Title Unit
Ms Amy Elleway, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Program 1.2—Legal Services**Sub Program 1.2.1—Civil Law**

Dr James Pople, First Assistant Secretary, Civil Law Division
Ms Janette Davis, Assistant Secretary, Office of Legal Services Coordination
Mr David Bergman, Assistant Secretary, Bankruptcy Policy Branch
Mr Richard Glenn, Assistant Secretary, Personal Property Securities Branch

Sub Program 1.2.2—Classification and Copyright

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division
Ms Jane Fitzgerald, Assistant Secretary, Classification Operations Branch
Ms Amanda Davies, Assistant Secretary Copyright and Classification Policy Branch
Mr Peter Treyde, Acting Assistant Secretary Copyright and Classification Policy Branch

Sub Program 1.2.3—Legislative Drafting and Publishing

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing

Sub Program 1.2.4—International Law

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law
Mr Stephen Bouwhuis, Assistant Secretary, International Law and Trade Branch
Mr Geoff Skillen, Acting Assistant Secretary, International Security and Human Rights Branch

Sub Program 1.2.5—Constitutional Policy and Law Reform

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Outcome 2—Coordinated federal criminal justice, security and emergency management activity, for a safer Australia**Program 2.1—National Security****Sub Program 2.1.1—National Security Resilience Policy**

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division
Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch
Mr Alex Webling, Acting Assistant Secretary, Chemical Security Branch
Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch
Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Ms Marcella Hawkes, Acting Assistant Secretary, E-Security Policy and Coordination Branch

Sub Program 2.1.2—Emergency Management

Mr Tony Pearce, Director General, Emergency Management Australia

Mr Mike Rothery, Acting First Assistant Secretary, National Security Resilience Policy Division

Ms Diana Williams, Assistant Secretary, Protective Security Coordination Branch

Mr Mark Sullivan, Acting Assistant Secretary, Crisis Support Branch

Mr David Prestipino, Acting Assistant Secretary, Emergency Management and Protective Security Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

Sub Program 2.1.3—National Security Capability Development

Mr Martin Studdert, First Assistant Secretary, National Security Capability Development Division

Mr Mike Norris, Assistant Secretary, Counter-Terrorism Capability Development Branch

Mr Peter Channells, Assistant Secretary, Emergency Management Capability Development Branch

Sub Program 2.1.4—National Security Law and Policy

Mr Geoff McDonald PSM, First Assistant Secretary, National Security Law and Policy Division

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Ms Belinda Moss, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Dr Karl Alderson, Assistant Secretary, AusCheck Branch

Program 2.2—Criminal Justice

Sub Program 2.2.1—Criminal Justice

Ms Elizabeth Kelly, First Assistant Secretary, Criminal Justice Division

Dr Dianne Heriot, Assistant Secretary, Border Management and Crime Prevention Branch

Ms Sarah Chidgey, Assistant Secretary, Criminal Law Branch

Mrs Frances Brown, Assistant Secretary, Law Enforcement Branch

Mr Craig Harris, Assistant Secretary, Organised Crime Task Force

Sub Program 2.2.2—International Crime Cooperation

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division

Ms Belinda Barry, Assistant Secretary, Mutual Assistance and Extradition Branch

Mr Steven Marshall, Assistant Secretary, International Assistance and Treaties Branch

Outcome 3—Assisting regions to manage their own futures

Program 3.1—Services to Territories

Ms Philippa Lynch, First Assistant Secretary, Territories and Information Law Division

Mr Julian Yates, Assistant Secretary, Territories West Branch

Mr Andrew Henderson, Assistant Secretary, Territories East Branch

Strategic Policy and Coordination Group

Priorities and Coordination Division

Mr Iain Anderson, First Assistant Secretary, Priorities and Coordination Division

Mr David Finlayson, Assistant Secretary, Public Affairs Branch

Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch

People, Information and Technology Division

Ms Sue Chapman, General Manager, People, Information and Technology Division

Ms Michele Kane, Assistant Secretary, Human Rights and Governance Branch

Finance and Property Division

Mr Stephen Lutze, General Manager, Finance and Property Division

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner

Mr Peter Bache, Acting Executive Director

Mr Nicholas Sellars, Acting Director, Policy and Research

Mr Brett Adam, Director, Corporate Services

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer

Ms Jane Bailey, Executive Director, Organisational Services

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer

Ms Marion Grant, Deputy Chief Executive Officer

Ms Linda Smith, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Steven Groves, Chief Financial Officer

Ms Jaclyne Fisher, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sue Pitman National Director, Trade

Rear Admiral Allan Du Toit, Commander, Border Protection Command

Ms Roxanne Kelley, National Director, Enforcement and Investigations

Mr Nigel Perry, National Director, Maritime Operations Support

Mr Jeff Buckpitt, National Director, Intelligence and Targeting

Dr Ben Evans, National Director, Law Enforcement Strategy

Australian Federal Police

Mr Mick Keelty APM, Commissioner

Mr Tony Negus APM, Deputy Commissioner, Operations

Mr Andrew Colvin APM, performing the duties of Deputy Commissioner, National Security

Mr Andrew Wood, Chief Operating Officer

Australian Government Solicitor

Ms Rayne de Gruchy AM PSM, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

Australian Human Rights Commission

The Hon Catherine Branson QC, President

Mr Graeme Innes AM, Human Rights Commissioner and Disability Discrimination Commissioner

Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination

Ms Susan Roberts, Executive Director

Mr David Richards, Manager, Finance and Services

Australian Institute of Criminology and Criminology Research Council

Mr Tony Marks, Acting Director

Dr Judy Putt, General Manager, Research Services

Mr Brian Russell, Senior Financial Officer

Australian Law Reform Commission

Emeritus Professor David Weisbrot AM, President

Ms Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security

Australian Transaction Reports and Analysis Centre

Mr Thomas Story, Acting Chief Executive Officer

Ms Jane Elizabeth Atkins, Acting Executive General Manager

Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer

Classification Board

Mr Donald McDonald, Director

Classification Review Board

The Hon Trevor Griffin, Deputy Convenor

CrimTrac Agency

Mr Jeff Storer, Acting Chief Executive Officer

Ms Nicole McLay, Chief Finance Officer

Family Court of Australia

Mr Richard Foster PSM, Chief Executive Officer

Mr Grahame Harriott, Executive Director, Corporate Services

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Mr Peter Bowen, Chief Finance Officer

Federal Magistrates Court of Australia

Mr Richard Foster PSM, Acting Chief Executive Officer

Mr Steve Agnew, Acting Deputy Chief Executive Officer

Mr Grahame Harriott, Acting Chief Finance Officer

High Court of Australia

Mr Andrew Phelan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Jeff Smart, Manager, Corporate Services

Insolvency and Trustee Service Australia

Ms Veronique Ingram, Chief Executive and Inspector General in Bankruptcy

Mr Peter Lowe, Executive Director

Mr Bob Morison, Chief Finance Officer

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar

Mr Franklin Gaffney, Director, Corporate Services and Public Affairs

Mr Hugh Chevis, Director, Service Delivery

Mr Hardip Bhabra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr Graeme Davidson, Acting First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

CrimTrac Agency

CHAIR (Senator Crossin)—I call to order this public hearing of the Senate Legal and Constitutional Legislation Committee. We are considering the portfolio budget statements and we are continuing with the Attorney-General's Portfolio. We have officers from CrimTrac before us this morning, in continuation from last night. We will continue from where we left off last night.

Senator BARNETT—Good morning, Mr Storer. Thank you for being here last night and again this morning. It is appreciated. I want to follow up the answers to questions on notice I put at the February estimates: question Nos 111 and 112. Firstly, with regard to the National Police Reference System you say in your answer that enhancements to the NPRS rely on the base system being fully rolled out to the police jurisdictions. You say that the final jurisdictions are scheduled to begin providing information to the NPRS in April, allowing further development to commence. Then you go on and say that a senior officer has been recently appointed to undertake a feasibility study for national case management. Firstly, can you give us a status report on the rollout, and then we would like to hear about the feasibility study.

Mr Storer—The National Police Reference System is due to be completely rolled out across the jurisdictions in July of this year.

Senator BARNETT—So we have been delayed a couple of months?

Mr Storer—Yes.

Senator BARNETT—End of July, beginning of July?

Mr Storer—First week of July.

Senator BARNETT—And that will roll out to all the jurisdictions?

Mr Storer—Yes.

Senator BARNETT—In terms of this feasibility study, can you tell us who has been appointed, who is undertaking that study and where the status report is?

Mr Storer—The study is in its very early stages. In fact the work in terms of undertaking the feasibility study of national case management was endorsed at our last board meeting. We have appointed some staff internally to undertake that work. Peter Brown is leading that piece of work. Its first stage, a study into the feasibility of a national case management capability, will be reported to the board of management in September of this year.

Senator BARNETT—What is the likely outcome? Do you have any sort of options for future development in mind at this stage?

Mr Storer—Because of the breath of case management, the purpose of the first piece of work is to identify what the feasibility of doing it actually is. A lot of questions about what some of the options may or may not be will really come out of this first piece of work.

Senator BARNETT—Do you have a terms of reference for that feasibility study?

Mr Storer—We do have a brief terms of reference of what is included in the first pass.

Senator BARNETT—Can you provide that to us on notice?

Mr Storer—I am sure we can. I will check and confirm that.

Senator BARNETT—That would be useful. In terms of the NPRS and the development of that, I understand that has to go back to your board for consideration. Have you got any options currently before you that need to be considered in terms of developing that further?

Mr Storer—I assume you are referring to the additional data sets for NPRS?

Senator BARNETT—That would be one option.

Mr Storer—There have been a number of additional data sets that have been identified.

Senator BARNETT—Can you identify them?

Mr Storer—The ones that we are currently looking at?

Senator BARNETT—Yes.

Mr Storer—Certainly. At the moment, under consideration for future directions for inclusion in the datasets are vehicles, firearms, locations and associates and associations. Again, we would need to undertake the scoping and the work before we proceeded with that, but they are the items under consideration at the moment.

Senator BARNETT—All right. I want to come to vehicles and the automated number plate recognition system in a minute. So you have got full cooperation from the different jurisdictions in the rollout of the NPRS?

Mr Storer—That is correct, yes.

Senator BARNETT—And how will that operate? You say it is from the first week of July. What benefits are we likely to see from that rollout?

Mr Storer—Essentially, that will provide a national view of the datasets which have been agreed across all jurisdictions.

Senator BARNETT—Can you just summarise the key ingredients of that dataset.

Mr Storer—Yes. There are 11 categories agreed in the first rollout. They include warnings, warrants, offence history, firearm orders, bail information, unidentified persons, missing persons, escapees and an ANCOR flag, which is our Australian National Child Offender Register.

Senator BARNETT—All right. So the information in that database will be available to the different jurisdictions—

Mr Storer—That is correct.

Senator BARNETT—and I presume there are an agreed set of terms and conditions for its use? Is that set in concrete?

Mr Storer—We do have an agreement with all the jurisdictions about how the information is both provided and then subsequently used.

Senator BARNETT—What is the nature of that agreement? Can you tell us about the agreement?

Mr Storer—As you could imagine, it is quite an extensive document.

Senator BARNETT—I would imagine, yes.

Mr Storer—It is predominantly around the provision of information, how people actually provide information to the system; the usage of the system; the availability of the system; and those types of things.

Senator BARNETT—Can you provide the document?

Mr Storer—I am not sure that we can provide the document in its complete form but I am happy to provide the key elements that the document actually covers—so, the items.

Senator BARNETT—All right. If you could take that on notice—

Mr Storer—Happy to take that on notice.

Senator BARNETT—and maybe consider that question and provide what you believe you can. I understand you would have some security issues there—

Mr Storer—That is correct.

Senator BARNETT—to take into account. That would inform the committee about how this is going to be rolled out. Secondly, there are obviously important issues of personal security and civil liberties in terms of privacy and so on. So they have all been carefully thought through?

Mr Storer—Again, in a number of phases, Senator. Whenever we undertake any work as CrimTrac, we look at the privacy implications and undertake a privacy impact assessment. We also take the security of the information which we hold extremely seriously.

Senator BARNETT—You mentioned privacy impact assessments; have you received one regarding this agreement and the rollout that is about to take place?

Mr Storer—Just let me confer with my colleagues. If I can take that on notice, Senator.

Senator BARNETT—So you are not sure if you have undertaken a privacy impact assessment relating to this agreement and the rollout of what I would consider incredibly important yet incredibly sensitive information? And here we are in, what, mid-May?

Mr Storer—I will confirm the extent to which we have undertaken a privacy impact assessment on this piece of work, yes. But I will take it on notice.

Senator BARNETT—Either we have or we have not, and you are not sure at this stage whether or not you have.

Mr Storer—What I am saying is that this project has been going for a significant amount of time, and in recent times, over the last four or five years, for every piece of work that we undertake we have done a privacy impact assessment because of the very issues that you raise. What I need to confirm is that we did that for this work that has been going for a significant length of time. So it is just a confirmation.

Senator BARNETT—All right. Have you liaised with the Privacy Commissioner regarding the agreement and the rollout?

Mr Storer—On the agreement, no. The agreement sets out the terms under which we and the jurisdictions will operate. In a sense, it is a type of MOU, so we did not see that it was necessary to engage the Privacy Commissioner on the document itself. In terms of the rollout, we have not engaged them specifically on rolling out this piece of work.

Senator BARNETT—You have or you have not?

Mr Storer—We have not engaged them specifically.

Senator BARNETT—When was the agreement signed and who signed the agreement?

Mr Storer—The agreement was agreed to and signed at our last board meeting, which was in March this year, and it was signed by the jurisdictional police commissioners. I have just been handed a note saying that we hold regular meetings with the Privacy Commissioner, giving her a status of the rollout of NPRS.

Senator BARNETT—Could you take on notice the date of that meeting?

Mr Storer—Certainly.

Senator BARNETT—Are you confirming that each police commissioner, including the Australian Federal Police Commissioner, has signed that agreement?

Mr Storer—They have agreed to sign it. I will take on notice the status of the actual signature.

Senator BARNETT—But they have all agreed to sign it.

Mr Storer—That is correct.

Senator BARNETT—Is there a review mechanism built into the agreement with respect to how the rollout is going to take place?

Mr Storer—I am not sure of the question.

Senator BARNETT—Is there a review mechanism in the agreement? Do you have an opportunity to review the success or otherwise of the agreement, and what is the duration of the agreement?

Mr Storer—We will review the rollout as part of our normal course of business to find out how the rollout has gone from an internal perspective. The agreement will have points of view in terms of its success, but I will confirm on notice the actual clause in the agreement and the review dates.

Senator BARNETT—Could you also advise what key performance indicators you use, if any, to mark the success or otherwise of the rollout?

Mr Storer—Sure.

Senator BARNETT—Do you have responsibility for national sex offender register?

Mr Storer—For the Australian National Child Offender Register, yes.

Senator BARNETT—Can you tell us a little bit about the register—how it operates and who has access to it?

Mr Storer—The Australian National Child Offender Register is a web based system designed to assist police to register cases and to manage and share mandatory information about registrable persons, as is required by legislation. The ANCOR system provides the following functionality to police services: registration, case management, case assignment, sharing and transfer of offender records, basic mapping, address type information and a national view of mandatory information, and the access is to police jurisdictions.

Senator BARNETT—And nobody else?

Mr Storer—Only to registrars in police jurisdictions, and nobody else.

Senator BARNETT—Is there likewise an agreement between the jurisdictions about the use of such information and safeguards in terms of privacy issues?

Mr Storer—There is not a specific MOU for this particular system. However, the legislation in each of the jurisdictions prescribes quite specifically how the information is to be used. My colleague has informed me that the broader use of information held is covered by the BPMA, or the business process, that we use for NPRS. NPRS provides access to flags, as I mentioned earlier, to the ANCOR system.

Senator BARNETT—What do we call this, the business process—

Mr Storer—The business practice management agreement.

Senator BARNETT—Tell us more about that agreement. Who is that with?

Mr Storer—That is the agreement that I was referring to earlier.

Senator BARNETT—So that is the name of that agreement.

Mr Storer—That is correct.

Senator BARNETT—But that has only just been signed.

Mr Storer—That is correct.

Senator BARNETT—This register has been in place for how long?

Mr Storer—ANCOR was established in September 2004. As I said, there is in each jurisdiction quite specific legislation about how this information can and will be used.

Senator BARNETT—Up until now we have been relying on the state and territory jurisdictions to ensure that they have relevant legislative and regulatory mechanisms to protect the privacy issues surrounding these registers and the manner in which the information is used. Is that correct?

Mr Storer—That is correct. In addition to that, the access to this information from a security perspective is controlled and monitored by CrimTrac to ensure that only people who have the right access do get access to the information.

Senator BARNETT—Yes, but that must be incredibly difficult or impossible once you have passed that information to a state jurisdiction. They then use it within their bailiwick, as it were, in accordance with their law. You cannot monitor every single use of such information.

Mr Storer—That is correct. What we can monitor is the access to that information; what we cannot monitor is the use of that information.

Senator HEFFERNAN—To get onto the register what do you have to have done?

Mr Storer—I will go back into a little detail. Each state and territory determines what is a registrable offence. To be on the register you must have been charged with a registrable offence in a state or territory.

Senator HEFFERNAN—But not convicted?

Mr Storer—Um.

Senator HEFFERNAN—If you do not know how and who then how the hell would we know?

Mr Storer—It is only the conviction.

Senator HEFFERNAN—Does the conviction have to be in Australia?

Mr Storer—Yes.

Senator HEFFERNAN—So people like Mr Scoble are not on your register?

Mr Storer—I cannot confirm whether he is or is not, but it is the Australian National Child Offender Register.

Senator HEFFERNAN—Isn't that corny if you are the greatest international paedophile? The AFP have done some fantastic work in Asia where there are 1½ million kids who are sex products for tourists. The AFP has a profile with the aid of a Microsoft system. Surely, if you go over there, hirer kids and get convicted, you should be on that register. Otherwise, it is just a scam. You will create interest in international child sex tourism.

Mr Storer—We are responsible for the management of the Australian—

Senator HEFFERNAN—But this would be 'mismanagement', wouldn't it?

Mr Storer—No, because we have been charged—

Senator HEFFERNAN—There is this huge hole.

Mr Storer—with the management of this database.

Senator HEFFERNAN—Some of these guys are the greatest travellers and they come back here with a clean sheet.

Senator Chris Evans—Senator Heffernan, I think you raise a reasonable point. I am sure the officers want to respond to it, but I want to add one thing. If someone has a criminal conviction overseas and they are assessed by my department of immigration against the character test, which if they have been convicted of paedophilia should—

Senator HEFFERNAN—'Should'—

Senator Chris Evans—catch them in terms of—

Senator HEFFERNAN—But ‘doesn’t’.

Senator Chris Evans—If they are using their right identity and have been convicted then in the normal course of events they should. It does not take away from your point. That is a measure whereby we try to prevent people with serious criminal records entering the country.

Senator HEFFERNAN—I appreciate that. I have been up there and had a look at this. There is a market you can go to in Cambodia where you can hire a kid for an hour, week or month and do whatever you like with them, and often the parents of these kids will pack their lunches for them. They do not see it as a big deal; it is just a way of getting a quid. These creeps go up there and come home. I have a couple of particular people in mind. If they are charged and go to court here, having had a long, well-recorded history up there, does the court get access to that? If a person is in your system and they are grabbed again—and these people are often compulsive serial offenders—does the court get access, if they want it, to this guy’s history? Recently there was a religious person in Sydney who had 28 different convictions and they were all separated in court so that the court did not know that there were 27 similar charges to follow. The guy got off. Does the court get access to your database so people can properly understand who the person is they are dealing with and what their history is?

Mr Storer—The courts could get access through the police. One of the reasons we call this a national system is that if there are crimes across jurisdictions—

Senator HEFFERNAN—Sensible.

Mr Storer—then that information is captured. So there is a national view of people’s activities across Australia.

Senator HEFFERNAN—In the normal course of events, would they go to your database?

Mr Storer—Sorry?

Senator HEFFERNAN—If someone is grabbed and charged and on his way to court, do the prosecutors have the capacity to go to your database just to see what sort of record this bloke has? You say that the access is restricted. If it is restricted in that way, it is a waste of time.

Ms Kelly—Just to assist by way of procedure, the criminal history that is tendered in a sentence for a criminal offence is usually obtained by the informant, usually the police—either the state and territory police or the AFP. It is then provided to the DPP, and the DPP, who are the Crown in sentence proceedings, determine whether to tender the criminal history. So the police would have access to the criminal history via the CrimTrac database.

Senator HEFFERNAN—But there is an automatic right to the access to the history?

Ms Kelly—To the police there is.

Senator HEFFERNAN—To the DPP?

Ms Kelly—The police would provide it to the DPP, and then the DPP—

Senator HEFFERNAN—So, if the police, for whatever reason, do not want to provide it than the DPP cannot get it?

Ms Kelly—I am not aware that that is an issue that has ever arisen.

Senator HEFFERNAN—I will do a bit more research. Thank you very much.

Senator BARNETT—I think it is a good question. So the courts do not have automatic access to it?

Mr Storer—That is correct. The courts do not have direct access. It is only via the police.

Senator HEFFERNAN—That is a problem.

Senator BARNETT—I think there are some important issues there.

Mr Storer—The database was established for the management of known offenders against children. That is why we hold convicted offenders on the register.

Senator BARNETT—No, Mr Storer. With respect, the point is that you hold Australian convictions on the register, not convictions from other jurisdictions overseas.

Mr Storer—That is correct.

Senator BARNETT—That is the point Senator Heffernan has made.

Mr Storer—Senator Heffernan, if I could just point out that there is nothing that would prevent us, from a database perspective, from holding that information.

Senator HEFFERNAN—For God's sake, you have an incomplete database. These guys are in the business of travelling over there.

Mr Jordana—We will look into that issue. I would be surprised if there were not a few issues we have come up against. I think it is worth looking into. Clearly the issue of sharing across jurisdictions relies upon jurisdictions therefore accepting the laws in each of the states. So there is a kind of mutual recognition issue. There are issues around the ability of people to get into the country in the first place, which the minister raised just before. There is also obviously the issue of knowing whether or not people have a record, which is of course an issue in its own right.

Senator HEFFERNAN—It should not—

Mr Jordana—We will look into it. It is a fair point you raise.

Senator HEFFERNAN—It should not take *Four Corners* to do the job. I have been up there. The Burma flower kids in Thailand have managers who pay the police to keep them on the street, for God's sake. The likes of that creep in India, who has not been convicted because he has got a deep pocket—they are the sorts of blokes that come back here and play merry hell.

Mr Jordana—We will look into the issue, Senator.

CHAIR—Are there further questions?

Senator BARNETT—Yes, and thank you for that intervention from Senator Heffernan. I think it does highlight some very important issues and a potential hole that needs to be plugged, so could you take that notice and respond. You also have a DNA database, I understand, and the national fingerprint database. Are there any other key databases you could alert the committee to? Secondly, what mechanisms are in place to ensure the integrity of that

data and the appropriate use of that data, apart from state and territory jurisdiction legislation and regulation?

Mr Storer—There are a number of questions. Yes, we do hold the national DNA database and the national fingerprint database and we do have a number of other databases which we use to do the criminal history checking business.

Senator BARNETT—Can you identify them?

Mr Storer—I can go through them by name if you like.

Senator BARNETT—How many are there?

Mr Storer—Some of them are databases and some of them are systems which access databases.

Senator BARNETT—All right. Just list them for us.

Mr Storer—ANCOR, the Australian National Child Offender Register, which we have talked about. The national fingerprint identification system, which you have mentioned. The national criminal record checking system, which is a system that accesses a variety of databases. The National Criminal Investigation DNA Database, which is the DNA database, which I have mentioned. The National Names Index.

Senator BARNETT—What is that?

Mr Storer—The index comprises multi-jurisdictional index data of criminal histories, missing persons, warrants, domestic violence orders, firearms history and related information on persons of interest for police.

Senator BARNETT—That is likewise shared with the various jurisdictions?

Mr Storer—Jurisdictions get access to that database via the NPRS system.

Senator BARNETT—All right. Go on.

Mr Storer—The National Police Reference System, which is a system rather than a database. They are the major databases we hold.

Senator BARNETT—Can you take notice to outline, for each one you have listed, what is on that database and the purpose for it?

Mr Storer—Sure.

Senator BARNETT—Let us move on. The automated numberplate recognition system: I understand a final report was tabled at the CrimTrac board at the 39th meeting on 19 March 2009, the final report has been printed and has been delivered to the Minister for Home Affairs, on 3 April 2009. Can we have that report or, if not, an executive summary of it?

Mr Storer—I am not sure you can at the moment. It has been delivered to the minister. We will take it on notice.

Senator BARNETT—All right. And no doubt Mr Wilkins will take that on notice as well.

Mr Wilkins—I will take it on notice too.

Senator BARNETT—I am just looking at your answer to my question 112. Anyway, if you can take that on notice and provide as much as possible—if not the full report then the

executive summary or, if not, a summation of the report. Can we go now to your consultancies: Donald Cant Watts Corke Pty Ltd, cost planning for a new office fit-out, completed 30 June 2008, cost \$31,680. Can you provide further particulars about that report?

Mr Storer—I will take it on notice.

Senator BARNETT—Likewise, if you can provide either the report or an executive summary of it.

Mr Storer—I will take it on notice.

Senator BARNETT—What is happening with your office fit-out and your redevelopment options and action?

Mr Storer—We moved into the refurbished premises late last year. We are in there now.

Senator BARNETT—How long is your lease?

Mr Storer—Essentially our lease—I will just confer with my CFO—is to 2018.

Senator BARNETT—Can you take on notice the key terms and conditions of your lease please?

Mr Storer—Certainly.

Senator BARNETT—Lincoln Scott Australia Pty Ltd on emergency services consultants completed 30 November 2008, cost \$108,900.

Mr Storer—We will take that on notice.

Senator BARNETT—Likewise, the O’Kane Pty Ltd assessment of IT infrastructure, cost \$77,000.

Mr Storer—We will take that on notice.

Senator BARNETT—Can you recall what the outcome of that report was in terms of its assessment of your IT infrastructure?

Mr Storer—The purpose of the report, broadly speaking, was to assess the status of our IT infrastructure—what infrastructure we had and what its relative connections were. I am happy to provide you, if I am able to, with a summary of the outputs of that report.

CHAIR—Mr Storer, we do not seem to have any other questions for you, so I thank you and your officers for coming to estimates and making your time available. I now ask representatives from the Australian Government Solicitor to come forward.

Senator BARNETT—Chair, may I interpose at this point. We do not have any questions for the Australian Government Solicitor. Senator Brandis is not here this morning. So, at late notice, we would like to notify the committee of that fact and apologise to the Australian Government Solicitor.

CHAIR—As there are no other questions, representatives from the Australian Government Solicitor may ‘run away’, as Shrek would say. That leads us now to evidence from the High Court of Australia.

[9.32 am]

High Court of Australia

CHAIR—Good morning and welcome, Mr Phelan. Do you have an opening statement that you would like to make this morning at estimates?

Mr Phelan—No.

CHAIR—Then we will go straight to questions. Senator Barnett?

Senator BARNETT—Hello, Mr Phelan. Thanks for being here today with your colleagues. In your 2007-08 annual report you made a number of observations regarding maintenance issues at the High Court. Would you like to advise the committee of progress, since that report was tabled, in addressing the concerns that you raised in the annual report. I think you said:

... new policy proposals to meet specific needs have a band-aid quality about them that makes them inadequate responses to the long-term problems to which I have referred.

This issue was raised at the February estimates. We would like you to outline to the committee any progress made in addressing the concerns.

Mr Phelan—I think you were alluding to comments by the Chief Justice in the annual report?

Senator BARNETT—Yes.

Mr Phelan—I might just go through a few of the items. In 2007-08 the government provided funds of \$3.476 million for the court to repair long-term leaks to the roof—that is, to paving and glazing. Those building works have progressed since late last year and I am pleased to report that within a week—my fingers are crossed—the significant paving and membrane repair works to the roof will have been completed. We will then move into a second contract, which is to repair the glazing works—the various windows which appear at strange angles on and adjacent to the roof of the building. The replacement of those windows will occur over the month of June.

Senator BARNETT—Have there been leaks through those windows as well?

Mr Phelan—Yes.

Senator BARNETT—Are they on a different angle to the roof, such that the water gets in through the gaps?

Mr Phelan—Yes. The architecture of the building is quite unique. You have tailor-made windows that appear at various parts of the building. We anticipate that the full rectification of the roof leaks will have been completed by the first week of July this year. It has been a long process, but we anticipate that what has been a very significant concern to the court over an extended period of time will have been rectified fully by then.

Senator BARNETT—What were the total costs to complete the rectification work?

Mr Phelan—I am yet to get a final reckoning, because the nature of the works is such that it required the risks to be shared to some extent. Until the contractors actually stripped away the long-term paving and membrane and found what was underneath them and causing the

problems, we were not in a position to do a full assessment of the cost. My informed guess would be not too far over \$4 million.

Senator BARNETT—That is a good deal of money, and that money is designed and dedicated to rectifying the leaks in the roof and windows.

Mr Phelan—That is correct. We have built into the contract a very long-term—that is, 25-year—guarantee in respect of the works. The supervision of the contract as it has been undertaken gives me confidence that the works should be robust and sustain the roof for that period of time and perhaps well beyond.

Senator BARNETT—So what you are saying is that you are confident that you will not have any further leaks in the next 25 years.

Mr Phelan—I am as confident as I can be. It is a building which is approaching its 30th year. It was designed for a long period of time. However, it has elements that appear through the roof, including drains and so on, which we are finding, to our surprise, were not designed to the level of robustness that one might expect today. There could well be leaks, but we anticipate that those leaks will not come from the areas that have been repaired.

Senator BARNETT—That is the hope and desire. It is important that you are not just doing a patch-up job. I am interested to know whether you think it is a patch-up job. Is it a bandaid measure, as the Chief Justice said in the annual report, or can we be confident that there will not be further leaks in the roof or through the windows in the months and years ahead?

Mr Phelan—To comment on the bandaid reference, that was in respect of a more general thought that the Chief Justice has put forward about the applicability of using the new policy proposal, which is designed by governments to put forward particular new initiatives—whether they are the appropriate mechanism for a constitutional court to deal with what might be regarded as base funding issues. That is the context to the bandaid reference.

Senator BARNETT—Can you describe in further detail what he meant by ‘bandaid measures’?

Mr Phelan—What he actually said on page 13 of the 2007-08 annual report was:

In the end, however, new policy proposals to meet specific needs have a band-aid quality about them that makes them inadequate responses to the long-term problems to which I have referred.

What he is referring to there is the unique constitutional characteristics of the High Court of Australia and the fact that historically the way in which funding issues have been addressed as they affect the court have been through new policy proposals or new policy initiatives. When you track back behind the purpose for new policy initiatives, they are more to introduce new government policies et cetera. What he was suggesting was two things. One, that there was a need for the funding needs of the court to be reassessed more fundamentally, what might be described in public sector parlance as a ‘rebasin’ of the court’s funding needs according to need, which would look at things beyond the strict parameters that apply in a hothouse budget context for new policy proposals with a requirement of offsets, for example, savings offsets to meet within the portfolio. The second thing to which he was referring, and which he alluded to again in a speech he gave on 15 May, was that consideration might be given to the High

Court moving onto a separate appropriation—separate from the appropriations for executive agencies and executive departments—similar to the process through which parliament passed to have its own administrative appropriations in the early 1980s. That is the reference to bandaid quality. The court is very pleased with the amounts of funds that it has secured this year but will return to the need for ongoing review of its base funding needs to sustain its constitutional functions.

Senator BARNETT—Just two quick things in response to that—have you received a response back from the government regarding the Chief Justice’s request for an independent funding mechanism for the High Court?

Mr Phelan—In a formal sense, no, but I understand from discussions with the Attorney-General’s Department that there is considerable work underway within the department, at the behest of the Prime Minister, to have a look at that.

Senator BRANDIS—At the behest of the Prime Minister? Has the Prime Minister personally interested himself in this matter?

Mr Phelan—The nature of things is that the Chief Justice will correspond with the Prime Minister on matters of this importance.

Senator BARNETT—That has occurred. When did that occur?

Mr Phelan—I do not have the precise date, but it was months ago.

Senator BARNETT—Could you take that on notice?

Mr Phelan—Yes. I do not know the precise date. It was before Christmas.

Senator BARNETT—Have they had further meetings since the correspondence took place? Have they met to discuss these matters?

Mr Phelan—I do not believe so.

Senator BARNETT—But it is a matter that the Prime Minister has demonstrated particular interest in?

Mr Phelan—That is correct.

Senator BARNETT—Are the High Court, the Chief Justice and you happy with the manner in which this is proceeding? Do you think there will be a mutually agreeable outcome in terms of the objectives put to the Prime Minister by the Chief Justice?

Mr Phelan—I cannot speak for all parties who might be involved in complex discussions of that nature but the court remains optimistic that the merits of the arguments that have been put forward will be dealt with meaningfully.

Senator BARNETT—All right. I am sure Senator Brandis has a special interest here. I know he has, following up the February estimates.

Mr Phelan—I might also say from your original question that there were a number of other repairs to the building which I have not covered.

Senator BARNETT—No, we must get back to that but you have just quoted from the annual report where you indicated that the Chief Justice said that he had made a number of

submissions to government for additional funds. When were those submissions made and may we have a copy?

Mr Phelan—I will certainly consult with the Chief Justice as to whether his correspondence with the Prime Minister would be available. My recollection is that it also covered other things of a more personal nature.

Senator BARNETT—If you wish to excise the personal matters, that is a matter for you. If you could take that notice and get back to us with a copy, that would be appreciated.

Mr Phelan—I will consult with the Chief Justice on that. The other issues have been addressed more at officer level, either correspondence with the Attorney-General or correspondence involving me and senior officials of the finance department in the context of the budget. I would be loathe, without referring to the minister, to release documents that were part of the argy-bargy of the new policy proposal bidding that went on before the budget was settled.

Senator BARNETT—There are Senate rules and procedures regarding not releasing documents relating to matters that are in the public interest. Otherwise, the normal process is that documents should be released, consistent with Senate rules.

Senator Chris Evans—As you know, we do not release documents relating to the preparation of a budget. Discussions between the High Court and the department regarding budgetary matters in the lead-up to the presentation of the budget would not be made available to the committee in accordance with long-standing practice.

Senator BARNETT—Sure. Senator Brandis has time commitments, so I will defer to him for one moment.

Senator BRANDIS—Mr Phelan, I am pleased the roof has been fixed.

Mr Phelan—Is being fixed.

Senator BRANDIS—Judges will not have to wade every morning in their galoshes and umbrellas into their chambers, thank goodness.

Mr Phelan—Or watch the paint dripping from the ceiling.

CHAIR—I was not aware it rained that much in Canberra.

Mr Phelan—It did when we stripped the first membrane off.

Senator BRANDIS—You mentioned other repairs that are needful. Can you tell me what they are, please? If you are able to, can you give me some estimate as to what you expect they will cost?

Mr Phelan—There are external and internal issues. The external issues relate largely to the forecourt area, the large paved area between the building and the National Portrait Gallery. There has been some subsidence there that has reached a stage in more recent times of considerable danger, requiring the court to, on advice from our insurers and consultants, fence the area off—

Senator BARNETT—A danger for pedestrians.

Mr Phelan—That is correct—with some industrial strength fencing that blocks off about half of the paved area of the forecourt.

Senator BRANDIS—Does that mean that pedestrian traffic between the High Court's area and the National Portrait Gallery is going to be restricted in a way that it currently is not?

Mr Phelan—It is slightly restricted now. They have to walk around the fencing. But it is not a huge impediment at this point in time—we tried to minimise that.

Senator BRANDIS—I would hate to think that there would be another dividing fences dispute between the High Court and the National Portrait Gallery.

Mr Phelan—I do not think there has ever been a dividing fences act matter.

Senator Chris Evans—Who do you intend acting for, Senator Brandis?

Senator BRANDIS—I have a foot in both camps, as it were.

Mr Phelan—The impact of that subsidence is seen when you look at the massive steps on the western side, which are falling in. The electricity and water services that run under that area appear to be damaged. We are obtaining a very comprehensive engineering report, which I anticipate will be concluded within about two weeks. Depending on whether that report is sufficiently comprehensive, we will then look at opportunities to act on it. The other significant external issue is in relation to the fountain, which I understand may even be a separate heritage listed feature. It has not been able to operate since leaks emerged during the tunnelling which occurred underneath it to gain access to the car park for the Portrait Gallery.

Senator BARNETT—When was that?

Mr Phelan—It has been about two years, I think, since the fountain—

Senator BARNETT—It has been closed for about two years?

Mr Phelan—Yes. Unfortunately, when water no longer runs through a feature of that kind, a whole range of other issues come into play, including seals that fail et cetera. Now, to remediate it, there is a formal requirement to have non-potable water. So we have had a very detailed report undertaken of the water feature, and the estimated cost of remediation is about \$3.1 million or so.

Senator BRANDIS—This is the water feature?

Mr Phelan—That is just the fountain, the one that cascades—

Senator BRANDIS—Yes, I know it. But what about the subsidence near the boundary with the National Portrait Gallery? Can you put a figure on that or is it too early in the piece to do that?

Mr Phelan—I think it is. It depends, I suspect, on how willing and able heritage concepts are to be adjusted or change with the times. There seems to be some opportunity—and I am speaking now just from some preliminary discussions I have had with the National Capital Authority—to improve on the original design at perhaps a lower cost than might have been the case if we were to simply remove the causes of the subsidence and recreate what existed back in the 1970s as a design concept, which in any case has moved on because of the construction of both the National Portrait Gallery and Reconciliation Place and the Indigenous

artworks that are built into some sloping hills and pathways to the north of the Portrait Gallery and the south of the High Court. So there could well be some options for not just remediation but actually improvement, building on tough infrastructures like the prototype building, by removing some of the dangerous elements and restoring it, for example, to rolling hills as opposed to paving on that side.

Senator BRANDIS—You are talking about landscaping here.

Mr Phelan—That is correct. So the costs could be anything, quite frankly. I suspect that a solution like that would cost a couple of million dollars, but I am not sure. I will wait for the report to give us that information. I also think we have got to understand what services might be under there—sewer lines and electricity and so on.

Senator BRANDIS—All right. So there is the subsidence and there is remediation of the water feature; what other structural issues are there at the moment?

Mr Phelan—There are some make-good and other fixes to the front lawn. There are some other subsidence and traffic issues in the precinct that I believe need to be addressed, and a lot of construction works in relation to the National Gallery of Australia, so I am quite sure we have seen the end of what I believe—

Senator BRANDIS—This is the problem with putting a court in an arts precinct, of course. These art galleries are always building things!

Mr Phelan—Or putting an arts—

Senator Chris Evans—An arts precinct around a court!

Mr Phelan—Yes, I was about to say that, Minister. The other, more significant thing is inside the building. Many of the design features of the building were appropriate at the time, but building codes have moved on—for example, ramps that are too steep for disabled access, railings which are of insufficient height. We have embraced a range of administrative processes to ensure the safety of visitors to the court, but over time—we have not really had the time and resources to date—we will need to look at some more robust solutions to some of those issues. I do not want to give the picture that the building is falling down; it certainly is not. But, like any building that was designed probably to the edge of technology 30 years ago, it is now starting to show issues that require fixing to ensure it lasts another 300 years.

Senator BRANDIS—Thanks, Mr Phelan.

Senator BARNETT—Could we just continue—

CHAIR—Just before you go on, Senator Barnett—Mr Phelan, did you put in a bid to this current budget cycle for any additional money in relation to the building?

Mr Phelan—We did.

CHAIR—What is your appropriation for the maintenance of the building?

Mr Phelan—There are two aspects. We put in a bid for capital works but it was unsuccessful. In relation to maintenance, we received some additional money to lift the amount of money we had for basic ongoing maintenance of the building.

CHAIR—Did the moneys that you asked for include money for the forecourt of the building?

Mr Phelan—Not the full amount. It was for research work. Ultimately, we were able to undertake some of that ourselves. What we are hoping is that that will be sufficient to inform potential future acquisitions of funds to remediate and, hopefully, improve that area. It is not just a question of appropriations, in our view. There could well be issues of contributions from those who may have been involved in the construction of the Portrait Gallery. There could also be issues related to the availability of the National Capital Authority, given its overarching role in the precinct, to perhaps be able to find some funds to contribute. We of course would have some funds that we would be able to contribute in that regard.

CHAIR—But in relation to the forecourt, you did not apply for any additional funds?

Mr Phelan—Not for the remediation of it, because we did not have the information to.

Senator BARNETT—I have noticed four reports in answers to questions on notice that have been undertaken by the High Court of Australia. Robson Environmental Pty Ltd carried out a survey of hazardous materials in the High Court building at the cost of \$7,381. Are you aware of that report, and did they find any hazardous material?

Mr Smart—The review from Robson was to update our asbestos-containing material register—

Senator BARNETT—I thought it might be.

Mr Smart—and, yes, they did. There were some areas we were aware of in terms of panels within air-conditioning ducts. We were aware of some asbestos material in some of our fire doors, which we have been replacing over a period of time. There are some other minor elements that have come to light through this review.

Senator BARNETT—When did you first become aware of asbestos in the High Court building?

Mr Smart—We have been aware of it for a long time. This is not new. In terms of the fire doors, the way the doors were constructed 30 years ago was with two timber panels that sandwiched the piece of asbestos. That was standard. Those doors are perfectly safe unless you drill a hole in them or damage them. As we have needed to replace locks, we have replaced the whole door and put the lock on the new door.

Senator BARNETT—What about the other asbestos?

Mr Smart—The one that has come to light that we were not aware of is that there was some asbestos rope around some of the light fittings. There is what you would call a pendulum light. Instead of having a rubber coating they actually had a piece of asbestos rope wound onto them.

Senator BARNETT—You have become aware of this as a result of the report. When was it completed?

Mr Smart—Since Easter.

Senator BARNETT—Since Easter this year?

Mr Smart—Yes.

Mr Phelan—I understand that the court prudently over many years has undertaken reviews, as the public has become more aware of hazards in many buildings. Basically this was a further, dare I say it, prudent updating of that specifically because we were going to move into doing things like repairing locks where we knew that there was some inert asbestos and wished to make sure our risks were covered.

Senator BARNETT—Now that you have the report that was brought down since Easter this year, what action has been undertaken to remedy this situation? Are you following through on the recommendations?

Mr Smart—We are seeking quotes to get that asbestos removed safely.

Senator BARNETT—You are getting some quotes?

Mr Smart—Yes, to remove those elements which we need to attend to. The report prioritised those parts of the building that contain asbestos.

Senator BARNETT—Which were the main areas?

Mr Smart—The one that comes to mind—and I do not have the report here—is the rope around the light fittings. That needs to be done quickly. There is no urgency on the fire doors; they will be replaced over a period of time.

Senator BARNETT—So you are not concerned at this time about the health and safety of the occupants of the building?

Mr Phelan—No.

Senator BARNETT—Could you take on notice to provide a copy of the report?

Mr Phelan—Yes.

Senator BARNETT—The other three reports, the HBO+EMTB Architects Pty Ltd, to design documentation to rectify water leaks to the High Court fountain is \$61,017. I presume that is the one you referred to. The second one was HBO+EMTB Architects designed documentation to undertake minor building alterations at a cost of \$14,218. The third one is for Strategic Facility Services Pty Ltd to develop a life cycle plan for the High Court building at a cost of \$19,800. I presume that they are the reports you referred to earlier. Perhaps you could confirm that and advise if—

Mr Phelan—Yes. Your figures include the GST. I had some slightly different figures before me. The HBO+ EMTB Architects designed documentation is to rectify the water leaks.

Senator BARNETT—Yes.

Mr Phelan—That is the one to which I was referring.

Senator BARNETT—And that is the one that said it will cost \$3.1 million to rectify the water leaks.

Mr Phelan—It said \$2.8 or something, plus consultancy fees. I have a copy here, if you would like it.

Senator BARNETT—Yes, that would be appreciated.

Mr Phelan—The second one was HBO+EMTB Architects designed documentation to undertake minor building alterations. I might pass that one to Mr Smart.

Mr Smart—That relates to a minor refurbish we did within the build.

Senator BARNETT—What was the purpose of the report and the purpose of the refurbish?

Mr Smart—This is for architectural services. It is for an interior designer to provide us with sketch plans to better use some space within the building.

Senator BARNETT—Again, if you could take on notice to provide a copy of the report.

Mr Smart—There is not a report as such; it is actually drawings. This is architectural work to advise on options for refurbishing some areas.

Senator BARNETT—That is fine. The third report, ‘Developing the life cycle plan for the High Court building’. This sounds like an interesting report.

Mr Phelan—Again, I will pass that one to, Mr Smart. Is that the one for \$19,000?

Senator BARNETT—Strategic Facilities Services Pty Ltd for \$19,800.

Mr Smart—It is a standard practice for facilities management to regularly review your building life cycle report. It is quite a dense report. What it does is take the building’s assets and breaks them up into differential categories. It does a condition audit and then recommends at what point you should be doing major maintenance or replacement work. So the report tells us, for instance, that I have an airconditioning unit on the roof it; it is of this standard and this condition and it needs to be replaced in seven years time. I have kitchen material such as dishwashers and stoves—

Senator BARNETT—Thank you for that. If you can again take on notice to provide a report if there is one.

Mr Smart—The report—

Senator BARNETT—The executive summary.

Mr Smart—I would have to have a look as to whether there is an executive summary.

Senator BARNETT—You have a look at that. Take it on notice and provide what you can. At page 369 of the PBS statement, under the heading ‘Program 1.1 expenses’, it says:

The High Court will receive additional appropriation funding in the 2009–10 Budget year and forward years to fund expenditure for building maintenance, security, electronic legal subscriptions and information technology infrastructure reviews.

When you look at the actual figures for 2009-10, it seems that there is a drop. It goes from \$16. 877 million to \$16.773 million. So there is an actual drop. Where are these additional appropriations and exactly how much is there to undertake the work that is set out in that PBS?

Mr Phelan—I might start by explaining what the funds were for. To the extent that there is an accounting reflection in the accounts I might then pass to Mr Smart. The May budget provided \$8.965 million in additional funding for the High Court over a four-year period. In terms of accounting, over half of that was in the form of capital. So, in terms of operating

statements, profit and loss et cetera, not all of that money will appear as revenues. In fact, about \$1.2 million of the roughly \$2-plus million per annum is in respect of sustaining the acquisition of library books for the High Court library.

In terms of the operating expenses, the court received in 2009-10 \$1.06 million; in 2010-11 \$0.876 million; in 2011-12 \$0.688 million and in 2012-13 \$0.8 million. The front-ending of some of that reflected some initial funds appropriated for the court to enable some information technology consultancies and related expenses to occur in this year and the next, and then they will just die. In terms of the funds that were provided, I am talking here of the figures I have just given you relating to the operating expenses: the \$1 million, the \$0.8 million et cetera in the out years. They were for electronic legal subscriptions. That is about \$100,000 and building maintenance was about \$190,000 per annum.

Senator BARNETT—Thank you. That is the main one that I am interested in.

Mr Phelan—There was some property maintenance. This is simply a transfer of responsibility from the National Capital Authority. That was \$70,000. They used to mow our lawns and blow up the leaves, and we now have to pay that. We got the money.

Senator BARNETT—That is fine. I do not want to delay the committee too much on this. Can you explain the reduction in the departmental item for the 2009-10 budget? The words in the budget document say that there is additional appropriations funding in 2009-10 when the actual numbers suggest that there is a reduction.

Mr Phelan—I will pass that one to Mr Smart.

Mr Smart—As Mr Phelan said, in 2009-10 there was additional operating funding of \$1.06 million. That was over our forward year projection from—

Senator BARNETT—I appreciate that. But the statement I have in front of me says: \$16,877—

Mr Smart—Senator, which page?

Senator BARNETT—Page 369 of the PBS. If the department wishes to interpose here, Mr Wilkins, please feel. Can that be explained by anybody?

Mr Phelan—I am trying to refresh my memory. There are quite a few tables on that page.

Senator BARNETT—It is at the top of page 369, under the heading ‘Program 1.1 expenses’.

Mr Smart—I can see the number you are referring to.

Mr Phelan—It may be. I would probably need to take that on notice. There has been a net increase in appropriations, I can assure you of that. It may well be that the figure for 2008-09 shows the revised budget. It may reflect—

Mr Smart—I can actually answer that. This number is not an appropriation; this number is actually our departmental expenses, which is the other side of the appropriation. The reason for the large number in 2008-09 is that we have approval to run an operating loss this year of over \$1 million. For example, there has been a write-down in our library collection as a result of a revaluation. So this number here is not the appropriation number—

Senator BARNETT—It is the departmental expenses.

Mr Smart—Yes, that is right.

Senator BARNETT—I will accept your assurances in that regard.

Mr Phelan—It is comparing the actual expenses with the budget for this year.

Senator BARNETT—Are the opening hours changing? Are they reducing or increasing? I notice that you had to reduce them as a result of the maintenance, forecourt issues and other issues you have had. What is the current status of the opening hours?

Mr Phelan—The court's opening hours have not changed over time. You may be referring to the need to move sittings of the court interstate in November and December of 2008. During that time the actual building remained open to the public. We are exploring the possibility of opening on weekends, at least partially, to answer what we perceive to be a need for the public, particularly the ones who might be visiting adjacent arts facilities—

Senator BARNETT—But that is not currently occurring?

Mr Phelan—No.

Senator BARNETT—Just going back to the leaky roof for one moment, did that impede the work of the court? If you are sitting with papers open and hearing submissions, I imagine it would be quite frustrating and difficult to concentrate if there were water dripping on your notes. How did it impact on the ability of the High Court to operate?

Mr Phelan—I am afraid to say it, but the drought almost worked in the court's favour over more recent years. In previous times there have been considerable horror stories about carpets being lifted, chambers awash with water and books having to be protected.

Senator BARNETT—So it was that serious?

Mr Phelan—It was that serious. Since I have been in the court, which is about 20 months, on the rare occasions when we have had a downburst before or during the repairs to the roof significant elements of the library floors had to be evacuated and books removed. There was a downburst a few months ago and we are still trying to dry out some of the rarer books that were affected on the eighth floor.

Senator BARNETT—Is that right? That is a tragedy.

Mr Phelan—It could have in the past had a significant impact on the operations. The court itself operated around it, of course. I do not think a day of sittings was missed. It was certainly an impediment and could not be sustained.

Senator BARNETT—I understand that there was a particular impact on courtroom No. 1; is that right?

Mr Phelan—Courtroom No. 2 was probably more—

Senator BARNETT—Courtroom No. 2, was it? You had to shift the hearing to another courtroom that was appropriate and able to be used on that occasion because of leaks in a room.

Mr Phelan—I do not recall that. I certainly recall an incident within the last year or so when I looked up with some amazement as a brown sludge descended from the high ceiling of courtroom No. 2, which attracted the then Chief Justice's attention.

Senator BARNETT—I am sure it would have.

Mr Phelan—But I do not recall—and I may be wrong—a court sitting having to be relocated in the past.

Senator BARNETT—Thank you very much.

CHAIR—There being no further questions for the High Court, I thank you for your attendance at estimates today. It is much appreciated.

Mr Wilkins—Referring to your query about those figures at page 369 for the High Court, my CFO tells me it is apparently a declining revenue tied up with a reduction in interest payments, revenue and interest received. I think that explains that drop in numbers that you remarked on in program 1.1 expenses. If you refer to table 3.2.3 you will see that there is a drop in the revenue numbers, particularly in terms of interest.

Senator BARNETT—Thank you.

[10.16 am]

Insolvency and Trustee Service Australia

CHAIR—I welcome the new officers to estimates this morning. Do any of you have an opening statement?

Ms Ingram—No thank you.

CHAIR—Then we will go straight to questions.

Senator BRANDIS—When was the Bankruptcy Act last reviewed comprehensively?

Mr Bergman—The last complete review of the Bankruptcy Act was in the 1960s when the Clyne committee reviewed it, and that is the review which led to the current act.

Senator BRANDIS—So there has not been a thorough review of the act since the existing act came into operation in 1966?

Mr Bergman—That is right.

Senator BRANDIS—I do not want to trespass into key policy areas but I suspect this is not at all politically controversial: is there a view in the department that perhaps after more than 40 years and given the changing nature of insolvency, including personal insolvency, that it might be about time the act was reviewed from top to bottom?

Mr Wilkins—There is a view of that sort in the department.

Senator BRANDIS—Has anything happened about that?

Mr Wilkins—Yes.

Senator BRANDIS—What has happened?

Mr Wilkins—We are doing a review.

Senator BRANDIS—Who is doing it?

Mr Wilkins—We are; internally.

Senator BRANDIS—It is an internal review?

Mr Wilkins—Yes.

Senator BRANDIS—Was that a review initiated by yourselves or requested by the Attorney or—

Mr Wilkins—It is as a result of conversations between the department and the Attorney.

Senator BRANDIS—Can you please describe the process of that review? I am interested in things like, for example, consultation with stakeholders, whether there will be solicitation of public submissions and the manner in which those interested in this review will be able to contribute to your thinking?

Mr Wilkins—There has been quite an extent of consultation already, and David can tell you a little about that. I would anticipate there will be further consultation; there may be some issues that need to be dealt with rapidly because of the current economic environment.

Senator BRANDIS—And that is where I was leading. Is it part of your thinking, by the way, that although there are profound differences there are also certain obvious similarities between corporate and personal insolvency laws and that reform of the personal insolvency laws does not seem to have kept pace with the reform of the corporate insolvency laws?

Mr Wilkins—There are aspects of the personal insolvency laws where, in the administration of those laws, it has certainly been brought up to date. There are facilities now to help people better manage their predicament and for early intervention if that is sought. The legislation could probably be updated to enable that to happen more efficiently. So practice, I think, is probably a bit ahead of where the law is. Generally speaking, what you say is probably correct. I do not know whether David has another view on it.

Mr Bergman—There have been a lot of amendments to the Bankruptcy Act in recent years, far more than there have been to the Corporations Act, and they have been to achieve quite deliberate policy outcomes that I think are really only relevant in the context of personal insolvency. So there are areas of difference, which have to exist for that reason. But, as part of the discussions we have been having with industry over the last couple of years, we have identified some areas where there could be greater harmonisation, and particularly of interest to the industry are things around the procedures of insolvency, the way that meetings are conducted, voting rules—that sort of thing—because they recognise that there are these more fundamental policy areas where there has to be a difference.

Senator BRANDIS—I suppose there is an obvious point of overlap between personal bankruptcy and corporate bankruptcy in relation to small businesses.

Mr Bergman—Yes.

Senator BRANDIS—Mr Wilkins, when do you expect this review to be completed?

Mr Wilkins—Let me just say that is imminent.

Senator BRANDIS—What, your expectation or the completion?

Mr Wilkins—The completion.

Senator BRANDIS—So the review is at a very advanced stage?

Mr Wilkins—Yes. There are modules of work to do, if you like to think of it that way. Some of that has been completed. Some of it has got further work to go. And a lot of it is currently, as you will appreciate, with the Attorney and it is a matter of policy. There is a discussion going on at that level about timing in relation to those matters.

Senator BRANDIS—What about process—is it intended to produce a white paper or to release an exposure draft of a bill or some other mode of consultation before amendments are actually introduced into the parliament?

Mr Wilkins—How that happens I think is really a matter for the Attorney. It is part of the policy process, so I do not want to pre-empt that.

Senator BRANDIS—But no decision has been made on those matters at this stage?

Mr Wilkins—Not precisely on those matters, no. But there have been, as I said, and David has had conversations on an ongoing basis with people who are, in one way or another, stakeholders in relation to the way in which the bankruptcy laws operate, so it is not as if we have not been having that conversation for some time. It is just that we are trying to pull this together into a more strategic approach to the reform of the legislation.

Senator BRANDIS—How many officers have been involved in this review?

Mr Bergman—Two or three in the department and we also engaged closely with the Insolvency and Trustee Service.

Senator BRANDIS—For how long have they been working on this?

Mr Bergman—I guess it has been an ongoing process for a couple of years now. Some of it flows out of reviews of specific parts of the act that have been conducted over the last four or five years, but I suppose it is in the last 12 to 18 months that we have been focusing more on the overall architecture of the act and the system.

Senator BRANDIS—Thank you. Let me turn to something else. Ms Ingram, do you have a copy of your latest annual report to hand?

Ms Ingram—Yes, we have one with us.

Senator BRANDIS—This is the 2007-08 annual report. If we go to page 22, table 1, would that be the best place to look in the annual report for a collection of the figures on personal insolvencies over recent years? I just want to know how many bankruptcies there have been in each year over the last several years. Table 1 seems to deal with that—is that right?

Ms Ingram—Yes, I think that is correct.

Senator BRANDIS—Mr Lowe, did you want to say something?

Mr Lowe—We produce two annual reports, one is the agency annual report and separately we produce the annual report by the Inspector General in Bankruptcy on the operation of the Bankruptcy Act. That report contains a lot of the statistical and information detail about the operation of the Bankruptcy Act as distinct from ITSAs agency operations. Table 4 of the Bankruptcy Act annual report—

Senator BRANDIS—I do not have that. Do we have a copy.

Mr Lowe—The table to which I am referring goes back to 1991-92 in terms of Bankruptcy Act activity.

Senator BRANDIS—The annual report to which you are referring is not available in the room but, rather than waste time on this, I assume the year to 30 June 2008 is obviously the last year for which you have collected statistics as to the number of personal bankruptcies—what is that figure according to the bankruptcy annual report?

Ms Ingram—We collect figures every quarter and release—

Senator BRANDIS—Just follow me, Ms Ingram. I want to know the annual figures to the end of 30 June 2008.

Ms Ingram—There were 32,865 total personal insolvencies.

Senator BRANDIS—Can I have quarterly figures since—in the quarter to September 2008?

Mr Lowe—I do not have the figures by quarters but I have a—

Senator BRANDIS—Ms Ingram just said you did.

Ms Ingram—I have the latest March quarter figures with me.

Senator BRANDIS—I want September, December and March. I want to see what the trend has been with the number of personal bankruptcies in the period since the last annual report.

Mr Lowe—To be of assistance I can give you the full nine months to the end of March. I have with me the March quarter.

Senator BRANDIS—Why do you not have the September quarter and the December quarter?

Ms Ingram—We can actually give you bankruptcies and debt agreements by the quarter but not the total.

Senator BRANDIS—I want the total.

Ms Ingram—We can take that on notice.

Senator BRANDIS—No, do not take it on notice. There is an easy way to do this. I want two figures. We are about to have morning tea. In the break can you please make a phone call and at 10.45 I will ask you the same question. Meanwhile, to save time, can I have the figures for the March quarter 2009?

Senator Chris Evans—Can I just say that the officers will do their best, Senator Brandis, but obviously they will not provide information unless they are confident that it is correct. By all means ask them at 10.45 but the officers will obviously do the best they can in the meantime.

Senator BRANDIS—It is not a burdensome request, Minister.

Senator Chris Evans—I am marking the record that they will use their best endeavours and then we will see whether it is possible to give you the exact figure that you need.

Senator BRANDIS—I am sure that Ms Ingram's best endeavours would certainly extend to making one telephone call to ask for two figures.

Ms Ingram—We should be able to provide you with that. For the March quarter 2009, total personal insolvency activity was 9,300.

Senator BRANDIS—That is the number of bankruptcies or debt arrangements that were new bankruptcies and debt arrangements recorded in the three months to the end of March 2009.

Ms Ingram—That is right.

Senator BRANDIS—All right. Thank you. I will ask about the other two figures at 10.45.

Proceedings suspended from 10.29 am to 10.45 am

Senator BRANDIS—Ms Ingram, do you have those figures for me?

Ms Ingram—Yes. The total figure for personal insolvencies for the September quarter was 9,007.

Senator BRANDIS—And the December quarter?

Ms Ingram—For the December quarter it was 8,702.

Senator BRANDIS—You have given me the annual figure for the year to June 2008. Do you by any chance have that fiscal year broken down quarterly as well?

Ms Ingram—Not with me, but I can get that on notice.

Senator BRANDIS—Do not worry; that is all right. Does your agency seasonally adjust, or do we leave that to the ABS?

Ms Ingram—We give straight numbers.

Senator BRANDIS—You simply give actual numbers.

Ms Ingram—Yes.

Senator BRANDIS—So there is no element of prediction.

Ms Ingram—We do not predict, no.

Senator BRANDIS—Other than it is obvious, as we know from the very bad state of the economy, that the numbers are on the rise. Is there a quarter where typically, in your experience, the numbers tend to be higher than other quarters?

Ms Ingram—Yes. The June quarter tends to be the highest each year.

Senator BRANDIS—I do not want to hold you to a precise figure, but is it usually, say, 10 or 20 per cent more?

Ms Ingram—I do not think we have that figure.

Senator BRANDIS—But it is typically somewhat higher.

Ms Ingram—Yes.

Senator BRANDIS—Is that because people getting their affairs together for the end of the financial year sometimes make the decision, on advice from their accountants, that they need to put themselves into bankruptcy?

Ms Ingram—We suspect that that is the case. Also, it could be that creditors who are putting their own affairs in order often hire debt collectors—

Senator BRANDIS—Chase their debtors more aggressively.

Ms Ingram—Yes—so it is a combination of those two things.

Senator BRANDIS—Is there a quarter that is typically lower than the others?

Mr Lowe—The September quarter is often lower.

Senator BRANDIS—Is that because it is the other side of the end of the financial year, for reasons obverse to those Ms Ingram expressed?

Mr Lowe—There are myriad reasons and I would not want to narrow them down.

Senator BRANDIS—If we take the March quarter as typical—neither high nor low—we are looking at, roughly, an annualised rate of insolvency in this financial year of a bit over 37, 000, multiplying that across the four quarters.

Mr Lowe—Yes.

Senator BRANDIS—That is a very sharp increase indeed, but I suppose that is to be expected. Thank you.

Senator BARNETT—I notice the bankruptcy rates for the March quarter in Tasmania rose 38 per cent—almost three times the national increase, which was some 13.7 per cent in the March quarter for 2008-09—when compared to the same period in the last year. There were 217 bankruptcies recorded under the Bankruptcy Act, up from just 157 in the same period last year. Do you consider this as a consequence of the global financial crisis or the economic recession that we are in at the moment? This is a huge spike. Why Tasmania would have an increase three times that of the national increase is clearly a matter for the Tasmanian government and people in Tasmania, but can you provide any observations as to the reasons why?

Mr Lowe—In the March 2008 quarter, which is the comparison quarter against our recent March 2009 quarter, there was a particularly low level of activity in Tasmania. The difficulty is when you have got narrow windows of comparison. It might be more relevant to look at the nine-month activity from July to March—

Senator BARNETT—Well, let me just jump in there. I have got the 12-month activity information from April 2008 to March 2009 for bankruptcies. Nationally, there was an 8.2 per cent increase and, in Tasmania, a 15.7 per cent increase. So that is about double and, clearly, an issue for Tasmania. Again, in terms of the increase in debt agreements, it was 21.6 per cent nationally and 66.2 per cent for Tasmania. For personal insolvency agreements, the national figure showed a 63 per cent change, and total insolvency activity was 12.2 per cent according to the administrations under the Bankruptcy Act, statistical data April 2008 to March 2009. So clearly those figures reflect the economic circumstances that we are currently facing and the

rapid increase or downturn as it affects not only individuals but particularly small business. Would that be your observation? Would that be accurate?

Mr Lowe—It is undeniable that the rates are high in Tasmania, tracking through—yes.

Senator BRANDIS—By the way, Mr Lowe, if you have got the March 2008 figures for Tasmania, presumably you have the March 2008 figures for Australia. What are they?

Mr Lowe—Bankruptcies or total activities?

Senator BRANDIS—The same figures that I was—

Mr Lowe—For bankruptcies for Australia in the March quarter—

Senator BARNETT—2008 or 2009?

Senator BRANDIS—2008.

Senator BARNETT—Are you doing 2008 or 2009, Mr Lowe?

Mr Lowe—Sorry, Senator Brandis; I do not have the figures on this particular sheet in front of me.

Senator BRANDIS—You have got them for Tasmania but not for Australia?

Mr Lowe—For Tasmania there were 217 bankruptcies in the recent quarter and 157 in the March 2008 quarter.

Senator BRANDIS—Yes, but what I want is the total number of insolvencies in March 2008 for Australia. You do not have that?

Mr Lowe—Right. There were 7,865 as against 9,300.

Senator BRANDIS—Okay. That is what I want. Thank you very much. Sorry, Senator Barnett.

Senator BARNETT—That is all right. I have concluded. Thank you for your time.

Senator BRANDIS—One last little thing I should have mentioned. If you go to page 107 of Budget Paper No. 2, which contains the new budget measures, it shows you are subject to one new budget measure, ‘maintaining service standards’. It says:

The Government will provide \$14.3 million over two years to maintain service delivery standards related to personal insolvency matters. This measure will allow the Insolvency and Trustee Service Australia to continue to deliver services in the personal insolvency system to a standard that provides confidence and certainty to participants.

There is an additional \$7 million in 2009-10 and \$7.3 million in 2010-11, but atypically for most of the budget measures there is no additional revenue or appropriation shown for the remaining two out years. May we take it that the additional \$7 million next financial year and \$7.3 million in the following financial year merely to maintain services reflect an anticipation of the growing pressure on the service in those two years because of significant further increases in the level of insolvencies?

Ms Ingram—That is right.

Senator BRANDIS—By the way, when you put the budget submission up to government did you make any estimate of the number of additional cases you would have to deal with from which these figures of \$7 million in 2009-10 and \$7.3 million in 2010-11 were derived?

Ms Ingram—I do not think I am in a position to reveal the budget inputs and deliberations.

Senator BRANDIS—Okay. I won't ask you what they were, but you did make an estimate, did you?

Ms Ingram—I can only point you to the increased level of bankruptcies until the March quarter, which are tracking at 14 per cent.

Senator BRANDIS—The fact that there is a larger appropriation in 2010-11 than in 2009-10 to maintain existing services presumably also means that you anticipate more bankruptcies in 2010-11 than in 2009-10; is that right?

Ms Ingram—Yes.

Senator BRANDIS—Thank you.

CHAIR—Ms Ingram, I thank you and the officers for your attendance today.

[10.56 am]

Office of the Director of Public Prosecutions

CHAIR—I welcome officers from the Office of the Director of Public Prosecutions. Mr Craigie, good morning and welcome. Do you wish to begin with an opening statement?

Mr Craigie—The opening statement is by way of an explanation of what we have discovered is a mathematical error in the budget papers. I do this, one, by way of apology and explanation and, two, in order to avoid any unnecessary controversy on the basis of the figure that is in the papers. I ask senators to have regard to page 455 of the budget paper.

Senator BRANDIS—This is the portfolio budget statement?

Mr Craigie—Yes, indeed. The error is in table 2.1 for outcome 1 and relates to the full-time equivalent employees for the office for 2009-10. The figure shown there is 596. That is incorrect. The correct figure—and I will explain as best I can how we got to the error—is 614. I am told that what happened was that, when the spreadsheets were being prepared which were to be the basis for the calculation, what was used was the opening value for July 2009 to work out the average rather than the June 2008-09 figure. I apologise. I am a lawyer, not a mathematician. That is the mathematician's explanation for it.

We discovered the error early this month on about 7 May. We did promptly advise the agency advice unit in the Department of Finance and Deregulation and we were told that, unfortunately, as the present table in its printed form had been cleared we could not amend it at that stage. I understand that a process is underway to supply what I think is called a correction slip, which has been prepared within the department. I am not sure at what stage that goes formally into some correction of the papers. You can be assured that we are aware of it. I simply bring it to the committee's notice with the apology that it was an innocent error based on starting with the wrong formula.

Senator BRANDIS—We may as well start at that very place. How many of the 614 FTE staff are lawyers?

Mr Craigie—It runs at about 60 per cent.

Senator BRANDIS—So 60 per cent of your FTE are lawyers—and by lawyers I mean prosecutors, assistant prosecutors, legally qualified clerks—

Mr Craigie—People with practicing certificates.

Senator BRANDIS—Of the remaining, has that number remained constant between the two years?

Mr Craigie—It has floated very close to constant.

Senator BRANDIS—Are you able to disaggregate, in each of the two years accounted for in table 2.1, staff with practicing certificates from other staff?

Mr Craigie—I could take that on notice. It is a figure that would be readily obtainable—although not today, I regret to say.

Senator BRANDIS—Please take that on notice. Are you able to tell us in general that the slight reduction in staff would be reflected in the disaggregated figures in a uniform way so that if it were 60 per cent lawyers in 2008-09 it would be 60 per cent in 2009-10 as well?

Mr Craigie—It is a remarkably stable population. In fact, it changes very little year to year.

Senator BRANDIS—All right. Do you have the Budget Paper No. 2 budget statement handy?

Mr Craigie—Yes.

Senator BRANDIS—You get one mention in this one:

The Government has identified savings of \$2.4 million over four years by reducing in-house legal services for matters that are ancillary to the prosecution function of the Commonwealth Director of Public Prosecutions.

First of all, what are we meant to understand by the expression ‘matters that are ancillary to the prosecution function’?

Mr Craigie—The principal ancillary service that we have would be mutual assistance advice and requests.

Senator BRANDIS—So who is going to do that now if you are not going to do it?

Mr Craigie—It is a combination of the referring agencies supporting it and the department itself.

Senator BRANDIS—So these are costs that are going to be absorbed elsewhere in the bureaucracy?

Mr Craigie—That is right.

Senator BRANDIS—This is perhaps not for you to say, but it does not seem that this is a change to the budget bottom line—that is, the costs that are currently incurred by you in

performing these functions are going to be performed by somebody else and, presumably, be accounted for in their budget.

Mr Craigie—Yes. I am reminded that I mentioned practicing certificates. Of course, any DPP lawyer has a right of appearance by reason of membership of the office. In any event, I will adjust your question to meet the sense of what you seek—

Senator BRANDIS—I think we are talking about the same thing.

Mr Craigie—Indeed.

Senator BRANDIS—To go back to this budget measure saving \$2.4 million over four years, that is not going to reflect in the number of staff engaged in the prosecution function or the number of staff with practicing certificates?

Mr Craigie—One significant in-house element will not be renewed, and that is the senior in-house counsel. That person's contract was coming to an end—in fact, in a few weeks time. That contract has not been extended.

Senator BRANDIS—Who was that person?

Mr Craigie—Wendy Abraham QC, who rendered a very considerable service to the office during her term. She has decided that she will return to private practice. I will not be replacing the position.

Senator BRANDIS—How many other senior counsel are there on the staff of the Commonwealth DPP? There is you, there was Ms Abraham—how many others?

Mr Craigie—We have one in Western Australia—Stephen Hall SC. He has a special arrangement with the office, with some other rights of practice—

Senator BRANDIS—He has the right of private practice too?

Mr Craigie—appended to it.

Senator BRANDIS—Are those the only ones?

Mr Craigie—We are a lonely tribe, yes.

Senator BRANDIS—Given that Ms Abraham's contract is not being renewed and she is not being replaced, who is going to do the work that she was doing? Are her matters now going to be briefed to the private bar?

Mr Craigie—The work she presently holds she will continue to hold on a new basis. She will join that pool of private counsel whom the office brief on ad hoc arrangements from time to time. They will take up that area of work that was wholly and solely her domain. That will be spread around the bar, as indeed we have done customarily.

Senator BRANDIS—Is it going to cost more to brief private silks than to have your own in-house silk?

Mr Craigie—I speak as someone who was an in-house silk for a long time. There are advantages to having people in-house, but you have the ongoing costs of supporting them and their chambers. There is flexibility in not paying for people when they are not actually in court.

Senator BRANDIS—I can understand there might be non-financial considerations why you would do it, but I am just limiting myself to the financial implications.

Mr Craigie—The financial balance is in favour of having counsel externally.

Senator BRANDIS—Really? Where in the portfolio budget statement do we find accounting for outlays undertaken by the Commonwealth DPP on briefing prosecutions to the private bar?

Mr Craigie—I think it is covered under the general heading of ‘legal expenses’, but there is no—

Senator BRANDIS—Can you take me to the page that is on, please.

Mr Craigie—I do not think there is a specific item. It is just covered in the general operating expenses.

Senator BRANDIS—Is that in table 3.2.3 on page 461?

Mr Craigie—I think it is probably in the annual report.

Senator BRANDIS—I see. Can you just give me the figure, please, for the most recent financial year. How much money, in total, did we spend on briefing private counsel?

Mr Craigie—I will get that turned up.

Senator BRANDIS—Yes, please. While you are doing that, I want to ask you a couple of questions about the Clarke report. When Mr Clarke’s report was received at the end of last year, there was some criticism of the Commonwealth DPP’s role in the events that were the subject of that report. I do not want to open this up widely. All I want to know is: what steps have been taken within the Commonwealth DPP to deal with matters raised relating to it in the Clarke report?

Mr Craigie—First of all, I should start by saying that our position was to be open with the report, of course, and to make clear what happened. What did happen—and I might say that this was after a fairly exhaustive internal review—did not reveal systemic failures. Far from it; what it revealed was that there had been a departure from proper protocols and, had those protocols been followed—whilst one could not guarantee that an unfortunate situation would not unfold—it would be certainly far less likely. Even though that was our view, we nonetheless went through our procedures again. I reviewed our internal guidelines to the prosecutors and I issued what I suppose you might call a series of belt-and-braces directives—

Senator BRANDIS—I am not familiar with that expression. That sounds attractively old-fashioned. Would you be kind enough to explicate that expression for me?

Mr Craigie—Having satisfied ourselves that in fact there were clear protocols as to the relationship in particular between a prosecutor and an investigator, we nonetheless affirmed that, again, in guidelines and directions, some things which we had assumed were obvious already were now in black-and-white and with emphasis.

Senator BRANDIS—Just pausing there—these protocols governing the relationship between the investigator, in particular, in this case, the AFP and your office, are very longstanding aren’t they?

Mr Craigie—They are.

Senator BRANDIS—They are a public document, aren't they?

Mr Craigie—They are not; they are an internal document.

Senator BRANDIS—Are they able to be made public or is there a reason you refuse to make them public?

Mr Craigie—They are not, and there are good operational reasons why they are not. They are regarded as sensitive between us and the AFP, simply because they reveal matters that would not be in the public interest to reveal generally. But I do not think it is any secret as to what their general import is.

Senator BRANDIS—Presumably, at the highest level of generality, they reflect the ordinary principles of law governing the exercise of prosecutorial discretion.

Mr Craigie—And day-to-day practice as established between ourselves and the AFP over many years. They are also, I think, fairly clearly laid out and reflected in the submission that we made to the Clarke report, which we really embraced as a mechanism by which we could explain to the most appropriate extent the way we work and put that into the public domain.

Senator BRANDIS—So your position is—and I do not want to put words in your mouth, but let me summarise my understanding of what you are saying to me and, if I have got it wrong, please correct me—that, so far as concerns your agency, the Clarke report revealed that a mistake had been made in a particular case; not that there had been any systemic failure within your office and, in particular, not that there was any systemic inadequacy in the nature of your relationship with the AFP such as to cause you to fundamentally alter the protocols governing that relationship? Is that right?

Mr Craigie—Yes.

Senator BRANDIS—So there were some amendments to the protocol, but they were more by the way of stating the obvious, in effect?

Mr Craigie—They were a re-emphasis in guidelines and directions—so, what standing practices were.

Senator BRANDIS—So there has been no change to practice and there has been no instruction that practice be changed?

Mr Craigie—No. In fact, the instruction is that the practice be adhered to with vigour.

Senator BRANDIS—Again on the question of the exercise about prosecutorial discretion, you are aware of the proposal that certain conduct under part IV of the Trade Practices Act be criminalised. Presumably, were a prosecution to take place in consequence of any breach of those provisions, then your office would be the prosecutor, not the ACCC?

Mr Craigie—The ACCC would be the informant and we would conduct the proceedings on their behalf.

Senator BRANDIS—That is what I am getting at. You would conduct the proceedings?

Mr Craigie—Yes.

Senator BRANDIS—That is what I would have expected. Have you been in discussions with the ACCC for the development of a protocol with them as to the manner in which any of the alleged criminal breaches of the act referred by them to you will be dealt with?

Mr Craigie—Those arrangements are largely reflected in the MOU, which has been publicly released, and in annexure to the prosecution policy.

Senator BRANDIS—So beyond those documents and, in particular, beyond the MOU, there are no discussions between you and the ACCC in relation to more detailed protocols governing such cases?

Mr Craigie—There are ongoing discussions around such areas as to the practicalities of how the leniency policy of the commission would interact with the prosecution policy.

Senator BRANDIS—That is precisely where I was going. That is what I want to know about.

Mr Craigie—But I suspect the question you were coming to is: is there a settled protocol? No, there is not.

Senator BRANDIS—You are obviously addressing this issue of the way in which the leniency policy and the ACCC's existing stated preference for trying to resolve these matters consensually with agreed to civil penalties might impinge upon any subsequent prosecution activity. So what I would like to know is where those discussions are at and the way in which you anticipate the exercise of prosecutorial discretion will be impinged upon in a special case of an agency with the ACCC's leniency policy.

Mr Craigie—I think we have come to a common understanding that, at bottom, if functions are to be carried on by me then they have to accord with the prosecution policy of the Commonwealth. That said, there are public interests and concerns in the way that policy is exercised.

Senator BRANDIS—Pausing there, who in your view has the ultimate say in determining the public interest concerns—the ACCC or your office?

Mr Craigie—I have the ultimate say, albeit it is a say that will be informed by a number of factors, not least of which is the view of a specialist regulator in a specialist area.

Senator BRANDIS—Let me put a hypothetical position to you. Let us say that there is an allegation of cartel conduct and it would fall within the criminal provisions of part IV of the Trade Practices Act. Let us say that the ACCC, having discovered that conduct and having formed the view that it constitutes a breach of part IV of the act, in giving effect to its leniency policy engages in discussions with the party allegedly in breach with a view to seeing if a settlement can be achieved and that party will give undertakings to consent to civil penalties.

Let us say that those discussions break down and there is no settlement. Leaving aside the issues that were agitated in the Pratt case—I do not really want to pursue that—it would be in those circumstances entirely possible, wouldn't it, for the ACCC then to refer the matter to you? And if the ACCC referred the matter to you, you would have to make your own judgment and exercise your prosecutorial discretion in the appropriate manner, and that may then lead to a prosecution of this particular corporation or individual. That hypothetical

scenario I have painted for you could very well take place under the new arrangements, could it not?

Mr Craigie—It could.

Senator BRANDIS—There is—as you are, Mr Craigie, I dare say, well aware—a concern in the community and in areas of the business community in particular that the threat of a prosecution, albeit that the ACCC is not the prosecutor but you are, introduces a new element into the settlement discussion with a party allegedly in breach so as to enable—to put it in the vernacular—the ACCC to put a gun to the head of such a party and, in effect, force the party to settle the matter on whatever terms as to civil penalties the ACCC demands, for fear that if that party does not yield to the ACCC's demands the ACCC will simply send the matter off to you and its directors may face criminal prosecution. You understand that concern that exists in the community.

Mr Craigie—I do not know whether that concern does exist within the community, but—

Senator BRANDIS—That could very well happen.

Mr Craigie—I am prepared to approach the question against the kind of situation that you explain.

Senator BRANDIS—Can I just make it clear I am not saying that there should not be criminal sanctions in the Trade Practices Act. Different people have different views in relation to this matter. But it does trouble me that the moment you introduce criminal sanctions into the Trade Practices Act, then the ACCC's leniency policy and the whole notion of trying to arrive at a civil penalty settlement take on an entirely different character, almost potentially to the point at which that mode of dispute resolution, which many people think has been a pretty good mode of dispute resolution, becomes really nominal. I know that is not immediately your concern, but you are obviously potentially a very important influence on this. So what I am wondering is: in your discussions with the ACCC, does the fact that there may have been pre-existing discussions to resolve a dispute by consent civil penalties, which discussions have ultimately fallen over—does that fact that there were such discussions and the impact of the potential penal consequences of the failure of those discussions impact on the exercise of your prosecutorial discretion? To put it in perhaps a slightly less wordy way: have you addressed with the ACCC the way in which these two different stages of a dispute—a negotiation with a view to achieving a civil penalty and a prosecution—might bear upon one another?

Mr Craigie—Senator, can I answer it this way—

Senator BRANDIS—Do you understand my question, Mr Craigie?

Mr Craigie—I understand the question, and it is not novel, I might say, to the ACCC.

Senator BRANDIS—No.

Mr Craigie—There are similar situations, for instance, with the ATO and with ASIC. I can only say it is my clear impression that the ACCC and the chairman in particular are very much aware of the delicacy of their position if there is any possibility of a future criminal position, and they would conduct themselves with propriety and within their powers with that reality in mind.

Senator BRANDIS—Sure. But, just pausing there, Mr Craigie, is that something that you could even properly have regard to? In exercising your prosecutorial discretion, should you or, indeed, could you—forgive me; I am not a criminal lawyer—weigh into the exercise of that discretion, the fact that there had been evidently good faith negotiations to try and resolve the matter on a civil basis which had nevertheless fallen over?

Mr Craigie—There are a number of aspects to the prosecution policy that would bear on this.

Senator BRANDIS—Yes. Tell me what they are, please.

Mr Craigie—There is an imperative which is in the recently amended Prosecution Policy, I should tell you, at 2.10(v), which is that in formulating the public interest test the sorts of things that one should consider—and the matters to be considered are non-exhaustive, of course—include ‘the need to give effect to regulatory and punitive imperatives’, the efficacy of other outcomes including regulatory-civil outcomes. So we are not unused to working in an environment where we have to consider those things and consider whether they have been properly approached by a partner agency, if I could so describe the ACCC.

Senator BRANDIS—Though, in this case, you have in the Trade Practices Act this rather jurisprudentially anomalous concept of a civil penalty. That makes it a little different, doesn’t it?

Mr Craigie—Whether it is anomalous is a matter for others to judge, but as I say there are examples of other regulatory regimes where there is a choice of civil or criminal paths to be followed. That is something with which the DPP and I personally are quite comfortable, and we can work with the ACCC on that basis.

Senator BRANDIS—What I gather from that, Mr Craigie, is that you are telling me that the fact that there had been pre-existing discussions between the regulator and the party allegedly in breach to resolve the matter on a civil penalty and undertakings basis, albeit ones that have fallen over, may be something to which you would have regard in the exercise of your discretion whether or not to prosecute. Is that right?

Mr Craigie—The factors, as I say, are non-exhaustive; so, depending on the way those processes travelled, yes, they could enter into consideration.

Senator BRANDIS—Okay. Has that very matter been the subject of a protocol, or is it the subject of a negotiation with a view to developing a protocol, between you and the ACCC?

Mr Craigie—Well, it is the kind of thing that we have discussed, obviously.

Senator BRANDIS—You have discussed it. Do you expect that it will be governed by some form of protocol?

Mr Craigie—Certainly, the ACCC have said to us, in effect, that they will not ordinarily entertain a civil penalty where the cartel conduct is of a serious nature and suggests, on the face of it, that it is going to be a criminal matter in any event—

Senator BRANDIS—But that is kind of putting the cart before the horse, isn’t it?

Mr Craigie—Yes.

Senator BRANDIS—Because they are making a preliminary judgment about a matter which is entirely your decision: whether or not there should be a prosecution. You cannot as the prosecutor have your hands tied by what the complainant wants to do, can you? You would be informed by their views, but it is your decision in the end, isn't it, Mr Craigie?

Mr Craigie—They have got to refer it to us.

Senator BRANDIS—Sure.

Mr Craigie—If they look at a particular matter and they instinctively see it is serious—

Senator BRANDIS—They might make an educated, well-informed judgment about whether or not the case was so serious that it was likely that you or your agency would decide to prosecute it. Nevertheless, they cannot make that decision, nor could they dictate that decision to you. That has to be an exercise of your own, independent discretion, doesn't it?

Mr Craigie—You are right. Their power, in a sense, over the matter crystallises at the point they decide to refer it to us. My point is that it would be difficult to conceive of a situation where there were both a civil proceeding and facts so serious as to suggest a referral to us for criminal action as well.

Senator BRANDIS—With all due respect, I think that is completely wrong. There may very well be circumstances in which the ACCC—and this is a question for them, not you, of course—regard a collusive tender, for example, as being a serious matter; nevertheless, for any one of a number of reasons they may prefer to resolve the matter on the basis of negotiated civil penalties and undertakings. If that negotiation is successful, that is what would happen, and there would be no reference to you. But, if that negotiation is not successful, there may then very well be a reference to you, and you may very well decide that it is a clear case to prosecute. With all due respect, I do not think what you said just then is right at all. That is just not the way this works.

Mr Craigie—My understanding is, in practice—and this seems to be reflected by our discussions with the ACCC—if the matter has the hallmarks of a serious cartel matter, the probabilities are that it would be referred as a criminal prosecution.

Senator BRANDIS—Did the ACCC tell you that?

Mr Craigie—That has been the outcome of discussions principally between Mr Davidson and officers of the ACCC.

Senator BRANDIS—Has the expression of that view by the ACCC found its way into a letter or any other document?

Mr Craigie—Of its nature, it is not capable of being distilled as an inflexible rule, but that is an indication of attitude.

Senator BRANDIS—I am going to stop there, because the next point I want to pursue is one I can only pursue with the ACCC, and I know my colleague Senator Boswell, who has a great interest in this issue, also has some questions. But with very great respect I say to you that I would have thought the assumption that the ACCC would necessarily or even probably refer for criminal prosecution a serious cartel matter—reflecting an antecedent decision not to seek agreed civil penalties and undertakings from the party allegedly in breach—is

completely wrong. If that is the assumption which governs the discussion between you and the ACCC in relation to any protocol that may be developed between your two agencies in relation to this, I think that is a matter of some concern and obviously needs further elaboration.

Senator BOSWELL—I would be concerned if, in negotiations entered into by a person representing the ACCC, he were to say to the person he was negotiating with: ‘Either you agree with this or we’ll proceed with it as a criminal matter.’ You might not think that would go on, but these sorts of things do go on. You are giving someone a tremendous lever to get an agreement. Do you see that as a threat?

Mr Craigie—I think you are entering into areas where it is highly speculative that anyone would approach it that way.

Senator BOSWELL—That has to happen. Human nature being what it is, that happens.

Mr Craigie—With respect, there is an implicit accusation in that, and I think that if that kind of question should be put to anyone it should be put to people from the ACCC. It has the whiff of some impropriety, I would have thought.

Senator BOSWELL—I am sorry that all things are not conducted under Marquess of Queensbury rules in the real world. They may be at your level; I suspect they are. You strictly go by the rules, but down at a lower level I suspect some of those things would happen. That is a concern I have. I understand the ACCC to some degree. I will leave that with you.

Senator BRANDIS—I express my concerns, which I think are shared by Senator Boswell and others, in this way. For many years now we have had the civil penalty model. The ACCC has pursued it very vigorously, and there have been unprejudiced discussions which have, more commonly that not, resolved in agreed undertakings and penalties which have sometimes been huge—many millions of dollars. That has been buttressed by the so-called ‘leniency policy’ to which you have referred. The parliament may decide to introduce a criminal element into part 4 of the Trade Practices Act, and that has been called for on both sides of politics, including me in years gone by. What I do not think the parliament, either the government or the opposition, intends is to replace the consensual civil penalty model entirely with a criminal prosecution model for the enforcement of the act. So if the parliament enacts criminal penalties for serious cases I am quite sure that the thinking on both sides of politics would be that the criminal penalty element should be reserved for the most extreme cases and should not supplant the civil penalty, negotiated resolution and undertakings to the court model.

My very great concern from what you said a little earlier to me, Mr Craigie, is that the way you, obviously informed by discussions with the ACCC, see this operating is that for all practical purposes that is what may very well happen. In the big cases—the really bad cases which might be, nevertheless, susceptible to negotiated resolutions, civil penalties and agreed undertakings—that stage would be bypassed and it would be booted to the DPP so that the first tool in the shed, as it were, would be a prosecution. Were that to happen, I think the consequences for the enforcement of the act would be quite a bit more draconian than the parliament intends, that the government through its statements has announced that it intends

or that the opposition would feel comfortable with. In any event, perhaps I can pursue that with Mr Samuel on 22 June.

Senator BOSWELL—I have questions on fishing convictions, Ms Kelly. On 15 May the Minister for Home Affairs, Mr Debus, wrote me a letter. Do you have that letter?

Ms Kelly—I do.

Senator BOSWELL—For the record, I will read it out: ‘When a person’s conviction is spent, the person does not need to disclose the conviction and others are prevented from taking the conviction into account unless one of the specified exemptions applies. However, when a conviction is eligible to be treated as spent it does not mean that the conviction is reversed or that the record of the conviction is removed from a person’s criminal history.’ You can see the difference in there. How can you give comfort to any person who has a spent conviction and assure them that they would not suffer any detriment, even though the conviction is not reversed or the record of the conviction is not removed from that person’s criminal history?

Ms Kelly—As the minister’s letter explained, the spending of the conviction does not reverse the conviction and it does not remove it from the person’s record; it merely provides that the person does not have to disclose it if asked in particular circumstances or that it cannot be taken into account. The structure of the scheme is that it is not removed from the person’s record and it is not reversed.

Senator BOSWELL—I want to give you a hypothetical example. If someone applying for a job says that they do not have a criminal conviction—knowing that it is spent and, therefore, they believe it is removed—and a letter comes back saying that they have a criminal conviction, they have lied to that person. How is that taken into consideration?

Ms Kelly—My understanding is that, if your conviction is spent and you are applying for a job that does not have status under the scheme—if you are applying for a job with a national security agency, there may be provisions that mean you have to disclose even spent convictions—and you are asked to disclose convictions then you are not obliged to disclose it.

Senator BOSWELL—I accept that. So you say you do not have a conviction and then your employer checks the record and finds you have a conviction.

Ms Kelly—Your employer would request a criminal history and that would be done through the CrimTrac agency. Before the criminal history is provided, the CrimTrac agency applies the spent convictions legislation of the jurisdiction from which the record is drawn—so, for example, if there is a record drawn from Victoria, it will be dealt with under the Victorian spent convictions legislation—and, if the request is for employment purposes in those ordinary circumstances, CrimTrac will disclose only those convictions that are not spent for that purpose.

Senator BOSWELL—I am sorry, you have lost me. I want a job in a bank and have been convicted for fishing in a spot that I did not understand was illegal. I have a conviction. When I apply for the job in the bank, the bank checks with CrimTrac and sees that I have a conviction. Does CrimTrac say I have not got a conviction? What does CrimTrac say?

Ms Kelly—It will come back from CrimTrac. The conviction that is spent—for the purposes for which the request is made—will not form part of the criminal record.

Senator BOSWELL—What will the letter say? Would it say that he has a spent conviction that is not to be considered a conviction?

Ms Kelly—Its existence should not be disclosed. I am not familiar with the form of the letters that go in all cases—and of course you can go through commercial providers as well to obtain access to criminal histories. The existence of the conviction should not be disclosed.

Senator BOSWELL—That is good, but that is not what this letter said. Do you agree?

Ms Kelly—In what respect?

Senator BOSWELL—It says:

However, when a conviction is eligible to be treated as spent it does not mean that the conviction is reversed ...

Ms Kelly—It will not be removed from the record of conviction held on the National Names Index but, if a request is made by an employer for a criminal history for that purpose, the criminal history that is provided in response to that request will not include that conviction. It will always remain on the central repository of criminal history information in the National Names Index.

Senator BOSWELL—But it will never be—

Ms Kelly—Depending upon the purpose for which an extract is requested.

Senator BOSWELL—I will just get these other questions on the record and I will come back to this. How will a spent conviction be made apparent to the person's record?

Ms Kelly—The central record kept on the National Names Index will not be changed, but the extract that is provided upon request for a particular purpose will reflect only those convictions that are not spent.

Senator BOSWELL—Okay. How can others be prevented from taking the conviction into account, as stated in Minister Debus's letter? You are saying that the fact that you have a spent conviction will not be revealed.

Ms Kelly—It depends upon the purpose for which the extract is requested.

Senator BOSWELL—For a job?

Ms Kelly—That is my understanding of the way the system works.

Senator BOSWELL—That is different to what Mr Debus is saying. Obviously, you knew I was going to ask these questions, so you would have researched them and your answer is probably right, but what you are telling me is not what Mr Debus said in his letter.

Ms Kelly—I apologise if that is unclear. That was the intention, but perhaps it has not been made as clear as it could have been in the letter.

Senator BOSWELL—If a person completes a form and, in response to the question, 'Do you have a conviction?', he replies 'No', and this document proceeds through its checks and the person is found to have a spent conviction relating to fishing, will that mean that they have completed the form erroneously?

Ms Kelly—If it is a form completed for the purposes of employment, and their conviction is spent—and of course the particular legislation has not commenced yet in relation to those foreign fishers, so it has not yet—

Senator BOSWELL—No, not foreign fishers.

Ms Kelly—Sorry—those particular individuals. So they are not yet spent. But, if they are asked when that legislation has commenced and taken effect on their convictions for the purposes of employment whether they have any convictions, then they do not have to disclosed that—if it is employment in the ordinary course.

Senator BOSWELL—Minister Debus's letter refers to the fact that, 'the relevant provision relating to spent convictions has not been proclaimed yet. Please advise when the proclamation will occur.' Will those involved be officially notified of this proclamation?

Ms Kelly—That is a matter for the Minister for the Environment, Heritage and the Arts. The amendments were passed in legislation within that portfolio. So it is beyond the control of our portfolio and, as we directed in the letter, it is a matter to be taken up with that minister.

Senator BOSWELL—I will be going to that committee in a few minutes. Pending the proclamation of the relevant provision of the act, what is the status of those fishermen whose convictions will be spent once the act is proclaimed? In other words, what is their status now?

Ms Kelly—The convictions are unaffected until the legislation commences. So the convictions stand and are disclosable.

Senator BOSWELL—I thought I had an assurance from the minister last year when we dealt with this matter that this had all been a mistake. The fishermen concerned agreed that the offences were committed, but they were fishing offences to which fines usually applied. You cannot give me an assurance, because I will have to get that assurance from the Department of the Environment, Water, Heritage and the Arts.

Ms Kelly—That is correct.

Senator BOSWELL—Thank you. You have been very helpful. The information you gave me was not represented in the minister's letter.

Senator Chris Evans—When did they get you for illegal fishing?

Senator BOSWELL—They did not get me, but remember the—

Senator Chris Evans—I know. It's a joke.

Mr Craigie—Just to respond to an earlier question, Madam Chair, in relation to legal services, here is an aggregated figure, a significant proportion of which would be external counsel. I will try and obtain that as a separate figure, but the overall figure is \$21,439,000. Yes, a very substantial part of that would be counsel's costs. We will try and isolate that element of it and get that as an answer on notice.

Senator HEFFERNAN—Given the recent experience of the DPP's office in New South Wales—the peculiar behaviour of a bloke called Patrick Power, and the peculiar response by Ian Barker QC that somehow that business was not all that bad and it was victimless et cetera—what precautions does your DPP's office take so that you have not got people doing the same sort of stuff in your office?

Mr Craigie—I will not comment on what happened in New South Wales.

Senator HEFFERNAN—That is fair enough.

Mr Craigie—Suffice it to say that the IT protocols within my office are about as tight—and sometimes inconveniently so—as they possibly can be. There are fierce firewalls. There are certainly very strong restrictions on who has access to the internet from within the office. There are very few of us who can do that. If I remember the facts of that particular matter, it related to a laptop that was brought into the office for repair, and some things were discovered there. I do not think it is the sort of thing that essentially is bound up with the internal processes of the office. I can assure you we take a very restrictive and very conservative view about IT.

Senator HEFFERNAN—Can you supply the committee the details of those precautions?

Mr Craigie—I can certainly supply the committee with details of our IT security and the extent of firewalls and restrictions. You would be conscious, no doubt, of the fact that we deal with a lot of very sensitive material.

Senator HEFFERNAN—I am.

Mr Craigie—You may assume, and I am quite happy to fortify your assumption, that our IT practices reflect the sensitivity of the material that we deal with.

Senator HEFFERNAN—Thank you very much for that. Are you able to express a view as to whether there is merit in the proposition, which I understand the government is giving consideration to, to establish a federal judicial commission?

Mr Craigie—That is a matter of high policy and I do not think it would be appropriate for me to comment.

Senator HEFFERNAN—I ask it to lead to the question: there is a committee of inquiry at the present time; have you been consulted in that process?

Mr Craigie—Not to my knowledge.

Senator HEFFERNAN—So, in terms of justifying or not justifying the establishment of a federal judicial commission, the DPP's office has not been consulted by anyone.

Mr Craigie—Certainly not formally. Mr Carter, who is sitting behind me, is the deputy director in that area and, if there was a submission sought and given, he would know about it.

Senator HEFFERNAN—I was appalled by that stuff in Sydney. The internet has made it very difficult to deal with this stuff. Some of that was just so graphic and disgusting. There are a whole lot of very prominent people, some of them key legal eagles, who gave—and this is their business—character references. Ian Barker QC said that it was no big deal, that this guy should be let go and that it was a victimless crime, whereas in fact it is very much a victims crime. If there was a request put in by the police to put a judge in the federal jurisdiction under surveillance, would that be a matter that would concern you as the federal DPP?

Mr Craigie—It is a matter for the investigative agency, not something that would be appropriate for me to comment upon. I should declare an interest in this. You mentioned a

number of people who gave references for Dr Power. You should be aware, lest there be any sense of subterfuge about this—

Senator HEFFERNAN—There is not.

Mr Craigie—that Dr Power received references from many people who knew him professionally and who gave comments about his prior good character. If you look down the list you will probably find mine. That should be on the table, lest you be misled.

Senator HEFFERNAN—I am aware of that. We all have human failures and we all give references.

Senator BARNETT—Do you have many failures?

Senator HEFFERNAN—I have got plenty of human flaws. Hands up all those who have not. No hands went up. There is something that troubles me about this case—in fact, there are several cases. In those lists of referees, there were three people—you are not one of them—who were named in police intelligence documents who were judges. There were 27 people, including 17 lawyers and three judges listed in police documents. I have handed those to the Attorney-General's Department, and they have on two occasions generously handed them back. The AFP has still got them. These police intelligence documents raise serious issues about their behaviour. Three of those people were referees. That is fair enough. So I am concerned about what is the subliminal message—turning the blind eye? I could read some graphic throw-away remarks by legal eagles about some of this stuff. But you have no direct say about, no interest in or no comment on circumstances involving a judge who has been named in police documents as having picked up boys at the toilets opposite Marcellin College in Randwick. This is a judge who sat in judgment on a father—

Senator Chris Evans—Madam Chair, I do not want to interfere with proper lines of inquiry, but the Office of the DPP is here to answer on issues relating to their responsibilities. Senator, I warn you again about parliamentary privilege—

Senator HEFFERNAN—No-one is going to be named.

Senator Chris Evans—I think you are getting very close to it.

Senator HEFFERNAN—No-one is being named. I have become very cautious.

Senator Chris Evans—I am glad to hear that, because I think in the past there has been some lack of caution.

Senator HEFFERNAN—Yes.

Senator Chris Evans—I think we made it clear that the role of the estimates committee is to ask questions of officers in relation to their responsibilities. Whatever Mr Craigie's personal views or attitudes, while they may be of interest to me over a beer, they are not the subject of estimates hearings. So I suggest that you might reflect on that.

Senator HEFFERNAN—I am.

Senator Chris Evans—Madam Chair, I think you need to take a close look at whether the questions are in order.

CHAIR—Thank you, Minister. Senator Heffernan, I just want to remind you that if you have questions you can put on notice that would be useful. We now have only 33 minutes left to question the department on outcome 1, the rest of outcome 2 and outcome 3. So I think time is of the essence. Have you finished your questions?

Senator HEFFERNAN—Chair, thank you very much for your advice and, Minister, for your note of caution. In May 2007, I put on notice three questions which have never been replied to—but I will deal with that later.

CHAIR—Were these questions to the DPP?

Senator HEFFERNAN—I will deal with that later, I think. This particular—

Senator Chris Evans—Senator, for the officers not to be misrepresented or confused, are you saying the DPP has failed to respond to questions?

Senator HEFFERNAN—No. I will have to check.

CHAIR—Do you have the numbers of those questions that have not been answered?

Senator HEFFERNAN—I will get the secretariat to dig them out. I will deal with that later, if you do not mind. I want to go back to the principle of knowledge and the role of the DPP's office, given recent experiences. This particular person, this judge, sat in judgment of a father who was found guilty of interfering with his own daughter, including the insertion of a rifle barrel. The court proceedings were suppressed. This is a judge whose has been recorded in police intelligence as having picked up kids in the toilets opposite a college in Randwick—

CHAIR—Senator Heffernan—

Senator HEFFERNAN—Can I just say that I am not naming anyone.

CHAIR—Order! Senator Heffernan. Do you have questions of the DPP?

Senator HEFFERNAN—I do have a question. I am coming to the question.

CHAIR—Let us come to the question quickly then.

Senator HEFFERNAN—That judge gave a non- custodial sentence to the father. He found him guilty and sent him back to the matrimonial home. As the DPP federal, do you think that is a fair thing? Do you think that was a reasonable judgment?

Mr Craigie—It is not appropriate for me ever to comment on the free exercise of a judicial discretion, let alone in a state matter—

Senator HEFFERNAN—I did not say what jurisdiction it was in.

Mr Craigie—It would not have been a Commonwealth offence in any event, and it is simply totally inappropriate for me to comment on a matter of that nature.

Senator HEFFERNAN—All right. Thank you very much.

CHAIR—As there are no further questions, I thank Mr Craigie and officers of the Director of Public Prosecutions and interstate agencies and other agencies.

[12.00 pm]

Attorney-General's Department

CHAIR—We will now move to the Attorney-General's Department and no doubt commence with cross-portfolio issues. I did not say it this morning, but I want to draw to the attention of witnesses the order of the Senate of 19 May 2009, a couple of weeks ago, specifying the process by which a claim of interest immunity should be raised. I have incorporated that in *Hansard* for the last two days, but I remind officers who are here today to be mindful of that.

Senator BARNETT—Mr Wilkins, do you have a response to my queries from last night, regarding two reports: the Tangentyere—

Mr Wilkins—There were three, I think, Senator. I do. I think you asked about a number of consultancies that arise from the department's ongoing management of the night patrol program in the Northern Territory. They were 10, 11 and 12. There was the Barkly Shire night patrol service review, the Tangentyere strategic planning, and the implementation of the town camp reviews. The first one is the Barkly Shire night patrol service review. I can give you the terms of reference for the review, or read them out, if you like.

Senator BARNETT—I am happy for you to table it. Is the report completed?

Mr Wilkins—It is basically looking at whether or not those night patrols had provided a level and quality of service and had properly accounted for their funding. I am advised that the department is currently working with the shire to implement the review recommendations on that. Those recommendations covered management, financial management, reporting and data collection. The Tangentyere—

Senator BARNETT—Just on that report: when was it completed?

Mr Wilkins—I am told that they were more in the nature of workshops than actual written reports. So there is no documentation of the nature of a report.

Senator BARNETT—Would you take on notice to provide further and better particulars regarding the recommendation and outcomes of the report?

Mr Wilkins—Yes, I think we can do that. The tan-an-jeeri strategic planning—

Senator Chris Evans—The tang-in-jira—

CHAIR—It is pronounced tung-in-jira.

Senator Chris Evans—otherwise the Northern Territory senator and chairperson will give you a hard time.

CHAIR—It is the Luritja language, so it is hard. It has been in the press a few times this week.

Mr Wilkins—This consultancy arose from an earlier consultancy which reviewed the night patrol service operated in Alice Springs. That review made recommendations for change in management, role clarity, communication, data collection and asset utilisation. I can give you the terms of reference for that too. The consultancy was for a strategic planning workshop

with the council to develop a detailed action plan to implement the recommendations from the review. I assume that you would probably like some details around that as well.

Senator BARNETT—Yes, please. Can we have the report?

Mr Wilkins—We could provide you with the earlier report, if that is what you are after. This is a workshop, once again.

Senator BARNETT—All right; and likewise, if you are happy to take that on notice, of the earlier report and the outcomes of the workshop.

Mr Wilkins—Then there was the implementation of town camp reviews. This consultancy arose from an earlier review of the night patrol services operated by Kalano Community Council, Katherine, and Julalikari Aboriginal Corporation, Tennant Creek. The terms of reference for those reviews I can give you as well.

Senator BARNETT—Just to try and be as quick as possible, Mr Wilkins, can we have the report and/or the executive summary of that report, if it is concluded?

Mr Wilkins—Yes, we can provide that. They made recommendations for improvement, once again, in areas such as management, communications, community expectations and data collection.

Senator BARNETT—That is fine.

Mr Wilkins—This was a workshop as well. I can give you those terms of reference.

Senator BARNETT—Thank you; and, likewise, that would be appreciated.

Mr Wilkins—I think you also asked about Mr Semple's work.

Senator BARNETT—Yes.

Mr Wilkins—I will ask Ian Govey to take you through that.

Senator BARNETT—Is there anything in writing you are happy to table? I am just looking at the time and there are other areas to raise.

Mr Wilkins—We probably need to explain them and take you through them.

Mr Govey—We do have a document we can table.

Senator BARNETT—If you think that answers the queries, the secretariat will grab that and we will go to other matters.

Mr Govey—I do not think it completely answers the questions because there are some corrections to the earlier material which I should explain. The information there for the Attorney-General's Department is as corrected in the evidence I gave before, so I do not need to say anything more about that. Similarly, the Federal Magistrates Court material on that sheet does not change. But in relation to the Family Court, the first matter that is listed there is a matter that started on 31 March 2009, so that was not included in the previous information. The second matter that was not included relates to the review of the Federal Court's structure, and that was work that was undertaken by Mr Semple in that context. The third item was there. The fourth item was not there because it was completed before the time frame for the previous question, which started in November.

Senator BARNETT—Hopefully, we can get a consolidation of all of this. I have asked the question a couple of times over the last 2½ days. Frankly, it cannot be too difficult to pull all this together into one piece of paper.

Mr Govey—What we have given you now is a consolidation in relation to Mr Semple for the period in question.

Senator BARNETT—Thank you very much.

Mr Govey—There is also another document I should table, which is a correction for the material previously provided by the department in response to question No. 115. I should table that as well.

Senator BARNETT—Thank you very much. There are two other reports I am keen to ask about. One is the review of customary law, bail and sentencing amendments expected to be completed in April 2009. Has that been completed? If it has, may we have a copy? The other one I want to ask about is the review of funding of the native title system, 2008, to be completed in August 2009. I would like to get the terms of reference for that and a status report.

Ms Kelly—In relation to the review of customary law, there is a final draft of that report currently under consideration by the minister.

Senator BARNETT—We would like a copy, please.

Mr Wilkins—We will take that on notice.

Senator BARNETT—We would need to have reasons why it would not be available under Senate procedures.

Mr Wilkins—Yes, I understand that.

Senator BARNETT—And the second one?

Ms Jones—The 2008 review of funding in the native title system was conducted as part of the 2009-10 budget process. It was provided to government to consider as part of that process.

Senator BARNETT—So we do not have a report flowing from that review, any written document?

Mr Wilkins—There is a report but it is part of the cabinet process of preparing the budget.

Senator HEFFERNAN—Australia absolutely, for the protection of its sovereignty, needs an offshore quarantine station, whether it is in mothballs or whether it is not. I do not understand why, but DAFF has handed over responsibility for the quarantine station on the Cocos Islands for a number of strategic reasons. Here is not the place to ask why we did that, and I have to say that the previous government is in this up to their neck as much as anyone else. Why have we handed responsibility for the Cocos Islands quarantine station to Attorney-General's? What is the intention of the Attorney-General's Department in relation to the Cocos Islands? Is it the intention that we maintain, as I say and all Australia's farmers plead, an offshore quarantine station? There is a ridiculous proposition that we bring quarantine onshore, so that if we are bringing an animal into Sydney, to Taronga Park zoo, and it has foot and mouth disease, we are in deep trouble. It is going to cost us \$13 billion. We have a quarantine station on Cocos Islands, although it is in abeyance. The responsibility is yours;

DAFF will not answer. I have been here before to get the answer. Will someone please explain to me what the hell is going on with the Cocos Islands quarantine station. We need to know that it is not going to be sold off, as has been suggested as late as yesterday by members of the government, because some developer bloke wants to get in there and develop it. Australia's farmers and Australia's people need to know that the government will responsibly maintain an offshore quarantine station. What is the position of this mess in your department?

Mr Wilkins—Would you like us to take it on notice, Senator?

Senator HEFFERNAN—You can do whatever you like, as long as you answer it.

CHAIR—Mr Wilkins, you first need to explain that the responsibility for the Indian Ocean territories came under the A-G's department following the 2007 election. So, Senator Heffernan, you need to put that in context. A-G's now has responsibility for external territories.

Senator HEFFERNAN—With your indulgence, Madam Chair, we do not want this to go under the radar. As we have demonstrated at Badgerys Creek with the horses, Australia's farmers desperately need to have confidence that we are going to maintain this. It will cost \$200,000 or \$300,000 to maintain it. We need to know you blokes are not going to flick it to some white shoe brigade bloke to develop it for god knows what. We need to know what is the intention of the Attorney-General's Department with regard to the assets and land upon which the quarantine station in the Cocos Islands rests. I have been waiting two days to ask the question; I have been told it is under Attorney-General's and I have been given indulgence of the committee and I am grateful. DAFF confirmed with me yesterday that I should come and ask the questions here.

CHAIR—It is Attorney-General's. It is outcome 3. You can either have the answer now or put it on notice, and we will continue with what we are doing.

Senator HEFFERNAN—I will take the answer now.

Mr Wilkins—I think it would be better to give you a rather much longer and more considered response to your question.

Senator HEFFERNAN—Could the Attorney-General's Department agree to meet with the Senate Select Committee on Agriculture and Related Industries to brief that committee as well as give us a written answer?

Mr Wilkins—We will certainly give you a written answer. I will talk to the minister about that, and we will see if that is possible to do.

Senator Chris Evans—I am also happy to raise with the minister whether a briefing with the committee might be an appropriate way to progress this. It is obviously an issue of legitimate public interest.

Senator HEFFERNAN—Thank you for your trouble.

Senator BRANDIS—Mr Wilkins, I want to take you to Budget Paper No. 3—that is, the budget paper that deals with specific-purpose payments. We learn from page 100 of Budget Paper No. 3, if the figures in table 2.122 in relation to payments to the states for legal aid are accurate, that there is a budgeted reduction in the payments to the states for legal aid in 2009-

10 from \$176.4 million to \$165.6 million, a reduction of \$10.8 million. In New South Wales there is a reduction of \$4.1 million, in Victoria a reduction of \$3.2 million and in Queensland a reduction of \$1 million—from \$37.2 to \$36.2. In Western Australia there is a reduction of \$800,000—from \$17.2 million to \$16.4 million. In South Australia there is a reduction of \$300,000—from \$14.4 million to \$14.1 million. In Tasmania there is a reduction of \$600,000—from \$6.1 million to \$5.5 million. In the ACT there is a reduction of \$100,000—from \$4.3 million to \$4.2 million. In the Northern Territory there is a reduction of \$500,000—from \$4.2 million to \$3.7 million. As I said at the start, this is a reduction of about \$11 million in legal aid funding across the board, reflecting reductions in every single state and territory. Are those figures accurate and, if those figures are accurate, why has the Commonwealth decided to slash legal aid funding in every state and territory?

Mr Wilkins—The figures are inaccurate.

Senator BRANDIS—Could we have the correct figures, please?

Mr Wilkins—Yes. In 2008-09—reading across by states into the total—there was \$53.1 million for New South Wales, \$35.4 million for Victoria, \$35.4 million for Queensland, \$16.3 million for Western Australia, \$13.8 million for South Australia, \$5.8 million for Tasmania, \$4.1 million for the ACT, \$4.2 million for NT and a total of \$168.1 million.

Senator BRANDIS—Are the figures for 2009-10 also inaccurate?

Mr Wilkins—Yes.

Senator BRANDIS—Can I have the correct figures, please?

Mr Wilkins—I am advised the figures for 2009-10 are \$52.2 million for New South Wales, \$35.1 million for Victoria, \$35.5 million for Queensland, \$15 million for Western Australia, \$14.1 million for South Australia, \$5.5 million for Tasmania, \$4.2 million for the ACT and \$3.7 million for the NT, coming to a total of \$165.3 million.

Senator BRANDIS—Thank you. So the reduction to the legal aid budget by the government is not as great as the figures would reveal. Thank you for correcting them.

Mr Wilkins—And there has been some one-off funding in the current financial year.

Senator BRANDIS—Given that time is against me, I just want to deal with this table as you have corrected it.

Mr Wilkins—I am just explaining there has not been a reduction. You need to take account of the fact that there has been one-off funding, which is not part of the ongoing funding.

Senator BRANDIS—The government has published a table with the budget entitled 'Estimated payments to the states for legal aid'. That table on its face reveals very significant reductions.

Mr Wilkins—It does, on its face.

Senator BRANDIS—I have queried those figures with you, you have corrected them and now I want to deal with your corrected figures. If you want to put a gloss on that then I will give you the opportunity to do so.

Senator Chris Evans—It is not a question of gloss. The officer is trying to give you the full information. If you want to draw a conclusion from part information, that is obviously up to you.

Senator BRANDIS—I want to focus on a matter which is of specific interest to me.

Senator Chris Evans—The officer would be remiss not to give you the rest, so, when you finish that, I would encourage him to again try to put on the record the rest of the picture.

Senator BRANDIS—Mr Wilkins, the figures as revealed by the amended table 2.122—and allowing for whatever gloss you may want to put on these figures—reveal a reduction in funding to New South Wales of \$0.9 million, a reduction of funding to Victoria of \$0.3 million, an increase of funding to Queensland of \$100,000, a reduction in funding to Western Australia by \$1.3 million, a slight increase of funding for South Australia, a reduction of funding to Tasmania of \$0.3 million, a slight increase in funding to the ACT and a reduction in funding to the Northern Territory of \$500,000, which, as a proportion of that state's legal aid budget, is about an eighth.

Mr Wilkins—The one-off funding I was explaining which was provided in the budget year of 2008-09 is as follows—

Senator BRANDIS—In 2008-09? Is that in a table somewhere?

Mr Wilkins—This is in the current financial year. I do not know whether it is in a table.

Senator BRANDIS—I gather what you are trying to say to me is that the table that the Commonwealth has put forward, allowing for the fact that the figures were just wrong, does not paint the full picture of Commonwealth funding to legal aid.

Mr Wilkins—That is why I am giving you this information.

Senator BRANDIS—If there is other Commonwealth funding for state and territory legal aid commissions, I would like you to direct me to where I find it in a different table or elsewhere in the budget papers. It cannot just come off a piece of paper in your hand.

Mr Wilkins—I will find out where we can find it in the three or four volumes of budget papers, but I just wanted to make clear that there has been one-off funding in the region of \$4.4 million for New South Wales, \$3.2 million for Victoria, \$1 million for Queensland, \$1 million for Western Australia and \$500,000 for Tasmania, coming to a total of around about \$10 million in this financial year.

Senator BRANDIS—In 2008-09?

Mr Wilkins—Yes. That is one-off funding.

Senator BRANDIS—If that is the case, that adds to \$10.1 million in 2008-09. Has there been one-off funding in 2009-10 as well?

Mr Wilkins—We have not reached 2009-10.

Senator BRANDIS—Is one-off funding budgeted for 2009-10?

Mr Wilkins—No.

Senator BRANDIS—If that is the case, if there was one-off funding amounts in 2008-09 of \$10.1 million and the amended total of the funding tabulated in table 2.122 is \$168.1 million net of that one-off funding, adding—

Mr Wilkins—That includes the one-off funding. That is the point.

Senator BRANDIS—I see. You are saying to me that the 2008 -09 figures include program funding and one-off funding?

Mr Wilkins—Exactly.

Senator BRANDIS—That still reflects a reduction in the legal aid budget of some \$3 million, although not as great a reduction as the inaccurate table would have suggested—it is a reduction of about one-third as great as the table suggested.

Mr Wilkins—The point is that because it was one-off funding it does not represent what the Commonwealth would normally provide to the states for legal aid funding; that figure, which is \$168.1 million, minus the \$10 million would represent what the true state of play would normally have been, except for the fact that the Attorney-General made, because of the exigencies, some special one-off payments.

Senator BRANDIS—But one-off pavements are one-off payments. There is no periodicity about them; there is no regularity about them. There may be one-off payments in 2009-10 or there may not be. You have told me that they are not budgeted. So, with respect, allowing for the fact that the one-off payments in the 2008-09 have been included in the figures for the budget but given that there are no one-off payments budgeted for in 2009-10, we still have a reduction—a reduction, as I said before, not as great or as severe as the table would have suggested but still a reduction of some \$3 million in legal aid funding.

Mr Wilkins—I am not arguing with the proposition except to make the point that this is not core funding that you are talking about.

Senator BRANDIS—I think I am more interested in looking at this from the point of view of the Legal Aid Commissions at the coalface in the states and territories who have, across the country in aggregate, had their funding reduced by not quite \$3 million this year—in New South Wales by nearly \$900,000 and in Victoria by some \$300,000.

Mr Wilkins—You could put it another way: you could say you were looking at their position having had a special one-off increase over core funding last year.

Senator BRANDIS—As no doubt you have done, Mr Wilkins, I have spoken to the access to justice people at the Law Council of Australia. You must be aware, if you have spoken to them as I have, that they say that the legal aid system in Australia today is in an acute crisis and the Legal Aid Commissions, with some of whom I have spoken, are very alarmed that the government has chosen not to increase but, in fact in aggregate terms and in the two largest states, to decrease legal aid funding. I do not expect you to comment on that other than to affirm that the Law Council of Australia's access to justice officers have said that to you, as no doubt they have because they have said to me. I daresay they have said it to government, as well.

Mr Wilkins—I am aware that people have said that.

Senator BRANDIS—Have they given you an estimate as to how much money it would cost to repair the legal aid system in Australia?

Mr Wilkins—There would be different views. I will have to take that on notice.

Senator BRANDIS—I am asking whether they have given you their view?

Mr Wilkins—I assume that they have given us their view; we have had representations from a number—

Senator BRANDIS—But you are not in a position to recall what they said to you?

Mr Wilkins—No, I am not in a position to recall precisely what they said.

Senator BRANDIS—Thank you.

CHAIR—Thank you Mr Wilkins and all the officers of the department. If there are any questions for the remainder of outcome 1, outcome 2 or outcome 3 they will need to be put on notice.

Proceedings suspended from 12.31 pm to 1.32 pm

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

Mr Matt Kennedy, Assistant Secretary, Migration and Visa Policy Division,

Mr Peter Speldewinde, Assistant Secretary, Migration and Visa Policy Division

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, Legal Division

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

Mr Peter McKeon, First Assistant Secretary, Systems Division

Ms Kate Pope, First Assistant Secretary, People and Governance Division

Mr Craig Farrell, Assistant Secretary, People Services Branch

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

Mr Sandi Logan, Manager, National Communications Branch

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

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

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 Lance Thomas, Acting Assistant Secretary, Border Intelligence Branch

Mr Nhan Vo-Van, Assistant Secretary, Border Policy 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 Branch

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

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

Program 4.2 – Onshore Detention Network

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

Ms Lucy Bitmead, Assistant Secretary, Unauthorised Boat Arrivals Branch

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

Ms Lucy Bitmead, Assistant Secretary, Unauthorised Boat Arrivals Branch

Ms Fiona Lynch-Magor, Assistant Secretary, Services Management 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 Daniel Boyer, Acting First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Mr Peter Templeton, Assistant Secretary, Settlement Branch

Mr Vincent Giuca, Assistant Secretary, Refugee Support Branch

Outcome 6 – A cohesive, multicultural Australian society through promotion of cultural diversity and a unifying citizenship, decisions on citizenship status, and multicultural and citizenship policy advice and program design.

Program 6.1 – Multicultural and Citizenship Services

Mr Daniel Boyer, Acting First Assistant Secretary, Citizenship, Settlement and Multicultural Affairs Division

Ms Renelle Forster, Assistant Secretary, Citizenship Branch

Mr Stewart Foster, Acting Assistant Secretary, Multicultural Affairs Branch

Migration Review Tribunal and Refugee Review Tribunal

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

Mrs Mary Urquhart, Deputy Principal Member, Refugee Review Tribunal

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

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

Migration Agents Registration Authority

Mr Brian Jones, President, MIA

Ms Maurene Horder, Chief Executive Officer

CHAIR—I now formally declare open the examination of the Immigration and Citizenship portfolio. As you know, the Senate has referred to the committee the particulars of proposed expenditure for 2009-10 and related documents for the Attorney-General and Immigration and Citizenship portfolios. We have to report to the Senate on 23 June. The committee has set the date of 13 July 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, but I particularly want to draw their attention to an order of the Senate that was passed on 13 May 2009—just a couple of weeks ago—specifying the process by which a claim of public interest immunity should be raised. I incorporated that into the *Hansard* for the last two days. I remind everyone that when they come to the table for the first time they should state their full name and the capacity in which they appear, and ensure that their mobile phones are turned off. For people in the Attorney-General's Department who might still be listening to these proceedings, two mobile phones went off this morning, so that is two boxes of chocolates that they owe the committee! They are all on notice if their phones go off!

[1.33 pm]

Migration Review Tribunal**Refugee Review Tribunal**

CHAIR—We will begin our proceedings with the Migration Review Tribunal and the Refugee Review Tribunal, followed, of course, by the Migration Agents Registration Authority and then the department. I welcome Minister Evans, the Minister for Immigration and Citizenship; and officers from the Migration Review Tribunal and the Refugee Review Tribunal, Mr O'Brien, Mr Lynch and their associates. We will begin with you, Mr O'Brien. Do you have an opening statement that you wish to make?

Mr O'Brien—Yes, I do Madam Chair, just a very brief one.

CHAIR—Thank you.

Mr O'Brien—Thank you very much, Madam Chair and senators. By way of opening I mention two things—first, our workload and, second, the soon to be completed member recruitment round. I refer, first, to our workload. In the RRT, the Refugee Review Tribunal, I report that to the end of April this year 2,203 applications have been lodged, which is 17 per cent higher than for the same period in 2007-08.

Senator BARNETT—For what period is that?

Mr O'Brien—It is to the end of April, Senator. As at the end of April we had decided 2,039 cases, which represents a nine per cent increase on our decisions compared with the same period in 2007-08. On the MRT to the end of April 6,039 applications were lodged and 4,794 cases were finalised. Lodgements in the MRT are 14 per cent higher than for the same period last year, but I can also report that decisions are 13 per cent higher. However, we did have 5,887 active cases at the end of April, representing an increase of 29 per cent in the active case load compared with the active case load as at 30 April 2008.

Through the board of the tribunals I have implemented several strategies to address the growth in our backlog. One strategy has been—I think I referred to this briefly on the last occasion—to allocate to members batches of cases involving the same visa subclass and the same reason for visa refusal. The idea of batching is that it should maximise member efficiency by giving them a bundle of cases involving broadly the same issues. Another strategy to deal with our backlog has been to take into account members' individual experience, skills and preferences in our allocation of cases to them.

That is all I want to say by way of introduction on workload. Referring to member recruitment, perhaps I should mention that the terms of appointments of 39 full-time and part-time members of the tribunals will expire on 30 June.

Senator BARNETT—What are those figures again, Mr O'Brien?

Mr O'Brien—Thirty-nine members.

Senator BARNETT—And they are due for renewal?

Mr O'Brien—That is right.

Senator BARNETT—Out of how many?

Mr O'Brien—We have about 90 members, Senator; so it is just under half.

Senator BARNETT—I will come to that.

Mr O'Brien—In accordance with government policy relating to transparent and merit based assessment in the making of appointments to statutory offices, the minister decided to advertise the positions and he invited current members to participate in the recruitment round. Applications were invited for appointment from 1 July as full-time or part-time members in Sydney, Melbourne, Perth, Adelaide or Brisbane. Those applications closed on 18 January and interviews were conducted with short-listed candidates during March and April. In conjunction with this member recruitment round, we are seeking from the government a modest increase in the number of full-time members because, as we see it, additional member resources will give us a greater capacity to finalise reviews and address the backlog that I mentioned. Madam Chair, that is all I wanted to mention by way of opening. Of course, my colleagues and I are happy to answer any questions.

CHAIR—Thank you very much, Mr O'Brien. Mr Lynch, did you have anything that you wanted to add to that?

Mr Lynch—No, I have nothing to add to that, thank you very much, Madam Chair.

CHAIR—Let us go to questions. Senator Barnett?

Senator BARNETT—Thank you, Madam Chair. Thank you for your opening statement, Mr O'Brien. I have quite a few questions about the latest figures that you have advised the committee of today. I want to go behind those figures to try to find out the reasons why they are as they are.

Mr O'Brien—Yes.

Senator BARNETT—You mentioned the backlog and the workload. How big is the backlog and how serious is it at the moment?

Mr O'Brien—By the end this year we are likely to have about 1,000 more cases on our books than we had at the end of last year. So we would have had a growth in the backlog of about 1,000 cases over the course of the year. As I mentioned, we are also making decisions at a greater rate but we have not been able to keep up with the number of applications that have been made to us.

Senator BARNETT—Is this for both the MRT and the RRT?

Mr O'Brien—No, that is for the MRT.

Senator BARNETT—Just the MRT?

Mr O'Brien—On the RRT we are pretty much keeping up with lodgements.

Senator BARNETT—We can come to the RRT in a minute; but at this stage we are talking only about the MRT?

Mr O'Brien—Yes.

Senator BARNETT—You have a 17 per cent increase in applications lodged to April 2009?

Mr O'Brien—Yes.

Senator BARNETT—What do you put that down to?

Mr O'Brien—There are probably a few contributing factors, but I think the main contributing factor has been that a larger number of applications and activity have been dealt with by the department over the past few years. Of course, that will then flow on to us, or a proportion of that will flow on to us. The primary decision-making levels have been much higher, so, inevitably, the review numbers are higher.

Senator Chris Evans—Might I just add there, Senator, for your information, that one of the things we have seen in the past few years under previous governments is a huge increase in the number of temporary visa holders coming to the country—students, 457s et cetera and people who come in without permanency who may well be seeking a permanent visa at some time down the track. If you like, we have had a growth in migration activity, and the tribunal has the flow-on impact of that. We are seeing many more numbers in the country on temporary visas. As people seek avenues of appeal on permanent decisions, you would expect those numbers to increase.

Mr Lynch—Might I contribute to that, Senator, There is an increase in the skill linked refusals. They have comprised 26 per cent of the MRT lodgements so far this financial year

and have become the highest ranking visa for lodgements. In the past partner refusals previously were the highest lodgements in the MRT.

Senator BARNETT—Which group is that?

Mr Lynch—The skill linked refusals—the 457s that the minister mentioned. I think the student visas refusals have also grown.

Senator BARNETT—What proportion? Do you have any figures on that?

Mr Lynch—The skill linked refusals currently comprise 26 per cent of our lodgement rate as compared with partner refusals, which are now set at 19 per cent. In the past they reached 30 to 40 per cent of the caseload. Temporary business refusals are at 10 per cent, student refusals at nine per cent and family refusals at eight per cent, and then it cascades down to four per cent, three per cent and two per cent for other visa types, such as permanent business refusals, sponsor approval refusals and bridging refusals.

Senator BARNETT—The skill linked refusals clearly are the largest group?

Mr Lynch—Correct.

Mr O'Brien—Yes, that is true.

Senator BARNETT—Do you have the numbers there?

Mr Lynch—Skill link refusals were 1,592.

Senator BARNETT—Could you take that question on notice and provide a three-yearly chart? We are interested in trends to show us where we have been going over the past three years. Perhaps you could take that question on notice—or is that—

Mr Lynch—We would be happy to do that. I might just take you to page 30 of our 2007-08 annual report, which also has a bit of an indicator of the prior years—that is, 2005-06, 2006-07 and 2007-08.

Senator BARNETT—Right.

Mr Lynch—We would be happy to take that question on notice.

Senator BARNETT—We now have the figures through to April 2009, so could you just give us an update? Mr O'Brien, do you want to make any observations regarding these trends?

Mr O'Brien—The only observation I would make is this. As I understand the figures, because of the economic downturn the number of applications recently dropped off. I am finding that it is always hard to crystal-ball-gaze in this area. However, one would expect that as time goes on that would reduce our caseload a bit.

Senator Chris Evans—I think that is right. One caveat on that is that generally the 457s and other temporary visas tend to follow the economic cycle. It is showing itself to be very responsive to the economic cycle. One of the things we will see because of what is coming across my desk is that people who have been here on temporary work permits will be fighting to stay. There will be a lag before the tribunal sees a consistent number for a while. Quite frankly, people who have been here on temporary work permits and who are trying to stay are

losing their jobs. Generally it will follow the economic cycle, but I think the caveat is that people might be looking to appeal decisions if they are not finding an avenue to stay.

Senator BARNETT—You said that the 1,592 skill link refusals currently comprise 26 per cent of your lodgement rate. Those are the figures through to April 2009?

Mr O'Brien—Yes, that is correct.

Senator BARNETT—Do you have a figure for that category for the previous year?

Mr O'Brien—Not to hand.

Mr Lynch—It is 1,279 for 2007-08.

Senator BARNETT—For the full year?

Mr Lynch—For the full year.

Senator BARNETT—There you go! That is a big increase, is it not? You are looking at 1,592 for only 10 months?

Mr O'Brien—Yes, that is true.

Senator BARNETT—We have another two months on top of that.

Mr O'Brien—Yes.

Senator BARNETT—That is a huge increase in skill link refusals.

Mr Lynch—Yes, perhaps another 300 to 500 on the figures for the previous year.

Senator BARNETT—Referring to your decision, you said that applications had increased—I think by nine per cent?

Mr O'Brien—In the MRT the figure is higher than that; it is 13 per cent.

Senator BARNETT—I am talking about the 2,203 applications lodged. That was a 17 per cent increase.

Mr O'Brien—On the RRT?

Senator BARNETT—Yes, that is on the RRT, and then there was a nine per cent increase in applications dealt with?

Mr O'Brien—On the RRT?

Senator BARNETT—Yes, on the RRT. The MRT had a 14 per cent increase, and a 13 per cent increase in those that are dealt with?

Mr O'Brien—Yes, that is right.

Senator BARNETT—Referring to the MRT and this 14 per cent increase, can you give us a breakdown of that? Were 6,039 applications lodged?

Mr O'Brien—Yes, that is right.

Senator BARNETT—Would you provide us with a view about the reason for the increase, if there is any view that you wish to share with us?

Mr O'Brien—It is the same reason that we have been discussing. The skill link refusals have certainly grown. Overall there has been a growth in our applications. That is one area

that has perhaps grown more than the others. We have just had a growth in applications and no doubt that comes back to the fact that there has been a lot more activity over the last couple of years around the primary decision making.

Senator BARNETT—You have looked at these figures and you estimate that by the end of this year there will be an increase in the backlog of an extra 1,000 applications?

Mr O'Brien—Compared with where we were last year; I think that is about right.

Senator BARNETT—An extra 1,000 applications. What is your total figure for applications? What is your estimate or your best guess?

Mr O'Brien—We are probably looking at about 7,000. We had 6,000 applications to the end of April, so it will probably be about 7,000.

Senator BARNETT—By the end of this financial year?

Mr O'Brien—Yes, by the end of this financial year.

Senator BARNETT—I want to ask about the recruitment of members, but I will check to see whether I can move on to that category.

CHAIR—Keep going.

Senator BARNETT—I think you mentioned earlier that the term of 39 of the 90 members will be expiring mid-year?

Mr O'Brien—Yes, they all expire on 30 June. There are two groups in the tribunal: the 39 members whose terms expire on 30 June this year and the remainder, whose terms expire on 30 June next year. The 90 also takes into account senior members as well as me, so 90 is the total membership. Next year we will probably be looking at about 40 members or so whose terms will be expiring.

Senator BARNETT—Can you describe the process for recruitment and appointment?

Mr O'Brien—I do not know whether that is something with which I can deal. It is really a matter that is handled by the department. Does the secretary want to talk about it? I am happy to talk about it if you want me to.

Senator Chris Evans—We might as well do that now.

Mr Metcalfe—The process for recruitment is in accordance with the arrangements put in place by the government for statutory office holders. The positions were advertised in various newspapers and applications were sought.

Senator BARNETT—When?

Mr Metcalfe—I will get the right bit of paper in front of me, so I will come to that before I finish.

Mr Fox—It was December last year.

Mr Metcalfe—Mr Fox has some detail and can supplement what I say. In accordance with the arrangements my position or my delegate is chair of the selection committee. I delegated Mr Jamie Fox, the relevant division head, to chair the committee, which also comprises the principal member, Denis O'Brien, a delegate from the Public Service Commissioner—I think

it was Annwyn Godwin, the Merit Protection Commissioner—and a community representative. So it was a four-person panel. That panel considered several hundred applications that were received and short listed—

Senator BARNETT—I am happy for you to tell us now how many applications you received. You could also take that question on notice.

Senator Chris Evans—Mr Fox will be able to give you the details.

Mr Metcalfe—The applications closed on 18 January 2009 and 517 applications were received. The selection advisory committee conducted interviews during March and April with applicants who had been short listed.

Senator BARNETT—How many were short listed?

Mr Metcalfe—I will get Jamie Fox to give you the detail.

Mr Fox—From memory, we interviewed 89 applicants.

Senator BARNETT—Eighty-nine applicants were put on the short list for the 39 positions?

Mr Fox—That is right.

Senator BARNETT—When were those interviews?

Mr Fox—We interviewed them during March and April.

Senator BARNETT—We are now in mid-May, so where are we up to?

Mr Fox—The panel has made recommendations to the government, and the government will be considering those recommendations.

Senator BARNETT—I am interested in the appointment process. Does the panel put forward 39 names, or does it put forward an additional number of names for the government to then consider?

Mr Fox—We put forward some additional names on the basis of advice from Denis O'Brien that he wished to extend the number of members that we had on the tribunals at that time.

Senator BARNETT—Let us do two things at once here. You want to appoint an expanded number of members. How many extra members are you wishing to appoint? Currently we have 90. Let us deal with that issue first, and I then want to know how many names you have submitted to the government for consideration.

Mr O'Brien—Although there are 39 members whose terms will expire there was a bit of flexibility in the numbers of appointments we were going to recommend to the government for its consideration. After adding up the members who were still there we were hoping to end up with between 90 and 95 members. We have only one member in Perth, one member in Adelaide and two members in Brisbane, so it was particularly desirable for us to get some extra resources in those places, Senator. Whether we were going to be successful in getting the extra numbers we were looking for depended on what the field was.

Senator Chris Evans—I think the other variable involved in the process is the part-time and full-time mix. They are not all full-time positions.

Mr O'Brien—That is right.

Senator Chris Evans—Perhaps Mr Fox can explain.

Senator BARNETT—Can you provide a breakdown for us?

Mr Lynch—Senator, on our case modelling and financial planning we are looking for a total of about 24 full-time members in the tribunals and 65 part-time members.

Senator BARNETT—All right.

Mr Lynch—We expect that level of resourcing to cope with the current and possible increases in caseload over the next 12 to 18 months or two years.

Senator BARNETT—A probable increase?

Mr Lynch—Yes. We have to plan for possible increases. The caseload is volatile. We have seen dramatic downturns in work, in particular, in the RRT over the past three to five years. In the past the government has had to consider difficult issues relating to the reappointment of large numbers of full-time members. We ended up with a complement that was perhaps short on full-time members and we are now seeking to rebuild the number of full-time members.

Senator BARNETT—Currently you are short on full-time members but you are trying to build that up to cover the expected increased workload?

Mr Lynch—The current workload and any increase that comes our way.

Senator BARNETT—We just heard from Mr O'Brien that you are expecting an increase, so you can say that you are expecting the increase and you are planning to meet that increase so that you can deal with it. Is that right?

Mr O'Brien—That is exactly right, Senator.

Senator FIERRAVANTI-WELLS—Could I ask one question. Taking into account the mix in the rationalisation process that you have gone through and the better allocation of cases that has afforded you some efficiencies, on top of that we are talking about a net addition?

Mr O'Brien—That is right. As I said, Senator, I think we have done quite well this year in our decision making and in the increase we have been able to achieve over the past year with the efficiencies and processes we have been able to put in place with our current resources. However, at the end of the day we need more full-time members to deal with the workload.

Senator FIERRAVANTI-WELLS—Thank you.

Senator BARNETT—That is good. Can we be more specific? You talked about a net increase of 95 or thereabouts. Can you be more specific and tell us how many extra full-time and part-time members you are looking for?

Mr O'Brien—That is a bit difficult, Senator. Ultimately, it is a matter for cabinet to make that decision.

Senator BARNETT—You are sitting here today. Using your best estimate you can tell us what is your view about the numbers you envisage are required to meet the increased workload.

Mr O'Brien—I think somewhere between 90 and 95, which is not much different from where we are now, but with a greater proportion of those being full-time than what we have now.

Senator BARNETT—So up to an extra five with a greater proportion being full-time rather than part-time?

Mr O'Brien—Exactly.

Senator BARNETT—Let us go back to Mr Fox. How many names did you put to the government?

Senator Chris Evans—I think Mr Fox is a bit reluctant to talk about advice to the government, Senator. I can say to you that the selection panel has forwarded its report to government and that report is before the government. It has not yet gone to cabinet but the appointments are due to start from 1 July. Consideration is imminent but that has not yet been determined by government.

Senator BARNETT—I do not want to have a barney with you now, Minister, over advice to government. As you know, the Clerk recently ruled that that is not a reason to refuse to give an answer.

Senator Chris Evans—That is not right, Senator; that is not the advice in the Senate order at all.

Senator BARNETT—This is not budget advice.

Senator Chris Evans—Advice on appointments to government has never been made public at estimates committees, Senator. There is no problem with this but—

Senator BARNETT—No that is not true, Minister.

Senator Chris Evans—Departments do not give Senate estimates advice that has been provided to government. The Senate order does not change any of those things. That deals with documents in a public interest defence. No public interest defence has been advanced here. The officer made clear that the selection panel, as described by the secretary, has reported to government. The government is in the process of making a decision and that will be publicly announced when the decision has been made.

Senator BARNETT—Sure. You are refusing to provide the number of members that have been forwarded to the government for consideration vis-a-vis the appointment. That is a decision that you have made. You are refusing to provide that information. If that is your position I will note it and continue to the next question.

Senator Chris Evans—Sure.

Senator BARNETT—I wish to talk about the locations of these members. I am happy for you to take this question on notice. Where are they currently and where do you anticipate them to be by the end of the year?

Mr O'Brien—I can give you an idea about that, Senator. The way the tribunal is structured is that most of our members are in Sydney. We also have a considerable number of members in Melbourne—I think about 32 in Melbourne. The rest are in Sydney, except that we have two members in Brisbane, one in Perth and one in Adelaide. Because we do not have on-the-

ground resources of members, particularly in Brisbane, Adelaide and Perth, for a lot of applicants residing in those cities or in those states we conduct videohearings to deal with their applications before us, to the extent that the local members who are there are not able to deal with all the applications from, say, Perth. I am looking to increase the numbers so that we have more than one in Perth and more than one in Adelaide and perhaps also a modest increase in Brisbane. The advantage for applicants will be that there will not be as many videohearings.

Senator BARNETT—Thank you for that; I appreciate that feedback. I will pass to Senator Fierravanti-Wells who wants to ask you questions about the RRT.

Senator FIERRAVANTI-WELLS—I am looking at the annual report of the RRT and at its cases on hand. I wish to ask similar questions to those asked by Senator Barnett relating to increases in the state.

Mr O'Brien—On the RRT, I think our cases on hand—

Senator FIERRAVANTI-WELLS—I am looking at page 30 of the annual report which takes us up to 30 June. I think you have figures to April.

Mr O'Brien—Senator, as at 30 April our active caseload in the RRT was 712. As I indicated in my opening statement, that is a 19 per cent change from where we were last year. Basically we are dealing with RRT cases as they come in. There is no significant backlog on the RRT because we are required to deal with them within 90 days.

Senator FIERRAVANTI-WELLS—I appreciate that. I notice that you have figure 4.3 as the RRT lodgements by country?

Mr O'Brien—Yes.

Senator FIERRAVANTI-WELLS—China is still by far the largest number.

Mr O'Brien—That is right.

Senator FIERRAVANTI-WELLS—What is the breakdown? On the previous page you have a figure of 890 for 2007-08. Do you have an updated figure?

Mr O'Brien—Yes, it is 872 to 30 April this year.

Senator FIERRAVANTI-WELLS—How many of those are from Falun Gong?

Mr O'Brien—The majority of the claims from China tend to be underground Christian church claims or Falun Gong claims, with a few others such as Uyghers and other minority groups in China. I think the majority of them—I would not be able to give you exact figures on this—would be underground Christian church claims and Falun Gong.

Mr Lynch—At the moment about 40 per cent of RRT cases originate from China. Currently, 21 per cent are set aside. The tribunal average is 18 per cent. Most cases from the PRC—approximately 80 per cent—relate to beliefs and practices, including Falun Gong, at 41 per cent, and Christians and recognised denominations at about 28 per cent.

Senator FIERRAVANTI-WELLS—How many of those cases are challenged in the courts?

Mr O'Brien—It is a relatively minor percentage.

Senator FIERRAVANTI-WELLS—You have the set-aside rates. We looked at figures last time for judicial review applications and outcomes.

Mr O'Brien—That is right.

Senator FIERRAVANTI-WELLS—I have that information on page 36.

Mr O'Brien—I can give you some updated information, I think, Senator.

Senator FIERRAVANTI-WELLS—Thank you.

Mr O'Brien—Of the 2,039 RRT decisions made during the period 1 July 2008 to 30 April 2009, about 35 per cent have been the subject of an application for judicial review. That is a considerable number of applications for judicial review. Looking at judicial review applications finally determined by the courts during the period I just mentioned, we tend to find that in 50 per cent of the cases the judicial review applications are dismissed. There are a reasonable number of applications for judicial review but also quite a significant number of dismissals of judicial review applications.

Senator FIERRAVANTI-WELLS—There appears to be anecdotal evidence about the existence of Falun Gong training schools that have been set up to help Chinese visitors or students make protection claims in order to stay in Australia. Have you seen evidence of these schools? In general terms, how do your members deal with credibility issues when they are looking at these sorts of claims?

Mr O'Brien—The act requires us to ignore and not to take account of conduct in Australia when assessing a refugee claim. It is always a question of the member testing an applicant's story to see what happened to that applicant in China and what might be expected to happen to that applicant if he or she returned to China. From time to time members suspect that a bit of coaching of some applicants goes on. At the end of the day we need to assess what happened to the applicant in China and what might happen if the applicant were to return to China.

Mr Lynch—In addition to that, Senator, that is when the member finds that the applicant has engaged in that activity in order to strengthen his or her claim for refugee status. From time to time we get indications of applicants fabricating claims by attending schools, group sessions or, in the case of religious adherence, attending churches in order to establish some sort of relationship with the pastor, the priest and so forth.

Members have to test those claims by hearing evidence from the applicant, witnesses and so on. From time to time some practices become well known to Refugee Review Tribunal members and they are able to test that evidence, depending on the facts of a case, and establish that the applicant has made a fraudulent claim or is genuine in a particular case.

Senator FIERRAVANTI-WELLS—But that is only anecdotal. You are not aware whether these schools exist. You are aware that in some cases there is possibly some coaching rather than—

Mr Lynch—There is anecdotal evidence that these schools exist, yes.

Senator Chris Evans—Senator Fierravanti-Wells, as you know, the department has also had to deal with a primary application with scams et cetera on occasions. Recently I think we

had an Afghan scam where we found a large number of PV applications in exactly the same form. That received some media attention. Obviously there will always be some people who try to work the system. Sometimes we deal with them at the PV stage, sometimes we deal with them at the RRT and some come up as MIs.

Senator FIERRAVANTI-WELLS—That has been existing for a long time in this area, Minister.

Senator Chris Evans—There is always somebody with a scam. Having said that, of course—

Senator FIERRAVANTI-WELLS—It is a bit like the tax act.

Senator Chris Evans—most of the applications are genuine, but, as always, there are others.

Senator FIERRAVANTI-WELLS—Thank you. I do not have any further questions.

Senator BARNETT—I refer to planned consultancies by the MRT and the RRT. I notice in an answer to a question on notice for planned consultancies for 2008-09 that client and staff surveys are expected to be less than \$80,000. I asked whether the procurement methods and the select tender had been published on AusTender and the answer was no. The select tender was sent to six potential vendors. The second issue about which I require information is the records management consultant procurement methodology. It has not yet been determined or published on AusTender. Can you provide further and better particulars about those two reports?

Mr O'Brien—Mr Jones might be able answer that question.

Mr R Jones—We have not yet proceeded with the records management consultancy, so that is still—

Senator BARNETT—Tell us about it, Mr Jones. Is it underway, and what are the terms of reference?

Mr R Jones—No, it is not underway at the moment. It is something that we have had on the slate to do this year, but we have not yet commenced the tender process. In fact, we are still in the early stages of defining our requirements and thinking about what we want.

Senator BARNETT—What is the nature of your concern, and what is the nature of the proposed requirement to be put to the consultant?

Mr R Jones—Effectively, we are looking at developing a new, if you like, records disposal authority with Australian Archives. That will deal with the handling and ultimate disposal of, for example, our case files. Both the tribunals have old record disposal authorities.

Senator BARNETT—How long do you hold your files?

Mr R Jones—From memory, at the moment the RRT files effectively are held indefinitely. The MRT files we hold for a range of periods—up to seven years, I think.

Senator BARNETT—Do you want to take the question regarding the MRT on notice?

Mr R Jones—Sure.

Senator BARNETT—You said that you were not entirely sure, and that it was up to seven years if there are different categories of cases. I presume you have a priority system where you hold certain files for seven years, others files for a lesser time and perhaps other files for a longer time?

Mr R. Jones—Just in accordance with the records disposal authority, and some of the considerations from memory and, yes, we will take it on notice whether or not they are subject to judicial review and the outcome of the case. That is, there may have been a withdrawal or a decision on the merits of the case.

Senator BARNETT—What is the records disposal authority? Is that something that is promulgated by the department or by—

Mr Lynch—It is an Archives Act requirement.

Mr R. Jones—Yes, it is a requirement under the Archives Act. All agencies who handle official records need to have a records disposal authority under the Australian Archives Act.

Senator BARNETT—Right. Do those involved in such a case have access to the file when the case is closed?

Mr R. Jones—The applicants in those cases?

Senator BARNETT—Yes.

Mr R. Jones—We have quite a high volume of requests under the Freedom of Information Act.

Senator BARNETT—Yes. That is one of the reasons for the question.

Mr R. Jones—I think that across the Commonwealth we are probably up near the top in terms of the number of requests we deal with for access to records. On the Migration Review Tribunal side, there is a provision in the Migration Act that provides for access to or a copy of the records that have been provided to the tribunals. The majority of requests in relation to the Migration Review Tribunal are dealt with under section 362A of the Migration Act. Requests in relation to RRT records are dealt with under the Freedom of Information Act.

Senator BARNETT—And there is a different cost associated with accessing the files in each case?

Mr R. Jones—Our policy is not to charge a fee for FOI access, so the cost is the same. Effectively, they are handled in very similar ways.

Senator BARNETT—So you do not charge them for an FOI application?

Mr R. Jones—Not to access their personal case file, no.

Senator BARNETT—When do you expect the report to be conducted and completed?

Mr R. Jones—At this stage I do not think that we will go to tender any earlier than the second half of this year. This would be for a consultant to assist us to develop a records disposal authority, which would require approval by the National Archives.

Senator BARNETT—Right. The first report is the client interest and staff surveys report, or planned consultancy.

Mr R. Jones—I do not have the exact details with me. It did go out for select tender. We are in the tender assessment period and we have not yet made a decision on the tender.

Senator BARNETT—All right. Do you have the terms of reference?

Mr R. Jones—I do not have the details here.

Senator BARNETT—Can you tell us more about these client and staff surveys that you are undertaking or planning to undertake and the purpose for which they are proceeding?

Mr O'Brien—We do not have the information here in front of us. We can certainly provide that information to you on notice.

Senator BARNETT—Is this a regular thing that you do once every three years or once a year?

Mr O'Brien—As I understand it, there had been a previous survey done before my time as principal member. This is sort of following on in that same fashion.

Mr Lynch—They are not a regular occurrence. It is something that we have been wanting to undertake for some time as part of strengthening our engagement with stakeholders, understanding their needs and the government's policy of greater access to justice for clients of the tribunal. We are looking for not only external stakeholders' needs and wishes, but also at what our own members and staff think about how they work, whether things can be improved, what their satisfaction levels are and that type of thing. It is something that is overdue. If I recall correctly, it might have been something the Audit Office suggested we undertake when they did a performance management review of us in 2007.

Senator BARNETT—All right. I notice a very high number of FOI applications in an answer to a question provided by the department. While the department is here, would those be related to agencies in front of us, or would they be separate from that? I am referring to questions 14 and 83. There were 1,153 FOI requests granted from 1 July 2008 to 31 December 2008, and in the period 1 July 2007 to 30 June 2008 there were 7,286. Are they related only to the department or do they include the RRT and the MRT?

Mr Lynch—I think a percentage of those would be requests made for access to departmental files as well as tribunal files while the review before the tribunals was current. We have had so far this year nearly 600 FOI requests across—

Senator BARNETT—Who is 'we'?

Mr O'Brien—Both tribunals.

Senator BARNETT—So far this financial year?

Mr Lynch—Yes. It is quite likely that a high percentage of those would relate to requests for access to departmental files.

Senator BARNETT—All right. We can get to the department. I do not know if they have a breakdown of those FOI requests and the purpose for which they are intended.

Mr Metcalfe—I do not have that with me, so could I take that on notice?

Senator BARNETT—Indeed. Thank you for that. I do not have any further questions.

CHAIR—Thank you very much for your time this afternoon.

[2.20 pm]

Migration Agents Registration Authority

CHAIR—Mr Jones, do you have an opening statement?

Mr B. Jones—I do. Thank you for the opportunity to address the committee. The Migration Institute of Australia was appointed to act as the Migration Agent Registration Authority under the Migration Act. Since we last addressed your committee on 24 February 2009 it has been confirmed by the minister that this appointment will end on 30 June 2009. In 11 years as the Migration Agents Registration Authority—the MARA—the institute has endeavoured to act in and serve the best interests of the profession and clients. The year 1998 marked the beginning of a new era with the establishment of the MARA.

Great strides have been made since then. The level of professionalism, consumer confidence and protection and the capacity of the MARA to assist consumers have increased significantly. The regulatory scheme has been effective in addressing unprofessional and unethical conduct, and the very few miscreants remaining in the profession continue to be dealt with through the disciplinary functions available to the MARA.

Consumer protection has been paramount, and we have been committed to efforts that properly deal with behaviour that damages consumers or tarnishes the professional reputations of the majority. In that context, it is in the interests of all that more continues to be done to distinguish and control the activities of recruitment agents and unregistered persons in and outside Australia which damage consumers, lead to negative media reports tarnishing the reputation of Australia's registered migration agents and undermine the effectiveness of the registration scheme. The profession is being tarnished by improper practices by persons who are not subject to regulation of the profession in many instances.

MARA has been responsible for significant achievements over the past 11 years. The key achievements have included recognition as a profession, the introduction in 2001 of an English language standard for all new registrants, an increase in the average length of continuous experience of RMAs from three to five years over time, the auditing of agents on an annual basis, the stronger code of conduct, the introduction of provisions relating to former RMAs allowing post-practice sanctions, the introduction of continuing professional development, the introduction of higher entry standards in August 2003, the migration advice professional knowledge examination and the graduate certificate in July 2006. MARA has sought to increase flexibility in resolving consumer disputes and has increased promotion and awareness of the scheme through advertising and community outreach officers visiting and talking to various community groups. We have improved services for migration agents and their clients in the fields of registration, processing of complaints, informal complaints resolution and so on.

Prior to our appointment ending, we have a number of projects that we will be seeking to complete. These are a feasibility study for establishing a fidelity fund, using some existing retained earnings to protect consumers, providing a recommended replacement code of conduct to address perceived inadequacies of the existing code and introducing higher English language standards for the profession. We will also be seeking to recommend new strategies to address issues stakeholders have raised as being of concern within the profession and the

regulation of the profession. We will very shortly be launching a new MARA website, which has been under development for some time, to better serve clients and the public. Thank you very much for your time.

CHAIR—Thank you.

Senator BARNETT—Thank you very much for your opening statement. It must have been very hard and challenging for you to prepare that statement knowing that your term would end on 30 June and knowing that you and your colleagues have put in 11 years of effort and initiative to protect and preserve the integrity of migration agents in and around Australia. You have highlighted some of MARA's successes over that period of time. You have noted the important role of consumer protection and the role of the auditing of agents, the code of conduct and the fidelity fund. I will touch on some of those and ask you about some of the key areas. Are you feeling upset and disappointed about the decision that has been made to conclude the role of the MIA and MARA?

Mr B Jones—We are honoured to have been asked to serve. We have been pleased to serve and we respect the right of the government to make the decision that it has made.

Senator BARNETT—I notice you are referred to as the president of the MIA, but you introduced yourself as the chairman.

Mr B Jones—The president of the Migration Institute of Australia is the chairman of the board. It is six of one and half a dozen of the other.

Senator BARNETT—So we can refer to you as either 'President' or 'Chairman' and you will answer to both?

Mr B Jones—I prefer to be referred to as chairman. I think 'president' carries certain images imported from other cultures.

Senator BARNETT—We discussed the fidelity fund at the February estimates hearings and you had concerns about the adequacy of the fund and the ability of consumers to access the fund. Can you expand further on your concerns regarding the ongoing ability of that fund to operate for the benefit of consumers. Perhaps you or Ms Horder can respond. It is nice to see you here, Ms Horder.

Ms Horder—Thank you.

Mr B Jones—I will be very brief and then I will pass over to Ms Horder. The primary cause for concern with the fidelity fund is that there is no protection of the funds of consumers where an agent acts improperly, as distinct from professional indemnity insurance, which will cover where an agent makes a mistake or whatever. The question became: is it possible or feasible to do anything to ameliorate that? We are simply undertaking an examination of that feasibility. Concerns that a feasibility study would address would be the adequacy of the funds, the range of services that can be provided, what the rules are and what it is possible to do. I do not personally have concerns in the sense that I think these things are insuperable, but I do believe that they are things that must be addressed in any sensible feasibility study.

Senator BARNETT—Ms Horder, would you like to respond?

Ms Horder—Senator, thank you for this opportunity. I stress at this point that it is still only a feasibility study. I believe it will ultimately be a matter for the government to make a decision on. The proposition we are looking at is how we might best use some surplus funds that have been accumulated from agents' registration fees to be set aside and put in a trust. In our view such a trust would probably sit with the government. It is not something that you would take outside of the new arrangements, but it would be set aside for some express purposes. It is a little preliminary to discuss it now. We have not quite finalised the proposal, but it is our intention to do so within the next few weeks and to provide that advice to the minister.

Senator BARNETT—All right. But, in short, your proposal is to establish such a fund so that those objectives can be met?

Ms Horder—That is the essence of the proposal. We have investigated the feasibility of such a fund. I should point out to the committee that that feasibility study is being done by an actuarial firm that has been commissioned to look at that on our behalf.

Senator BARNETT—How much money is there at the moment in terms of excess or surplus funds, and what is to become of them on 30 June?

Ms Horder—The surplus funds are sitting in the region of \$3 million to \$4 million.

Senator BARNETT—What is to become of that money at 30 June?

Ms Horder—All of the funds and functions, if you will, would become the responsibility of the new Office of the MARA that is to be created on 1 July. They are consolidated revenue funds thereafter.

Senator BARNETT—Here we are in mid-May and we do not know specifically. We might get a response shortly from the department or the minister regarding that. But you are not aware of any specific initiative to establish a role for the ongoing use of those funds?

Ms Horder—I am not aware of any. But I can assure the committee that any surplus funds will be passed back to the government.

Senator BARNETT—Sure. Migration agents will be asking how that money will be used. It is their money that they have put into the MARA over 11-odd years or however long it is. That is a fair assessment, is it not?

Ms Horder—Which is why this is one proposal that we would suggest the government may want to entertain. It could set some of that aside in trust for the express purpose of protecting consumers. Of course, there may be other options.

Senator BARNETT—It is understandable that migration agents would have a very legitimate interest and stake in that \$3 million to \$4 million.

Ms Horder—I would think so.

Senator BARNETT—What is your view with respect to consumer protection? It has been a key role and objective for MARA for some time. What are your concerns about consumer protection measures and how consumers can be fully and better protected from 1 July?

Ms Horder—I think it might be fairly said that the process of setting up an independent registration authority was very much with a view to ensuring that consumers—that is,

prospective migrants or visa holders who were using the services of agents—had their interests protected. I think it was actually a joint committee of parliament that investigated that and came up with quite strong proposals for the government of the day that they ought to strengthen some of those measures.

It is my understanding that during the time of the MIA's guardianship of MARA consumer protection has been a paramount issue in terms of the way the code of conduct has been developed, the way in which the business practices have been required and vetted and so on and so forth. I think it is fair to say that it has been a key part of protecting the client. Indeed, the whole process of complaints and provisions of the act are very much directed at ensuring that if someone does have a problem then they have recourse under the auspices of MARA.

Senator BARNETT—Likewise, you are not aware of any specific measures that will be undertaken post 1 July to ensure that consumer protection is a priority?

Ms Horder—I do not think it is for me to answer that.

Senator BARNETT—No, I am asking whether you are aware of that, and you are saying you are not.

Ms Horder—I am not aware.

Senator BARNETT—All right. The profession being tarnished by, perhaps, unregistered and backyard operators, as it were, has obviously been a concern for you in the past. Does that remain a concern for you into the future?

Mr B Jones—The fact is that the profession has to wear the disapproval of people when its members do things they should not. If they are involved in fraud or they treat clients poorly then that reflects upon us. It is incumbent upon us as a profession to seek to address that. The issue of concern to us is that when clients are trying to make decisions about who to choose to provide a service one imagines it is intended that they should be encouraged to use a registered agent—one who is controlled by, subject to and compliant with government law. If registered agents are not differentiated from people who are acting illicitly and outside the system in the eye of the public and in the eye of the beholder then clients—the public—are discouraged from making that decision.

There is an issue for us, as the regulator and as the profession, around two things. First, when a member of our profession who is a registered agent does something they should not then they should be brought to book. The client should be protected as far as possible. Second, we have a concern about the choice of the clients as to where they go for their services. The image that is created for them at the moment is not one that differentiates between registered migration agents and the obligations they have and must meet in working for a client and others, people who are not required to enrol or who are not compliant. Our obligations are to our clients. The code very clearly sets that out, as do, of course, the law and good behaviour generally. But the client is our primary focus of obligation.

How do we protect a client when the client is discouraged by public perceptions of the profession because of the grouping together of migration agents and migration fraud without differentiation—which occurs, but not always? The clients' ability to protect themselves is

damaged by their own perception, which they receive from that medium. I am sorry; that is a very long answer.

Senator BARNETT—No, it is an understandable answer. I can see where your priorities and objectives are. I will follow up on that. You have a code of conduct for your profession?

Mr B Jones—We do.

Senator BARNETT—What is to become of it?

Mr B Jones—The code of conduct is set out in regulation at the moment. We have been reviewing a draft for some time. One of the roles of MARA is to advise government on potential changes. We have been conducting a ground-up review, if you like, rather than tinkering with the existing one. That is currently being prepared and it has been out for consultation for a decision to sign off on a recommendation to go forward.

Senator BARNETT—What is that decision? Have you made the decision or is that a matter for government?

Mr B Jones—We are editing a draft for a meeting to be held shortly.

Senator BARNETT—Is that a matter for government or a matter for you?

Mr B Jones—A recommendation would be a matter for us, I think.

Senator BARNETT—You are going to look at it, make a recommendation, and then obviously—

Mr B Jones—We will pass it to the government.

Senator BARNETT—Then it will be up to the government to decide what to do?

Mr B Jones—Yes, that is right.

Ms Horder—We clearly cannot speak on behalf of the government. But I would say that we would have great confidence that there would be a common expectation about many of the things that exist within the statutes and the regulations now, particularly matters such as a code of conduct and other issues to do with your early questions about consumers. The common expectation over the last decade has been towards those objectives. I do not think there would be any expectation that suddenly those things would fall by the wayside.

Senator BARNETT—That is a matter for government and we will go there in a minute. Clearly there are things set out in legislation and regulation, but then there are matters of policy and of action initiated on a voluntary basis that can change the nature of your profession. You have been acting for and on behalf of the profession in protecting the professionalism and integrity of the system and of the profession as it currently stands. What about agents' fees? Are we likely to see any change in the fees?

Ms Horder—Again, I guess that would be a matter for the department to comment on. But we have not had change in agents' registration fees for some years, be it for initial registration or repeat registration. I think the most recent change was in about 2005. In a couple of categories there has been no change since early 2000. But, given the level of surplus that the profession has been able to generate over recent years, there may reasonably be an expectation that those fees could be adequate.

Senator BARNETT—I think Mr Jones indicated that auditing of agents occurs currently and has occurred, I assume, over the last 11 years. Is that correct? Again, I assume that you do not know what process will take place in the future?

Mr B Jones—We do not know what process will take place in the future. It is fair to say that it has always been an evolving process. Things have been added in when we have identified problems and things are taken out when the problem eases. With audits, as with so many things in these fields, there is a level of consumer protection that you need to have to do this. You need to undertake these activities to protect the consumers. You also need to have an eye on the fact that all of these activities impose costs on people which ultimately, in the commercial world, finish back with those same consumers. So that needs to be balanced up as well.

Senator BARNETT—Finally, you mentioned the website being relaunched. Can you give us a status report on the website?

Ms Horder—I am sure there are others who have shared the experience of expecting a website to be up and ready and finding that it falls quite short of your anticipated launch date. We have recently suffered that. That said, we do expect an updated website. It is designed not only to inform agents and consumers more effectively but also to improve accounting, people's ability to reregister and many of the processing functions of the authority. We would assume again, that that, as with many other things that are in hand at the moment with MARA, will be handed over to government as a working and functioning operation. We are very keen to ensure that this transition is a smooth and painless one, if you will, for everyone involved. Many of the staff who are currently employed by MARA have been made offers by the department to work in the new agency. That sort of thing will help. I guess the website is an example of something that is state of the art and up to date. We want to hand it over as a good working site.

Senator BARNETT—Have you been advised that it will continue post 1 July?

Ms Horder—Indications to me are that it probably will. No doubt other administrative changes will be made.

Senator BARNETT—All right. How many staff have been made an offer and how many have not been for post 30 June? How many do you have at the moment? What are your staff numbers?

Mr Metcalfe—On the issue of to whom offers have been made and how many, I suspect that that is more an answer that the department would provide to you rather than the MARA, given that from 1 July the Office of the MARA will be a body within the department. We are happy to answer that question. Perhaps Ms Horder can respond to the other aspects.

Senator BARNETT—Unless Ms Horder has anything further to say, I would like to ask the department a range of questions regarding post 1 July activities. Ms Horder or Mr Jones, do you have anything further you wish to say?

Ms Horder—The only comment I would make is just to emphasise on behalf of the institute, which has been managing the system over the last decade, that we hope that those

policies, practices and procedures that are in place, or being finalised, transition without any difficulty across to the department.

Senator BARNETT—Of course that would be your hope and desire.

Ms Horder—And our expectation.

Senator BARNETT—It is helpful to have that as well. Mr Metcalfe and Mr Vardos, we will now go to you.

Mr Metcalfe—I suspect that technically the department is still not before you, but we are very comfortable in answering questions at this stage in terms of continuity. Senator Barnett, with your indulgence, I would like to place on the record the department's thanks for the Migration Institute of Australia's service over the past 11 years as the Migration Agents Registration Authority and their work in regulating the profession. The institute, of course, continues on, and we certainly hope that they will continue in their work of improving the quality of services, the capability of agents and ultimately public confidence in their membership.

We have been cooperating closely in the transition to the new arrangements following the decision by the government that this is a role that the department should take on to ensure the best possible continuity and stability as the new arrangements come into place. We certainly look forward to continuing to work with the Migration Institute of Australia. It is a key stakeholder of the department across all of our programs and it is certainly a key stakeholder in relation to the regulation of the industry. For example, it will be on the advisory board for the new Office of the MARA.

Senator BARNETT—Perhaps we can start with staff—the last question first. Can you assist us there?

Mr Vardos—I personally invited all MARA staff who had an interest in transferring to the new Office of the MARA—

Senator BARNETT—How many are there?

Mr Vardos—We identified about 26 staff.

Senator BARNETT—About? How do you get 'about'?

Mr Vardos—If my memory serves me correctly, one officer fulfilled a role in both the MIA and the MARA and we had to ensure that we were dealing with staff who were in the MARA structure. I would say 26 staff, including that individual. People were invited to put together a profile of the job that they did, the functions they performed and a bio of themselves. We went through an analysis to establish work values and to link them into Public Service structure and nomenclature to come up with a new structure.

Senator BARNETT—When did you do that?

Mr Vardos—That has been happening over the past several months.

Senator BARNETT—When did you first communicate with them?

Mr Vardos—I cannot remember the exact date that I went to Sydney and addressed the staff at their current premises. I think it was earlier this year. Ms Horder may remember the date.

Mr Metcalfe—If you want a precise date, we can probably come back with that.

Senator BARNETT—You can take that on notice; but it was this year, in 2009?

Mr Vardos—Yes. The dialogue on this issue between Ms Horder and me went on for some time before that. But the date that was picked in the end was determined as the first appropriate opportunity for me to address the staff.

Mr Metcalfe—Bearing in mind the government's decision for this transfer only occurred earlier this year.

Senator BARNETT—That is why it is interesting that Mr Vardos said that he had ongoing discussions with Ms Horder prior to the visit to Sydney. You just said last year, but the government made the decision this year. How does that follow?

Mr Vardos—It is misleading on my part. The discussion with the MIA, Ms Horder, Mr Jones and others about the actual transition arrangements was triggered by the minister's decision to bring the MARA function back into government.

Senator BARNETT—That was not made until this year. Do you have the date for that, Mr Metcalfe?

Mr Metcalfe—We will take that on notice.

Senator BARNETT—Could somebody please check that.

Mr Metcalfe—I was about to say that we hope to be able to provide that to you in the course of this afternoon.

Senator BARNETT—That would be appreciated—as soon as possible. We are sitting here and I am sure it will be on the minister's website. Perhaps one of your officers could let us know as we are discussing these matters.

Mr Vardos—I am certain that my staff are monitoring this discussion and that they have heard your question.

Senator BARNETT—I am sure they have.

Mr Vardos—I expect that, once my evidence is finished, I will check my Blackberry and get the information.

Senator BARNETT—What communication did you have with the staff?

Mr Vardos—All the staff were invited by Ms Horder. I could not just march into the offices of the MARA and do my thing. It was with the permission and the agreement of the current administration of the MARA, and Ms Horder's staff arranged the occasion. I went there with some of my staff from the legal division, from the HR area and from my immediate staff. The general presentation was initially a get-to-know-you session. They needed to see who these people were that were coming to take over the function to give them a level of reassurance about the future, that they were not going to be expected to actually apply for

their jobs. We were inviting them to express interest in coming to join the Office of the MARA.

I could not give them an ironclad guarantee at that point that every single officer would be able to make the transition, and I made that quite clear. I outlined the process that we would go through. I also gave them an assurance that it would be on a no-disadvantage basis in terms of their remuneration levels. I then explained why we needed them to put together a profile of the work that they were doing, a bio of themselves, their qualifications, salary level and that sort of thing—so that we could then go through a technical process of translating MARA staff into Public Service structure and nomenclature.

Senator BARNETT—It sounds very much like a job application. You were asking for bios, profiles and so on.

Mr Vardos—We certainly had to identify the skill set of the people that we were looking to bring into the Office of the MARA. The question was raised by one of the officers: ‘Am I going to be interviewed? Is this an application process?’

Senator BARNETT—What did you say?

Mr Vardos—My answer was, ‘No, it is an appointment to the new structure, but you cannot be appointed permanently to a Public Service position without a merit process.’ The plan was, and it is what I put to them, that in the first instance, for a period of approximately six months—but that would be determined by the new CEO, not me—they would be appointed as non-ongoing staff on contract. They would be given an opportunity to work in the new environment and to become familiar with the Public Service way of doing business.

Senator BARNETT—From 1 July?

Mr Vardos—From 1 July.

Senator BARNETT—Non-ongoing staff?

Mr Vardos—That is contract staff; it is not a permanent appointment. As you would know, to join the Public Service on a permanent basis it has to be through a merit selection process. It was our view that to have a merit selection process right upfront would have been unfair and it would have disadvantaged those staff. In terms of equity, it was an opportunity to work for six months in the new environment and then effectively go through a merit selection process for all of the available positions.

Senator BARNETT—Did you tell them it would be a six-month non-ongoing contract arrangement?

Mr Vardos—Yes, I did. I said it would be approximately six months and it might even be a bit longer, because six months would take us into the Christmas-New Year period. It would be up to the new CEO to make a judgment as to whether they might want to extend that beyond the Christmas-New Year holiday period to ensure that people were back on deck and ready to roll. There was no ambiguity in the presentation.

Senator BARNETT—It sounds very much up in the air. You are talking about expressions of interest that you were seeking from these people. How many expressions of interest did you receive?

Mr Vardos—We received 26; 19 offers were made and two withdrew. I am not certain of the reasons they withdrew. That made a total of 17 appointments, and five were not successful.

Senator BARNETT—Two withdrew after the offer was made?

Mr Vardos—Yes, that is my understanding. We made 19 offers.

Senator BARNETT—To the 26 who expressed interest?

Mr Vardos—Yes.

Senator BARNETT—Then you subsequently made 19 offers. So seven missed out?

Mr Vardos—Two withdrew and five were not—

Senator BARNETT—Of the 19?

Mr Vardos—Of the 19.

Senator BARNETT—Two withdrew?

Mr Vardos—Yes.

Senator BARNETT—Of the 26, seven missed out.

Mr Vardos—No, that is not the way to characterise it. Two withdrew and five were not offered positions in the new structure.

Senator BARNETT—So it is not of the 19. Of the 26, two subsequently withdrew prior to an offer being presented?

Mr Vardos—My recollection is that, after the offer was made, for whatever reason they decided not to pursue appointment to the MARA. But I can get more detail on that, if you wish.

Senator BARNETT—Let us get clarity around this. Twenty-six expressions of interest were made. When were they made?

Mr Vardos—I cannot give you an exact date. Again, it is since my appearance before the MARA staff, after we received the documentation from them, after we had done the analysis of the documentation—at that point. I think the offer was made probably within the last fortnight, if my memory serves me correctly.

Senator BARNETT—So 26 expressions of interest and the offers were made in the last two weeks or so to 19 of the 26?

Mr Vardos—Yes.

Senator BARNETT—Twenty-six less 19 is seven.

Mr Metcalfe—Let me help, Senator. Twenty-six, two withdrew, 24; 19 offers made; difference is five.

Senator BARNETT—Right. Is that correct, Mr Vardos?

Mr Vardos—That is correct, Senator.

Senator BARNETT—The way you expressed it before and the way I heard it was that 19 offers were made and two out of that 19 withdrew. Thank you for clarifying that.

Senator Chris Evans—That is why he is in attendance, Senator.

Senator BARNETT—All right. What has happened since then?

Mr Vardos—The CEO delegate and the deputy CEO delegate have met with the staff on one occasion, possibly two occasions. Again, they have no formal role at this point in time, so it is a getting to know the staff meeting, for the staff to see who their new senior peer guys will be.

Senator BARNETT—You expect that they then will sign a written agreement for a six months contract, starting on 1 July.

Mr Vardos—Whether it is an exchange of letters or a formal contract, I am not certain, Senator; but it will be an appointment for a period of approximately six months from 1 July until the positions are declare vacant, and there will be an interview process. But I would like to add, just for completeness, that when the positions are advertised for filling, anybody can apply for a public service vacancy.

Senator BARNETT—All right. Thank you for that. I just want to move on now and ask the department about consumer protection measures.

Senator Chris Evans—Senator Barnett, do you have more questions in relation to MARA?

Senator BARNETT—I may have.

Senator Chris Evans—It is just that the department is supposed to come up under the program, and MARA of course—

Senator BARNETT—I know, but while the MARA is here, Minister, it makes every sense to get clarity.

Senator Chris Evans—I was happy to do that for the transitional issues, but if we are going on to departmental policy, I would rather we finish MARA first.

Senator BARNETT—This is a transitional issue.

Senator Chris Evans—All right. I just bring it to the chair's attention. I am happy to deal with matters that make sense in terms of the transition, but I think beyond that we would like to do it under the policy ambit.

Senator BARNETT—Sure. These are transitional matters. Consumer protection measure post 1 July, Mr Metcalfe, and ensuring integrity and professionalism of those agents: how will that be maintained post 1 July?

Mr Metcalfe—The simple answer is that the arrangements currently in place will continue from 1 July. All the things that were outlined previously by my colleagues to the left will remain in place. As I said earlier, our whole objective is continuity, but my expectation of course will be that the new chief executive will rigorously review the arrangements, procedures and so on that are applicable to the authority. Either under her own remit, or in consultation with me, or by seeking a formal decision by the minister, we will have a program of improvement.

Senator BARNETT—All right.

Mr Metcalfe—We do not know exactly what that might be because at this stage we are not formally responsible for the function, but the whole aspect here is to ensure the best possible consumer protection and the highest appropriate standards for the industry that is being regulated.

Senator BARNETT—Let us get to the tin tacks, the \$3 million to \$4 million that is held in the proposed fidelity fund.

Mr Vardos—Senator, as Ms Horder indicated, the surplus will be coming to the Commonwealth as consolidated revenue. Those funds will be used to administer the office of the MARA. We are certainly aware of the work that has been done by the MIA at the moment on the fidelity fund; they have kept us informed.

I am not sure that there was ever any intention, once the decision was made by the government to transfer the function, that a major initiative like that would be up and running before the transfer. But the work continued. The results of that work will be transferred to the government, and decisions will be made after that point. I cannot sit here and tell you that we are committed to introducing a fidelity fund or any other arrangement—

Senator BARNETT—But you can rule it out?

Mr Vardos—No, I will not rule it out.

Mr Metcalfe—Senator Barnett, I think that Mr Vardos—

Senator BARNETT—You just said that you would use the funds to administer MARA within the department. That is what you just said, Mr Vardos. You said you would use the \$3 million to \$4 million to the MARA within the department.

Mr Vardos—The MARA functions within the department.

Senator BARNETT—Essentially, that rules out the use of those funds for anything else and including the fidelity fund.

Mr Vardos—Not necessarily, Senator. It is a question of how big the fidelity fund might be. It is a question whether—

Senator Chris Evans—I think we are at cross-purposes here. I think it ought to be made clear who owns the money, and the money is—

Senator BARNETT—Who do you think owns the money?

Senator Chris Evans—As I understand it, it is the Commonwealth—the MARA, the Commonwealth. MARA is not the MIA. MARA is the government regulatory authority and, as I understand it, these are Commonwealth funds we are debating. Any question about what might be done with those or other Commonwealth funds is a decision for the Commonwealth government. No proposition has been put to me yet. While MIA may have some suggestions about a fidelity fund, that is great, and we would consider them when those up to government. But let us be clear: the funds we are talking about are funds under the authority of the MARA and are Commonwealth funds.

Senator BARNETT—All right. We will get clarity on that shortly, Minister. Thank you for that.

Senator Chris Evans—I think that gives you the clarity.

Senator BARNETT—That is your view of it. I appreciate your view.

Senator Chris Evans—No, it is not a view, Senator. If you are suggesting that those funds are owned by somebody other than the Commonwealth of Australia, I would like to hear why.

Senator BARNETT—We will go to that.

Senator Chris Evans—If anyone here wants to argue that, I would like to hear why. Certainly it is my intention to administer them as funds of the Commonwealth.

Mr Metcalfe—Minister, I can advise that the funds essentially are a surplus that has developed because the expenditure by the MARA has been less than the fees collected by the MARA. So there is now a surplus of funds. The purpose to which that surplus is put is a matter for government, as the minister says.

Senator BARNETT—I do not have any further questions on transitional matters other than to ask Ms Horder of MIA her view of the ownership and propriety of the \$3 million to \$4 million.

Ms Horder—I think it is clear, Senator, from our previous reports to the parliament, and it will be clear when we do our final report to the parliament, that those moneys belong to the Commonwealth. I do not think there is any question of that. The issue is that there has been a surplus generated by the authority.

Senator BARNETT—Right.

Ms Horder—I do believe there is no difference of opinion at this table about that.

Senator BARNETT—All right.

Ms Horder—It is really how that might be directed. That will be a subject of the proposal I foreshadowed will go to government.

Senator BARNETT—My last question is: do you have any closing comments, having heard the evidence of departmental officers?

Ms Horder—No, thank you.

Senator BARNETT—Mr Jones?

Mr B Jones—If I could, I would like to acknowledge Mr Metcalfe's comments earlier when thanking the MIA for its participation over its 11 years. It was very gracious of him to say that. I would like to say that I understand it the intention of the Migration Institute to work in a very cooperative and constructive way going forward with the government on migration matters, including registration of agents and improvements of the profession. With that, I will simply say that it has been a good opportunity. Thank you very much.

CHAIR—Thank you, Mr Jones. Are there any other questions?

Senator FIERRAVANTI-WELLS—In effect, MARA raises probably about \$4 million more than it needs in its operating expenses. Is that basically it, in a nutshell?

Mr B Jones—Each year the MARA generates a surplus which accumulates. It is paid to the government in fees by agents and it is then paid back as expenditure.

Senator FIERRAVANTI-WELLS—I was just looking at the financial arrangements. It just comes in an income, and then at the end the bottom line is that there is a profit. It is really just operating income. I understand that.

Ms Horder—Senator, probably a point that should be made on behalf of those who have been responsible for managing the MARA—as I have indicated to the committee earlier, I am only a newcomer on the block in that regard—it is fair to say that the management has been frugal and effective over the past decade, which has led to their being a surplus. There has been no squandering of money. I would hope and expect that that will continue. That is why that surplus was generated.

Senator FIERRAVANTI-WELLS—Who can lodge complaints to the MARA? For example, if I as an MP have a case that comes to me and it is clear that there has been action by some shonky agent there, can I refer the case to MARA directly?

Mr B Jones—Yes.

Ms Horder—Yes, you can. Indeed, some members of the parliament take that opportunity. I do not think we have had any this year—or at least not recently—but that is certainly something that occurs.

Senator FIERRAVANTI-WELLS—But over time, the trend of complaints has gone up. Have you done a bit of a snapshot over the last 11 years?

Mr B Jones—Over 11 years?

Ms Horder—Over the decade or 11 years, they have not risen to the same extent that the growth in the profession has risen.

Senator FIERRAVANTI-WELLS—Proportionately?

Ms Horder—Yes, proportionately. Overall they have, yes, but I do not think proportionately they have gone up.

Senator Chris Evans—Senator, to be fair to the profession, we have increased numbers of visas and applicants. Migration to Australia has grown enormously as an activity. You would expect a significant rise in complaints in a sense because of the number of applications.

Senator FIERRAVANTI-WELLS—That is why I asked the question about the proportion.

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—Thank you. Have we done an audit of how many agents operate out there, both registered and non-registered? Do we actually know?

Mr B Jones—The registered is simple. We check the register, obviously, but the unregistered, I would imagine, very clearly are committing offences.

Senator FIERRAVANTI-WELLS—No, no. Mr Jones, my question was: do we know how many unregistered agents operate in the migration area, whether they be education or other forms of agents that are operating in this area in Australia.

Mr B Jones—We do not, no.

Senator FIERRAVANTI-WELLS—Mr Metcalfe, have we ever stopped and thought about how many are operating out there?

Mr Metcalfe—I am sorry, Senator. I did not hear the last part of the question.

Senator FIERRAVANTI-WELLS—My question was: do we know how many agents operate, both registered and unregistered, in the migration area? I am talking broadly about agents.

Mr Metcalfe—Yes.

Senator Chris Evans—Senator, the question you should be asking in relation to the unregistered agents is: how many people are acting unlawfully or criminally?

Senator FIERRAVANTI-WELLS—I am just—

Senator Chris Evans—That is the difficulty with asking that question off the bat.

Senator FIERRAVANTI-WELLS—It is like recently we had an inquiry into the number of non-profit organisations in Australia. We had even the tax office saying, ‘I think we have about 700,000.’ I guess that is really the question. I am really only asking it in generic terms.

Senator Chris Evans—Sure.

Mr Metcalfe—I think the minister has answered the question. We certainly know the number of registered agents—

Senator FIERRAVANTI-WELLS—Certainly.

Mr Metcalfe—because the authority handles that. In terms of unregistered agents, people giving migration advice in some form or another whether it is for a fee or without a fee, I would not hazard a guess. I will check with my colleagues during the course of the afternoon and see if any estimates have been made of complaints that we have received or whatever. But I suspect that, because it is an unlawful activity, the full extent of it would only be a guess. One would hazard a guess that there is a substantial amount of activity in relation to people for a fee or for some other consideration providing advice when they are not registered to do.

Senator FIERRAVANTI-WELLS—Have you envisaged some form of formal audit, considering the numbers?

Mr Metcalfe—Again, it is almost ‘how do you know the unknowable?’ How much is going on out there that you do not know about? I will have to check on whether we have done any work with regard to whether there is some form of sampling, surveying such as client surveying or some other form of registering that and whether we believe that that would be a sensible expenditure of resources.

Senator FIERRAVANTI-WELLS—Minister, you have made comments in the past, reported in the press and even during estimates, when we have talked about education agents and the sort of shonky operations that are in existence. With this transition to the department, do you envisage some formal revisitation of bringing in education agents and perhaps broadening the scope of registration as well as some sort of reform? I am not sure if that is along the lines that you are thinking, but given the comments you have made in the past and in view of Mr Metcalfe’s comments about the CEO working assiduously to do more I wonder whether that includes doing more.

Senator Chris Evans—No. It is a good question, Senator. I think I will answer it in this way: it is fair to say I have had a slash outside the off stump at education agents a few times. It has been pointed out to me by some people that it is not my portfolio area, but I think I reflect the frustration that others have about the experiences of some students with people who are attempting to package an education visa and sell hope, often with false information as well.

The Deputy Prime Minister made a statement to the parliament yesterday about the education industry and its importance to our economy. It is probably our largest export earner now, given the price of iron ore and coal and that export volumes have gone down. In that statement she spoke about convening a roundtable of parties interested in the treatment of students, in particular around those education services, to focus on ensuring that people get a quality experience. The vast majority of students who come to this country go to reputable organisations and have very positive experiences, but there is a small core.

Some of that activity is between our responsibilities and education responsibilities. We have had a number of active investigations in recent times and a lot of work going on in the area, but the Deputy Prime Minister made it clear that she thought we needed to do more and that we will engage much more. We will play a role in that from our end of the process. As I say, some of the agents are trying to sell people a package. Is it education advice? Is it migration advice? They are selling a product which in itself is not illegal in a sense, but we feel that there has been some exploitation and misrepresentation. Our officers are probably better able to comment, but we work very closely with DEEWR on trying to address those issues.

I refer you to the Deputy Prime Minister's statement in the parliament yesterday. It was more focused on the education industry, the value and the service it provides, but it also picked up those issues that have been of particular concern in Melbourne but also in Sydney.

Senator FIERRAVANTI-WELLS—How many complaints do we receive regarding education agents? Basically, how do we deal with those?

Mr Metcalfe—Senator, I do not have that figure to hand, but I will take that on notice.

Senator FIERRAVANTI-WELLS—Will you take that question on notice?

Mr Metcalfe—If we can answer it during the course of the hearings, we will.

Senator FIERRAVANTI-WELLS—Thank you. Minister and Mr Metcalfe, can I read into your comments that potentially we will be looking at education agents coming under the umbrella?

Senator Chris Evans—Senator, I think in my first comment I indicated to you that—

Senator FIERRAVANTI-WELLS—Is that your hope?

Senator Chris Evans—I think it is fair to say there are portfolio responsibilities.

Senator FIERRAVANTI-WELLS—Yes, that is right.

Senator Chris Evans—The responsibilities for education agents are not mine, but there is this interface.

Senator FIERRAVANTI-WELLS—Okay. Thank you.

Senator Chris Evans—If you ask me if I think we will start regulating education agents—no. Do we as a whole-of-government response in conjunction with state governments need to tackle some of the issues in this area with more vigour? I think the answer to that is yes. The Deputy Prime Minister's statements yesterday reflect that view from government.

Senator FIERRAVANTI-WELLS—Thank you.

Mr Vardos—Senator, if I may, I have the answer to Senator Barnett's question through the wonders of BlackBerry. The minister's decision was announced on 9 February and my presentation to the staff in Sydney at the MARA headquarters was on 12 March, which was the first appropriate date identified by Ms Horder.

Senator BARNETT—Thank you.

Senator TROOD—Mr Metcalfe, there is a reference in the PBS at the foot of page three to the new office being supported by an advisory board. There is also a reference to stakeholders. I am just not clear about the line of authority here and whether or not the office will report directly to you or up the line. Is there a hierarchy here? Is the advisory board supposed to instruct the office? Perhaps you can clarify how these lines of authority are intended to work.

Mr Metcalfe—Certainly, Senator. I would be happy to. The authority will be a discrete office within my department headed by a chief executive, who is an SES officer. She will report directly to me and hold delegations from the minister in relation to the work of the Migration Agents Registration Authority. The advisory board will be that—advisory—and Mr Vardos can provide some details as to the bodies represented. But it will be very much there to be a formal stakeholder in the engagement process so that we are able to frequently communicate, listen to and engage with the relevant industry bodies and others who have an interest in the matter. When you boil it down, MARA is a licensing body. That is to ensure that the administration of the function is happening in an open and transparent manner and that we are hearing the views of key people. But the formal responsibility will be with the chief executive reporting to me and with me, reporting to the minister.

Senator TROOD—I would like to hear from Mr Vardos in a moment, but just explain to or clarify for me please whether you are intending to be a member of the advisory board. Is there a senior officer of the department who will be a member of the advisory board?

Mr Metcalfe—I will ask Mr Vardos to provide the details, Senator Trood.

Mr Vardos—The first point to make is that the board has not yet been appointed. We are still going through the process. The proposed structure will have an independent chairperson. I am not sure that there is any particular field being scoped in terms of occupational skill, but there will be independent chair. There will also be a representative from the Migration Institute of Australia, a nominee from the Law Council of Australia, a consumer representative, a community representative and perhaps a representative from the university sector because they are involved in development of courses for people who aspire to be migration agents. The proposal is that someone from the department proper will also sit on that board. It may be me or it may be one of my deputies.

Senator TROOD—Mr Vardos, is this intended to be a permanent arrangement? It is not an interim arrangement while this transition is completed?

Mr Vardos—No, Senator. The advisory board will be appointed on a permanent basis until such time as a future government decides to change the structure that has been put in place from 1 July. As Mr Metcalfe said, it is advisory, not determinative, but it will provide informed guidance to the CEO on procedures, policies, strategies, organisational directions, consumer issues—the whole range of issues that the Office of the MARA will have to grapple with.

Senator TROOD—So it is an advisory board to the CEO, not an advisory board to the secretary?

Mr Vardos—I guess it will be an advisory board to both the minister and the Office of the MARA. It can be to the CEO; it can be to the minister.

Mr Metcalfe—That is right. To make it quite clear, Senator—the details have been finalised in relation to the composition, size and membership of the board. But I think your point is an important governance point. It is advisory. It is not a decision-making body or a body that would have role in setting policy or procedures, but it will be a group of people with whom to consult on a regular basis to ensure that we are in fact staying in touch with key stakeholders.

Senator TROOD—Have you thought through as yet how frequently the board will meet?

Mr Metcalfe—Those matters are still to be worked out, Senator. I imagine, just chancing my arm on this, that the view would probably be that in the early days they may wish to meet more frequently, and we would see value in that as we go through the transition process, and then settle into a pattern. My experience with these sorts of bodies is that normally we would meet with or convene a meeting three to four times a year. That would be the normal type of arrangement.

Senator TROOD—Thanks, Mr Metcalfe. Thank you, Chair.

Senator Chris Evans—Senator Trood, just to add to that—of course, in terms of accountability to the parliament, that will come very much through the department, the CEO and the minister to here. There will be a direct reporting to the parliament as it is part of the department's structure.

Senator TROOD—Thank you.

Senator FISHER—Following on from your answers to Senator Trood, Mr Vardos, you in particular suggested that this advisory body would advise the department and the minister—

Mr Vardos—Sorry, not the department, Senator. If that is what I implied, I withdraw that. It is the minister and the CEO of the Office of the MARA.

Senator FISHER—Thank you. In terms of its statutory setup, what will the functions of this body be described as in relation to who it advises?

Mr Metcalfe—If I can answer that, this is not a statutory body. The advisory board is not a statutory body. It is an advisory board like many that are being established through administrative fiat by the minister. He sees that as an important way of ensuring that he and

the MARA are able to receive advice in a structured way and consult with the key bodies on this issue.

Senator FISHER—Will that administrative fiat by the minister specify who this advisory board advises? If so, how will it specify that? What will it specify?

Mr Metcalfe—Senator, my expectation is that the advisory board would be established. It would have terms of reference. That would indicate the membership of the board and its role, which is to advise in relation to the regulation of the migration agents' profession and their registration. Those documents have not yet been developed or discussed with the minister, so I cannot provide a final answer in relation to that. But those are issues that obviously will be developed in the near future.

Senator FISHER—It is all very well and good to have an advisory body. Most ministers in most portfolios have one or more advisory bodies to assist ministers with carrying out their functions as a minister of the government of the day. Does Senator Evans have any other advisory bodies in this area?

Mr Metcalfe—Not in this specific area, Senator. But the minister and the government have advisory boards in the area of refugee resettlement.

Senator FISHER—But not in this area?

Mr Metcalfe—No, not in the aspect of the regulation of migration agents.

Senator FISHER—To the extent that there might or might not be one in this area, it will be the body that we have been talking about.

Mr Metcalfe—Yes.

Senator Chris Evans—There is none currently that I am aware of. If they are advising me, it is being kept a secret from me. But the intention is very clearly to set up an advisory board, Senator. I have not given the final sign-off on size and clear reporting lines. The department has discussed with you the intentions.

Senator FISHER—Direct lines and direct accountability to the minister and to you, sir, may not be such a bad idea, particularly given the really important nature of this area and the sorts of issues that Senator Fierravanti-Wells raised and cannot get answers about at this stage. There is a lot of really important work to be done in this area.

Senator Chris Evans—Yes. As I say, where there is a commitment to an advisory board, I see its role as being quite important. I have valued the input of MIA on the board, obviously, and some other key stakeholders. I must say, with all due respect to the department, that in my experience it is always good to have other sources of input and advice. That is not a criticism of the department. It just gives you a different perspective. In the other boards we have, such as the Refugee Resettlement Advisory Council chaired by Sir Bruce Baird, we get free and frank advice and a different perspective, which is good.

Senator FISHER—Thank you. We look forward to seeing the lines of accountability as they unfold in due course.

Senator Chris Evans—Senator, when we make the announcement, I will make sure that is all in the press release so you do not have to wait for the next estimates to find out.

Senator FISHER—That will be helpful. Thanks, Chair.

CHAIR—As there are no other questions, Ms Horder and Mr Jones, thank you very much for your attendance at estimates. I place on the record your involvement in immigration through MARA over more than a decade. Certainly your ability to be honest and frank and to attend estimates hearings to assist us with our process throughout all that time has been appreciated. I offer you our best wishes, and I thank you both for your attendance.

Ms Horder—Thank you, Senator.

Mr B. Jones—Thank you, Senator.

Senator BARNETT—Madam Chair, on behalf of the coalition I wish to make a similar statement to thank both Ms Horder and Mr Jones for their service to the industry and to the country.

[3.26 pm]

CHAIR—We will now move to outcome 1.

Senator BARNETT—I draw the attention of the minister to our discussion earlier when he minister refused to provide information in relation to a question I asked regarding the number of people on a short list. The minister refused to provide that information. The information was being provided in an answer by Mr Fox. The minister intervened and said that that was a matter for the government and had some other reasons, of which I am not fully aware. I have a copy of the order of the Senate, I have a copy of the *Guide to Committee Procedure and Practice*—

Senator Chris Evans—Before you continue, Senator Barnett, although I am happy to pursue this point, you were not refused a short list. You were refused detail on the advice about appointments that goes to the government. He described for you the numbers on the short list and the numbers interviewed. What you asked him for were the numbers to be appointed by the government and what advice was given to the government in relation to the number of appointments. That is when I said that that is advice to the government, and the government has not taken a decision on that matter. In accordance with past practice, we do not disclose advice given by the department to the government.

Senator BARNETT—I think we are almost on the same page.

Senator Chris Evans—I just wanted to explain that it was not that way.

Senator BARNETT—We can check the *Hansard*.

Senator Chris Evans—Whatever was said then and if either of us misspoke, I am just making it clear to you that what I am refusing to give you is the content of the advice to the government to consider when considering appointments to the MRT and RRT. That is what I am not giving you.

Senator BARNETT—Minister, I did not ask for the content and I did not ask for names. What I did ask for was the number of people on the short list that were put from the panel to you. You refused to allow the officer to answer that question. I would like you to provide on notice the reason for your refusal. I have looked at the *Guide to Committee Procedure*, I have looked at what is allowable and at what is disallowed. At the time you indicated that there was

no public interest ground, and I concur with that view. I think you were of the view that it was an advice to government but, on page 109 of the procedures, that is specifically listed as an unacceptable ground. However, you may have other grounds on which you refuse to allow that officer to answer the question. I would like you to take it on notice and provide an answer to the committee as soon as is convenient.

Senator Chris Evans—I do not need to take it on notice, Senator Barnett. This is advice to government for consideration by cabinet. It has not been provided in the past, will not be provided now, and you can take it as a formal rejection. The government will not be providing you details of advice for decisions by cabinet, full stop.

CHAIR—Mr Metcalfe, we will break at 3.30, but I understand that you have an opening statement before we begin our official questioning of the department.

Mr Metcalfe—Thank you very much, Chair, and thank you for the opportunity to deliver a short opening statement. Firstly, I thought it might be useful for the committee if I briefly take you through our new outcome structure and program structure following changes made to the reporting arrangements as part of *Operation Sunlight: enhancing budget transparency* measures. As you would be aware from our portfolio budget statements, we now have six outcomes, which is a change from two outcomes in previous years. The formerly described outputs are now reported as programs. Most programs are divided into two: service delivery, which deals with issues around processing activity, and policy advice and program design.

The six outcomes are described on page 9 of the portfolio budget statement and tables describing the transition from the 2008-09 outcome-output reporting structure to the new outcome-program structure can be found on pages 23 to 30. There is a transition chart there. For ease of reference, we have also prepared a freestanding table describing our outcomes, programs and divisional responsibilities, which may assist the proceedings today. I would be happy to table that particular document. We will make that available to you.

CHAIR—That will be useful, thank you.

Mr Metcalfe—I will give you a couple of topical examples of where activities now sit which will assist the committee's consideration. The migration temporary entry program, which previously was output 1.1, helpfully remains program 1.1, visa and migration, and is split into both service delivery and policy advice and program design. Refugee and humanitarian entry and stay, which was previously output 1.2, becomes program 2.1, refugee and humanitarian assistance. Border security, which was previously output 1.3, becomes program 3.1. This includes the new administered item on combating people smuggling. Immigration law enforcement and compliance activities, which previously was output 1.4, becomes program 4.1 and includes a new budget measure to fund the new directions in the immigration detention initiative.

I must say it is very pleasing to see that the budget has included additional funding for a permanent community care and assistance program. As you would know, this program has been successfully piloted over the last three years and provides for the effective management and resolution of status for all lawful non-citizens in the community through early intervention and the provision of needs based support and assistance. Immigration detention is now more clearly reported in three separate outcomes. Onshore detention, which was

previously part of output 1.5, becomes program 4.2. The illegal foreign fishers element is now reported separately as program 4.4.

Offshore asylum seeker management, including community and detention services on Christmas Island, is now reported under program 4.3. The previous outcome 2 outputs, which were dealing with settlement, citizenship and multicultural affairs matters, generally translate directly to both programs 5 and 6. For the record, it is worth noting that our major business transformation program, Systems for People, is no longer reported separately as an outcome or a program, but is spread across all of our programs, reflecting the fact that it contributes to work across the department.

We obviously will seek to assist the committee to identify the appropriate program for discussion of particular issues throughout today and tomorrow. Chair, at this stage, could I also note that it was drawn to my attention just today that there is an erratum that I need to provide to the committee in relation to the portfolio budget statements. I have provided that here. If I may table that, I will. I am advised that essentially some funding was misattributed in the translation from the old outcome structure to the new program structure. Those administrative expenses basically offset each other, so there is no change to the final bottom line, but there are some changes on both page 50 and page 75 of the PBS. We will make that available to you.

Chair, I would now like to introduce to the committee our new deputy secretary for corporate and client services, Ms Felicity Hand, who joined us earlier this month and who has been most recently been working in the foreign affairs portfolio.

Ms Hand—Good afternoon.

Mr Metcalfe—With the indulgence of the committee, I would also like to acknowledge and say a few words of farewell to a senior officer of the department, Nhan Vo-Van, who retires from the Australian public service this week after more than 25 years of service. Nhan has been a close colleague of mine throughout that quarter of a century, but it is for other reasons that I wanted to particularly mention him today. Mr Vo-Van's various roles have included working closely with many former and current senators, including when he was the parliamentary liaison officer to the Senate for two years at the time of the transition from the Keating government to the Howard government. He was head of the cabinet office in the Department of Prime Minister and Cabinet in 1999 and 2000 and indeed, and perhaps uniquely, has played a role in the cabinet offices of both Australia and Thailand where he accompanied his wife when she was posted with the Department of Foreign Affairs and Trade.

Nhan also has made an outstanding contribution to this department. In 2007 as assistant secretary of parliamentary and executive services, he provided support to me, the minister and the parliamentary secretary during the change of government from the Howard government to the Rudd government. More recently, Nhan has led our border policy branch, which manages the immigration clearance processing policy at our airports and sea ports, the electronic travel authority and advanced passenger processing systems as well as the APEC business travel card. Nhan has performed his work in the best tradition of the Australian public service. I would like to record my personal thanks and that of the department for his professionalism

and dedication over the last 25 years. I wish him, his wife, Julie, and his family the very best for the future.

There are just a couple of other things, but both are important. Firstly, I am sure the committee would be aware of the death last week of Professor Jerzy Zubrzycki, AO, CBE. I was honoured to know Professor Zubrzycki and I represented the department on Monday at his funeral, which also was attended by the Minister. I was reminded not only of how he overcame extraordinary adversity as a young man—he was taken prisoner in the first days of World War II by the Germans but escaped and served with the Polish underground and then served in the UK with the Special Operations Executive—but also of the breadth of influence that he exhibited, after coming to Australia, over Australia's immigration and multicultural policies for some five decades.

Professor Zubrzycki's work centred on the concept of cultural pluralism in contrast to the theoretical concepts of assimilation and integration. The 1977 report, *Australia as a multicultural society*, by the Australian Ethnic Affairs Council, which he chaired, contained the first definition of multiculturalism as resting on the three principles of social cohesion, equality of opportunity, and cultural identity. Professor Zubrzycki was a strong proponent of Australian multiculturalism, recognising that our immigration history and our unique approach to settlement and cultural diversity have delivered substantial benefits to Australia socially and economically, and was something in which all Australians should take pride. We of course are now a country in which some 45 per cent of us are either migrants or the children of migrants.

In later work Professor Zubrzycki also reinforced the importance of social inclusion. He was passionate in his support for refugees and played a key role in many community associations. It is a tribute to his work that these same principles continue to drive much of our work today in our areas of citizenship, settlement and multicultural affairs. On behalf of the department I record my sincerest condolences to his wife, Alexandra, his family and his friends. He was a great man. He clearly was a great husband, father, grandfather and friend to many people. I believe he was a great Australian and he will be greatly missed.

Finally, Madam Chair, I would like to place on the record my appreciation for the ongoing efforts of the staff of the department in this period of high policy and operational tempo. The staff's dedication to our departmental purpose of building Australia's future through the well-managed entry and settlement of people constantly impresses me. Our staff have my thanks for their professionalism and commitment, and their strong and positive values. Thank you.

CHAIR—Thank you, Mr Metcalfe. That was a very comprehensive opening statement, and I thank you.

Senator Chris Evans—Madam Chair, may I make just a couple of comments. I know that we are pressed for time but I want to formally acknowledge Felicity Hand joining the department—we have much work for her—and to acknowledge Nhan Vo-Van's contribution. I used to make his life miserable when he was the PLO and I was the Opposition Whip—and in recent years I had the pleasure of making his life a misery again! But he has given fantastic service to the Australian Public Service and to former Minister Hill. We wish him the best and acknowledge his huge contribution.

It is also appropriate to acknowledge the passing of Professor Zubrzycki, who served the Fraser government, the Hawke-Keating government and the Howard government. He had a fantastic life and made a fantastic contribution to Australia. Given his contribution to this portfolio, it is important that we acknowledge the contribution he made. His passing is a terrible loss. At his recent funeral I learnt a lot that I did not know about his early life. It is a fantastic Australian migrant story of an incredible man. I offer the condolences of the government to his family.

CHAIR—Thank you, Senator Evans. The committee supports your comments and Mr Metcalfe's comments about Professor Zubrzycki. We all acknowledge the work that he did. Ms Hand, I formally welcome you to the estimates committee process and recognise Mr Vo-Van's contribution, which will be formally recognised at the conclusion of estimates. He still has a few hours yet to prove himself after more than 25 years! Mr Vo-Van has provided tremendous service. We recognise public servants, such as Mr Vo-Van, who have dedicated the best part of their lives to ensuring that our democracy continues as openly and as accountably as it is. Mr Vo-Van has contributed to that in a very big way, and the committee recognises his tremendous service. Mr Vo-Van should feel very proud of the service he has given to this country through his work in the public service, which is in fact very important. Having said that, we will now break for afternoon tea. The committee will resume at 3.55 pm.

Proceedings suspended from 3.37 pm until 3.55 pm

CHAIR—Senator Fierravanti-Wells, do you want to continue, despite the fact that we do not have the Minister present? We will proceed, Mr Metcalfe. Senator Fierravanti-Wells? We are dealing with outcome 1.

Senator FIERRAVANTI-WELLS—Mr Metcalfe, at the last estimates hearings in February you gave me some figures of staff numbers as at 30 June 2008. On page 77 we had 7,106 employees in the department and as at 31 December 2008 we had 7,092, so there is a small reduction. Can you update us on those figures?

Ms Hand—Currently we are at 7,574, and we are projecting around 7,500 for this full financial year.

Senator FIERRAVANTI-WELLS—So the figure is going up. Are those the total staff numbers?

Ms Hand—I should have said including locally engaged.

Senator FIERRAVANTI-WELLS—Where have those increases or decreases occurred, or would it be easier for us to look at the outcomes for those?

Ms Hand—It has been up and down across the board. Broadly speaking, during the year the national office has increased slightly across its program and the service delivery and corporate areas. The overseas network has reduced by nearly 10 per cent and that is largely as a result of the savings measure to reduce positions resulting from the government's decision earlier in the year. The service delivery network has about a 3.9 per cent increase for the year to date. Those are the client service areas onshore.

Senator FIERRAVANTI-WELLS—Have you had some voluntary redundancies in the year?

Ms Hand—We have and I have those figures to hand.

Mr Metcalfe—Senator, last year we had a voluntary redundancy program which was primarily aimed at offering the opportunity for voluntary redundancy for staff in the national office. At the moment a voluntary redundancy program is available to staff throughout the department.

Senator FIERRAVANTI-WELLS—Since 2008 we have had 149 voluntary redundancies—145 in the national office and four in the service delivery network. A report on 1 May states that one in 10 jobs is expected to be slashed in the immigration department in this month's federal budget. Do you want to comment on that?

Mr Metcalfe—Yes, that is an erroneous report, Senator. But it is fair to say that we expect that we will need to reduce our staffing numbers over the year ahead.

Senator FIERRAVANTI-WELLS—Reduce your staff?

Mr Metcalfe—We expect that we will need to reduce our staff for a number of reasons. A range of measures in the budget, such as the Gershon review relating to IT, are seeking savings from the department's IT expenditure. Conversely, part of that strategy has been to reduce the number of consultants and contractors that we use and to replace them with full-time staff. While we are making savings, some of that is reducing contracted numbers but increasing our own employees. Like all agencies we are subject to the normal efficiency dividend, so that has an impact on us as well.

There are a range of other savings measures or measures that needed to be absorbed by the portfolio. Another significant driver of our financial position is described as activity levels under our resourcing agreement with the Department of Finance. As you would be aware, in some areas of activity we have seen significant declines in activity. For example, the 457 visa has significantly reduced in numbers in response to economic developments. Next year the migration program will be smaller than it has been this year but, conversely, we have seen an increase in refugee processing work and unauthorised arrivals.

Those matters tend to make up the overall budget. It is our expectation that in order to achieve the savings and efficiencies required we will need to take a whole range of measures to review how we spend money and ensure that it is spent efficiently. Some of that relates to the fact that we will require less staff over the year ahead. We are now putting plans in place to achieve that objective.

Senator FIERRAVANTI-WELLS—In effect, average staffing levels will even themselves out?

Mr Metcalfe—We expect our average staffing to be smaller. Ms Hand indicated that the current figure was around 7,500 or so. We expect it to be in the range of 7,100 next year. But the one in 10 article that appeared in the media was made up by someone. I do not know where that came from.

Senator FIERRAVANTI-WELLS—We are not dealing with the budget program by program but in outcome 1 the average staffing level for next year is down by 108. In outcome 2 the average staffing level is down by 59. In outcome 3 the average staffing level is up by 20.

In outcome 4 the average staffing level is down by 127. In outcome 5 the average staffing level is down by 42, and in outcome 6 the average staffing level is down by 100.

Mr Metcalfe—Yes. You will find that adds up to 416.

Senator FIERRAVANTI-WELLS—Yes.

Mr Metcalfe—That is an average staffing level across the year; it is not a head count figure. The precise number of staff who may be in the department on a particular day will vary. Obviously we have a significant number of part-time staff or staff who might be on leave or not on leave and that sort of thing. Those figures are also estimations based on the best advice at the time that the document is produced. But, as I have said, our budget and our funding are dynamic because they are linked closely to activity levels.

Our funding will change as a result of what happens in real life. A lot of our work is linked to outcomes or to applications. Depending upon the size of programs and what happens in relation to activity levels, I suspect that those numbers will change. However, we know that we will be reducing the size of our organisation because of the factors I indicated earlier.

Senator FIERRAVANTI-WELLS—I refer to the length of service of your employees. We have had this figure before and we know how it compares. Are employees staying for lesser periods or do you have greater numbers leaving?

Mr Metcalfe—I will see whether Ms Hand or another colleague has an up-to-date figure. Traditionally, our turnover rate has been up above 10 per cent—from memory, around 13 or 14 per cent. The latest figure I saw in the last few weeks was just under 10 per cent. In other words, our turnover had reduced and we would expect that that is largely because of the economic downturn more generally.

People are less willing to leave and to look for other jobs or get another job. Basically, they are staying in what is a relatively secure public service environment. Roughly across any year we would expect about one in 10 of our staff to leave, and we would recruit to fill that position. One of the strategies that we have in reducing the size of our staffing is effectively to recruit only two positions where we have a technical requirement for that person and those skills are unavailable in the department. It is not what I would call a staffing freeze but basically we are using the normal attrition of staff to assist us in our downsizing.

Senator FIERRAVANTI-WELLS—Are you finding that you are moving staff around a bit more than perhaps you have in the past?

Mr Metcalfe—To an extent.

Senator FIERRAVANTI-WELLS—I know that the department of immigration has branches everywhere.

Mr Metcalfe—We have almost 100 work locations. For example, we now have significant numbers of staff who are regularly deployed to Christmas Island. Although they may be based in Canberra, Sydney, Melbourne or elsewhere, the nature of their work, which is largely expert interviewing and assessment of claims work, means that a significant feature of their job is regular travel to Christmas Island, even if they are not based there. Of course, we employ a small number of people on the island itself, but the major facilities providers are the people who employ larger numbers of employees there. As I indicated before across programs

we are seeing fewer applications for 457 visas. We are seeing increases in work elsewhere and, as we would normally do, we transfer staff to where the work is and move it across. I would not say that that is unusual; that is just part of the way in which we manage our resources.

Senator FIERRAVANTI-WELLS—Ms Hand mentioned that that figure includes locally employed staff overseas. Have people been taken out? You gave me figures as at 1 January 2009. Have there been reductions or additions in some of those posts?

Mr Metcalfe—Ms Hand mentioned before that there were some reductions in the number of Australia-based posted officers as a result of a savings measure last year which reduced our overseas A-based presence by 10 per cent. But our numbers of local staff have remained roughly the same. The work that is done in our embassies, high commissions and consulates overseas will vary very much by country. It depends very much on the risk profile of the visa application workload that you might see in that country. Given the volume of work and the risk profile associated with that work, it would not be surprising that we have our largest amount of resources in China spread across Beijing, Shanghai, Guangzhou and Hong Kong.

Our second largest workload, and indeed our largest single office, is in New Delhi, because of the fact that we are receiving very large numbers of students, migrants and tourists from those places. But we note significant fraud levels in the applications that we have to deal with as well. There has been a significant change in the business model of the department, though, which began some years ago. Traditionally, overseas posts processed applications received from the country that the post was in. For example, when I was our regional director in Hong Kong—almost 20 years ago now—we dealt with applications that came to us from Hong Kong and Macao. These days a large amount of this processing work is done in specialist processing centres such as that in Adelaide. That is the biggest migration visa processing centre in the world, because we have the skilled processing centre located there.

The role of overseas posts has changed into more of a following up of detailed inquiries if there is a particular issue or concern about an application, rather than the full processing of the application. In the same vein we have established, as I think we have discussed here before, processing centres for 457 visas in Sydney, Melbourne and Perth. Nationally, applications are dealt with in one of those three centres. Sponsored parents are dealt with in the Perth office and working holiday-maker applications for the whole world are dealt with in Hobart. Work flows and changes and the deployment of resources has now moved to a more sophisticated model than we had 10 or 15 years ago, when if you got more work in Rome you put more people in Rome, essentially. It does not work that way now and, sadly, we are no longer in Rome.

Senator FIERRAVANTI-WELLS—Yes, I know.

Mr Metcalfe—All the good posts are no longer there, Senator.

Senator Chris Evans—If you get in trouble on your visits you are on your own. We do have an embassy though.

Mr Metcalfe—And we have a very well-known ambassador.

Senator Chris Evans—He has a vicious dog, or so I have read.

Senator FIERRAVANTI-WELLS—I have met the dog.

Senator Chris Evans—That is a good thing.

Senator FIERRAVANTI-WELLS—Mr Metcalfe, you made the comment that we have changed the make-up of some of the staff. Which posts have people been taken out of and which ones have people been put into?

Mr Metcalfe—Leave the issue of a straight comparison of pluses and minuses with me, and I will try to get that information to you.

Senator FIERRAVANTI-WELLS—Thank you. Ms Hand, I asked a question on notice about allegations of corruption at some of our overseas posts and I received an answer to that question. In your answer you said:

There were 57 allegations of corruption relating to staff in overseas posts during the 12 month period from January 2008 to December 2008. None of the allegations against locally engaged staff were found to be substantiated.

I take it from that that there were allegations of corruption only against locally engaged staff?

Mr Metcalfe—I will check the answer to make sure we are not being cute with words.

Senator FIERRAVANTI-WELLS—Could you also explain to me what process you employ to deal with complaints? How do you process those complaints? Are they dealt with on site, are they dealt with back in Canberra—what are the procedures for dealing with those allegations? Perhaps that question could be taken on notice.

Mr Metcalfe—I am trying to establish whether the right officer is here to give you the details. When those allegations are made, when concerns are raised or when our own people feel that there may be an issue, we have expert investigators, usually based in Canberra, who travel to the post to ensure that it is looked at externally and not just dealt with within the post itself.

Senator FIERRAVANTI-WELLS—This happens from time to time. As members of parliament people come to see us. I am sure you appreciate that some of those areas relate to posts that might have religious sensitivities.

Mr Metcalfe—Yes.

Senator FIERRAVANTI-WELLS—How do we deal with those concerns? That is the point that I am trying to make.

Mr Metcalfe—I think there is a distinction between allegations of corrupt behaviour and allegations that a particular staff member, due to his or her ethnicity or religious belief, may unduly influence an outcome or adversely influence an outcome. That claim has been made at a number of posts. We are sensitive to that but we are also sensitive to the fact that, as an organisation, we expect all our staff to operate without regard to religion, ethnicity, race or whatever. Ordinarily we would expect the local senior A-based officer, our principal migration officer, to be conscious of those sensitivities and to ensure that they are managed. I recall, and this goes back some years ago, that at least on one occasion the responsibility for the management of a particular caseload was moved from one embassy to another because of a concern that a fair go might not have been given to applicants from a particular place. I do

not recall whether that was proven, but I believe there was a view that it would probably be less problematic if the workload was moved somewhere else.

Senator FIERRAVANTI-WELLS—It would be helpful if you could take that question on notice and give us a breakdown of the nature of the complaints. We could be dealing with an allegation of corruption, right through to somebody who might not be happy because of the perception of a religious sensitivity. I think it would be useful if we had such a breakdown.

Mr Metcalfe—We will try to provide some more information and expand that out.

Senator FIERRAVANTI-WELLS—Please take that question on notice, Ms Hand.

Mr Metcalfe—We certainly receive complaints—everything from, ‘The security guard at the front gate would not let us in,’ through to an incident where a bribe had occurred. We regard as most serious any issues that go to corruption, inappropriate behaviour and breaches of the Australian Public Service code of ethics, and they are properly and fully explored. Action has been taken and will be taken if staff breach their obligations relating to that. To give you more colour as to the sorts of things that come up, we will look at providing further information about that issue.

Senator FIERRAVANTI-WELLS—There is a difference between posts that have a high volume as opposed to those that are high risk posts.

Mr Metcalfe—Some are both.

Senator FIERRAVANTI-WELLS—I appreciate that. Referring to the high-risk posts, do you conduct a review or an assessment of the nature of the risks at different posts?

Mr Metcalfe—Absolutely.

Senator FIERRAVANTI-WELLS—I assume that you do that on an ongoing basis?

Mr Metcalfe—Yes. That is done in a different range of ways—from how visas may be applied for and granted. For example, in our very low-risk environments for tourist visas it is possible—it has been for 12 years now—to apply for an electronic travel authority. Within the past few months we provided a new facility to all European Union nationals to apply over the internet using a product called eVisitor, which recently won an award in a major government awards program for technology. That represents risk assessments as to the particular caseloads and allows us to understand quickly whether we are able to have what we call autogrant where, essentially, the decision is taken by running the person’s name across the movement alert list or whether we need to intervene and have a human being look at that matter and deal with it.

In other posts where there are high levels of fraud, again there are statutory arrangements. For example, in student visa processing a graduated series of interventions determines whether or not we have a light touch or a significant look at an application, at a person’s bona fides, at the savings that enable them to proceed down a student visa pathway, et cetera. Similarly, the work of our staff will vary significantly. For example, our staff in London are very much about dealing with third-country nationals, promoting migration to Australia, or providing support for those people who need lodge a paper application. Whereas in China and India, of course, we have large teams of people carefully assessing applications, doing field

visits and visiting applicants to ensure that, if they say they are welders, or whatever their occupation might be, they are.

Our level of intervention will vary significantly. Arrangements and plans are in place in each of our overseas regions that recognise the risks that are faced. A substantial amount of the department's infrastructure is used to support that effective decision making. While one would never be sanguine on this point—one would never be sanguine—I think we are pretty pleased. Less than one per cent of all tourists, visitors and students to Australia overstay or do not comply with the conditions of their visas.

The number of illegal immigrants in Australia—and I think we have had this discussion before—is a little bit under 50,000, compared to the United States of America where the figure is 10 million to 12 million. Even if you take into account the 15-fold size of their population compared to ours, we have a remarkably good immigration compliance arrangement. We largely rely upon self-regulation and voluntary compliance, but our whole system is designed to maximise the outcomes.

Senator FIERRAVANTI-WELLS—I refer to high-risk posts and to the recent surge last year in people smuggling. Will this be taken into account in assessments at our high-risk posts overseas? Will we put resources into those areas where those alleged push factors are operating? Are you looking at doing something about that?

Mr Metcalfe—I would not quite describe it in that way.

Senator FIERRAVANTI-WELLS—I used that terminology to try to explain—I think you are aware of the point that I am trying to make.

Mr Metcalfe—Certainly. As you would be aware, there are a whole range of measures in the budget, both in this portfolio and in other portfolios, to combat people smuggling. One of the measures is to give us an additional five specialist staff in key posts overseas, in Jakarta, Colombo, Dubai, Hanoi and in Kuala Lumpur, to enable us to better engage—we already do it pretty well—with the immigration authorities and governments of those countries.

The reason I am not precisely agreeing with your proposition is that in some of the source countries we are increasing our resourcing for the current flow—and Sri Lanka is one. We do not have a presence in Afghanistan, which is the other major source country at the moment. We have a presence in Pakistan, but our work relating to stabilising populations of people who might be minded to move is done through various funds, some which we administer but also development assistance, working with law enforcement and various other bodies. Similarly, there are funds in the budget relating to some additional initiatives.

We also significantly work with international bodies and host governments in transit countries. Obviously we have a major level of activity and cooperation with the Indonesian authorities, in our case, particularly with our counterpart organisation, Imigrasi. We work closely with the International Organisation for Migration and with the staff of the United Nations High Commissioner for Refugees. Similarly, we work closely with people in the other key transit country, that is, Kuala Lumpur, which is Malaysia, because of the air routes that are being taken by people as they come into this region.

There are funds in the budget to enable us to continue to build partnerships with the immigration authorities in Indonesia and to strengthen their capabilities. That is building on work that has been underway for many years. We will be working with bodies such as the UNHCR and the IOM to strengthen capacity generally in the region to deal with the regular migrants. I am sure you are aware of the Bali process that was commenced some years ago. From memory, there was a ministerial meeting in April, which Minister Evans attended.

Senator FIERRAVANTI-WELLS—There was no meeting for six years, Mr Metcalfe. I was going to come to that.

Mr Metcalfe—Yes. Certainly the first meeting was attended by—

Senator Chris Evans—The previous government had a good idea but it needed resuscitating.

Senator FIERRAVANTI-WELLS—It took along time to resuscitate it, Minister—six years.

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—Mr Metcalfe, you were saying?

Senator Chris Evans—I might point out that we were not in government during that period.

Mr Metcalfe—The Bali process provides a good umbrella. Work has continued at an official level over those years. I think the ministerial meeting has reinvigorated work between agencies there as well. The point I am trying to get to is that we have moved and have been provided with additional resources in some of the key posts and countries where people smuggling and border security issues arise. We have significant initiatives and funding for cooperation with our regional partners and international organisations. We also work closely with other Australian agencies that are involved in the criminal elements of people smuggling, or some of the other aspects of it, for example, the diplomatic effort, and so on.

Senator FIERRAVANTI-WELLS—Let me summarise what you are saying. When you refer to our overseas posts you are not looking at putting any more immigration resources, if I can put it that way, into those countries?

Mr Metcalfe—I have indicated the five positions that we are putting in.

Senator FIERRAVANTI-WELLS—Colombo had three, as at 1 January, and it has 17 locally engaged staff?

Mr Metcalfe—That is right.

Senator FIERRAVANTI-WELLS—So you are increasing that by one?

Mr Metcalfe—By one Australian-based officer. I will check that figure of 17 to establish whether we are making changes in relation to that. The 1 January figure is 17, with three A-based staff. That will be a fourth position going in there as an A-based officer specifically to ensure that our immigration liaison role with the Sri Lankan authorities is strengthened. So it is as a specific measure to increase our border security. As I have said, similar positions are going into Kuala Lumpur, Vietnam, Indonesia and Dubai.

Senator Chris Evans—Senator, you referred earlier to immigration officers in source countries, for example, Afghanistan and Pakistan. That is a good point. You would logically think that you would respond by putting more people into some of those source countries. Both the secretary—

Senator FIERRAVANTI-WELLS—I was not necessarily meaning only people; I meant resources.

Senator Chris Evans—Sure. I wanted to alert you to a key consideration—which I know the secretary and I take seriously—that is, staff safety. People are fleeing some of these countries because it is not safe. There is a great responsibility on us when we send staff into some of these places. For instance, a number of Australian embassies have reduced their staff to the bare minimum, as I recall we did in Iraq during the conflict there, and in Pakistan. You and I could make a case for increasing our resources in a couple of places. However, we have pulled out of—

Mr Metcalfe—We have reduced our staffing.

Senator Chris Evans—We have reduced our staffing in Pakistan because the secretary and I have been very concerned about the level of security, after receiving advice about security. There is that other factor that you want to be there, but, for the same reason, people are fleeing.

Senator FIERRAVANTI-WELLS—Let me rephrase my question. Are there other avenues—an Australian message about our legal situation here an Australian? How do we diffuse that message in those posts in an attempt to reduce the alleged or so-called push factors?

Mr Metcalfe—What message is that, Senator?

Senator FIERRAVANTI-WELLS—I will refer to this issue later, but we need to promote an awareness of our immigration laws in Australia. There is the potential for a lot of people to be misrepresented. Many of the people smuggling operations misrepresent the situation. My question to you is: what avenues do we have available to us to better inform people in those countries where we perceive there to be push factors? You mentioned certain areas of cooperation.

Mr Metcalfe—Yes.

Senator FIERRAVANTI-WELLS—Mr Metcalfe, my question is: what avenues are open to us other than putting people there, as the Minister said, for security reasons, which might detract from that? What avenues are open to us?

Mr Metcalfe—There are several, Senator. As you indicated, there is the work that the Australian government can do to ensure that there is a proper understanding of Australian immigration requirements, as well as the perils of dealing with people smugglers—criminals who are in it for the cash. Tragically, as you know, some people have perished. The whole issue of risk to life and limb is something about which we are very mindful. Active work is being done through our diplomatic missions—by the public affairs officers employed by the Department of Foreign Affairs in engaging with the local media. Our own staff engage with

government officials and the civil society to ensure there is an understanding of Australian rules and processes.

In some countries there have been information campaigns—there will continue to be information campaigns—and the Australian Customs and Border Protection Service has a role in developing ideas there. We also work closely with international organisations. The IOM has been a significant partner for us at a community level and it has provided advice. For example, we do some excellent work with the IOM which has a network of officers through Indonesia. I acknowledge that it is an extraordinarily large and spread out archipelago. The IOM has been funded by the department to have a network of officers who are educating people at the local level about Australian immigration rules.

Finally, with international bodies such as UNHCR and the United Nations Office on Drugs and Crime, we continue to find every avenue we can to ensure the message is spread about the lawful means of travel to Australia. We have one of the world's largest positive refugee resettlement programs but there are real risks relating to travelling to Australia unlawfully because of the criminality of the people smugglers with whom migrants might deal as well as the dangers to them.

Senator FIERRAVANTI-WELLS—Those were my general questions for the department. I wonder whether other senators had general overview questions for the department.

CHAIR—No, keep going.

Senator FIERRAVANTI-WELLS—I refer to output 1 and to special visas for Iraqis. Is this the appropriate time to ask those questions?

Mr Metcalfe—Are you referring to the locally engaged employees, the defence force staff?

Senator FIERRAVANTI-WELLS—Yes, the locally engaged employees.

Mr Metcalfe—I would probably ask those questions under output 2. We are all learning here, Senator. I would put that under program 2.

Senator FIERRAVANTI-WELLS—What about questions relating to general skilled migration?

Mr Metcalfe—We are here now—program 1.

Senator FIERRAVANTI-WELLS—In last year's budget the government announced an additional 31,000 skilled migration places, which took the program to an overall record high of 133,500 in the 2008-09 program. On 16 March you went backwards because you announced a 14 per cent cut of 18,500. Is that not in effect a net increase of 7,000 skilled places for 2008-09?

Mr Vardos—Senator, I would need to do the sums on this. You are referring to the net increase from 2007-08 to 2008-09. I am just looking for our table, Senator, with the comparison numbers over the years.

Senator FIERRAVANTI-WELLS—Sure.

Mr Kukoc—The total skills number for 2007-08 was 108,540.

Senator FIERRAVANTI-WELLS—Minister, there has been a bit of confusion. Back in February Minister Gillard made some comments about rejecting calls to slash the skilled migration intake to preserve domestic jobs following research undertaken by Bob Birrell. Basically, the minister is calling for a rejection of the cut in skilled migration. You have announced these cuts. How do you reconcile those two situations? What is the government's position? Will it continue to cut?

Senator Chris Evans—No, Senator. The government sets a migration program for the year as part of the budget process. In this budget process, given the overall economic situation, we made a decision about the size of the program, as we did the previous year. We made an adjustment towards the second half of the last financial year because of the changed economic circumstances and we reduced the overall size of the program. But we still run a very solid skilled migration program.

I have attempted to do something, which the previous government started down the path of doing but it did not make much progress. I have tried to refocus the program to ensure that we are bringing in the skills that we need. Part of Bob Birrell's critique is that the program has been bringing in the wrong people. Sometimes there are two critiques: first, we are bringing into too many people and, second, we are not bringing in the right people.

We have tried to move from a system driven by people choosing to come here to a system driven by the needs of our economy. We have increased and encouraged the number of people in the general skilled migration program who come in as employer sponsored or who come in as state sponsored. Increasingly, we will be up to just short of 50 per cent in this year's program. Instead of having people who choose to come here—they may well be good people, but they do not necessarily come here to do a job—we have tried to focus on people who are coming here for a job. The number of people who are employer sponsored—the department will give you the figures—has been increasing. These people who come here arrive and go straight into work. They are not a drain on society and they are making a contribution from the day that they arrive. That focus is an important part—it is not just about numbers. Another thing to which I wish to refer, which never gets any recognition in debate, relates to the percentage of people who are already in the country and who are converting from temporary to permanent visas. When you say that 100,000 people are coming in under the migration program, they are not.

Mr Hughes—Thirty-five per cent of migration program visa grants for the period 1 July 2008 to 31 March 2009 were made to people who are onshore.

Senator Chris Evans—We are trying to change the understanding of the migration program. Effectively, what has happened with the growth in students and people coming in for temporary work reasons, there has been an emphasis on skills sponsorship and state sponsorship. The annual migration program, half of that is people who are already here, people converting to permanent visas. I have been trying to emphasise that the raw number debate about the annual migration program is not the big issue, when you look at the other people who come in on temporary visas.

Halfway through this financial year the number of people coming in on temporary 457s was equivalent to the number coming in permanently, so the nature of the program has

changed. We have tried to focus on those people who are coming directly into work, who have a job and who have been sponsored by an employer because they cannot get somebody else to do so. That is the link that we are trying to build.

Senator FIERRAVANTI-WELLS—What skilled areas are you now targeting?

Senator Chris Evans—We have created what we call the critical skills list, which is designed to apply to those people who self-nominate. An employer can nominate someone to come into a particular skill position, and that is based on the employer's needs. Currently, if someone wants to self-nominate to come in, the critical skills list gets priority. There are about 30 occupations. We can table this information and it is available on the website. Primarily those occupations are in the health field—doctors, specialists, et cetera—and in the engineering field where we have had huge labour shortages.

The critical skills list relates to those areas where the states and industry, when consulted said, 'Those are the areas in which we really need people.' Those are the critical skills that are short in the economy. We made one change to that. Originally we had some trades levels on it and we took those off when we saw the demand for tradesmen weakening so as to ensure that people were not coming in to compete with Australians at a time when there were not that many jobs available. It is capable of being moved and we take advice on it. But at the moment it is pretty well focused on high-level engineering type areas and almost half would be for medical type professions.

Senator FIERRAVANTI-WELLS—We saw those who were asking to come under 457s visas basically.

Senator Chris Evans—As you know, we have a huge shortage of doctors and specialists. They dominate the list, as do some of the engineering trades. We have radiologists, pathologists, paediatricians, ophthalmologists, stenographers—I am not sure whether I know what those are—and speech pathologists, which I might need.

Senator BARNETT—Speech pathologists are very important. I am married to one!

Senator Chris Evans—Registered nurses are also on the list. I can table that list.

Senator FIERRAVANTI-WELLS—The New South Wales government will be most impressed to see that there because they are the biggest takers of nurses.

Senator Chris Evans—For the first time we have had a close engagement with the states in designing the list. They have a finger on the pulse in relation to some of those industry needs.

Senator FIERRAVANTI-WELLS—In reassessing your critical list, did you have a look at the numbers that we were getting, for example, of hairdressers and accountants? How many students were studying hairdressing and accounting, when we had so many of them here in the country. Did you conduct an analysis over the past few years of those categories that were so-called being 'abused'?

Senator Chris Evans—There are two issues here. This is not about the student issue; it is about what skills are in short supply in the Australian economy. We are looking at the modal, that is, the list of occupations which has traditionally governed these things. We created the critical skills list because we found that the modal was not a fair reflection of what was going

on in the economy. Hairdressers are a good example. In the past 10 years—the department will give you the figures—we brought in a lot of hairdressers because they always showed up in the employment surveys as being in short supply.

They were in short supply because the wage rates were low. People who come in as hairdressers then go and get jobs doing other things. It did not matter how many hairdressers came in under the previous government and this government—we were still short of hairdressers. Bringing in another 3,000 hairdressers has never solved the problem of hairdressers. We said, ‘Hang on; a more realistic assessment of skills in demand needs to be done.’ You will notice on the critical skills list that those occupations are no longer there. That does not stop an employer from sponsoring a hairdresser into a job into a particular region, but it means that a hairdresser in Canada cannot say, ‘I’m going to Australia because I am on the list’. Hairdressers would have to be sponsored because they are no longer on the critical skills list. They are not barred from coming in but they are not priority processed.

Senator FIERRAVANTI-WELLS—Has skilled migration changed in percentage in relation to the total migration picture?

Senator Chris Evans—It has, but I will let Mr Hughes take you through the figures.

Mr Hughes—It has and I think it is still broadly two-thirds skilled, one-third family and other.

Senator Chris Evans—We have increased the number of parent places in both budgets delivered by this government because there is still a huge demand for parent visas. Mr Hughes will give you the numbers. In both budgets we increased the number of parent visas because, as you know, the waiting lists on the non-contributory parents’ visas I think are out to 17 or 18 years.

Mr Hughes—That is correct.

Senator Chris Evans—At one stage I had to cap the contributory visas—I think in the first year—or we got close to a cap. We have increased the number of parent visas because there is a lot of demand for them. However, there is still a big emphasis on skills. Mr Vardos might be able to help.

Mr Vardos—Senator, let me clarify the position. At the moment the waiting period for parent visas has reduced as a consequence of an increase in the numbers. It is around the nine- to 10-year mark. It has come down from the 17- or 18-year mark.

Senator Chris Evans—For contributory visas, where people have to contribute financially, it is down to nine months.

Mr Vardos—Senator, for consistency, can I confirm the figures that you opened with?

Senator FIERRAVANTI-WELLS—Certainly.

Mr Vardos—The outcome for 2007-08 for total skills was 108,540. The revised planning figure for total skills for this year is 115, so that figure is up by 6,450. The planning figure for permanent skills for 2009-10 is 108,100. The outcome for 2007-08 and the planning figure for 2009-10 are roughly comparable.

Senator FIERRAVANTI-WELLS—I refer to the skilled migrants' settlement areas. Have any more gone into regional and rural areas? Do you have the latest figures to show where they are going?

Senator Chris Evans—Mr Speldewinde will be able to assist. Sponsored skilled migrants clearly are going to where there is economic growth. Up until recently Queensland and Western Australian numbers were increasing because they were driving the national economy. Mr Speldewinde will be able to help with some sort of breakdown.

Mr Speldewinde—I have in front of me numbers year to date to 30 April 2009 which show that, in relation to the state sponsored categories, by far and away the biggest state is South Australia, which sponsored 4,115 migrants to that point. Let me back up a bit. The biggest sponsor is Victoria with 6,875, followed by South Australia, then Western Australia, Queensland, New South Wales, the Australian Capital Territory, the Northern Territory and Tasmania.

Senator Chris Evans—They are state sponsored though, are they not?

Mr Speldewinde—Yes.

Senator Chris Evans—They are not the total skilled migration?

Mr Speldewinde—No. I thought the question related to the pattern of migration in regional areas around Australia. Was that what you were asking?

Senator FIERRAVANTI-WELLS—Yes. I am asking for a snapshot. Migrants have gone into Victoria, but have they gone into regional Victoria or into metropolitan areas? Please take that question on notice if you do not have the figures here.

Mr Speldewinde—We can certainly get that breakdown for you. It is a very complex set of figures.

Senator FIERRAVANTI-WELLS—I appreciate that. I will deal now with the 457 visa program. Minister, in April you announced a reform of the 457 visa program to implement a system of market based minimum salary requirements for 457 visa holders. Can you give us an outline of how that will work in practice, or how that system will be enforced?

Senator Chris Evans—I will get one of the officers to take you through it. It is now in the development phase, and we have a consultative group with industry, trade unions and state governments working through these issues. Mr Kukoc will describe where we are up to with that process.

Mr Kukoc—Seven key reform measures were announced by the minister on 1 April: introducing market salary rates to replace minimum salary levels from September 2009; increasing the minimum salary level for visa holders by 4.1 per cent from 1 July to ensure that overseas workers' conditions do not fall below Australian conditions; increasing the English language skills to all trades and chefs and lower skilled occupations from 14 April; introducing formal trade assessments from 1 July for all trades and chefs from countries that are not low-risk countries, or countries that do not have access to electronic travel authorities; a requirement that employers attest to a strong record of employing local labour and non-discriminatory employment practices; developing formal training benchmarks for sponsors; and requiring ASCO 5 to 7 range lower skilled occupations to have labour agreements.

All these measures are now being implemented, and there are different timetables for these measures. Increasing the minimum salary levels will be implemented on 1 July; introducing market benefits will be implemented on 14 September, which will be at the same time as the new Migration Legislation Amendment (Worker Protection) Act commences; and increasing English language skills for all trades will commence on 14 April. Formal trade assessments will commence from 1 July. At the moment that is being done by DEEWR. I understand that DEEWR sent a request for expressions of interest to a range of registered training organisations, and the rollout of skilled testings will happen progressively from 1 July. Developing formal training benchmarks for sponsors is also being implemented by DEEWR and hopefully it will be in place from 1 July. Finally, removing ASCO 5 to 7 from standard business 457 visa class to the labour agreement has been implemented since 15 May. They will all be progressively rolled out.

Senator FIERRAVANTI-WELLS—Minister, have we had the regulations? Have they not come in? I understand that we had an inquiry last year.

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—That is when the act was introduced.

Senator Chris Evans—The workers protection act, yes.

Senator FIERRAVANTI-WELLS—Yes, that is right. Basically, the act was just the framework.

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—As I understood it, we were going to have regulations.

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—The inquiry we undertook was based on those regulations.

Senator Chris Evans—Senator, I will get the officer to take you through where we are at with that. But I honoured my commitment to you and I wrote to all parties and to the Independents and provided them with information and with the time for comment. I wrote to the shadow spokesperson.

Senator FIERRAVANTI-WELLS—Further down the pecking order.

Senator Chris Evans—Yes. As I said, I also wrote to the Senate minor parties and others. However, I forget the timetable, so over to Mr Kukoc again.

Mr Kukoc—Senator, the regulations have been drafted and circulated to all members of the consultative panel—all state governments, businesses and union representatives—for final comment. We consider them to be almost finalised. There is a draft for sign-off by the government. They are ready and subject to the minister's views. I am happy to send them to you.

Senator FIERRAVANTI-WELLS—The main issue raised at that hearing was not knowing what impact those regulations would have on business.

Senator Chris Evans—Sure.

Senator FIERRAVANTI-WELLS—We heard from a number of people at that hearing. I was keen to ensure that the concerns that were raised at that hearing were dealt with appropriately.

Senator Chris Evans—Senator, we engaged in a good process with this consultative panel on 457s. As you know, there was a lot of debate in the community. Minister Vanstone, the former minister, and others were dealing with quite complex issues. That included, as I said, representatives of the key employer organisations, key unions and four of the state governments. They have in place a pretty good process—having the argument and the discussion in the same room refereed by the department and advised by the department. As a result of those processes we have achieved a pretty good outcome. I think it has been a pretty positive experience.

Over the past few months I have met with their employer organisations. I am not about to suggest that they will agree with everything on which I finally sign off, but they have been pleased with the process and we have taken on board their concerns. As I said, the final decision is for me to make. I think they are about ready for me to sign off.

Senator FEENEY—Senator, there is a huge document in my in-tray and I suspect that that might be it.

Mr Vardos—Senator, the panel met last week and they were given the regulations. We are just finalising them for the minister's consideration.

Mr Kukoc—No major concerns have been expressed about them.

Senator FIERRAVANTI-WELLS—My concern is this: it has been made very clear through the media and the criticisms by the union movement—in particular Mr Sutton. He has been very vocal on this and he and I had an interesting exchange in relation to this at the hearing. But my concern is to see that the framework of it remains, because it has been a very good program. I wanted to ensure that the concerns raised—particularly by a lot of people in manufacturing, the engineers and a lot of those people who gave evidence—were heard. They want this system retained because it is so important to their operations.

Senator Chris Evans—I made it clear to you before that I am a strong supporter of the temporary work visa—the 457 visa. We have done an awful lot of work to make it easier for industry to access them and also to improve the integrity of the scheme. As you know, we have the Deegan review and we have followed up all those issues.

Senator FIERRAVANTI-WELLS—Yes.

Senator Chris Evans—There has been a lot of policy development in this area and a lot of engagement with industry. We have tried to rebuild integrity in the scheme given its expansion and move into other areas. I think we have got a pretty good result. Of course, what has happened at the same time in recent months is that the demand for the scheme has gone down as demand for labour has gone down. There are still people coming in, but that is in the skills area where employers say they need to bring somebody. The scheme is still operating well.

What it has really shown is how responsive it is to the economy. The advice and the consideration of the department was that it would take a bit longer for it to respond, but the way it has tracked from the economy has been quite interesting. It is certainly there to be used. We think it has more integrity and we have addressed what were legitimate concerns about exploitation of overseas workers.

As you know, the previous government moved to a labour agreement with the meat industry because of its concern about exploitation of workers in that industry. I am hopeful that we have addressed those concerns. That is the way I think the reputation of the visa will be rebuilt. That small amount of abuse of foreign workers was undermining the public credibility of the scheme. People like Mr Sutton have been champions of people who had been, quite frankly, exploited under the scheme. We did need to fix that and I think we have done so without actually preventing proper employers with integrity from bringing in the skills they need.

Senator FIERRAVANTI-WELLS—The issue is that when you get down to the nitty-gritty of the instances some of them were associated with state issues as well. Even going on the department's own figures in terms of its inspection and the compliance with the 457s, the compliance levels were very good. That certainly came through.

Senator Chris Evans—I can refer you to a number of cases that went to the Workplace Ombudsman that resulted in the successful prosecution of exploitation. There are some terrible—

Senator FIERRAVANTI-WELLS—I appreciate that and I am not in any way devaluing it, but I am also putting on the record the fact that on the department's own figures the level of non-compliance was relatively low. Having said that, I say there was an issue. I now refer to the framework. Whilst the visa initially was at the high end, if I can put it that way, are we now looking at a scheme that covers what we described as skilled and semi-skilled—

Senator Chris Evans—Yes.

Senator FIERRAVANTI-WELLS—Are we going to see a system that is now going to look at the whole spectrum? Is that what we are going to?

Senator Chris Evans—There was no change. When the previous government introduced the scheme, it was largely focused on the high skilled end—doctors, engineers and IT professionals. In the last five years, we have seen an extension down the skills list to the tradesman level, which is where the skills list ends, because of the demand for labour in the Australian economy. The place was booming; we needed welders, fitters, carpenters et cetera, and they could not get them locally. I will not open up the question about the previous government's investment in education; I will leave that fight for another day. We had a skills shortage, so the nature of the scheme changed. There has been no change in the levels of the skills people can bring in; that is demand driven by employers. But it is still the case—one of the officers can give me the figures—that the majority of the scheme is at the high end. Despite all the publicity, we are still bringing in more nurses than we are metal tradesmen et cetera.

Mr Hughes—The top five occupations over the last nine months have been computing professionals, registered nurses, business and information professionals, general medical practitioners and chefs—but more of the skilled chefs than cooks.

Mr Vardos—I would like to make a comment to emphasise the point that Mr Kukoc made. Access to ASCO 5 to 7, which is at the lower end of the skills spectrum under one of the measures that was announced by the minister, will be via labour agreements only. So negotiating a labour agreement will be the mechanism by which you are able to bring in ASCO 5 to 7.

Senator Chris Evans—The skill is best characterised by Irish ministers and Indian doctors.

CHAIR—If you have a business that has actually applied to bring in a worker under the 457 regime under the previous arrangements—

Senator Chris Evans—They are all on the web monthly.

CHAIR—The new arrangements come into place. Will there be some applications that are caught between the old and the new? What happens in that instance?

Mr Speldewinde—For the actual changeover, we envisage that as people come up for a renewal of their visa requirements—and historically 457 visas are granted for up to four years—they will be reviewed in the light of the new arrangements. So if you, for argument's sake, have a 457 visa holder who is coming under a standard business sponsorship, whose 457 visa comes up for renewal at the end of that four-year period—

CHAIR—What if that is in three weeks time, for example?

Mr Speldewinde—If it comes up in three weeks time then we would have to look at it in light of the decisions that have been made for the change. The move from the ASCO 5 to 7 arrangement to the labour agreement regime was effective immediately.

CHAIR—Right.

Mr Speldewinde—At that point in time, the sponsor of those people would need to seek a labour agreement if they were looking to retain those people.

CHAIR—That is a much more onerous process, isn't it?

Mr Speldewinde—It is a more onerous process and it is deliberately so, because the evidence from the Deegan review and the stuff collected by our monitoring officers indicates that, particularly in the ASCO 5 to 7 groups, the evidence of exploitation was quite high. Under the labour agreement, the terms and conditions are examined by two portfolios, ours and DEEWR. DEEWR looks at the labour market implications of the proposal. For ASCO 5 to 7, the prospective employer has to demonstrate that they have a training plan and a commitment to training and upskilling Australian workers at the same time. They must also have a plan for managing a transition away from a reliance on overseas workers.

CHAIR—If you have someone on a 457 visa and that visa is about to expire, even if they have had that person for the last three years, do they still have to go through this new process again or it is somewhat easier or more flexible if that person has been a long-term employee?

Senator Chris Evans—I will let the officer answer the question, but I would like to point out something that is not understood or not focused on enough. People who come in on a 457 visa have the right to remain temporarily in Australia while in employment with their sponsor up to a maximum of four years. They are not here as permanent residents; they are here to fill a skill shortage to meet the needs of an employer. The expectation is that at the end of the 457 visa they will no longer be a resident of this country. People need to be very clear about that.

I have no problem with 457 visa holders migrating to permanent visas. That is a perfectly good means of permanent migration flow, because we know they are here, we know they like Australia and we know we like them and they are in a job. In a sense they are a perfect migrant. But be very clear, by getting a 457 visa you have a temporary right, like a tourist visa holder or student visa holder, to reside in Australia under those conditions. I will let the officer respond to your question about transfer.

CHAIR—What I am getting to is more along the lines of someone who has been here for, say, 18 months and the employer has still not been able to find a local person with comparable skills. Do they still need to fill out a labour agreement, or is there some provision to be able to roll that over in a more flexible way? They might not have been here for four years and there might not have been an intention that they would be here for four years.

Mr Speldewinde—Are we talking ASCO 5 to 7?

CHAIR—Yes, in that area where labour agreements are now needed.

Mr Speldewinde—It is open to an employer who wants to retain the services of somebody to seek to sponsor them for permanent residence under one of the employer nomination schemes or the regional sponsored migration scheme. There are some flexibilities under those schemes in terms of being able to waive some of the requirements. But, essentially, to get permanent residence under those two the employee would have to satisfy the visa requirements for permanent residence.

Senator FIERRAVANTI-WELLS—During the inquiry it was canvassed whether employers who had been regular employers of 457 visa holders would go through a process and then it would be easier.

Senator Chris Evans—Accreditation.

Senator FIERRAVANTI-WELLS—Thank you, Minister. Has that been retained?

Mr Kukoc—The government is considering a proposal for that at the moment.

Senator FIERRAVANTI-WELLS—We just have to wait for this; it is under consideration. It was one of the things raised—

Senator Chris Evans—We are keen to go down that policy path and work is being done, but we have not implemented it yet. As the department tells me whenever I want to do something, ‘It requires systems changes, Minister.’

Senator FIERRAVANTI-WELLS—That was my first question about the enforcement of the system. That is why I asked as part of my question at the beginning: how is it going to work in practice and how do you enforce the system? What is the average time taken to approve a labour agreement, given the various processes that it needs to go through?

Mr Speldewinde—Can I take that on notice?

Senator FIERRAVANTI-WELLS—Sure.

Mr Speldewinde—Labour agreements span a whole spectrum and some happen a lot more quickly than others.

Senator FIERRAVANTI-WELLS—If need be, I would like a bit of a breakdown of the types. Can you also take on notice how many were approved in 2008-09, since 1 July?

Senator Chris Evans—The point worth making about labour agreements is that last year there was an awful lot of activity, particularly on the part of labour hire firms in the labour agreement area wanting to sponsor lots of workers. I think most of them will not be filling their quotas in the coming year as the demand drops off. They might have authority for 100 places, but whether they will actually have an employer prepared to pay for them, I suspect the answer is no.

Senator FIERRAVANTI-WELLS—I accept that. I do not know whether you have done any projections for approvals. If you have, can you provide them on notice? How many 457 visa applications do you envisage granting in 2008-09? I know we are not quite at the end of the year, but how many do you envisage will be granted compared with last year?

Senator Chris Evans—We actually update the numbers monthly and that information goes up on the web. A monthly report is issued.

Senator FIERRAVANTI-WELLS—I guess in terms of trends—

Senator Chris Evans—We have included some analysis of the trends as well at the front of the report. But Mr Vardos can perhaps give you a quick summary.

Mr Vardos—It is actually difficult to predict what the total 457 visas granted will be simply because they are demand driven. But in terms of the trends, applications have been trending downwards since September 2008. Applications lodged in April 2009 are at their lowest since April 2005. Primary applications lodged in April 2009 were 47 per cent lower than those received in September 2008. Primary applications lodged in April 2009 were 22 per cent lower than March 2009. You can see that the trend is generally downwards. At the end of the day, it is hard to predict what the final number will be at 30 June this year. However, it has been on a downward trend since September.

Senator Chris Evans—2008 was going to be a record year. They were at record numbers and when the economy started to change they came down dramatically, and they are continuing to fall. The scheme had been growing each year for three or four years. Prior to that there were quite large numbers. 2008 was trending to be huge and then the pace fell off. Of course, this calendar year the numbers have been trending seriously down.

Senator BARNETT—When did the drop kick in?

Mr Kukoc—We had a very significant increase in 457 applications and grants until September last year. Since then we have experienced a significant drop in monthly applications. The application number for April is, I believe, 47 per cent lower than in September last year. The grants numbers are 64 per cent less than in September. In terms of year-to-date numbers, that was largely driven by significant increases in the early part of the

financial year until September. But given the significant downturn since September, I expect to have a slightly lower number of 457 grants in 2008-09 than in the previous year.

Senator Chris Evans—That is a bit misleading—I am not saying that the officer is misleading. The grants for the year are misleading; that is why he makes the point that the change started in September-October and before that it was going gangbusters. The two halves of the year are a bit different. The total numbers will be slightly down.

Senator BARNETT—I know that. Thank you for that. Can you give us the numbers for September and April?

Mr Vardos—I am not sure we have those.

Senator BARNETT—Applications and those granted?

Mr Kukoc—Leave it with me and I will come back to you.

Senator BARNETT—Sure.

Mr Vardos—Just to clarify, the percentages I outlined earlier are a combination of both onshore and offshore applications as a total package.

Senator FEENEY—In terms of these applications and the declining demand, do you have any data you can give us about which occupations may have been particularly affected by the decline in demand? Is it in building trades or whatever?

Mr Kukoc—I can take the question on notice and give you the exact numbers. But generally the significant drop in the demand was in ASCO 4 and below occupations.

Senator BARNETT—Which occupations?

Senator FEENEY—ASCO 4 and below, which is the trades at the lower end of the market. There has been a more significant drop in offshore applications. Also, in terms of occupations, industry sectors such as construction have experienced a more significant drop in demand.

Senator Chris Evans—It is not counterintuitive that if you have more workers available in Australia you are more likely to employ locally, and, even if you are going to employ a 457, you are going to try to find them onshore rather than pay the transport costs of bringing from offshore. So the numbers from offshore have gone down more dramatically.

I make the point that all these figures under the new and accountable regime of the new government are actually published monthly and put on the website. They are available with quite a detailed statistical analysis. We have seen a drop-off in trades areas, but I think the demand for nurses has stayed pretty strong. It may have gone off a bit, but it has actually stayed strong because we still have a huge demand for health professionals throughout Australia.

Mr Metcalfe—Mr Vardos can provide you with some year-on-year changes across the occupations that might be of interest.

Senator BARNETT—Thank you for taking that on notice. We are here tomorrow as well, so if those answers could be obtained before we conclude that would be greatly appreciated—perhaps by tomorrow morning if that is possible.

Mr Kukoc—I can give you the figures for grants now. For example, in April 2009, we had 5,032 grants for 457 visas compared to 5,665 grants in September 2008. That is quite a significant drop of 64.1 per cent.

Senator FEENEY—Do you have any statistics in relation to visa holders who are actually in the country and what is happening to them and their numbers? Once again, can you tell us anything about the industry sectors that might be particularly affected?

Mr Kukoc—I will have to get back to you on the information about the industry sectors, but we do have figures for 457 visa holders in Australia. Given the normal time lag between the trend in applications and grants and the stock numbers in the country, we expected stock to start to decrease around 12 months after the start in the decrease in applications and grants. But that apparently occurred much earlier. I will need to take that question on notice. But we have experienced some reduction in the stock number as well.

Senator FEENEY—When was the last time there was a reduction in the stock numbers? In terms of trends, is this an unusual happening?

Mr Vardos—We can look at a time series to give you an indication of the trends. But as the minister indicated earlier, there is a direct correlation between the decline in the economic circumstances domestically and the need for labour.

Senator FEENEY—Quite naturally. Of course, the minister made some remarks about how the scheme was responding to the domestic and international economic environment and, in fact, said that the scheme was responding faster than predicted. I am interested in seeing some numbers that make that point.

Mr Kukoc—Ever since the 457 scheme was implemented in 1996 we have seen a continuous growth in visa applications and grants and in the stock numbers.

Senator FEENEY—So would that mean the decline in April was the first ever decline?

Mr Kukoc—Of the stock?

Senator FEENEY—Yes, of the stock.

Mr Vardos—I do not think we can say that with any degree of confidence, because you get seasonal peaks and troughs as well.

Senator Chris Evans—We will take that on notice.

Mr Vardos—For example, in December last year they dropped significantly because people go home for Christmas, so they were not in the country.

Senator FEENEY—Okay.

Mr Vardos—There are seasonal adjustments.

Mr Kukoc—In terms of the trend numbers, they have been on continuous growth since 1996.

Senator FEENEY—It is certainly the trends that I am interested in.

Mr Kukoc—We will take that question on notice.

Senator FEENEY—Thank you.

Senator BARNETT—On that point, you have indicated the numbers for grants for April and September, but you have not given us the numbers for the applications.

Mr Kukoc—I will need to get back to you.

Senator BARNETT—Okay.

Mr Kukoc—I have the number of grants but not applications.

Senator BARNETT—Thank you.

Senator FIERRAVANTI-WELLS—The annual report has a snapshot of your activities over 2007-08. It has the total of permanent and temporary visa grants at 4.6 million.

Mr Metcalfe—Now you know what those 7,500 people do!

Senator FIERRAVANTI-WELLS—No, I asked this question at a hearing into the department's activities. Given my former activities, I know the movements that happen and what the department does. So 4.6 million visas does not surprise me at all.

Mr Metcalfe—We are all feeling quite tired!

Senator FIERRAVANTI-WELLS—I know, Mr Metcalfe, you sit there every night going through them as part of your quality control. Is the table underneath a breakdown of the various categories?

Mr Metcalfe—That is correct. That 4,637,259 was the total number of visas that we granted, bearing in mind that many of them are multiple re-entry visas and whatever. There were 3.6 million visitor visas, of which 2.7 per cent were ETAs.

Senator FIERRAVANTI-WELLS—Okay.

Mr Metcalfe—That is a further disaggregation. There were 157,000 working holiday visas, 278,000 student visas et cetera.

Senator FEENEY—Please take this on notice if you do not have the answer to hand. Earlier you ran through the 457 scheme measures that were introduced on 1 April. I am interested in your outline of the impacts of those changes. What can you tell us about the impact of those tighter measures on demand and the projected impact on applications and stock? Do you have anything you can give us there?

Mr Kukoc—It is very hard to disaggregate the impact of the government's announced changes, especially as some of them have still not been implemented, and due to the general labour market conditions in the downturn. It is very hard to provide that assessment. I would have thought that at least some messages around the announcements of direction may have had an impact. Also, some measures that have been implemented, like increasing MSL and more regular updates of MSL than was previously the case, have helped the market to react more effectively and to perform more effectively in terms of the impact on the 457 numbers, because any perverse incentives to employ overseas workers over Australian workers have been removed. Most of these measures still have not been implemented. But I would have thought that the messaging and the intention to implement certain directions may have had some impact. But it is very hard to disentangle the labour market.

Senator FEENEY—That is a fair point.

Senator Chris Evans—They all send the message that the 457 scheme is supported by this government but that persons coming into Australia under 457s should come in only if skilled workers are not available in Australia, and that overseas workers should not be cheaper to hire than Australian workers. Therefore, the incentives in the system are for employers to employ Australian workers. Lifting wage rates and some of those other conditions are very much about that.

Senator FEENEY—Find an Aussie first.

Senator Chris Evans—Yes. We were concerned that some of the messages in the previous system actually provided that perverse incentive. It is about addressing that. One of the things about the market rates is ensuring that the MSL is moved, if you like, from what is a very blunt instrument. If the Australian worker is on \$60,000 a year, you do not bring in and pay someone \$44,000 a year to do the same job. You bring them in and then pay them \$60,000 a year. The problem with the MSL is that it only set a minimum, which was fine at the level where workers were being paid \$40,000 or less. However, for those on \$60,000 or \$70,000 there was nothing to prevent an employer undercutting an Australian worker. That is what market rates should fix.

Senator FEENEY—When you took us through the seven major changes announced on 1 April, I do not recall whether you talked about when they were being implemented.

Mr Kukoc—Yes, we did.

Senator FIERRAVANTI-WELLS—We do not have the regulations yet.

Senator FEENEY—I am just attesting to the fact that he is undertaking—

Senator FIERRAVANTI-WELLS—I am going to get a special delivery.

Senator Chris Evans—And I have given them to you through your spokesperson in draft form to review, Senator. I am waiting for your feedback. You had better be quick.

Senator FEENEY—It is open and transparent government.

Senator Chris Evans—I made a promise and I delivered.

Mr Kukoc—Before we finish with 457, I would like to come back with information on the application numbers. The applications in April 2009 were 3,040, compared to September last year at 5,790, which makes around 47 per cent, I believe. Also, I would like to correct myself for the record on the previous question about the contributory parents. The waiting period is 1.5 to two years at present, not nine months as I advised. I apologise for that. However, we expect that, with the increase of 1,000 places in next year's migration program for contributory parents, that waiting period will drop to nine months.

Senator FIERRAVANTI-WELLS—I refer back to a question I asked earlier about the number of visas granted and referred to the figure of 4.6 million. Do you have a figure for the number of actual warm bodies, if I can put it that way? Where can I find that?

Mr Metcalfe—That is visas and, of course, there are many visas that allow multiple entry, so they will be used more than once. A permanent migrant visa or a resident return visa obviously allows multiple re-entries. Of course, there are visas that are in existence from previous years that are valid for some years. So the actual number of persons crossing the

Australian border is further down that list on the border security, passenger and crew arrivals and departures of 25,700,000. That will show you that that many people—Australians and foreigners—crossed the Australian border. But you halve it because a lot of people who arrive depart and a lot of people who depart come back. That will show you the numbers of people moving. A nice way to say it is that about one person every second crosses the border.

Senator FIERRAVANTI-WELLS—How many of those are non-Australians?

Mr Metcalfe—Roughly half. I will see if I can give you a better figure. I will see if my colleagues can find a better figure. However, it is roughly half Australians and half foreign nationals who travel.

Senator BARNETT—When you say ‘cross the border’, is that incoming?

Mr Metcalfe—That is both arrivals and departures. There were 25,700,000 movements across the border.

Senator Chris Evans—Coming in through immigration.

Senator BARNETT—What did you say?

Mr Metcalfe—One person per second. No wonder we are feeling tired.

Senator Chris Evans—The numbers are quite remarkable. When I first heard them I could not believe they were so large.

Senator BARNETT—What page is that?

Mr Metcalfe—That is just in some summary information in which we try to explain all the things we do. It is on page 2 of the annual report.

Senator BARNETT—Thank you.

Senator FIERRAVANTI-WELLS—When he was previously focused on it, it was in the context that when things do happen in the department one appreciates why they did happen—that is, because a significant number of movements, visas and things actually do happen in immigration. But we will not go there.

Senator Chris Evans—Can you imagine what it would be like if we were still doing it in the old way, stamping things and having a paper based system?

Senator FIERRAVANTI-WELLS—Since you have raised that, where are we up to with the Systems for People IT program? I am going to be asking this every time until you say to me that it is finally implemented.

Mr Metcalfe—As I said in my opening comments, we used to report separately on Systems for People, but now because of new reporting requirements it actually permeates everything. I will refer to Mr Correll, the Deputy Secretary and Chief Information Officer, who can provide you with an update on where we are with the releases under the program, bearing in mind that the program was funded in the 2006-07 budget, from memory. We are now just under three years in and it is a four-year program. A lot has been achieved. I mentioned earlier in our technology area that we won a major award for our e-visitor program. We actually won the first prize in the e-government awards for programs that appear on the front page of our website called the Visa Wizard and the Citizenship Wizard. They are

very smart technology in which you can answer a series of questions. They will guide you through to the type of visa that you should apply for. The technology allows you to navigate the regulations and to arrive at an answer. If you are a certain age and coming from a certain country for a holiday for a certain period of time, then it will direct you to an ETA, an e-visitor visa. Where it is possible to apply online, it will take you through to that and allow you to do so. It is a terrific example of automated decision making and the connections between technology and the legal process. Although we have a very complex system with many different visa subclasses and fees in different currencies and entitlements depending on age, nationality or purpose of travel, the Visa Wizard will guide you through. I encourage you to use it, have a look and play with it. It is a great bit of technology.

Senator FIERRAVANTI-WELLS—If I can use it—

Senator Chris Evans—Have a child alongside you and you will be fine.

Mr Metcalfe—We certainly encourage your electorate staff, if they are helping constituents, to say, ‘Okay, let’s use this,’ and it will take them to the place they need to be. Our own staff use it at our client contact points and show clients how to use it. It will help them to navigate the maze of regulations and come up with an answer. That is just one thing which we have achieved and which has been recognised. Mr Correll is still walking very tall as a result of that. There are many other things that Systems for People is intended to do. It has achieved many things. I think it is fair to say, as I have said before, that in any massive program like this, with so many complex systems sitting in our portfolio, there were bound to be some areas where we did not perform as well as we had hoped and where we have had to do further work. There are some areas where we have been very pleased with the results. This is an ongoing program. I am really pleased with the success that we have achieved in the last year or so as we have had a more mature management of the program. We are now in the final several releases. Mr Correll can possibly give a little more detail.

Mr Correll—The next release is release 9 out of an overall program of 12 releases. So we are three-quarters of the way through the program now. It is due to be completed in June-July 2010. Release 9 will largely complete our work in the compliance, case management and detention area. The major objective there has been to introduce far more effective consistency in our business processes, far stronger quality control in process and better recordkeeping, thereby eliminating some of the high levels of risks in some of the activities that were identified in the Palmer report. That release will also be implementing new detention directions policy reform changes. It represents a massive milestone in that area, because those policy changes are being implemented in the new portal environment only, not in the old systems. For the first time under the program we will be waving goodbye to old systems.

Senator FIERRAVANTI-WELLS—These are the 26 program initiatives that I keep going on about—changes to the new detention values.

Mr Correll—One of those 26 relates to the computer systems changes. They will go in in June. They are on track to successfully deploy at that time. The last three releases—releases 10, 11 and 12—will then focus to a great extent on our visa-processing work and, in particular, introduce what we call the generic visa processing concept. That will introduce globally consistent business processes, it will draw on the business rules engine, which is

already being used for the Visa Wizard and the Citizenship Wizard, and it will lead us to a position by July 2009 where we will be reaching an end state architectural position with that technology. That in turn enables us to progressively retire some, though not all, of our existing legacy systems.

Senator FIERRAVANTI-WELLS—In other words, it will also facilitate your being able to better analyse or take at any given time a snapshot of who is in the country, who is eligible for what and so on. I assume it will enable you to do that a lot more easily than you have in the past.

Mr Correll—It does a number of things. It gives us much greater consistency in business process. It gives us much greater and improved visibility of all the department's transactions with an individual client. For example, the client search tool now does a search through over 100 million records whenever it searches. In the past a much smaller number of records were being searched and to get a complete view staff had to do three, four or five different searches across different systems. It is already at that point. But that will continue, so by the time we get to the end of the program there will be a complete search facility across the total records database.

In the area of information, because the whole end-to-end work process is being supported through the technology, the department will move to a much more information rich position and therefore will be able to use that information in areas like risk management to a much greater degree and in supporting overall operations. They will have a much clearer picture of where things are at. Even today, a case manager working in the department has a complete view. If a transaction is happening somewhere else in the organisation in relation to a client under their control, that information will flow through to the case manager.

Senator FIERRAVANTI-WELLS—So you can now work out how many non-residents who have been in Australia have moved on or back overseas with that sort of program?

Mr Correll—Not necessarily. That would depend on whether that data forms part of the processing systems and whether the data is captured. If the data is captured, it will go into a data warehouse and will be able to be accessed very quickly.

Senator FIERRAVANTI-WELLS—This is probably a question for you Mr Metcalfe. How many non-residents received a \$900 cheque as part of the stimulus package that was intended to be spent in Australia, and how many of those cheques went overseas?

Mr Metcalfe—I have no information on that. I suggest you a raise that in the FaHCSIA estimates. We were involved in no way in the payment of that measure and I have no information.

Senator FIERRAVANTI-WELLS—Did FaHCSIA at any time approach DIAC asking for any information in relation to people who are non-residents and who are residing or have left Australia in regard to any payments to do with that stimulus package? In other words, did they approach you for any information or a breakdown on that?

Mr Metcalfe—I am not aware of that. I will take that on notice.

Senator FIERRAVANTI-WELLS—That is the reason I asked Mr Correll the question I did, apart from knowing about Systems for People. If your information systems are very good

now—that is, a lot better and able to elicit a lot more information—one would have thought that if FaHCSIA had approached you that sort of information could have been made available to them.

Mr Metcalfe—As I said, I will take on notice whether there has been contact. I understand from advice I have just received that the issue of what constitutes a resident and non-resident in terms of entitlement for pensions and benefits is a legal concept and a term which may be different from how we regard permanent residents and whether they are people residing in Australia or not. There may well be different definitional issues between the various portfolios. But, as I said, I will have to check on those issues and I will take that on notice.

Mr Correll—We are not qualified to comment at all on the position of those payments, that is a matter for FaHCSIA or Centrelink. However, one of the key projects that was recently very successfully implemented involved Centrelink and our department. A major interface and exchange of data was developed to assist Centrelink in its overall payment regime for those very purposes. We understand that that project has received great accolades. Indeed, the head of Centrelink recently wrote to our secretary congratulating the department on the success of that project. That has certainly opened up a very strong and improved flow of information between the two agencies.

Senator FIERRAVANTI-WELLS—I would appreciate any statistics that you do have. They may have applauded the system, but they did not use it. If they had used it they may not have paid some people overseas \$900 from the stimulus package.

Senator Chris Evans—That is a political argument.

Senator FIERRAVANTI-WELLS—It is a political comment.

Senator Chris Evans—But those payments were based on FaHCSIA or Centrelink records about people receiving benefits or pensions, taxation records et cetera. They were not in any way based on immigration records. It would not be at all appropriate to use the immigration records because we are measuring different things. Certainly, I will be at FaHCSIA, so we can have a chat about it then. But in terms of this department, it is nothing to do with us. We could not have fixed it for them. If your suggestion is that if they had come to us we could have somehow fixed the problem, the answer is no.

Senator FIERRAVANTI-WELLS—If they had bothered to get information about non-residents who had visas and were now overseas they may not have received it. The intention of your stimulus package was for the \$900 to be spent in Australia. It was not to be sent overseas or to be spent overseas. That is the point I am making. I appreciate that you are not the appropriate department. I am simply making the comment.

Senator Chris Evans—That is your point. That is a political argument and I am happy to have it with you. But if you are asking if the government had approached Immigration to deal with what you say is a public policy problem would the department have been able to help, I think the answer is no.

Mr Metcalfe—That is right. Our records would indicate whether a person was in Australia or not. They would not indicate whether they were overseas for a week on holiday, whether they had permanently departed or whether there was something in between. Our records

would actually need to take you to a case-by-case examination of the intentions indicated by the person on their outgoing passenger card, which is clearly an impossible task. For that reason, the relevant department or agency would have relied on other methods in terms of determining—

Senator Chris Evans—Such as tax records.

Senator FIERRAVANTI-WELLS—But they could have asked you.

Mr Metcalfe—Because I was simply not familiar with the issue, I said that you would need to pursue that with FaHCSIA. It could be FaHCSIA or the Human Services portfolio, of which Centrelink is an agency.

Senator Chris Evans—FaHCSIA is more the policy centre for the administration.

Senator FIERRAVANTI-WELLS—Thank you.

Senator FIFIELD—Minister and Mr Metcalfe, you would certainly be well aware of the number of high profile cases recently of people with disabilities who have been denied the immigration outcomes they were seeking. That was particularly highlighted by the case of Dr Moeller's son, who had Down syndrome. I am also aware of the review that the House Committee is undertaking from the reference of yourself and Parliamentary Secretary Shorten. I want to get a handle on the prevalence of these sorts of cases. Mr Vardos is probably the best officer to direct questions to.

Senator Chris Evans—He is the one with public notoriety from defending the Dr Moeller decision.

Senator FIFIELD—That is right. How many people apply for permanent residency in Australia, not specifically people with a medical conditions or a disability, just overall?

Mr Vardos—I could not put my finger on a number to tell you how many permanent residence applications there are in any given year at this moment. I will have to take that on notice unless one of my colleagues has that table handy. The program is announced by the minister and each year there is a ceiling. There are more applicants than there are visas granted.

Senator FIFIELD—Obviously.

Mr Vardos—I cannot put my finger on how many applications we might get.

Senator FIFIELD—I am sure you will provide that to the committee. Can you advise how many are refused permanent residency on the basis of failing to satisfy the health requirement?

Mr Vardos—I do have a brief on that. In the 2007-08 program year, the number who did not meet the health requirement totalled 54. In 2008-09, to 31 March, it totalled 57.

Senator FIFIELD—That is failure to meet the health requirement?

Mr Vardos—Yes.

Senator FIFIELD—Are you able to break those two numbers down further?

Mr Vardos—My colleague tells me I have made an error in my interpretation. I might have to take that on notice to give you a correct figure.

Senator FIFIELD—Is it fair to say that it is something of that order of magnitude; that is, we are talking in the tens rather than the hundreds?

Mr Vardos—I mentioned numbers in relation to visa classes for which we will be looking at introducing a health waiver where one does not currently exist. It is possible that overall the number not meeting the health requirement could be in the tens or in excess of 100, but it is not in the thousands.

Senator Chris Evans—I have seen those numbers before and Mr Vardos is right; that is not the number you are asking for. I think we ought to take that on notice, but we may be able to get it to you shortly. You are after the number of applicants refused on health grounds.

Senator FIFIELD—And if that can be further broken down into those who are refused on the basis of having a disability as opposed to an illness.

Senator Chris Evans—Mr Vardos might be able to take you through that, but I am not sure that we break it down in that sense, in that there is not an effective disability clause.

Senator FIFIELD—You either meet the health requirement or you do not.

Senator Chris Evans—Yes, and it is often misrepresented as being a disability clause when in fact it is a health clause.

Mr Kukoc—We will take it on notice as Mr Vardos has said. But I am pretty sure that we do not break down refusals on the basis of type of illness or disability.

Mr Vardos—The two things that might lead to refusal are having a disease that is a risk to public health, and tuberculosis is the issue there. Normally where tuberculosis exists there would be a possibility for treatment to bring it under control. That might result in someone then meeting the health requirement. The other area—and this is where there can be an intersection with disability—is costs. Another area that leads to refusal is where if a person came to Australia they would impose significant costs on the system. There is a capacity in many visa classes to waive the health requirement; in other words, having acknowledged the cost, choosing to waive the health requirement. In other circumstances—including some of the celebrity cases we have had over the past year—there is no actual capacity within the regulations for the department to waive the health requirement. The only way for those cases to be dealt with is for them to go to the Minister. However, the department has been working towards opening up that area to departmental decision making.

Mr Vardos—The only thing I would add is that if it is a condition that is likely to prejudice access by Australians to health care and community services that may be in short supply—

Senator Chris Evans—The classic there is a kidney transplant, where we have a waiting lists of Australians and that would affect the supply.

Senator FIFIELD—Sure. Mr Vardos, you mentioned that work is being undertaken to provide the capacity for a waiver where that does not currently exist. Can you take us through that a little more?

Mr Vardos—Only certain visa classes have a waiver available to them if someone fails the health requirement. The one that immediately comes to mind is if you are in refugee or humanitarian circumstances. It does not readily apply to skilled visa categories. That is where

we had the issue with Dr Moeller. He was applying for a skilled visa and there was no waiver available. That case has focused us on the issue of looking at what would be reasonable in terms of creating a waiver available to a decision maker rather than having an applicant going all the way through the appeal process and ultimately ending up at the Minister's desk asking for a ministerial intervention.

Senator Chris Evans—We have had negotiations with the states on the waiver issue.

Mr Vardos—We are negotiating with the states. Again, there is a financial threshold, which at the moment might surprise you—it is only \$21,000. A state or territory's reaction is not binding on the Commonwealth, but it is something we would like to do in concert. We are consulting with the state and territory governments to increase that threshold. It is a work in progress.

Senator FIFIELD—Is that just in order to be kind and thoughtful to the state and territory governments?

Mr Vardos—It is recognition of the fact that ultimately if someone has an illness or a condition they will end up in a state or territory health system to be dealt with. The states have a significant stake in this issue.

Senator Chris Evans—I do not want to focus on Dr Moeller's case, but if his son needed an aid at school that would be a cost that would fall on the state government. Often the costs of these decisions are not directly carried by the Commonwealth, although we might be subsidising health and education costs. But the principle is that you consult with the states, because they are going bear the burden, if there is a burden, in terms of health or other support or community needs.

Senator FIFIELD—Mr Vardos, you mentioned that Dr Moeller and his son were knocked back because there was no waiver possible in that skilled migration category. Dr Moeller's son was clearly not coming here as a skilled migrant, although his father was. That is just a function of the fact that as a dependant you are subject to the visa or skill category—

Mr Vardos—That is exactly the case. The dependants of the principal applicant are included in the consideration of meeting the health requirement.

Senator FIFIELD—Minister, by the sound of things, you are not waiting for the outcome of the House of Representatives inquiry before taking action to alleviate the situation.

Senator Chris Evans—I made an announcement at the time that I would look to extend those waivers through negotiations with the states. I think I have approved two or three states already and the others are close to signing. That is my information. That allows us to consult with them on the waiver on those small number of categories. I think we have regulated two or three states.

Mr Vardos—The ACT, Victoria and Western Australia have formally agreed to participate. The consultations are based around an estimated threshold of \$100,000. That is what we are negotiating around. The arrangements came into effect on 28 March for the ACT and Victoria and 15 May for Western Australia. The consultation is continuing with the other jurisdictions.

Senator Chris Evans—Not putting too fine a point on it, I said that if I have one I will put it through rather than wait for all seven to come to a consensus. We have three through and

the others are getting close. I think the previous government found when it had been in this field that the process went on for five or six years. Like many of the commonwealth-state arrangements, it basically just atrophied. I think there are three on board and the others will come on board in the next little while. That at least gives us some capacity to deal with those visa classes, but it does not solve the problem.

I make a point that is important but not widely understood. I get a lot of applications for ministerial intervention in this area from people who have been refused in accordance with the law. This is not about the department being heartless. Mr Vardos had to go out there and be the public face of the department in that particular case.

Senator FIFIELD—A charming face.

Senator Chris Evans—I can assure you that he is a caring and compassionate man, but he was not portrayed that way at the time. But it is important to understand that, first, it is a health issue, not so much a disability issue, but clearly it impacts on people with a disability. The balance for us in a public policy sense—and this is what I hope the parliamentary committee comes to terms with, bearing in mind that there has been a lot of talk about push and pull factors—is that we have one of the best health systems in the world. For all our failings in terms of community services and health services, we have a very attractive health and community services structure, framework and access in this country. One of the things you confront in dealing with the public policy area is that probably 95 per cent or more of people with health and disability issues in the world would get better treatment in Australia than they would where they are living now.

What the committee will have to deal with is exploring that tension between wanting to treat people in a proper and fair way and not discriminating against people because of disability, as well as deal with the fact that we are a very attractive place for access to health and other community services. That is why I am happy for the committee to get stuck into the work—because there is no easy answer. A good airing of those issues in a debate on the public policy options would be helpful. I know that previous ministers have had to deal with this, and it is not easy. It is an important issue. I just put on the record something that is not acknowledged by some groups when they talk or think about this. As I say, I hope the parliamentary committee will do a thorough job on those issues, as it is part of their terms of reference.

Senator FIFIELD—Sure. Thank you for that. In the case of Dr Moeller's son, I think Mr Vardos mentioned that \$21,000 was the threshold for medical costs.

Mr Vardos—We are negotiating a new threshold of \$100,000.

Senator FIFIELD—Yes, but at the moment it is \$21,000.

Mr Vardos—Yes, \$21,000.

Senator FIFIELD—At the moment, it is \$21,000.

Senator Chris Evans—That is a different issue, is it not? It is a question of when the medical officer has to make the decision.

Mr Vardos—Yes, 'does not meet the threshold'.

Senator FIFIELD—In the case of Dr Moeller's son, was that \$21,000 threshold relevant?

Senator Chris Evans—I think someone might take you through how the health waiver works in the officer's decision making. We are confusing two issues here, in a sense. Maybe Mr Kennedy, who knows about it, might come to the table and just take you through what the department are required to do if they think there is a health cost associated with an applicant or a member of an applicant's family.

Mr Kennedy—Senator, the three elements of the health requirement have been described in earlier responses. The \$21,000 threshold is what is classified as the 'does not meet' threshold. If the health costs or community services costs related to a health condition exceed \$21,000, a medical officer will find that the applicant 'does not meet'. The \$100,000 figure is the figure at which we are proposing to refer to the states items that might attract a waiver.

Senator Chris Evans—Could you explain why the threshold is \$21,000 and how that is assessed by the medical officer? That is the key issue. It is actually not a departmental decision.

Mr Kennedy—The \$21,000 is the threshold that the medical officer of the Commonwealth uses to assess eligibility in terms of whether the applicant meets or does not meet the requirement. The medical officer of the Commonwealth considers a range of factors, including health costs and community support costs and, if the medical officer of the Commonwealth assesses those costs as totalling more than \$21,000, he will declare that the applicant 'does not meet'. In that circumstance our visa decision maker must accept the medical officer of the Commonwealth's decision and must refuse the visa.

Senator FIFIELD—Is that \$21,000 a figure that has been negotiated or agreed with the states?

Mr Kennedy—Sorry?

Senator FIFIELD—That \$21,000 is agreed—

Mr Kennedy—No. The \$21,000 is the 'does not meet' threshold.

Senator FIFIELD—It is just stipulated.

Mr Kennedy—Yes.

Senator Chris Evans—I think it would be worthwhile your explaining that this is not an assessment of the individual's case, because I think that is the other issue here.

Mr Kennedy—Yes. The courts have held that the medical officer has to assess the situation on the basis of what is called a hypothetical person, not the individual circumstances. They have to assess the circumstances as if they apply to a hypothetical person. A medical officer is not able to take into account the individual circumstances of the individual applicants. In the Moeller case, as I think the minister has already mentioned, the other factors that might have been weighed in, such as whether the family was of value to Australia, were not able to be taken into account.

Senator Chris Evans—But also things are taken into account like whether they have private health insurance or whether they have a milder form of whatever the condition is. Effectively, it is not an individual assessment. That is the key issue. I do not think we ought

focus on Dr Moeller all the time. When they make an assessment about somebody, it is more a generic costs argument rather than saying, 'We have examined person A and we think they're going to cost \$300,000 because they'll need this, this and this.' It is more of a generic assessment which is applied against that person, and that is where the \$21,000 threshold kicks in.

Effectively, what that has meant is that the department has lacked any discretion. Even if a decision maker says, as the MRT did in Dr Moeller's case, that they thought there was a strong argument, given all the other issues at stake, the department and the MRT have no power. Under our perverse system, the only one who does have the power is the minister in any individual case. But these are the sorts of issues we want to explore through a committee because that has been a longstanding system, as I understand it—Mr Kennedy?

Mr Kennedy—The health requirement has been in place in its current form since the 1990s.

Senator FIFIELD—Sure.

Mr Kennedy—Mr Hughes just reminded me that when I say a medical officer finds that somebody does not meet, there is no discretion in the department. There of course is discretion when a waiver applies. Waivers were spoken about earlier. Generally, waivers apply in the family stream.

Senator FIFIELD—Sure. Thank for that. In the case of Dr Abdi, a case with which you and the minister would be well acquainted, could you take me through the relevant officer and what the situation was there. Dr Abdi had been knocked back by the department in this instance.

Mr Kennedy—As I understand it, Dr Abdi did not apply. He did not have the relevant visa. I think he had taken advice that he would not meet the particular skilled visa that he was applying for and therefore did not apply for that skilled visa.

Senator FIFIELD—Did he apply for a protection visa?

Senator Chris Evans—He applied for protection, was found not to be under Australia's protection, and then went to the RRT and lost at the RRT. I do not want to go into the details of his case, but this has been in the press. Then the debate came to be about the question of his disability or his blindness, whereas in fact that had not been considered. One of the issues I was going to raise earlier is that one of the effects of the health test is that of course there is a deterrence value: if you know you are not going to meet it, do you apply for a visa? Dr Moeller was in the country on a 457, which had a lower threshold.

One of the issues for us is that different visas have different thresholds in terms of health testing. If you think about the recent debates, there have been debates about people who are already in the country. We tend not to get into a debate about people who are not in the country because they do not get past the first hurdle, if you like. But, with increasingly large numbers of people coming in temporarily on work, student or other visas, we are seeing an increase in debate around these issues. Dr Moeller was here on a 457; Dr Abdi was here originally on a student visa. So you have people already in the country and then it becomes an issue when they are here on a valid visa and they want to move to a permanent visa. I do not

want to say anything more about that case because his file is actually before me at the moment, Senator.

Senator FIFIELD—Sure. I appreciate that. I have just two more questions before I yield. I see that the Disability Discrimination Act does not apply to the department of immigration.

Mr Metcalfe—That is correct, Senator.

Senator FIFIELD—Okay. I am not necessarily contending that it should, because I guess the very nature of a lot of decisions by the department are discriminatory in a very neutral sense, in that you are discriminating on the basis of one criterion or another. But does the Anti-Discrimination Act as a whole not apply to the department?

Mr Metcalfe—I do not think so. I will check that, Senator. I think the answer is that we are not exempt from the act. Certainly we are in regular contact with the Human Rights Commission on various matters, but regarding that straight legal question, I must say that I have not looked at that recently. I will check and let you know.

Senator FIFIELD—If you could, please take on notice what elements of the relevant Commonwealth discrimination law the department is exempt from.

Mr Metcalfe—Perhaps if I take that slightly wider, I will look at what aspects of discrimination legislation apply or do not apply to the portfolio.

Senator FIFIELD—That is right. Include it, but do not limit it to disability discrimination legislation. That would be useful.

Mr Metcalfe—Yes.

CHAIR—Just to clarify that, Mr Metcalfe, you mean the programs in the portfolio, as opposed to the department.

Mr Metcalfe—Yes, probably most correctly to decisions made under legislation.

Senator FIFIELD—The decision-making process.

CHAIR—As long as we are clear.

Senator Chris Evans—Not in terms of the treatment of our staff?

Senator FIFIELD—No.

Senator Chris Evans—As far as I know, anyway!

Mr Metcalfe—That is right.

Senator FIFIELD—No, in relation to the decision-making process.

Mr Metcalfe—That is right.

CHAIR—We are just going to try to narrow the investigation.

Mr Metcalfe—The visa decision making.

Senator FIFIELD—The visa decision making, that is right.

Mr Metcalfe—Thank you, Senator.

Senator FIFIELD—Clearly there are a number of cases in which ministerial intervention results are initially brought to the attention of the minister of the day by virtue of media

coverage. I am wondering—in the interim, while the House committee is undertaking its work and while your department is looking at the issue of the application of waivers, what processes are in place to ensure that cases similar to the ones that we have discussed today do not require media coverage before sensitive and appropriate consideration is given?

Senator Chris Evans—Senator, it is a good question. I suppose the answer is this: first of all, even in a couple of cases we have discussed, they were not actually generated by media coverage. They had a valid ministerial intervention request in the system. In Dr Moeller's case, I think there was some communication breakdown and it became a media story, but it was actually being processed. There was some coverage of another case in Perth where there was a press story that was highly critical of our failure to deal with the matter, but I had actually already granted the visa subject to health and security checks.

Most of them do not hit the press. There is a reasonable number, not a large number but a consistent flow, of ministerial intervention requests involving these sorts of issues. Many are at quite low-cost levels, but some are much higher. Given the number of people onshore on temporary visas, I think the numbers are increasing or are likely to increase. As I say, ministerial intervention application is available to people, and they come through in the normal course of events. I would say that the vast majority of the ones I have dealt with have not received any media coverage, but equally I would say that I have not approved them all either.

Senator FIFIELD—Is there an issue of ensuring adequate communication with people who have requests in the system?

Senator Chris Evans—No. I think in one of the cases we talked about, Dr Moeller's case, there was a communication breakdown and we bore some responsibility for that. In Dr Abdi's case, I think his advocates highlighted the problem he would have, but had not yet hit, if you like, so there was something like a pre-emptive discussion of the fact that they knew under the current rules that he would have a problem in terms of another visa application. So I do not think that was a communication problem, as it were. Generally, they go to MI then, and the department would assess them against the minister's guidelines for referral to me.

But they are coming through and I do not know whether the department has figures on the numbers that are MI or come to me for ministerial intervention, but I suspect they are growing as the number of people onshore who do not have permanent visas has grown. The thing about the way the migration program is changing is that you would expect the numbers to increase.

Senator FIFIELD—Sure. Thank you, Chair. Just in conclusion, Mr Vardos, you are taking on notice the number of people who are refused visas because they fail to satisfy the health requirement.

Mr Vardos—Yes, Senator.

Senator FIFIELD—And also whether there is the capacity to break that down further—whether the department does record in any way those decisions in further detail.

Mr Vardos—We will be able to provide that information before this committee rises tomorrow.

Senator FIFIELD—Yes.

Mr Vardos—I would like to apologise for the confusion of my earlier answers.

Senator FIFIELD—That is fine, thank you.

Senator Chris Evans—Senator, I just stress again that I think the deterrence effect would be high, so whatever the numbers are—I would be interested myself in the numbers of actual formal referrals—if you go the department’s portal and work your way through the system—

Mr Metcalfe—Yes.

Senator Chris Evans—It will tell you there is a medical test, and whether or not you are likely to pass it.

Senator FIFIELD—What? There is a bit of a self-assessment opportunity there?

Senator Chris Evans—Yes. People will seek advice and are told that if you have a serious medical condition, you are unlikely to qualify. I make the point only to say that the refusals perhaps will not be a true reflection of those who would have sought a visa, if they did not know the rules.

Senator FIFIELD—Sure. I appreciate that. Thank you, Chair.

Senator BARNETT—I think my question is in this area, but it might be slightly across portfolios as well. It follows an answer to a question on notice I put in February regarding your communications program. You have allocated to the Australia Needs Skills expo program \$784,536, and it says ‘media advertisement to be placed in the United Kingdom’. I was wondering whether you can provide a little more detail about that and specifically why it is limited only to the United Kingdom and whether you are looking at other countries as well.

Mr Vardos—Senator, we have been involved in expos, both onshore and offshore, for quite some time now. But for a range of reasons, including the economic decline and budget circumstances, we are participating only in one this time, which is the one you have identified. The opportunity arose to link it into the G’day Australia campaign, or some broader campaign that is being run in the UK at the time, so actually it has a multiplier effect. We get a greater coverage by being involved in a bigger activity.

It is a very highly targeted exercise. People who have an interest are pre-screened to make sure that the jobs in which they are interested relate to the skills that we are interested in, so it is not an open the doors, Boxing Day sale for everybody who wants to walk in. It is a highly targeted by invitation exercise. State and territory governments are invited to participate. The agents general in London are actively being engaged by our senior posted offer in London, as are employers. Off the top of my head I cannot recall who has signed up, but it is a smaller scale in activity than it has been in past years. It is only in the UK this year. Apart from the fact that we can link it into another activity, the UK is also currently still our largest source of skilled migrants.

Senator BARNETT—When is it?

Mr Vardos—The third or fourth week of June.

Senator BARNETT—Next month.

Senator Chris Evans—Senator Barnett, can I just say that the original proposition about expos was for a more comprehensive program. They have been run in various sizes and stages over the year, but given the changed economic circumstances we took a decision not to invest in too many this year. In fact, that is the only one we will be involved in because our demand for labour and our search for skills was being reduced. But I think there is an attempt in this one to focus on the skills we need. I think there is a focus on medical skills. But if times had been different, we might have done two or three in other countries as well. Effectively we cut our cloth according to the circumstances.

Senator BARNETT—Yes, sure. I wonder if you could take on notice and provide details of last year's expos, such as where they were and the cost?

Mr Vardos—Last year's expos, yes, Senator.

Senator BARNETT—Likewise I notice in your planned campaigns for the future it says \$800,000 approximately and that where the planned advertisement is to be placed is unknown. Does that mean we are anticipating another expo of this type in the UK next year?

Mr Vardos—Not at this point, Senator. When we provided the entries for the annual report, the circumstances were a little bit different. As the minister has said, we clawed back and we actually considered cancelling participation because of the decline. However, we had entered into certain financial commitments with the venue and all the rest of it, so there would have been a cost of withdrawing.

Senator BARNETT—But there is a plan for an \$800,000 spend and it says approximately next year. By approximately, I assume that is for next financial year on an Australia Needs Skills expo. Do you have a view on where that should be and where that money will be spent?

Mr Vardos—No. I do not have the data with me.

Senator BARNETT—You can take it on notice.

Mr Vardos—I will.

Senator Chris Evans—But I do not recall signing off on a particular project.

Mr Vardos—No, you have not.

Senator Chris Evans—I suspect it is a budgeted amount to deal with plans.

Senator BARNETT—Right.

Senator Chris Evans—But we will take it on notice.

Senator BARNETT—That is fine. I wonder if you could take on notice, to assist and inform us in our understanding of this expo in the UK, the key performance indicators and what the inputs and the outputs are. You probably have some documents somewhere that can summarise that for us.

Mr Vardos—We will attempt to do so. One of the challenges, of course, is that you might get a lot of interest and, as carefully as you select participants to target certain skills, it is the follow-up and how many of them actually follow up with a visa application.

Senator BARNETT—But with any injection of funds of this order you would need to have some key performance indicators. I am sure you have some, so we would like to know what they are—

Mr Vardos—Yes, we will.

Senator BARNETT—and whether we are getting a return on funds invested.

Senator Chris Evans—There was a large number of them run under the previous government, Senator, so we will give you the criteria that were used then and that we used on this one. This is relatively small compared to some of the earlier periods. But, as I say, we have cut our cloth according to the grain to recognise the changed circumstances.

Senator BARNETT—Sure. Thank you.

Senator Chris Evans—The other part of that is of course to say that there are a lot of places now whose economy is much worse than ours. We actually do not have to go and advertise.

Mr Metcalfe—Yes, absolutely.

Senator Chris Evans—In somewhere like Ireland, we have seen large numbers of people applying for tourist visas and working holiday visas et cetera, and there are others whose economy went south before ours and in a much larger way. Senator, it seems we do not need to advertise nearly as much as we might have when other economies were going very strongly.

Senator BARNETT—I do not want to detain the committee too long but, likewise, the two next items underneath the UK spend are the eVisitors campaign and the Working Holiday Maker campaign for about \$28,000 and then \$243,000 respectively. If you can take that on notice and provide further and better particulars regarding those campaigns, that would be good.

Mr Vardos—Yes.

Senator BARNETT—Likewise, on the proposed campaigns, the US Work and Holiday promotions campaign, the temporary skilled reform project and the working holiday promotions, could you provide further and better particulars regarding those items.

Mr Vardos—We will.

Senator BARNETT—Thank you.

CHAIR—Do we have other questions for this area?

Senator FEENEY—I have some questions about temporary protection visas.

Mr Metcalfe—I think that is probably straying across into the next outcome, Senator.

Senator FEENEY—Outcome 2?

Mr Metcalfe—Outcome 2.

Senator FEENEY—So be it.

CHAIR—Are there any more questions for outcome 1?

Mr Metcalfe—Earlier I think I was in the process of suggesting to Senator Feeney that Mr Speldewinde would provide some more information about changes in occupations around—

Senator FEENEY—457s?

Mr Metcalfe—Yes, 457s, and we did not get to that. We could do that now, if that would be suitable.

Senator FEENEY—Please.

Mr Speldewinde—I have data with me on the changes to the top 10 occupations, comparing the period July to April 2007-08 to July to April 2008-09.

Mr Metcalfe—We could table this.

Mr Speldewinde—We could table this.

Senator FEENEY—Yes, that would spare me a little scribbling. That is good.

Senator Chris Evans—Paint him a picture and then we will table it.

Mr Speldewinde—Okay. The most substantial increase that has occurred in that period is around the occupation of registered nurse, which is showing a 21.7 per cent increase.

Senator FEENEY—Just refresh my memory: that is an increase in a decreased overall pool?

Mr Speldewinde—That is correct.

Senator FEENEY—Does the table you intend to table provide me with raw numbers as well as statistics?

Mr Speldewinde—I am sorry, Senator?

Senator FEENEY—Does the table you are about to table have raw numbers as well as percentage?

Mr Speldewinde—It does.

Senator FEENEY—Great. Please keep going.

Mr Speldewinde—For argument's sake, with the registered nurse, for the period July to April 2007-08, we granted 2,660 457 visas to registered nurses. For the corresponding period in 2008-09, we granted 3,240 visas. That is the major increase. Major decreases have occurred in the area of computing professionals, which is showing a 16.3 per cent decrease. In 2007-08, we granted 3,850 visas. In the corresponding period in 2008-09, we granted 3,230 visas. There have been a number of other increases—

Senator FEENEY—I was more interested in the decreases. I wonder if you could just jump to telling me what is happening in some of the trades and building areas?

Mr Speldewinde—Okay. The trades themselves are not showing in the top 10 occupations.

Senator FEENEY—That is a splendid thing.

Senator Chris Evans—As I said when I made the point earlier, Senator, I think we will table the annual report for you and there are monthly updates. But, despite the public debate about the trades level, the focus on the trades and where we have seen some of the real

problems with exploitation, it is a small part of the program. I do not know what number of visas we have issued in the trades area.

Senator FEENEY—Some of the trades estimates I have seen have suggested that 20 per cent of visas are in the trades space. Is that roughly right?

Mr Kukoc—Around 15 per cent of the total 457 program is trades and below. We have seen some significant decreases in the last few months. Senator, if I may suggest, we can table the state and territory recent summary report, which contains all the statistics, including percentage changes month by month and in the last few months, by occupations and by states. It is a very detailed report.

Mr Vardos—By jurisdiction, updated within the last couple of weeks as at 30 April, and that is actually on the web.

Senator FEENEY—Marvellous. Thank you very much.

[6.25 pm]

CHAIR—Let us start on outcome 2 before the dinner break. We will begin with questions from Senator Feeney.

Senator FEENEY—In respect of temporary protection visas, I understand TPVs were introduced in 1999. Is that right?

Mr Hughes—That is correct, Senator.

Senator FEENEY—Very good. Can you tell me how many unauthorised boat arrivals there were in 1999, the year that TPVs were introduced? If you do not have these statistics to hand, do not hesitate to just take it on notice.

Mr Hughes—I do have them.

Senator FEENEY—Very good.

Mr Hughes—In 1999, 3,720.

Senator FISHER—Boats?

Senator FEENEY—That was not the question. That is how many TPVs were granted, I am guessing—is that right?

Mr Hughes—No. I thought you asked how many unauthorised boat arrivals there were—persons.

Senator FEENEY—We can go with persons. Do you have the boat arrivals number?

Mr Hughes—I do have boats, but persons is more—

Mr Metcalfe—Perhaps I can help, Senator. TPVs were introduced in October 1999. In the year prior to that, 3,042 persons arrived by boat.

Senator FEENEY—Okay. Can you tell me about the next two years?

Mr Metcalfe—In the year after that, which is December 1999 to November 2000, 2,921 persons arrived by boat.

Senator FEENEY—That was 2,921?

Mr Metcalfe—That is correct.

Senator FEENEY—And in the following year?

Mr Metcalfe—In the year December 2000 to November 2001, 6,540 persons arrived by boat.

Senator FEENEY—Okay. How many TPVs were granted in total prior to their abolition?

Mr Metcalfe—I am advise that, from inception to abolition, there were 11,213 temporary protection visas and temporary humanitarian visas, which is a related visa class.

Senator FEENEY—Okay.

Mr Metcalfe—That is disaggregated into 10,359 TPVs and 854 temporary humanitarian visas.

Senator FEENEY—Temporary humanitarian visas—forgive my ignorance. As at the date when the TPVs were abolished, are you able to tell me about the following three types of person. How many people who had held a TPV had been granted a permanent protection visa? Secondly, how many people who had held a TPV had been granted a visa to remain in Australia that was other than a permanent protection visa? Thirdly and lastly, how many people who had held a TPV had departed Australia?

Mr Metcalfe—What I can tell you is that 9,690 persons holding a temporary protection visa were granted a permanent protection visa and a further 151 persons were granted some other sort of permanent visa.

Senator FEENEY—And how many departed Australia?

Mr Metcalfe—From my records, around 379 departed Australia.

Senator FEENEY—If we just stick with TPVs, there were, over the whole life of the TPV, 10,359 granted?

Mr Metcalfe—That is correct.

Senator FEENEY—And 379 of those persons departed Australia.

Mr Metcalfe—That is correct, and 26 people died.

Senator FEENEY—Right. Of those persons who held a TPV and departed—that is that number of 379—can you tell me how many of them departed Australia voluntarily?

Mr Metcalfe—All voluntarily because, by virtue of being a visa holder, their departure was a matter for themselves. No persons who held a visa would have been removed by force of law.

Senator FEENEY—Okay. I am interested in going to the discretion to allow TPV holders to apply early for a permanent protection visa or to allow TPV holders, who were otherwise ineligible, to apply for a PPV. What can you tell me about that discretion?

Mr Metcalfe—From what I understand, Senator, ordinarily there was a prohibition, that a person who was granted a temporary protection visa was unable to apply for a permanent protection visa for 30 months from the grant of the TPV.

Senator FEENEY—Right.

Mr Metcalfe—That was essentially six months short of three years, in the expectation that a temporary protection visa was a three-year thing and there would be six months of processing, so it was 2½ years. There was provision for a shorter period to apply and a number of decisions were taken in relation to that. I understand that in the period 2004 to 2008, when that exercise of a shorter period of stay provided that a waiver request could be considered, 276 requests were received, 162 were waived or approved, 39 were not waived and 75 were resolved in some other way.

CHAIR—We will finish there to take a dinner break, thank you.

Proceedings suspended from 6.31 pm to 8.00 pm

CHAIR—It is eight o'clock so I will ask officers associated with outcome 2 to come to the table. We will proceed with questioning.

Mr Metcalfe—Chair, I just want to add to what I was discussing before the dinner break. I gave Senator Feeney some figures that indicated that, in relation to the exercise of the shorter period of stay waiver requests during the four-year period 2004-08, allowing access to a permanent protection visa earlier than the 30-month period, we received 276 requests, of which 162 were waived, 39 were not waived and 75 were otherwise not resolved. Senator, we will just need to check whether those figures relate to cases or persons. The figure I gave you earlier in relation to the number of TPVs—the 11,213 figure—was definitely persons. But just in terms of departmental recordkeeping, a request may cover more than one person. I just want to make sure that we are talking about apples and apples, not apples and dozens of apples. We will probably be able to check on that overnight—the relevant staff are not available at the moment—and come back and clarify that point tomorrow. My understanding—I should probably just add this—is that the vast majority of decisions in relation to that waiver were made by the ministers at the time. So this is a ministerial decision as to whether or not that waiver should occur.

Senator FEENEY—You say most of the decisions are made by ministers.

Mr Metcalfe—The vast majority, I believe, Senator.

Senator FEENEY—I presently, obviously incorrectly, understand that the minister of the day is the only person with that discretion. Can you illuminate that for us?

Mr Metcalfe—Again, I will check to see. I am just being cautious in not being completely definitive.

Senator FEENEY—If my understanding of this is right—and I say this tentatively—all 276 must have been seeking the minister's discretion.

Mr Metcalfe—I am advised that there was a delegation to departmental officers to allow a waiver in extremely limited circumstances. The circumstance, I understand, was where some members of the family may have already been granted a permanent protection visa or be on the cusp of being granted a permanent protection visa and others were still subject to the 30-month period. To align decision making about the same family, there was an ability for an authorised departmental officer to make a decision in that circumstance. I am told that that was extremely unusual and that the vast majority, therefore, of those decisions in relation to

waivers for the shorter period of stay was a personal ministerial decision. If I am incorrect in any way, I will clarify the record tomorrow morning.

Senator FEENEY—Can you tell me how many times those discretions were exercised by ministers in each of the relevant program years?

Mr Metcalfe—We will have to check on that, Senator. We do not have that detail.

Senator FEENEY—In the same vein, then, could you also, perhaps on notice, take up the question of whether there were any changes to that discretion over those years.

Mr Metcalfe—We will take that on notice as well.

Senator FEENEY—As I understand it, people on TPVs were not entitled to family reunion. Is that correct?

Mr Metcalfe—That is correct—family reunion sponsorship rights.

Senator FEENEY—How long were TPV holders separated from their families? Was there a minimum amount of time? Has the department got information about an average time?

Ms Keski-Nummi—I would have to take that on notice. We have some broad statistics around the average periods—maximum and minimum. But to give you really accurate statistics on that would be extremely difficult. We can get some estimates.

Senator FEENEY—That would be extremely difficult, did you say?

Mr Hughes—Ms Keski-Nummi can try and get you something precise. But—

Senator Chris Evans—Maybe you can explain the rules.

Mr Hughes—Generically, if people got a three-year temporary protection visa, they could within 30 months of getting a three-year visa apply for a further visa, which may be permanent. There were some circumstances where it would not be permanent and they could end up with a further temporary visa. So notionally the period was three years before you might get the opportunity to get a permanent visa and then sponsor a relative from overseas. I think in practice, though, the periods that a person might be separated from their relatives were much longer than that because of processing pauses for people's initial visa. When asylum seekers came to Australia, sometimes because of changed country circumstances, their applications were not processed quickly because there were processing pauses to deal with changed circumstances in the country of origin. Therefore, some people had to wait quite a while before they got a temporary protection visa. So that might end up being a year or so. Then as you added a three-year period on top of that and possibly further processing delays, certainly some people were complaining that the net effect of all of that was they had to wait a period of possibly up to five years.

Senator FEENEY—Do you happen to know, Mr Hughes, off the top of your head what the most extreme case might have been?

Mr Hughes—Not off the top of my head. What I am saying is technically the period is three years because that was the length of the visa. But, in practical terms, some people who arrived as asylum seekers and were found to be refugees might have been separated from their family members for much longer periods. That is the more detailed information about which we will see what we can get.

Senator FEENEY—Thank you. Obviously when we are talking, then, about being separated from their families, we are, of course, talking about circumstances which include parents being separated from their children?

Mr Hughes—Yes.

Senator FIERRAVANTI-WELLS—I want to follow on from the questions of Senator Feeney. I appreciate where he was going on that. Mr Metcalfe, could you also confirm something. Regarding boat arrivals, some of the figures that you have actually quoted to me in answer to a question on notice differ a little from other information that we had. In any case, we subsequently got the library to verify a series of figures. I think on the last occasion there was some toing and froing in relation to boat numbers or whatever. The long and short of it is that we have got the library to verify those figures. There are some differences. But for all intents and purposes, based on information from your department, Mr Metcalfe, I am satisfied with the information that I now have. The Pacific Solution was introduced in 2001?

Mr Metcalfe—That is correct, Senator.

Senator FIERRAVANTI-WELLS—The excised places act was introduced in 2001?

Mr Metcalfe—That is correct.

Senator FIERRAVANTI-WELLS—You had ongoing detention. At the same time after the *Tampa* incident, we had an arrangement where we were turning boats back?

Mr Metcalfe—Yes, Senator.

Senator FIERRAVANTI-WELLS—Combined with this, you had the situation of temporary protection visas in the three-year period that you have talked about and the legal processes that often went beyond the three years; therefore, there were longer periods in detention. The point I am making, Mr Metcalfe, is that Senator Feeney's line of questioning seems to be going to the point that he is concentrating on temporary protection visas and, I think, drawing the conclusion that because some comments have been made about temporary protection visas somehow that alone is stopping boats. But the point I am actually putting—

Senator FEENEY—I would like to clarify what the point is so that you can debate it.

Senator FIERRAVANTI-WELLS—Thank you.

Senator FEENEY—My point is there is no nexus between TPVs and the failure of boats arriving in this country. But, perhaps most dramatically, TPVs did not have the effect that those persons granted TPVs did not leave Australia.

Mr Metcalfe—Senator Fierravanti-Wells, I did not actually hear Senator Feeney make any conclusions. I read to him some statistics as to—

Senator FIERRAVANTI-WELLS—No. I am also going to ask—

Senator FEENEY—To come to the conclusions, I was adducing evidence so that I could reach them.

Senator FIERRAVANTI-WELLS—Certainly. In 2000 to 2001, I understand there were 54 boats and 4,137 arrivals. Bear in mind that temporary protection visas were abolished in 1999.

Senator FEENEY—No. They were introduced in 1999.

Senator FIERRAVANTI-WELLS—I beg your pardon—introduced in 1999. Would you agree with me, Mr Metcalfe, that there was probably a lag time and a period of time when information took some time to filter through? But in any case, the year after—

Senator FEENEY—I would be interested, actually, in your answer to that proposition, Mr Metcalfe, that regulatory impact studies in Sri Lanka and Afghanistan produced changed flows.

Senator FIERRAVANTI-WELLS—Senator, I was asking questions.

CHAIR—You are right, Senator Fierravanti-Wells. Continue.

Senator FIERRAVANTI-WELLS—Senator—Mr Metcalfe, thank you.

Mr Metcalfe—I work for a living, Senator.

Senator Chris Evans—He obviously gets paid a lot more.

Senator FIERRAVANTI-WELLS—I anticipate he wants to swap places.

Senator Chris Evans—You opened yourself up for that!

Mr Metcalfe—Sorry, Senator, but I am not exactly sure where the question ended up.

CHAIR—I am not sure she got to her question!

Senator FIERRAVANTI-WELLS—Let me just put a few things into perspective. In 1999, temporary protection visas were introduced.

Mr Metcalfe—That is correct.

Senator FIERRAVANTI-WELLS—Then, in 2000 to 2001, we had 54 boats and 4,137 arrivals. In 2001 to 2002, we have, on your figures, 19 boats and 3,039 arrivals.

Mr Metcalfe—I do not have that figure in front of me. I have a calendar year figure, Senator.

Senator FIERRAVANTI-WELLS—Just take it from the information.

Mr Metcalfe—If that is the published figure then I will accept that.

Senator FIERRAVANTI-WELLS—That is what I have been provided.

Senator Chris Evans—Senator Fierravanti-Wells, we got into trouble last time because we included disruptions et cetera. Let us just be clear that the figures the department has been using have been calendar years. Are you now using something different?

Senator FIERRAVANTI-WELLS—Well, this is another issue, because I am using figures based on financial years, which is what I have been provided with. What we have been using is based on financial years.

CHAIR—Perhaps if you could clarify. It is provided from?

Senator FIERRAVANTI-WELLS—The library. And the library advises that the figures are based on information that they have checked through departmental sources.

Mr Metcalfe—It is just that I do not have financial year figures with me. I have calendar year figures. If the library have figures and checked them with the department, I will accept them.

Senator Chris Evans—The secretary has a table of arrivals for about the last 25 or 30 calendar years.

Senator FIERRAVANTI-WELLS—Thirty years, did you say?

Senator Chris Evans—Yes. It is going back a while. Would it be useful if we table that so that at least when the secretary gives you a number, at least you know where it is coming from? The last time we got into a hell of a mess where we could not even agree on what we were talking about. So I would be happy if we agreed on what we were talking about and then disagreed about the conclusion.

CHAIR—Are you able to table those?

Mr Metcalfe—I will just check that I have the right figure there. Yes, Chair. I have a table that dates back to 1976, in fact, so we could table that. It is by calendar year, Senator.

Senator FIERRAVANTI-WELLS—Thank you, Mr Metcalfe. To put into context the questioning that was asked—

CHAIR—Did you table those? We can copy them.

Mr Metcalfe—Yes.

Senator FIERRAVANTI-WELLS—Those figures should be put against the background of the introduction of the excised places act in 2001, the continuing detention policy—a policy which included a background of turning boats away as well—and the introduction of the Pacific Solution in 2001.

Mr Metcalfe—Senator, I might chance my arm. I think what the figure will show is that if you look at the various policy measures taken in Australia in isolation, you will see some interesting things. TPVs were introduced in October 1999. As I indicated in response to questions from Senator Feeney earlier, over the next couple of years the number of unauthorised arrivals by sea increased, particularly in the 2001 calendar year. You are absolutely correct in saying that there were a range of policy measures introduced following the *Tampa* incident—the Pacific strategy processing on Nauru and the introduction of excised offshore places. There were, from memory, four vessels returned from whence they had come to the vicinity. There was also obviously significantly increased legal cooperation and interagency cooperation in transit countries such as Indonesia.

As someone who has been involved with these issues in one way or another since the late 1980s, I think it is also important, though, for any discussion to include wider global factors. For example, it is obviously a matter of record that following the 11 September tragedy, the United States-led coalition invaded Afghanistan, removed the Taliban regime and was able to bring at that stage a situation of significant security to the people of Afghanistan, which led, I think, to the return of some three million refugees—

Mr Hughes—Ultimately up to five million.

Mr Metcalfe—to Afghanistan who had been in Pakistan and other places. They were able to return to Afghanistan. Of course, in March 2003, from memory, the United States-led coalition invaded Iraq and removed the Hussein regime, leading to a period of stability and then internal conflict and now what is hopefully a period of much greater stability. Sadly, in Afghanistan, in the last couple of years, we have seen what had been a relatively stable situation in security terms become far less stable. We have seen a very significant increase in global irregular migration. So the point I am trying to say is that there certainly are Australian policy measures that were taken at various times where you could have a discussion as to whether they had an impact or not. But I think, to be honest, far more important is the security situation relating to potential refugee flows in places such as Afghanistan, Iraq and Sri Lanka, which have led to large outflows, periods of instability and whatever. What we did see in the early part of this decade was a significant reduction in terms of the numbers of people who were fleeing persecution. That period of relative stability stayed in place for some five or six years. But now it is very clear in the last couple of years that there is a less stable international situation. Many countries, including Australia, are seeing increased numbers of irregular migrants.

Senator FIERRAVANTI-WELLS—So in other words, Mr Metcalfe, are you categorically ruling out that any change of policy in this country is contributing to what we are seeing and have seen in terms of increased numbers, certainly since about August or September last year?

Mr Metcalfe—I am a cautious person. I would never categorically rule anything out or in. What I would say is that there has been one constant through the whole period. The one constant has been that Australia is a signatory to the Convention relating to the Status of Refugees. Governments of both persuasions have since 1951, since the convention was established, honoured our international obligations to people seeking asylum in Australia. We have seen changes in numbers of people over the years. But it has been a constant in Australian public policy and law that, if a person is a refugee, they will be granted protection in Australia. The exception to that was the Pacific strategy, whereby people were removed from Australian territory to neighbouring countries but on the specific basis that there would be no refoulement, no return, no arbitrary return of refugees. Of course, the Pacific strategy involved refugee status determinations for people. Many people were found to be refugees. Most of those people were resettled in Australia.

So I would not want to be categorical about the impact of Australian policy changes, but I would say that there is one very significant policy, and that is Australia, New Zealand and PNG are the only countries in our region that are signatories to the convention. The global pattern of irregular migration is very significant at the moment and was in the early part of this decade. Australia receives proportionally very low numbers of irregular migrants. I am sure you are aware of the situation in the Mediterranean, for example. I think Greece received 35,000 boat people last year. Italy has received very large numbers. Spain has received very large numbers. If you actually look at where people fleeing persecution go to, overwhelmingly they are going to Europe and North America. So that is a longwinded response.

I would not want to be ever definitive as to whether policy changes in Australia have an impact. But I would say that you can read the trends in a couple of different ways. To only look at the picture from an Australian perspective is missing probably 95 per cent of the story. The real story is what is happening in terms of global refugee matters; stability in key areas; protection for people in places near their homes, such as Pakistan, and whether that is effective; the role of people smugglers; the ability to cooperate with countries of transit, such as Malaysia and Indonesia; and the fact that, although we certainly receive numbers of refugee applicants in Australia, what we see here is tiny compared with other countries.

Senator FIERRAVANTI-WELLS—I appreciate that, but in the source countries for places such as Italy and the Mediterranean, there are different factors. You are not comparing apples with apples.

Mr Metcalfe—Well, if you are to compare, for example, the movement of Afghan asylum seekers, Australia is not in the top five countries. I actually happen to have a handy map here, Senator, that I could probably share with the committee, because we have done a bit of thinking about this.

Senator FIERRAVANTI-WELLS—I am sure you have done a lot of thinking about it.

Mr Metcalfe—In 2008—

Senator Chris Evans—Mr Metcalfe did a lot of thinking about it under the previous government.

Senator FIERRAVANTI-WELLS—I am sure.

Mr Metcalfe—And the one before that.

Senator FIERRAVANTI-WELLS—Mr Metcalfe and I go back a long, long way.

Senator Chris Evans—Mr Metcalfe was on the People Smuggling Task Force and in PM&C was responsible for these matters at the time, I think.

Mr Metcalfe—Yes.

Senator Chris Evans—So he probably carries more scars over the last 10 years on this issue than anybody else in public life.

Mr Metcalfe—Thank you, Minister. I will mention that to Comcare next time I am talking to them. Senator, for example, from Afghanistan, according to UNHCR figures last year, 2008, we had 52 asylum claims from Afghans. Clearly, we have had a significant number since, but this is calendar year 2008. We had 52. The United Kingdom had 3,730. Germany had 1,363. Austria had 1,365. Italy had 2,005. Greece had 2,287. So the top five destination countries were all in Europe. Australia's proportion, even of the smallest of those, was one-fortieth of the number from Italy.

Senator FIERRAVANTI-WELLS—Of course, under our obligation under the UNHCR, refugee and refugee status is something that has under the convention a defined time. The convention recognises that there may be a period when a person no longer is a refugee and is able to be returned to their country. That is as I read the relevant provisions.

Mr Metcalfe—Yes. But I think—

Senator FIERRAVANTI-WELLS—And our obligation is not to, if I understand, expel or return them.

Mr Metcalfe—The fundamental obligation under the convention is non-refoulement—not returning a person to a place of persecution. But I think it is fair to say that the first way of dealing with and accommodating refugees, according to longstanding UNHCR doctrine and practice adopted by all relevant countries, is that people should be given safety in the place where they first go. In the case of Afghanistan, the vast majority of people have been given long-term stay and safety in Pakistan. However, it is also clear that there are situations where a person is not able to return in safety and dignity to their own country and where long-term stay in a neighbouring country is not viable. That is precisely why Australia and a number of other countries have a refugee resettlement program. Of course, Australia has—something that we are very proud of—resettled over 700,000 refugees since World War II. This year, we will resettle 13,500. Next year, it will be 13,750. So Australia has much to be proud of in this space. But the doctrine and practice of UNHCR in relation to asylum seekers and persons being granted asylum has, I think it is fair to say, had a strong preference for a permanent outcome for the person, although the temporary protection visa regime was established on the basis of legal advice that indicated that that was not a breach of the refugees convention.

Senator FIERRAVANTI-WELLS—But isn't that the reason that people do not flood into Australia in the same way—because we have a much more orderly process than they have in Europe? It seems a lot more chaotic than it is. It makes us a lot more attractive. It almost works both ways.

Mr Metcalfe—I do not quite know how to respond to that. North America and Europe are the destinations of choice for asylum seekers if they are moving to the West. But, of course, the vast majority of asylum seekers—we are talking millions and millions of people—are usually provided with a degree of safety in their own region.

Senator FIERRAVANTI-WELLS—I guess the point I am making is that we have a framework. Irrespective of whether it was stronger before and not as strong now—that is not the point I am making—the fact that we have a framework which deals with this process is in itself, I think, a certain deterrent factor. The strength or otherwise of it is the degree of deterrence, but it acts as a deterrent. That is the point I am making.

Mr Metcalfe—I think there is a whole range of deterrents. Clearly, Australia operates a strong visa regime. We not only carefully assess applications but we carefully manage, with the airline industry and other governments, who actually gets on aircraft coming to Australia. For example, you are aware that in a number of places we have officers posted in airports, checking documentation and various other matters. There is clearly a geographical issue, in that Australia is an island continent whereas Europe and Asia are connected by land. Of course, the large numbers of people have been travelling into Greece and elsewhere by sea as well.

At the end of 2001, which is a significant date, the total population of concern to the UNHCR—which includes refugees, asylum seekers, internationally displaced persons, internally displaced persons and stateless people—was 20 million people worldwide. By the end of 2007 that figure was 31.7 million people, so it had grown by 58 per cent. We are seeing

an increase in people seeking asylum in industrialised countries around the world. For example, between 2007 and 2008, across industrialised countries there was a 12 per cent increase in asylum claims. That is now up to 383,000 applications, and that is a March 2009 figure from the UNHCR. We saw a 19.8 per cent increase in that period. We saw that reflected in the evidence given by the tribunal this morning about what they were seeing as well. We had just under a 20 per cent increase, to 4,474 applications. Our share of the 383,000 was 4,474. Canada in the same period received a 29 per cent increase to 36,912, the UK saw an increase of eight per cent to 30,600 and New Zealand saw an increase of two per cent to 254. However, some countries saw much larger increases: Finland had an increase of 168 per cent; Italy, 122 per cent; Norway, 121 per cent; Netherlands, 89 per cent; Switzerland, 53 per cent; and France, 20 per cent. So there are a large number of people in need of or seeking international protection. In the last couple of years there has been a significant increase across all Western countries in asylum claims.

Senator FIERRAVANTI-WELLS—But put that into the context of the fact that we are the second highest taker of refugees.

Mr Metcalfe—In absolute numbers we are the third. Per capita, we think we are right up there with the US and Canada.

Senator FIERRAVANTI-WELLS—Well, we are certainly nowhere near some of those other countries. So, to put it bluntly, we take a lot more refugees than a lot of other countries in the world, and we do it according to a recognised program. I was at a dinner recently with Mr Guterres, where he commended us on the way that we do business. My point is that, in the end—agree with me or disagree with me—every potential person who jumps the queue is taking a position or a spot from some person who has been waiting legitimately under a UNHCR program to have resettlement that is not yet available to them.

Mr Metcalfe—I certainly agree that it is a public policy challenge and that Australia is very generous. Some people would argue we should take many more refugees for resettlement. Others argue we should take less. Certainly I think both the previous government and this government have maintained a strong commitment to the resettlement of refugees. It then becomes a public policy question as to whether maintaining that strong commitment to resettling refugees is impacted by the number of asylum claims in the country. That is a choice. What we do not have a choice about is a person who comes to our jurisdiction and has a well-founded fear of persecution for reasons established in the convention. We cannot send them home. We have a fundamental obligation under international law. While it derives from the treaty setting up the refugees convention, I think many people would argue it is now in fact a fundamental aspect of international law, whether or not you are a signatory. A constant in Australian policy for almost 60 years now has been that if a person comes to Australia and is a refugee, we will give them protection.

Senator FIERRAVANTI-WELLS—A constant is also the fact that, comparatively speaking, over a long period of time—I am only speaking now from my own corporate history and yours as well, probably—our legal framework and our appeal framework are a lot more generous than other countries' in this respect. As a body and together, it constitutes a very attractive package.

Mr Metcalfe—I certainly think that we should be proud that we have a robust system. We obviously look at the approval rates for similar populations of people. I think I am right in saying that we are roughly comparable in terms of approval rates. So we have a good system. The parliament should take pride in the system that has been established in the department and in the tribunal. Some people would still argue that it is not a perfect system, but many people would probably say it is amongst the best in the world. We would agree with you on that. I think what you are trying to say is that, because we have a good system, we are seen as a better place to come.

Senator FEENEY—It is a soft touch.

Mr Metcalfe—Australia is a terrific place. What I think I have demonstrated is that globally we are seeing an increase in asylum seekers. We have seen a 58 per cent increase in the last year. There are many other countries which are seeing larger increases than Australia.

Senator FIERRAVANTI-WELLS—I appreciate that. I ask you to put that into the context—

CHAIR—Let's get back to questions.

Senator FIERRAVANTI-WELLS—I just said: 'I appreciate what you have said. I ask you to put that into the context.' I was about to ask the question until you interrupted me. I will come later to intelligence and very statistical information that you may have collected in relation to particularly those arrivals over the last year or so. How long have these people been sitting? How long have they been transiting? How long have they been sitting in Indonesia waiting to come out here? I put what you have just said in terms of what has happened in, say, the last year globally, but I also would like to contrast that with the times that they have actually been waiting. So they have actually been waiting in Indonesia for considerable periods of time before they have come out here; do we have some statistics on that?

Senator Chris Evans—Senator, you ask a question by drawing a conclusion in the question. The conclusion you drew in the question is actually wrong, so now we have to contradict it. If you want to have the political argument, we can. If you want to ask questions of the officers within their responsibilities, that is what estimates is for. When you ask a question which says they have been there a long time and that is not true, the officer has to go back and say, 'Well, actually.' I would have thought you would be better off asking the question—I am not telling you how to suck eggs—'What information do we have on how long they have been there?' Then the officer can give you an answer. But you actually want to judge the issue and then ask them to respond. To be fair to the officers, can you just ask the question?

Senator FIERRAVANTI-WELLS—I withdraw the commentary and ask Mr Metcalfe: do we have statistics relating to the time that people are spending in transit before they sail to Australia?

Mr Metcalfe—I will ask Mr Hughes or Ms Keski-Nummi to answer based upon the discussions and interviews we have had with some of the recent arrivals as to what their circumstances are.

Mr Hughes—Sometimes there is confusion regarding a small population of asylum seekers that had been in Indonesia for a very long time and were found not to be refugees, although subsequent reviews have affected that. There is some confusion between that and recent arrivals in Indonesia that have translated into boat arrivals in Australia. We will give you some more statistics on notice. But the people arriving unauthorised by boat in Australia in recent times have spent quite short periods of time in Indonesia.

Senator FIERRAVANTI-WELLS—Perhaps you might like to go through all arrivals since, say, the last year and detail for me the periods of time that each has spent before coming to Australia.

Senator Chris Evans—I do not think you will get that specificity, just because we do not have it. Mr Hughes will be able to give you some more information on notice. But I think what you are saying, and what I, the AFP and others have said publicly, is that we saw a change in tactics in recent times. What we have experienced is a number of the arrivals in recent times have moved through South-East Asia quite quickly. They have actually come in by air into Malaysia or other parts, moved into Indonesia and stayed a very short period of time in Indonesia and moved on. What Mr Hughes was suggesting is that there has been a group that have been stopped in Indonesia a fair period of time, some of them eight years or so—leftovers from the last wave, in many respects. Some of those and others have joined expeditions. What we have seen is that a large number of people—and the IOM and others' reporting has indicated this—are coming into Indonesia looking to move on quickly. The people smugglers, quite frankly, do not want them staying in Indonesia for long for fear of detection, intervention and what have you. That is why I tried to correct the assumption in the first question you made. Is there anything else you can think of at the moment, Mr Hughes?

Mr Hughes—Just that in some cases it is a matter of days or weeks, not very long periods. But we will try and look at what figures we have in a little more of a systematic way and give you something on notice.

Senator FIERRAVANTI-WELLS—As part of that information, I would assume that they spend a transit period in another country—in other words, they may have left their place—to get a snapshot of the transit journey. I hear what Mr Hughes says. In some cases, it may have been short. In some cases, if I understood correctly what you said between you, Minister and Mr Hughes, some of the people who have been there a long time have also joined recent expeditions. So do I take it that we have a mix of people now arriving or who have arrived in the last year or so that are a mix of both short-term transitters, if I can put it that way, and long-term stayers in Indonesia?

Mr Metcalfe—I think you can say that, Senator. But I think we would say, subject to what we might answer on notice, that the majority are people who have moved through. The typical case is an Afghani who has been living in Pakistan and who has then moved quite quickly by air through the Middle East to Kuala Lumpur, been met by people smugglers, smuggled into Indonesia and then quite quickly, within a space of a few weeks, been brought into Australia by boat. But you are right in saying that some of those people who have been in Indonesia for some years have arrived as well.

Senator FIERRAVANTI-WELLS—I was going to ask questions about intelligence gathering et cetera. I assumed—

Mr Metcalfe—Outcome 3, Senator.

Senator FIERRAVANTI-WELLS—Outcome 3. I was not sure whether we would get to that.

Senator FEENEY—I will ask one question germane to that. I am interested in this proposition. You said, Mr Metcalfe, that in your judgement—I want to make sure I characterise you accurately—95 per cent of the equation was global movements. I wonder if we can get a little more forensic about that. Does the department have any data concerning the familiarity of both types of arrivals with the Australian regulatory regime? I am aware of the fact that Dr Roslyn Richardson of Charles Sturt University has attested in her study that none of the respondents she interviewed for the study arrived in Australia with a detailed understanding of Australia's immigration policies. I just picked up from Mr Hughes that it sounded like there was some proper level of debriefing—I do not know if 'surveying' is the right way of characterising it—of asylum seekers in terms of their transit and their journey. I just wonder, as part of that process, whether you ascertain their familiarity with our laws.

Mr Metcalfe—Senator, I am aware of Dr Richardson's study, which related to some people who had come here in the wave of boats we had between 1999 and 2003. I am aware that she made a recent press release. I will quote a little from her press release of 22 April:

Many refugees do not receive Australia's deterrence message or any information about Australia's immigration policy ...

... ..

... the respondents suggested that their pre-arrival understanding of Australia, its immigration policy or the international refugee protection system was minimal ...

Importantly, I also found that even when refugees have been traumatised as a result of their experiences of the TPV and immigration detention, they do not necessarily pass on a deterrence message. On the contrary...many of my respondents downplayed the difficulties that they had faced in Australia when they talked to friends and relatives who may also be considering coming to Australia via smuggling routes.

Senator FEENEY—Do you concur with that assessment?

Mr Metcalfe—I note her assessment. I have not personally talked to former asylum seekers about their knowledge or motivation for coming here. I think it is important, Senator, that we deal with the issue on the fact that there are quite often different motivations for travel. We have clearly seen, in the various waves of boat people arrivals since the late 1990s, different motivations. For example, we had a significant number—some hundreds—of nationals of the People's Republic of China arrive by boat in around 1996-97. You may recall that they were fairly high profile because they were on the east coast of Australia. One vessel came into the Hawkesbury and one beached at Scott's Head. There was one up near Cairns. It was very attention grabbing at the time. Almost to a person, those passengers indicated that they had intentionally come to Australia because they had been told there were jobs in Australia to work for the Olympic Games, the forthcoming Sydney Olympics. There was essentially—

Senator Chris Evans—Well, that was accurate.

Mr Metcalfe—Well, there were jobs, but not for them, Minister. They were returned. There were no refugee issues. They were returned to China. They were coming from a part of China which had traditionally been the source of very large numbers of illegal immigrants over the years. They were from Fujian Province, from where literally hundreds of thousands of people had gone to the United States illegally and so on. So a person may be motivated to travel by a desire to improve their economic circumstances. That may be perfectly understandable, but it is not allowable under our laws. There are some people who clearly are very worried about their safety in the country they have come from, quite often even if they have been given some sort of temporary asylum, such as, typically, the Afghans we are seeing, who have come from living some time in Pakistan.

I do not like generalisations. I am very careful. If I were to offer an opinion, I would say those people are after a safe life for themselves. They do not really care where it is. That is why Australia does not feature prominently on the map of global asylum seekers as a destination. We certainly have a reasonable number. The numbers we are seeing are certainly keeping us very busy. We certainly would prefer that people did not travel in that way because we have seen some terrible tragedies over the years. We have had SIEVX. We have had the recent drowning of people off Malaysia and off Indonesia. It is inherently a risky and dangerous business. As Senator Fierravanti-Wells says, we would far prefer that people took opportunities that may exist through orderly processes, such as a refugee resettlement program. But it is fair to say that the refugee resettlement programs offered by the US, Australia, New Zealand and Canada and a small number of UNHCR countries in no way meet the needs of the millions of people who are facing these situations.

So some people are motivated by a genuine fear of persecution. As to whether they choose to come to a particular place because it will offer them safety, Australia is a signatory to the convention, and we should be proud of that, as are the European countries, as is North America. There are few other countries in our region who are signatories to the convention. Indonesia is not. Malaysia is not. It is only Australia, PNG and New Zealand in our region that are. Although those other countries are strongly cooperative, and certainly Indonesia has been extraordinarily generous in providing protection for refugees under programs, such as the Comprehensive Plan of Action for Vietnamese refugees a couple of decades ago or, more recently, in relation to people intercepted on their way to Australia, it is not a refugee convention country.

As I said, there are different motivations for people travelling. Some provide an outcome in international law. Others do not. It is the role of immigration authorities to manage that. But what we see are people who are not sophisticated in terms of expecting a certain access or outcome or policy position in Australia. We see people who come here because they want safety.

Senator FEENEY—They do not land with their barrister.

Mr Metcalfe—No.

Senator FEENEY—Thank you.

Senator FIERRAVANTI-WELLS—I think, Mr Metcalfe, you said, if I heard you correctly, that the Afghanis travel from Pakistan. Do we know—I think it is going to be part of what Mr Hughes is going to provide—how many of them had been there or for how long they had been in Pakistan?

Mr Metcalfe—Certainly Mr Hughes has undertaken to provide you with what information we can on people's recent travel. But I think it is fair to say that the majority of people we are seeing at the moment are Afghans. The majority of those people have been living for some time in Pakistan. They may have returned to Pakistan and to Afghanistan following the fall of the Taliban and then come back out again because of the conditions in relation to them. Many of them are from an ethnic group called the Hazaras, and the Hazaras face some real issues.

Mr Hughes—I could supplement that by saying that Mr Metcalfe has talked about people who have spent time in Pakistan. Clearly the situation for Hazaras in Pakistan with the rise of the Taliban in that northern area has become very tenuous, so I think that is something that has caused them to move on. But, similarly, some of the people have transited to Australia through Iran because there has been for some years a population of Afghan refugees in Iran. Iran has also been closing camps there and wanting to reduce the population of Afghans seeking asylum there, which I think has made the situation of people there insecure. That has also encouraged them to depart. So changed situations in both Pakistan and Iran have made a difference to Afghans seeking security somewhere, as Mr Metcalfe has said, mostly in Europe but in smaller numbers heading towards Australia.

CHAIR—Senator Fierravanti-Wells—

Senator FIERRAVANTI-WELLS—I am still going.

CHAIR—I am just waiting for a chance to go to Senator Hanson-Young; that is all.

Senator FIERRAVANTI-WELLS—In this area?

CHAIR—I think so—outcome 2. Why not keep going until nine o'clock, which is our tea break?

Senator FIERRAVANTI-WELLS—And then Senator Hanson-Young perhaps after. Is that all right?

Senator HANSON-YOUNG—Yes, certainly. Thank you.

Senator FIERRAVANTI-WELLS—I will ask, if I may, some short questions up to nine o'clock. What is the situation now with the special visas for Iraqis? Mr Metcalfe, where are we with that? We have had 600 visas granted. How many have been anticipated?

Ms Keski-Nummi—Five hundred and three visas have been granted. The remainder are rolled over into this year, should any other people still come forward and need to be resettled in Australia.

Senator FIERRAVANTI-WELLS—So you are going to keep it open for another year?

Ms Keski-Nummi—It is closing for the people who supported the former battalion that was there, but it is still open for people who have supported defence operations since then and for other locally engaged employees employed by DFAT.

Senator FIERRAVANTI-WELLS—I think we have raised this before. There were some questions raised in the past about it. There is no issue with the Iraqis? They are fine with that?

Ms Keski-Nummi—Yes.

Senator FIERRAVANTI-WELLS—In answer to—

Senator Chris Evans—I think I made the point last time that there is no doubt the Iraqi government would argue that Iraq is, if you like, stabilised and safer and they would prefer that people stay. They would prefer that friendly countries not encourage people to leave. But there is no problem, as it were. There is a view—I think the ambassador put it to me last year—

Ms Keski-Nummi—We had a question on that. No, it has never been officially raised with us in terms of concerns.

Senator Chris Evans—No, not in terms of the LEEs. But, more generally, obviously they are looking to retain their population and rebuild their country. They particularly do not want to lose highly skilled people. But that is not specifically an LEE question, I know.

Senator FIERRAVANTI-WELLS—There is an answer to a question on notice from the last estimates. It was in output 1.2. It was under the refugee humanitarian program—how many had arrived for that financial year. It was answer 12. Out of Iraq, in 2007-08, there were 1,666 humanitarian entrants. In 2008-09, and bearing in mind that those figures are only up to 28 February 2009, there were 2,242. Does that include the 503 that you previously mentioned?

Ms Keski-Nummi—No. The resettlement program for the locally engaged employees is a separate program.

Senator FIERRAVANTI-WELLS—In terms of the breakdown of these people from Iraq, in the past, have there been any people coming out of the camps—people who were displaced—particularly Christian minorities?

Ms Keski-Nummi—The vast majority of the Iraqis who have been resettled come from Syria and Jordan. Some have been in Turkey. Each of them is assessed on a case-by-case basis. Clearly, ethnicity and religion are social groups where they may face persecution. I cannot give a breakdown, but the department's settlement database, which is on the website, will show what people have nominated themselves as humanitarian entrants and what their religion may be. But it is not a basis for a decision unless it is part of their persecution claims.

Senator FIERRAVANTI-WELLS—I appreciate that, yes. Up to 30 June, what is the anticipated figure for humanitarian entrants?

Ms Keski-Nummi—We expect to fully fill the program. That will include 6,000 refugees and roughly 5,000 special humanitarian program entrants. The remainder will be on short protection entrant decisions. Sorry, I have to correct myself. There will be 6,500 refugees this year because we have a one-off allocation for Iraqi refugees. I will be able to give you a more accurate number after 30 June.

Senator FIERRAVANTI-WELLS—Thank you. I was going to start asking questions about the new complementary protection arrangements. Would you like me to start now, Senator Crossin?

CHAIR—We may as well have a brief question before we go to a new area.

Senator FIERRAVANTI-WELLS—Minister, I have read the press release of 12 May saying that you will also, as part of your humanitarian program announcements, introduce complementary protection arrangements for people at risk of the most serious form of harm in their country. What does this complementary protection mean?

Senator Chris Evans—I will get Ms Keski-Nummi to take you through the details, Senator. Effectively, it is to comply with some of the other conventions in terms of our obligations on non-refoulement. It is effectively a caseload that is currently handled through ministerial intervention. Because it is not capable of being made by the primary decision maker or the Refugee Review Tribunal, they come through the MI route, where people do not fit the refugee definition but they have a threat, say, under the convention against torture. Ms Keski-Nummi will take you through the detail. Effectively, there is a cohort of people who are not picked up under the refugee convention who are owed our protection or would be in danger of refoulement. It is, if you like, a gap. There has been a cause for years to fill it. As I say, it is currently met through the MI process. It is part of my attempt to ensure that the department makes decisions on matters that are covered by MI. If you like, to make sure we have comprehensive coverage of people's cases, we have agreed to look to implement complementary protection. Ms Keski-Nummi is much better at the detail and the international concepts than me, so she will give you a much better explanation.

CHAIR—Just before we do, I am wondering whether we should break. Have you got many more questions on this topic?

Senator Chris Evans—This will take a few minutes; it is a bit complex.

Senator FIERRAVANTI-WELLS—It is a bit complicated and I think it is going to take some time.

CHAIR—We were going to have a break and then go to Senator Hanson-Young.

Senator FIERRAVANTI-WELLS—Why not go to Senator Hanson-Young after the break and we will come back to this? It is sort of complicated.

CHAIR—All right. Let us do that. We will break until quarter past nine.

Proceedings suspended from 9.01 pm to 9.17 pm

CHAIR—The committee will reconvene.

Senator HANSON-YOUNG—Minister, in your press release from budget night, you stated that the humanitarian programs for 2009-10 will be set at 13,750, and 7,750 of these are going to the special humanitarian program—correct me if I am wrong—and 6,000 are for the refugees. By my calculations, this represents an increase of only 250 places from the 2008-09 levels. Is that right?

Senator Chris Evans—Yes.

Senator HANSON-YOUNG—Given the global movement of people around the world and the unrest and more people seeking refuge, which by your own assessment is a global problem, not just something that Australia is facing, 250 places does not seem much of an increase in relation to where we fit.

Senator Chris Evans—That figure was actually determined as part of the previous budget, where we announced that we would have this increase this year. I am trying to get into a longer term planning framework. Anyone will know that we are taking 5,000 Bhutanese over the next five years. We are trying to actually get into a much better planning framework than just sort of an annual raffle and to be able to commit to the UNHCR on the numbers we will take and help them with their protracted situations. But that was the number determined by the government in the budget process. We have to be really frank about it. The Treasury costings on the cost of bringing in refugees are quite high. In a tight budgetary context where there is competition for dollars, I probably should not say this, but I thought I did pretty well to get that, which is not a sign of any policy or any change in the view of the government. But it is a straight cost argument.

Senator HANSON-YOUNG—I would just like to qualify and say that I am glad there has been some increase. I guess in terms of the fact that we are recognising that there is an increase across the world, I am just trying to figure out the context. What you are saying is that if we were forward planning, you would imagine that we would be increasing those numbers?

Senator Chris Evans—I think the government has a strong commitment to a humanitarian refugee program. We make proportionately a large contribution. This government remains committed to making that sort of serious contribution. I think that is bipartisan across the parliament. I pay tribute to the previous government. They did run a strong humanitarian and refugee program despite the other criticisms I would have of their activities in this area. But it has been supported across the parties and the parliament. I think UNHCR and others recognise and appreciate the contribution we make. It just comes down to the numbers and costs, again, to be honest. I know the Prime Minister has a strong commitment to the program. As you know, he is an internationalist. His area of expertise before he came into parliament was foreign affairs. He has a strong commitment to international organisations like the UN and the UNHCR. So there is no question about the government's commitment in this area. But the size of the program has to fit within the budgetary considerations. So I think we increased the program in the previous year by 500 and a further 250 this year. As I say, you have to put it in a budget context, basically.

Senator HANSON-YOUNG—How do we balance the issues within budgetary constraints? How do we increase those humanitarian intake numbers with the money that has been directed to, say, helping the processing of applicants in Indonesia if we are not increasing the number of people significantly who would then be allowed to come to Australia?

Senator Chris Evans—I will let one of the officers talk about the commitment to processing. The numbers we take is one part of the equation. What we are trying to do is improve processing and support for refugees in our region and, in fact, around the world. We are involved in a whole range of projects. Because we know it is a global problem and

because we know the solutions are global and regional, we actually have a whole range of engagements for trying to support refugees through IOM, UNHCR and other processes. Perhaps Ms Keski-Nummi or Mr Hughes might want to give us a summary of the approach.

Mr Hughes—Senator, I will say in relation to the figures that Australia's situation does hold up pretty well. I think we are possibly the only country that is—

Senator HANSON-YOUNG—Which figures are you referring to?

Mr Hughes—In relation to the increase in the humanitarian program from 13,000 a couple of years ago to 13,750. As far as I am aware, we are the only country that has increased our offshore resettlement program. Some European countries have actually scaled back their resettlement activity in the last couple of years. So the fact that we have increased at all does set us apart from some other governments in the resettlement business.

Senator HANSON-YOUNG—Surely, you have to keep in mind the actual context of what those original figures were anyway in terms of the countries that were perhaps scaling back.

Mr Hughes—Indeed. But some have gone backwards is what I am saying and Australia has gone forwards with a larger number of places. It can never be enough, and we all know it can never possibly be enough, but we have actually gone forward. As the minister said, our activities are not just resettlement. There is a mix of solutions. Resettlement is not for everyone. Obviously, we make contributions to UNHCR to help them carry out their activities around the world. We also make contributions through the displaced persons fund to stabilise populations in the nearby region for whom resettlement may not be the solution. It may just be safety for a period of time until they can go home. I think you were mentioning Indonesia. We do contribute to resettlement there. I think we have probably resettled more people out of Indonesia than any other resettlement country, although other countries do participate there.

Senator HANSON-YOUNG—I acknowledge that. I guess the reason I am asking is if we look at the figures in this year's budget—and if you could articulate them for me, that would be great—my reading is \$14.3 million for regional engagement with Indonesia, which includes the IOM and managing detention facilities and those processes. Is that right? It is \$14.3 million. Then there is \$16.4 million to work in particular with the UNHCR and the IOM. If we are putting that type of money up in terms of dealing specifically with people that we know need to be resettled—it is \$30 million-odd—I wonder how that is balanced with the fact that we have only actually increased the capacity to transfer people to Australia by 250.

Mr Hughes—I think, Senator, as has been said, there is a balance of solutions. In other words, resettlement is not the only solution and not the one that we exclusively put our efforts into. Even if we had transferred all that money, say, into resettlement, I am not sure that that would have added much at all to the resettlement figures because resettlement—

Senator HANSON-YOUNG—I am not suggesting that you do transfer all that money. What I am suggesting is that we are putting \$30 million-odd into helping people go through a process of seeking asylum, having their paperwork done and going through the application process, be it through the IOM or UNHCR directly with the Indonesian facilities. Would we not want to ensure that we create that space for people to enter into Australia if we are acknowledging that there needs to be processing offshore in Indonesia?

Mr Hughes—I think we are creating that space. But my colleague would like to answer that question specifically.

Senator Chris Evans—It is not a zero sum game. One of the things we have been doing is assisting Indonesia with its protracted caseload of persons. I think we have the figures on the numbers of people we have repatriated out of Indonesia. We have also entered into cooperation with New Zealand in terms of assisting Indonesia. So they are not mutually exclusive propositions.

Ms Keski-Nummi—I can add a little to that in terms of Indonesia. We do resettle people from there. I will explain. The support to IOM and UNHCR, and particularly to UNHCR, is to undertake the refugee status determination of individuals. UNHCR will then, once they have made a decision, and if they find someone is in need of resettlement, normally do a referral to the most appropriate country. Those people who have links to Australia would normally be referred to Australia. People who have links elsewhere would normally be first of all referred to other countries for resettlement. This year we are, as the minister said, supporting Indonesia in terms of the resolution of most of its protracted cases. I would have to dig through the papers a bit to get all the numbers for you.

Senator HANSON-YOUNG—If you could take that on notice, that would be good.

Ms Keski-Nummi—Sure; I have them with me. Generally speaking, there is a program allocation there for the resettlement of people in Indonesia who UNHCR have found to be refugees and who refer them to Australia for resettlement.

Senator HANSON-YOUNG—Do your figures show those referral rates?

Ms Keski-Nummi—I can get them for you.

Senator HANSON-YOUNG—That would be good. I was not suggesting at all that those two measures were mutually exclusive. I think they should be working in tandem. That is my point. If we are going to be contributing \$30 million-odd to the application process and determining the refugee status of people being held in Indonesia, rather than over-focusing on perhaps people trying to reach Australia by other means, it would make sense to go through this process, because surely it is safer and it is a better outcome for all parties involved.

Ms Keski-Nummi—Clearly, one of the things we are looking at is strengthening those processes and making sure that people understand what those processes are, whether it is in Indonesia or Malaysia or elsewhere, and being able to seek that sort of support and protection there and then go through the appropriate resettlement pathways as well.

Senator Chris Evans—But even further than that—sorry to interrupt—if you asked us what our main objective would be, it would be to settle those Afghans somewhere safe in their region, provide support for them and have them processed by UNHCR and referred in part to Australia. That is where you would like to start. Then they are not in the hands of people smugglers at any stage. What is happening at the moment, of course, is there are not the safe places for Afghans that there were. Even though they might not have been ideal, with Pakistan and Iran, they have been forced out of those safe places. That is why we have got what is occurring now. We do a lot of work trying to help deal with displaced persons close to their homes. The ideal—the UNHCR recommended it—is to return to home when it is safe. Yes,

you would rather operate, if you like, at source. We have some operations where you talk about transit countries. Then we have obviously got issues in Australia. But we do put a lot of effort into trying to settle displaced populations and provide security and support, if you like, at their first point of arrival outside of their country.

Senator HANSON-YOUNG—How much money is being directed towards those other locations outside Indonesia for precisely this?

Ms Keski-Nummi—I would have to take that on notice. For instance, we supported UNHCR in Malaysia last year with additional funding for the registration of people. It is similar in Thailand. We have supported UNHCR in Syria and Jordan for very similar exercises and in Turkey and in Iran, where we have supported, through funding, employees to be deployed to those regions to undertake the refugee status determination processes. So there are a number of different places that we provide that support. I would have to take on notice, though, all the dollar figures that you are asking for.

Senator HANSON-YOUNG—Could you take that on notice and the referral numbers from those countries to Australia?

Ms Keski-Nummi—Sure.

Senator Chris Evans—But there are also other things, such as housing in Afghanistan.

Ms Keski-Nummi—That is correct, yes.

Senator Chris Evans—You might run through a couple of the projects we support.

Ms Keski-Nummi—For instance, we have the Afghan housing project, which has supported people who have returned to Afghanistan. There is also the displaced persons program. Last year, it was \$16½ million. This year, it will be less than that because there was a one-off allocation to support, particularly, displaced Iraqis in Syria and in Jordan. All of the evidence showed that people did not want to move from there, but there was a strong need for stronger protection measures there for registration, for alternative livelihoods and, particularly for women and children. A lot of the funding went to those sorts of measures. Similarly, in the displaced persons program we are currently funding some shelter and housing for Rohingya refugees in Bangladesh to ensure that they have adequate housing, particularly, again, women and children, because they are at extreme risk in those camps. At the same time, we have a resettlement program from there as well. So there are a number of those sorts of projects that we do, which is a balance. As Mr Hughes said, it is very difficult in that we can never resettle everyone. We play a more comprehensive part in terms of finding some sort of funding for projects that will also provide safety, shelter and support for individuals who have been displaced.

Senator HANSON-YOUNG—Thank you. I appreciate that. I am specifically interested in the money that we are directing in areas of helping the UNHCR or other organisations to process those applications and the numbers, in terms of the referrals, to resettle those people in Australia.

Senator Chris Evans—One of the expenditures we have made recently in assisting Indonesia was to help fund IOM and UNHCR to deal with those 400 Rohingya people who arrived in Indonesia. Our investment in Indonesia supported those organisations in processing

and settling those 400 people. While people say a lot of the money has gone to Indonesia, it has actually gone to assist those 400.

Senator HANSON-YOUNG—Absolutely.

Senator Chris Evans—That is just an example of the sorts of different things we do.

Ms Keski-Nummi—There is a very close correlation of the referrals to the actual refugee visa grants. There are very small numbers of people who are refused and who have been referred by UNHCR. It is normally for other reasons. One is that they may have already been resettled elsewhere. There may be some security or character issues that exclude them from resettlement.

Senator HANSON-YOUNG—That the UNHCR would not have picked up?

Ms Keski-Nummi—They may not have. Normally they would have and they would certainly give us that information. But we undertake on a case-by-case basis interviews of all humanitarian applicants as well.

Senator HANSON-YOUNG—At what stage does DIAC reassess after UNHCR have referred?

Ms Keski-Nummi—Once we have had a referral, we register the applications and prepare the interviews. Teams will then go out to where the individuals are in the camps and interview all of the applicants. As I said, it is done on a case-by-case basis.

Senator HANSON-YOUNG—You will give me the figures on the referrals. But you are making a point to say that we take most of the referrals?

Ms Keski-Nummi—That is correct, yes.

Senator HANSON-YOUNG—Do you have numbers to show how many we do and how many we do not?

Senator Chris Evans—Basically, what we are saying is that if they have been referred by UNHCR their strike rate for approval in Australia is very high. It is not counterintuitive because they have gone through a similar process.

Ms Keski-Nummi—Yes. That is right.

Mr Hughes—I can add, Senator, the total figures. Australia has resettled over 30 per cent of the people who have sought asylum in Indonesia and been found by UNHCR to be refugees or in need of international protection. So far, that has been 320 refugees and 120 persons classified as not being refugees but in need of international protection.

Senator HANSON-YOUNG—Thirty per cent of what?

Mr Hughes—Thirty per cent of those people in Indonesia in recent years who have been found by UNHCR to be refugees or, indeed, in need of international protection.

Senator HANSON-YOUNG—Is that 30 per cent of people who have been referred to Australia?

Senator Chris Evans—No. Thirty per cent have been referred to Australia and others would have been referred to other nations.

Senator HANSON-YOUNG—Is that referral rate from Indonesia the largest that we have?

Ms Keski-Nummi—Sorry?

Senator HANSON-YOUNG—Of the numbers that are referred to us, out of the money that we put into these programs to assessing people's applications and to finding out whether they tick the box in terms of UNHCR referring them on to us, are the majority of them coming through the Indonesian channels or are they coming from elsewhere?

Ms Keski-Nummi—The refugee program comes from around the world.

Senator HANSON-YOUNG—I realise that. Are the majority of those that we are accepting at the moment coming from Indonesia—

Senator Chris Evans—No.

Senator HANSON-YOUNG—through the processes that are happening there?

Senator Chris Evans—No.

Ms Keski-Nummi—No.

Senator HANSON-YOUNG—So I guess when you give us the figures, we can have a look at how much money we are contributing to these different programs, both in Indonesia and elsewhere. Then we can look at the money that is spent in those places plus the referrals that we are getting as well.

Senator Chris Evans—I take your point. It is a complex picture. But the money is not directly linked to the referrals. For instance, we take a third of the program from Africa.

Ms Keski-Nummi—That is right.

Senator Chris Evans—We would not be spending as much. That is part of our contribution internationally.

Ms Keski-Nummi—That is right.

Senator Chris Evans—So we take a third from Africa, a third from the—

Ms Keski-Nummi—From the Middle East and a third from the Asia region.

Senator Chris Evans—But the investment we make in other programs is not directly linked. There will be other countries doing, say, more in Africa than we do. But we have made a policy decision, given the needs and discussions with international organisations, to take a third of our program out of Africa.

Ms Keski-Nummi—If I could add, I think the funding in Indonesia or elsewhere is really about strengthening those capacities. It is part of, for want of a better word, Australia being a good international citizen and supporting international efforts to develop a good system of international protection. Other countries will do things in other parts. We focus very much on this region to provide that international protection framework.

Senator HANSON-YOUNG—Thank you. I have some questions about the complementary protection program. I know that Senator Fierravanti-Wells was starting to look at it. I might ask my questions and then she can follow on. Firstly, I would just like to

say that the Greens were really pleased to see the announcements. It is something we have been calling for for a long time and it is great to see. I just want to know some more details in terms of when we will actually see the fine print, I guess, in terms of how this will look and what the process will be for implementing it.

Senator Chris Evans—Well, it will be subject to a bill. Who is best to take us through?

Ms Keski-Nummi—I am happy to do it.

Senator Chris Evans—It is in part based on the drafters. But we have a bid in for the bill to go into the parliament. There has been a wide consultative process with interested parties in the community. Ms Keski-Nummi, do you want to lead?

Ms Keski-Nummi—Yes. In relation to complementary protection, all things being equal and the bill getting through, it will be introduced on 1 November this year. The system will bring into the formal visa framework the ICCPR convention against torture and the Convention on the Rights of the Child obligations. It will be one system under the protection visa regime. What will happen is that we will assess a person against the refugees convention obligations. If they are found not to be a refugee, we will also assess them against our obligations under ICCPR CAT and CROC. So it will be one system rather than two systems.

Senator Chris Evans—But for administrative purposes we will not have a dual system.

Ms Keski-Nummi—Between now and then, clearly, the bill needs to be brought into parliament. We need to then have regulations put in place as well as training and implementation of the system. We have had fairly extensive consultations. We will need to go out again at some stage in the future, in terms of the next stages and the next steps in introducing this, to clarify any outstanding issues that individuals might have. I do not know if you want more clarification around that. Essentially, that will be the system.

Senator HANSON-YOUNG—Between now and when the bill is introduced—hopefully we start to see it formalised and in operation—what is the department's position towards people who are currently caught in the gap? Since we now have a position of principle, what do we do with people who are in the gap at the moment?

Ms Keski-Nummi—Currently, that is where the minister's ministerial intervention powers are usually used. They will have to remain in place until 1 November. The law is very clear under the protection visa at the moment. We can only take into account refugees convention issues. So between now and then, the ministerial intervention would be the normal pathway for assessing any of these other international humanitarian obligations that we have.

Senator Chris Evans—It is true, though, to add, that I have made clear to the leadership of the principal membership of the RRRT and MRT that I encourage them to highlight any cases of concern that fall outside their jurisdiction. So many of them have taken to saying: 'This is a particularly compelling case. If it were not for the fact that they fall outside the refugee regulations, we would give it consideration' or, 'This is one where the minister might like to have a look.' Formally they do not do anything, but they sometimes in a decision—

Senator HANSON-YOUNG—There is a watching brief?

Senator Chris Evans—Yes. I just encourage them to highlight any issues of concern they might have. It is also the case, of course, that they know now that the government will be

introducing the legislation. So it is still unsatisfactory in the sense that it is only when people come through the MI route that that gets measured, if you like. This will address that issue. At the moment, there is more awareness of the issue and the problem and the receptiveness of the government to deal with it. But the strict answer is the only avenue for people in that route is the MI route. But it is also fair to say that the networks in the sector are pretty good. If I approve one thing one day, there are 10 exactly the same the next.

Senator HANSON-YOUNG—Consistency. I like it.

Senator Chris Evans—I do not promise them consistency, but they certainly try to go through the door.

Senator HANSON-YOUNG—How many people do we think will be accepted under these new provisions?

Ms Keski-Nummi—That is a very hard assessment to make. The closest we can look at is under the current ministerial intervention cases what proportion might raise some humanitarian issues. Our estimates are probably no more than between 100 or 200.

Senator HANSON-YOUNG—Per year?

Ms Keski-Nummi—Per year. As I said, there is very little science behind that.

Senator HANSON-YOUNG—I appreciate that.

Senator Chris Evans—It is a very important issue, but I do not think the numbers are nearly as large as some advocates think. But it is also, I suppose, in part sometimes people who could have qualified under a number of conventions might actually get up in the refugee process, if you like.

Ms Keski-Nummi—That is correct.

Senator Chris Evans—But they would have qualified for other reasons as well. So I do not think the numbers will be as large as some advocate. Nevertheless, it is a gap in our system that needs to be fixed.

Senator HANSON-YOUNG—And a pretty tough position if you happen to be someone in that gap.

Ms Keski-Nummi—That is right.

Senator HANSON-YOUNG—So 1 November is the aspirational timeframe?

Senator Chris Evans—If you can get the Senate to deal with it expeditiously, Senator, I would appreciate your help.

Senator HANSON-YOUNG—We will see what we can do, Minister

Senator Chris Evans—Stop those damned Greens holding it up. Sorry.

Senator HANSON-YOUNG—At the moment, are the people who have been given the okay through the ministerial intervention given bridging visas in the interim or protection visas?

Ms Keski-Nummi—No. If the minister intervenes and grants them, it is a protection visa.

Senator HANSON-YOUNG—It is a protection visa. I just wanted to clarify that. The other questions I have are in other outcomes.

Mr Metcalfe—Senator, we had a couple of matters to come back on from this morning. I will get Ms Hand to come back.

Ms Hand—Senator, in the general questions, there were questions about staff. The first one was about staff tenure. The average tenure of ongoing employees in the department in the last two years has been stable at seven years. Before that, it was slightly less—6.6 years in 2006. The total voluntary separation rate for last financial year, 2007-08, was 11.45 per cent. Our projection for this financial year is 9.5 per cent. That includes employees who initiated separations and separations by transfers to other agencies. It does not include voluntary redundancies.

You also asked about locally engaged employees and whether there had been any significant changes in our posts overseas. There have not been since the January figures we gave you on notice. We do not envisage any major change in our locally engaged employees based overseas unless, as you are aware, I believe, from the last estimates session, we have two reviews underway. One is a service delivery functional review, which is looking at the processes we use for processing visa applications and other services and whether we centralise some of them onshore or offshore. Obviously, were we to do so, that could see our employee base overseas for locally engaged staff reduce if we centralise onshore.

In respect of A based staff, we currently have 129 A based staff overseas. That includes the five border protection positions that the secretary referred to earlier. You also asked about locally engaged employees and investigations in terms of corruption and other things. The process is, as we said earlier, usually our A based head of post or another A based officer would refer a potential investigation to our values and conduct section in Canberra. They would assess it and determine the veracity of the allegation. They may send a team to post to investigate. Then the Canberra team would make a recommendation to the delegate about the nature of any follow-up action to be taken. In the last 12 months, from July to December last year, we had 43 allegations from overseas posts. Of those, 26 were for corruption related allegations and 11 for more APS code of conduct matters. There were none found or taken further. None were found to be validated. Between January and 27 May this year, we had 33 allegations of corruption, four for code of conduct matters and one case of unlawful access to a database. Some of those are still being investigated. Again, none have been validated as such. The vast majority are for locally engaged overseas staff—I cannot give you the exact figures.

Senator FIERRAVANTI-WELLS—I want to ask about the locally engaged staff. It would be interesting to see where some of those complaints have come from. Could you take on notice the location?

Ms Hand—Sure.

Senator FIERRAVANTI-WELLS—I appreciate the process that you have gone to and I thank you for that, but it would be useful to know where that has occurred. Are there places where there have been recurring complaints in relation to, for example, the sort of sensitivities

that we were talking about this morning—about perhaps treatment by staff over the counter or something like that? I think we were talking about that.

Mr Metcalfe—Sure. We are happy to do that. I will just say that, in providing that information, if the information were to be so specific as to identify that it must have been an individual person because it was a one person post—

Senator FIERRAVANTI-WELLS—I appreciate that. I see what you mean.

Mr Metcalfe—we would probably try to basically provide it in a way that would indicate that there may have been certain—

Senator FIERRAVANTI-WELLS—I will leave it up to you as to how to—

Mr Metcalfe—We will do it in a way so it will not identify individuals.

Senator FIERRAVANTI-WELLS—I think that would be okay.

Senator Chris Evans—I will make the point, which I am sure my predecessors would have made as well, that the locally engaged staff in many of our posts are some of our longest serving, most hard working, most loyal and most valued employees. I have visited a couple of the officers. Their longevity and commitment to Australia and their jobs really does strike you. I know you were not suggesting otherwise—

Senator FIERRAVANTI-WELLS—No.

Senator Chris Evans—but I want to make it clear that we have great confidence in our locally engaged staff. We would not be able to operate without them. As I say, some of them have been with us forever and do a fantastic job. It is the nature of the work that we get these sorts of complaints. We treat them very seriously. But it is also the case that I get a number through to me which are often based on allegations of us providing favouritism to certain religious groups over others et cetera, trying to argue a policy point. As we made clear, we have a non-discriminatory policy in relation to those issues. Certainly a lot of the complaints I get are really, ‘You’re taking Shias. You’re not taking Shi’ites’, that sort of thing. There is no basis for that complaint. All complaints are investigated and taken very seriously because it is important for the integrity of the organisation.

Senator FIERRAVANTI-WELLS—Well, corruption has a certain connotation. That is why I was interested to know the nature and the breakdown of the allegations involved. It may well be a lack of adherence to perhaps a religious sensitivity as opposed to outright corruption or taking of moneys. There is a difference, obviously, between the two. In fairness, it is important, I think, if you see allegations of corruptions.

Senator Chris Evans—We make hundreds of thousands of decisions a year, many of which are unfavourable.

Senator FIERRAVANTI-WELLS—Of course.

Senator Chris Evans—When people do not get a decision they like—

Senator FIERRAVANTI-WELLS—I appreciate that.

Senator Chris Evans—they will react in a range of ways.

Senator FIERRAVANTI-WELLS—I accept that.

Mr Metcalfe—I would like to endorse what the minister just said. It is absolutely spot on. We could not do our jobs without the work of our 1,000 or so staff overseas who have language skills and cultural awareness and who, because of the cost of posting Australian staff overseas, clearly are a cost-effective way to do our program. I would also like to say that we have zero tolerance for corruption. So if there is a proven matter, we certainly deal with that in a very robust manner. You would never be sanguine on this point, but we take great pride that we have a very high standard of behaviour amongst our immigration officials. On those sad occasions where misbehaviour or corruption occurs, we take a very robust approach to weeding out that problem.

Senator FIERRAVANTI-WELLS—I will move to complementary protection. We had really just opened, Minister, with the reference in your press release of 12 May. What will be the criteria specifically for these complementary protection arrangements?

Senator Chris Evans—Ms Keski-Nummi took you through some of them. She can add to the answer, if you like. The other thing I would indicate, though, is of course we will have a draft bill coming in. No doubt there will be some sort of Senate committee process. It is not a ministerial thing; this will be a legislative thing. The other thing I would offer you and other members of the committee, not to curtail anything tonight, is a briefing, if you want it, when we get to the stage of introducing the bill or at that sort of stage. I am happy to provide that briefing as well but it will be a bill introduced into the parliament. No doubt we will have a Senate committee inquiry into the bill. But, in the meantime, Ms Keski-Nummi can take you through some of the details.

Ms Keski-Nummi—As I said, it would incorporate into the protection visa regime our obligations, specifically our non-refoulement obligations, explicit or implied, in the ICCPR and the convention against torture and convention on the rights of the child. The specific criteria is currently being developed. We are working closely with the Office of International Law and our legal area to develop that specific criteria. I cannot talk about it at the moment because I have not even seen it. The work is currently underway in terms of just how to define some of the issues around it, particularly issues such as being arbitrarily deprived of life or having the death penalty imposed and carried out. It will be those sorts of issues that are part of the ICCPR and CAT.

Senator FIERRAVANTI-WELLS—What about a review body? It will be set up. Will it have the sort of appeal rights up the chain and the usual—

Senator Chris Evans—They will be treated in the same way as a current application for protection. So a decision will be made in the department at the same time as a review of the refugee claims in the RRT and a ministerial intervention.

Ms Keski-Nummi—The other changes are required to give the RRT the powers to also review these cases. So both in the primary decision making and in the review stages it will be within the current PV regime.

Senator FIERRAVANTI-WELLS—How many visas do you envisage will be granted in a year?

Ms Keski-Nummi—As I mentioned earlier, any numbers I give would be purely speculative at this stage. Our best estimates are that they would be quite small, based on what

we have seen through the ministerial intervention processes to date, but no more than possibly 100, maybe 200, and I do not think it will go as high as that. But, as I said, there is no science behind that at the moment.

Senator Chris Evans—Senator, effectively what happens now is the escape valve for people who are not found to be refugees but have complementary protection claims is through ministerial intervention. They basically end up in that stream as the only place to go because there is no legal basis for their claims otherwise. I think the numbers will be quite small; I am on the conservative side of the numbers estimates. We do not formally know, but if you are asking me on the basis of my experience of what comes across my desk, I think the numbers will be quite small. It is important, in my view, that we deal with filling the gap as a policy thing, but I do not think the numbers will be large.

Senator FIERRAVANTI-WELLS—Obviously, determining the parameters within legislation is to ensure that the scope of application is not broadened through interpretation. Over many years I have seen, particularly in this area, courts get hold of things then broaden their application. Is this an attempt to codify a parameter?

Ms Keski-Nummi—We are only dealing with three of the treaties. We are currently working in terms of the criteria to be applied. It is not opening it up more broadly than that. We do not anticipate that there will be a high number of grants over a period of time. I am sure that we will see interpretations through the courts that we will have to do then also have a look at.

Senator FIERRAVANTI-WELLS—So, in effect, it is opening up a new avenue for appeals to a broader number of people through the court system?

Senator Chris Evans—I think about it like this: you have a group of people who are seeking protection in this country. They have a set of claims. They apply for refugee status. Some of them qualify; some do not. Some do not because they will be picked up by complementary protection grounds. Currently we do not deal with them very well, but I think that the vast majority, if not 100 per cent, of these people, already seek our protection, seek review and, if they fail, seek ministerial intervention. They are not a new cohort. There is not a group out there not in the system. These are people who claim to be in need of protection, who seek to go through the system. Part of what I am trying to do is make sure the system caters for their needs and fills that gap. It is not as if we have group A over here and then group B over there who are currently out of the system. They are part of group A and currently they cannot be assessed by the department because we do not have the complementary protection provision, and the RRT cannot find them to be under our protection either, because of the guidance. They tend to end up on the minister's desk because the RRT say: 'We cannot deal with them but, clearly, returning someone to a position where they may be tortured is not acceptable to Australia. Can you fix it?'

Senator FIERRAVANTI-WELLS—So it is basically only available for onshore applications?

Ms Keski-Nummi—That is correct, yes. One way to put it is that we currently do have complementary protection but it is the minister's intervention powers. This brings it into a

much more transparent framework—I am not saying it is not transparent now—under the statutory framework.

Senator FIERRAVANTI-WELLS—So, potentially, somebody has gone through the processes and been refused, and then their case goes to the minister, and the minister can exercise their ministerial discretion. In these cases the only avenue is ministerial intervention?

Mr Metcalfe—Yes. Let me try to briefly summarise it. We have obligations, under a number of international conventions, to not return people if they would be subject to persecution, torture—whatever. The best known is the refugees convention. That is enshrined in the Migration Act in relation to the criteria for the protection visa. It basically imports into the Migration Act the definition in the refugees convention about a ‘well-founded fear of persecution’.

We have also had obligations for many years—under the International Covenant on Civil and Political Rights, the convention against torture and the Convention on the Rights of the Child—not to send a person back if they would be the subject of inappropriate treatment. Until the recent decision announced by the government in the budget, the method of giving effect to those last three obligations was administrative, and it only became available through the ministerial intervention power under section 417 of the Migration Act following RRT review. There was no visa category and no way that a departmental officer could make a decision in relation to those convention obligations, because there were no statutory criteria relating to that. The only criterion we had was the refugees convention. Similarly, the refugee tribunal’s jurisdiction relates to the refugees convention, and so, in situations where a person was not a refugee but where we formed a view that there was an obligation under one of the other three conventions, the only avenue to deal with that was the section 417 power of the minister at that stage. So it was at the end of the process, not at the beginning. In the same way, we discussed earlier today with Senator Fifield the aspect of the health waiver and how in some cases that is not available to a departmental officer at the beginning or to the MRT on review; it is only available at the intervention stage.

So, as Ms Keski-Nummi said, until now complementary protection has been given effect administratively at the ministerial intervention stage. The announcement by the government is that complementary protection will be legislated as a criterion of consideration for a protection visa, and therefore it would be a determination that a primary decision maker will be able to make in relation to claims being made by people. Similarly, if a departmental officer refuses the case and a merit review is sought by the tribunal, the tribunal will have the power to substitute a decision based on those other conventions and that would thus obviate, we would expect, the need for the intervention through the minister to occur—unless, of course, the tribunal also finds against the person and they still seek intervention, which is possible.

Senator FIERRAVANTI-WELLS—Which is where it will come back to.

Mr Metcalfe—It is still possible, but we would expect those meritorious cases to be established at the primary decision-making stage or at least at the review stage, which would significantly reduce the number of cases that need to go before the minister. As the minister said, we do not expect this to be a new caseload because it is an existing caseload that is being

dealt with in a different manner. There is not a large group of people out there who are sitting there in Australia not going through any process because there is no process to go through; what they would typically do at the moment is go through the refugee process and then find the answer to their particular set of issues only when they get to the minister.

Mr Hughes—I will just add to that answer that what we are doing brings Australia more into line with international standards. In other words, I think it has become accepted that it is best to have all non-refoulement obligations decided in a single procedure, whereas now we have a procedure over here for the refugees convention and another procedure over there for the other non-refoulement obligations. The concept of a single procedure has, I think, really become the international standard and is certainly adopted by the 27 countries of the European Union. So I think what we are doing will bring us much more into line with international practice.

Senator FIERRAVANTI-WELLS—So effectively this is going to reduce the cases that are before you in terms of ministerial intervention, Minister? That means your in-tray goes down.

Senator Chris Evans—I would hope so, but not significantly. Of the 5,000 or more files I see, I reckon it would be under 100, so if you think I am going to feel hugely relieved on a workload basis then the answer is, ‘I don’t think so.’ But what it does do is provide transparency and justice earlier, and people will know that we are meeting our obligations and that this is the statutory process. At the moment, that is not at all clear. There may be some who do not apply because they think they are not eligible, but this will give us integrity in the asylum seeker process for these international obligations as well. I am not sure that it is all that contentious; it is just a recognition of our obligations and a way of making sure we process that in a more efficient and transparent way than we do currently.

Senator FIERRAVANTI-WELLS—So, at the end of the process, they will be given a protection visa.

Senator Chris Evans—We are trying not to add to the complexity, basically. The idea is that there is one process and that other grounds, if you like, through that process will have the same visa outcome if they get up on the other ground.

Senator FIERRAVANTI-WELLS—Clearly, there has been an assessment made within the department based on current caseloads. Do we have a particular country of origin that dominates that category?

Senator Chris Evans—Ms Keski-Nummi might want to say something; but, from my experience, when we get the files the convention on the rights of the child is the one that comes to you most often. And you have claims made often on terms of the one-child policy in China, for instance. I do not want to be too specific, but there are those sorts of issues that are raised.

Ms Keski-Nummi—I really do not have much to add. In terms of there being any particular country—no. If you look at the major countries where there are protection visas, they are the major refugee producing countries. There will probably be other issues raised around the complementary protection issues as well.

Senator FIERRAVANTI-WELLS—Will these be counted against the refugee and humanitarian program, or will they be part of the 6,500 or the figure that you were quoting before?

Ms Keski-Nummi—They will be counted against the program, as they currently are for protection visas. Protection visas are currently counted against the program.

Senator Chris Evans—Most of them would be, anyway. If it comes by ministerial intervention and I give them a protection visa, it is counted as well. I guess what I am saying is that it is more substitution than new caseload.

Ms Keski-Nummi—That is right. With ministerial intervention, if the grant is a humanitarian visa it is also counted against the program, so it is not really an addition; it is counted there now.

Senator FIERRAVANTI-WELLS—Is this going to be a sort of catch-all? Let me just take an example. If somebody comes into the country on a tourist visa and becomes an overstayer, are we going to open up a new category for people who find some sort of claim under one of these conventions? Basically, we are opening up another avenue to people to go through our system?

Ms Keski-Nummi—No, I do not believe so. It is no different from what happens now in terms of individuals who may have some claims but they have to wait until they go to ministerial intervention. I do not believe it is opening up to other claims. As we have said, it is in those areas where we have treaty obligations, and it is limited to those areas alone.

Senator FIERRAVANTI-WELLS—You have obviously made an assessment that there are probably 100 or so cases per annum. I am just picking a figure. Are we able to get some sort of statistical information of the breakdown of that into the categories where you think that those cases would fall?

Ms Keski-Nummi—Can I take that on notice and have a look to see what we might be able to provide.?

Senator FIERRAVANTI-WELLS—Absolutely.

Senator Chris Evans—As I said earlier, Senator, I am not trying to delay you at all, we will introduce a bill with an explanatory memorandum and we will have an inquiry. We will provide a lot of that information, but we will give you what we can now.

Senator FIERRAVANTI-WELLS—I am going to test Mr Metcalfe's corporate history here. I think in the early 1990s a similar sort of visa—and correct me if I am wrong; I am only going on my memory—was introduced. It was enforced for about a year and then, if I am not mistaken, people started to get very creative in terms of falling under its umbrella. Suddenly, it was not enforced for very long and it was ceased.

Mr Metcalfe—You have got a good memory, Senator. I think what you are referring to is section 6(A)(1)(e) of the Migration Act, which, from memory, was introduced in legislation in 1980. I will check this, but I am pretty sure it commenced operation in January 1981. I will provide you with a very short history of it. Up until then, the power to grant an entry permit, as they were then known, established in section 6 of the act at the time, was basically completely unfettered. What we now have in hundreds of pages of regulation was contained

in one section that said: ‘The minister may grant a person an entry permit.’ That was it. There was an amnesty in 1980, known as the Regularisation of Status Program, which was seen by the government at the time as a means of cleaning up a large illegal population in Australia. Some thousands of people came forward and had their status regularised. But, in introducing that amnesty or the Regularisation of Status Program, the then government indicated that they would bring in statutory criteria for the grant of an entry permit if it was a permanent permit being granted to a person after coming to Australia on a temporary basis—the so-called change of status arrangement.

Section 6(A) contained a number of subsections which permitted the application to stay in Australia permanently, if you had been here temporarily, to a number of criteria. From memory, 6(A)(1)(b) related to spouses—so if you married an Australian; 6(A)(1)(c) related to the refugees convention; 6(A)(1)(d) was, I think, territorial asylum; and 6(A)(1)(e), which is where you are coming to, Senator, was ‘other strong compassionate or humanitarian grounds’. According to the material from the government of the day, that was intended to be the safety net for those tricky cases where there was no other provision.

Senator FIERRAVANTI-WELLS—They were reviewable under judicial review.

Mr Metcalfe—Reviewable under the then recently introduced AD(JR) Act—

Senator FIERRAVANTI-WELLS—That is right.

Mr Metcalfe—It was intended to be a very small number of cases. It was a little bit like—18 years later—ministerial intervention. It was designed to be limited to a very small number of cases as a safety net. We found that that very small number of cases under 6(A)(1)(e) grew, I think, to some 20,000 or so cases. That was one of the reasons—

Senator FIERRAVANTI-WELLS—Particularly with a liberal interpretation by the then Federal Court, I would add, Mr Metcalfe.

Mr Metcalfe—That is right. Their honours assisted in this respect.

Senator FIERRAVANTI-WELLS—They assisted greatly.

Mr Metcalfe—That was expanded greatly.

Senator Chris Evans—Who was in government in 1980?

Mr Metcalfe—I think it was the Fraser government.

Senator FIERRAVANTI-WELLS—It was the mid-eighties.

Mr Metcalfe—I think it was Minister Ian McPhee. I remember this clearly, because I had just joined the department. I was literally brand new. I was 21. That system collapsed essentially. I remember that former Minister Ruddock was fond of telling that story. That then led to the migration reforms in the late eighties and the introduction of statutory criteria regulations and whatever. Having given that very long introduction, can I say that this is completely different. The criteria under these three conventions are quite clear. There is a non-refoulement aspect in relation to essentially persecution. We assess the potential for there to be a blow-out or even a statutory or judicial interpretation to vastly widen the criteria as nil. So, as we have been saying, we are already seeing these cases and that no new case load is going to appear. We do not believe, frankly, that there is scope for smart lawyers or other

people to dress up claims to try and fit in with these criteria. We believe that we are already seeing these cases. We see them as refugee cases which are unsuccessful, and we then see them as cases that come to the minister under ministerial intervention.

Senator FIERRAVANTI-WELLS—I raise the issue because, while I appreciate the Convention on the Rights of the Child and the convention against torture, the International Covenant on Civil and Political Rights is much broader, and my concern is that there is the possibility of creativity, if I can put it that way, in the application of that convention.

Senator Chris Evans—You and I are on the same page there, and I have sought the same assurances and pursued the same issues. We do want to make sure it is limited to those people who we think are in need of our protection.

Ms Keski-Nummi—In terms of the ICPPR, it is limited to our non-refoulement obligations under the ICCPR. So we have to do an assessment around those where there is a non-refoulement issue, not everything under it.

Mr Metcalfe—I suppose what we are saying, Senator, is that we believe that the people who would access this process are already known to us because they are using the refugee process in order to find their way through to the only way to deal with the issue, which is the minister's personal intervention powers. But that has been a very helpful discussion for us, because we now know exactly what to put in the explanatory material for the legislation and in our submission to the forthcoming committee enquiry that I am sure we will have in due course.

Senator FIERRAVANTI-WELLS—Okay. Do you want to ask some questions, Senator Barnett? And then I will ask some more.

Senator BARNETT—Thanks very much for that, Senator. I wanted to ask a few questions about this settlement grants program and the Auditor-General's report. I am a member of the Joint Standing Committee on Public Accounts and Audit—

Mr Metcalfe—I think we have just leapfrogged through to outcome 5, Senator.

Senator BARNETT—I was advised that the settlement grants program was under outcome 2.

Mr Metcalfe—That is under the old system.

Senator BARNETT—The old system? Okay.

Mr Metcalfe—Yes, it has been until now.

CHAIR—It is 5 and 6.

Mr Metcalfe—As I mentioned this morning, the old outcome 2 has now become outcomes 5 and 6 in our new world.

Senator BARNETT—All right. We will get to that then, won't we?

Mr Metcalfe—We will see you tomorrow about that!

Senator Chris Evans—Senator Barnett, it is designed to confuse both the senators at the table and the minister! And it has been successful.

Senator BARNETT—Well, we have achieved that! There is one other area that may be in this outcome—but I stand to be corrected. I asked in February and, I think, at previous estimates about the persecution of Christians in the Middle East and the measures and numbers that we have in Australia in terms of resettlement of refugees. Do you have any figures on the current position?

Ms Keski-Nummi—I do not have figures on that. In terms of the referral or assessment of people for resettlement, it is done on a case-by-case basis. We assess people against their persecution concerns and, clearly, religion can be one of the areas for which a person does receive refugee status. The closest information, I think, that I could point you to is the department's website and the settlement database there, where people do identify their ethnicity and their religious groups. But we do not keep details of each of the persecution criteria for people who are assessed as being refugees. So I could not say to you that it was on the basis of their being a Christian or from any other religious group. That is one of the criteria that are assessed. There are a number of criteria under the refugee convention, such as being a member of a particular ethnic or social group, and religion can also be a reason for persecution.

Senator BARNETT—How many do we have from the Middle East?

Ms Keski-Nummi—Sorry?

Senator BARNETT—How many do we have from the Middle East?

Mr Metcalfe—About a third of our programs.

Senator BARNETT—About a third. Yes, I read in the annual report that it was one of the key areas. So numbers wise, if we have got about 13,000, it would be about a third of that?

Mr Metcalfe—Yes.

Senator BARNETT—And what are the main reasons given by that third?

Ms Keski-Nummi—The reasons are in relation to fear of persecution. Some would be because of membership of a particular social or political group, their ethnicity or their religion.

Senator BARNETT—Can you be more definitive?

Ms Keski-Nummi—No, I cannot, inasmuch as we do not keep those sorts of detailed statistics of the persecution claims themselves. It would take an enormous effort for our post to be able to disaggregate the data to that specificity. As I said, I think the settlement database is one area where you do find how people themselves self-declare their ethnicity and their religious affiliation.

Senator BARNETT—I am a little surprised. In some countries like Iran or even Iraq there would be a common view amongst those refugees applying for resettlement in Australia as to the cause of the persecution.

Ms Keski-Nummi—What I can say is that, clearly, being a member of a particular religious minority is a key one.

Senator BARNETT—That is right.

Senator Chris Evans—But not, on its own, necessarily enough. It is an individual—

Senator BARNETT—But together with other issues.

Senator Chris Evans—Yes. It is an individual assessment process. I think what the officer is saying is that each individual assessment might have different factors that influence the decision maker to make a grant. To identify which one was primary and which was secondary is not something they do. What she is saying is you can look on the website and see some descriptions of the ethnicity and the religious beliefs of the people who came in, but they may not have come in strictly on that basis. They might have been found to be owed our protection for other related matters. It is complex, personal. Each case is done individually.

Senator BARNETT—I am sure I am not alone and that there would be many other senators and members in this parliament and in other places who get a lot of constituent feedback and the stories are heart-wrenching. Certainly the stories I have received are heart-wrenching in terms of religious persecution, particularly in Iran. We have heard stories about Iraq and other Muslim countries, in the Middle East and other places. The persecution is rife. The stories are shocking. You are just saying to me that those stories are all assessed on a case-by-case basis.

Ms Keski-Nummi—Yes, they are. To add to what you say, I know, having personally done these sorts of interviews, that they are incredibly distressing. The program is a program of 13,500 this year, and many more people would like to be resettled than we can resettle under our program. We look to support people in many different ways, particularly in Syria and Jordan at the moment, through some of our displaced persons programs and the work we do with UNHCR to provide support and assistance to people who have been displaced. So there are a number of different ways that we do provide that support. But, yes, refugee claims and the interviewing of people who have suffered a lot are every distressing.

Senator BARNETT—I will leave it there. Thank you.

Senator FIERRAVANTI-WELLS—I have just looked at the website. Whereabouts would I find that?

Ms Keski-Nummi—I will have to ask Daniel Boyer, but it is on the settlement database.

Senator BARNETT—The minister referred us to the website earlier and I had a bit of a search myself but I could not find what I was looking for. I will go back and try again.

Ms Keski-Nummi—We will provide you with a direct link tomorrow morning, if that is okay.

Senator FIERRAVANTI-WELLS—Okay. I was just in the website now and I wondered where I would find it.

Ms Keski-Nummi—It will be under the settlement area somewhere. We will get you a direct link.

Senator FIERRAVANTI-WELLS—Thank you. I want to ask some questions in relation to the changes in the budget to the 45-day rule. This was introduced by the coalition to prevent extensive abuse of the refugee processing regime and limit some vexatious claiming. How many people does the government believe will be affected by this change?

Senator Chris Evans—I will get Ms Keski-Nummi to take you through that. There is a bit of a development story here. One of the first things I got when I came into office was a report that Senator Vanstone had done about alleviating the problems that the 45-day rule was causing. She had been grappling with that. Mr Andrews had as well. It has taken me a long time and a lot of work with the department to see whether we can find a way forward. Ms Keski-Nummi will take you through the process.

Ms Keski-Nummi—If I could start at the beginning, I will take you through and go through the numbers as well. I guess we have developed a number of public policy principles around this in relation to ensuring that people remain lawful while they are in Australia and, if they do remain lawful while they are in Australia, that they have access to work rights. The 45-day rule in some ways was a pretty blunt instrument. We often found people who had been in Australia perfectly legally and validly, possibly students or others who had been in Australia for a long period of time, had had their country's circumstances change. They had remained lawfully in Australia and then applied for a protection visa. Because of the length of time, they were then not able to get work rights even if they may have had work rights earlier on. Some of the evidence also showed that the protection visa applicants who applied within the 45 days had lower visa protection grant rates than some of the people who applied after the 45 days, which was a grant rate of around 36 per cent. There was quite a difference in individuals themselves.

The way the 45-day rule will now work is that people who have remained in Australia irrespective of the period of time that they have been in Australia would have access to work rights. People will go onto a bridging visa A, for instance. People who go onto a bridging visa C, I think it is, where they may have been lawful but then come forward to the department to apply for a substantive visa and are put onto a bridging visa, are then told there will be an assessment of their compelling need to work. We are working on that criterion at the moment in terms of the interpretation and guidelines around 'compelling need to work'. People who have been located and are given a bridging visa E would not only have a compelling need to work but also the criteria would now require them to have an acceptable reason for delay in applying for a protection visa. There will be a graded difference depending on your status and how you have continued to interact with the department in relation to access to work rights. We are currently finalising and working on the guidelines and the criteria around the compelling need to work and also the acceptable reason for delay to ensure that it works well. An estimate is that it probably would give an additional 600 people work rights.

Senator FIERRAVANTI-WELLS—So what is to stop a student, for example, who has been here on a student visa then putting in a claim at the end? Previously they might not have been entitled to do that. Given the number of students that we do have, is it not possibly something that could turn out to be a lot more than 600 people?

Ms Keski-Nummi—I do not believe so, for the reason that if people have been in Australia, remained lawful and been doing what they were doing on their visas and there is a change in country circumstances and they apply for a protection visa then I do not see that it will necessarily blow it out. It also means that we are then dealing with people expeditiously because we still have the 90-day rule for assessment of applications. So I cannot really see that there will be an enormous growth of people.

Senator FIERRAVANTI-WELLS—What is to stop somebody, say, putting in a claim simply because they want to extend their time here in Australia?

Ms Keski-Nummi—People do that now, I would venture to suggest. With the 90-day rule, the protection visa cannot be seen as a way of delaying departure or being able to stay in Australia for long periods of time; in fact, if anything, that has had quite an impact in terms of the very quick way that we move through protection visa applications.

Senator FIERRAVANTI-WELLS—Are you telling me that the introduction of the 90-day rule has lessened—

Ms Keski-Nummi—I think what I am saying is that—

Mr Metcalfe—If I can just jump in, my recollection is that at the time of the introduction of the 45-day rule there was a very significant backlog of applications before the department. We were finding applications that were clearly unmeritorious—people from countries where you would not expect there to be a refugee problem. My memory of the time is that the \$30 application fee for a protection visa was known as the ‘\$30 work visa’; it was being marketed that way. The key to dealing with these matters is quick resolution of the decision. The absolute key is not having two-year backlogs but dealing with cases in 90 days, because it removes the incentive.

In terms of the potential for someone who might have been here as a student for two, three or four years and wants to stay longer to use this process to obtain work rights, to be perfectly blunt, if that person wanted to stay then they would just work illegally anyway. But what we have seen—there are clearly documented examples, and I am sure that there will be many charities, church groups and others who will provide evidence if there are ever committee hearings on these issues—is the misery caused through people not being able to look after themselves and being entirely reliant upon charity who are in fact refugees and who may have had good and valid reasons for not applying within the 45 days. What I think Ms Keski-Nummi has articulated is a very careful, considered policy approach to try and ensure that there are no incentives created by the changes but that the hardship that has been clearly documented is overcome. Those are the policy principles that have been established.

Senator Chris Evans—A key thing at the heart of this and a number of other changes made in relation to ministerial intervention is that you have to remain lawful and engage with the department. If you play by the rules, you get treated properly; if you do not play by the rules and do not stay lawful, we are not interested in you. What we are trying to enshrine in this method is that people who stay lawful and stay engaged with the department get the benefit of having working rights, if you like, while their processes are expeditiously dealt with. The people who do not do that do not get them. It is what we are trying to do with ministerial intervention. I do not take the MIs from people who are not lawful. I used to have these files coming up from people who were unlawful seeking ministerial intervention. I said: ‘Hang on. Why should I be intervening if they are not lawful?’ That underpins the approach as well: keeping people lawful and keeping them engaged with the department. Our experience has been that you get better results from them in terms of voluntary returns and all those things if they are actually engaged. Once they drop out of the system, work illegally, are scared to front up to the department et cetera, they disappear, if you like, and turn up as an MI

10 years down the track. So part of the principle is to keep people engaged and able to support themselves. But what I have also made very clear is that, once people have exhausted their rights of appeal, they ought to leave voluntarily or be removed.

Senator FIERRAVANTI-WELLS—Can I ask, Mr Metcalfe, obviously we have this magic figure of 50,000 lurking out there who we think are—

Mr Metcalfe—It is a bit under. It is about 48,000 and something.

Senator FIERRAVANTI-WELLS—Are we monitoring this?

Mr Metcalfe—Absolutely, yes.

Senator FIERRAVANTI-WELLS—Update me. Obviously 50 has gone down to 49.

Mr Metcalfe—Yes. I think in the last annual report it was about 48,000—something like that.

Senator FIERRAVANTI-WELLS—And trending down?

Mr Metcalfe—No, staying around the same, but what is interesting is that it has remained around the same while at the same time the number of people coming to Australia has increased. So the issue with overstayers has remained fairly constant in terms of numbers but a decreasing proportion of the number of people are coming to Australia.

Senator FIERRAVANTI-WELLS—So should I read into that that the ultimate objective of your changes on the 90-day rule with this number of—

Mr Metcalfe—The 90-day rule, of course, was introduced by the previous government in 2005. It was essentially to require compliance, as far as humanly possible, by both the department and the tribunal. There are issues that go into the amount of resources applied to the caseload, so if caseloads change and increase then we have funding formulas that allow more resources to be employed in that area. But, frankly, our objective is not 90 days; it is fewer than 90 days. It is to deal with cases as expeditiously as possible and, as I said earlier, it is critical that the system not become dominated by backlogs which provide perverse incentives. That is the critical point. I thought it was in my year-at-a-glance snapshot figure, Senator, but I cannot find the figure. But it will be in the annual report and we will obviously upgrade it in the forthcoming annual report.

Senator Chris Evans—Senator, I could not possibly undermine the secretary, but when I find the department cannot give me figures on people who are legally here, I am always amazed at the accuracy of the figure for people who are not legally here. I have always wondered how we calculate that figure.

Senator FIERRAVANTI-WELLS—Mr Metcalfe was worried about this for some time.

Mr Metcalfe—I always get worried when I get questions from this side of the table, Senator, but what I should say is that that figure is a statistical figure. It is an estimate. It is very clear, and it is based upon the fact that Australia—not uniquely, but there are very few countries in the world that are able to—can accurately measure the number of people who arrive who are foreign nationals and the number of people who depart who are foreign nationals. The minister has helpfully told me—

Senator Chris Evans—No, I have passed on pertinent papers!

Mr Metcalfe—The minister has helpfully passed information to me, which I am sure he wants me to use, that indicates that our estimate at the end of last year, as at 31 December, was 48,500, which is 0.2 per cent of our overall national population, compared to 11,600,000 illegal immigrants in the United States of America, which is 3.8 per cent of their population. So I think we are doing 17 times better than America.

Senator FIERRAVANTI-WELLS—And I guess, too, as part of that statistic you can monitor the type of people who are out there illegally.

Mr Metcalfe—In terms of broad cohorts, yes. And when we come to visa compliance under program 4 tomorrow, we can certainly talk about the top nationalities in terms of overstays, in terms of numbers, in terms of proportions and those sorts of things. We are able to do that. But, as I said, it is an estimate based upon clocking people in and how many we would expect to be clocked out again, bearing in mind that it is a dynamic process of people coming and going over time.

Senator BARNETT—Which outcome is that under, Mr Metcalfe?

Mr Metcalfe—The aspect of visa compliance and status resolution is under outcome 4.

Senator FIERRAVANTI-WELLS—I want to follow up a question on notice, Mr Metcalfe, but I do not want to start embarking on too much. Perhaps we can start tomorrow on border management. Senator Humphries has asked me to follow up a question on notice for him. It is question No. 22. Senator Humphries asked:

Have any of the (boat) arrivals in this most recent round been previous boat arrivals in Australia, onshore or offshore? Were any of them previously on the *Tampa*?

I think on the last occasion, Mr Metcalfe, as you may recall, there was a bit of to-ing and fro-ing on this and then subsequently the answer came.

Mr Metcalfe—I was a bit untidy on that point and I clarified that with Senator Humphries.

Senator FIERRAVANTI-WELLS—That is all right, but there has now been an answer given. The answer is:

Of the recent boat arrivals between 2 October 2008 and 19 January 2009:

- Four Offshore Entry Persons (OEP's) have been in Australia before. They had been granted temporary protection visas and departed Australia of their own accord.
- Five OEP's were processed on Nauru and accepted voluntary reintegration packages to return home after being found not to be owed protection. Of these, four were previously on the *Tampa*.

Senator Humphries has asked me to ask you how could they have been processed on Nauru when the facility closed in February 2008.

Mr Metcalfe—They had been processed previously and returned home previously.

Senator Chris Evans—Senator, what he is saying is that they came back. They were on the *Tampa*, they were found not to be refugees, they went back to Afghanistan and they came out in one of the more recent boat arrivals.

Senator FIERRAVANTI-WELLS—So perhaps the wording of it has confused Senator Humphries. Anyway perhaps you might have another look at that question for him and if there is anything further you could clarify it for Senator Humphries.

Mr Metcalfe—I will read it again into the record. It says:

Senator Humphries ... asked:

Have any of the (boat) arrivals in this most recent round been previous boat arrivals in Australia, onshore or offshore? Were any of them previously on the *Tampa*?

The answer that we gave in question No. 22 is:

Of the recent boat arrivals between 2 October 2008 and 19 January 2009—
so those are some of the folk who arrived recently—

- Four Offshore Entry Persons (OEP's) have been in Australia before—

so those are people who are offshore entry persons now, have been here before and they have been granted temporary protection visas. So they had come here before the Pacific strategy was put in place and been processed, found to be refugees, granted TPVs and left Australia of their own accord. Another five offshore entry persons—here now—had been processed on Nauru, and it says they:

accepted voluntary reintegration packages to return home after being found not to be owed protection.

Of these, four had been on the *Tampa*. So those folks—the five now—who were here had been here before. The four on the *Tampa* had been sent, under the Pacific strategy, to Nauru, were found not to be refugees, accepted voluntary return packages to go home and have come back again.

Senator FIERRAVANTI-WELLS—So we do not know when they were processed on Nauru?

Mr Metcalfe—Clearly, it would have been in the earlier part of this decade. As for the four on the *Tampa*, they would have been processed probably in 2002 or 2003. As to precisely when they returned home I am not sure. Nauru was shut well over a year ago.

Senator FIERRAVANTI-WELLS—That should clarify it. Chair, I do not have any more questions as to outcome 2.

[10.49 pm]

CHAIR—As there are no further questions, we will move to outcome 3.

Senator BARNETT—This is a follow-up to the parliamentary Joint Committee of Public Accounts and Audit, the Auditor-General's report on the management of the movement alert list. As you would know, it has had some media in the last week. I want to address some of the criticisms in the report. I am a member of the committee. We treat the decisions and the reports of the Auditor-General very seriously. I am aware, obviously, of the important role of the movement alert list and its objective to protect the country from those people who may pose a threat to the Australian community, whether they be criminals or whatever background they have. The key findings are set out on pages 15, 16 and 17 through to page 21, where a number of recommendations have been made. I note that DIAC has agreed to the recommendations, so that is somewhat comforting.

I would like a more fulsome response, if possible, Mr Metcalfe to the concerns raised by the Auditor-General, specifically 13, 14, and 16. In 13, the movement alert list has identified persistent shortcomings in the management of MAL data, in the collecting of all the right

records, in maintaining data quality and in deleting outdated information—that is one point; two, DIAC needs to resolve who is responsible for the integrity of the data; and, three, they say that you are well aware of the deficiencies of the data. That is a pretty bold statement, but he has said it. Perhaps that could address those three things to start with. You have obviously seen the media and you have seen the reports.

Mr Metcalfe—Yes, that is right. We engage very closely with ANAO in their inquiry and cooperating with them. It is something that I regard as very important, to have a good open working relationship with the Audit Office. Perhaps I will make some general comments and then I will turn to Mr Correll or Mr Frew to talk in more detail.

First of all, the movement alert list, as you are aware, is a critical tool in our overall visa management and border security arrangements. It is intentionally described as an alert list to alert us that there may be an issue in relation to a person or a document. It is intentionally a very large database to ensure that any person who may possibly be of concern is identified. We would believe that a very significant problem would exist if a person who should be identified was not identified. Frankly, it is less of a problem if a person is identified when there is no need for them to be identified because it is not of decision-making tool. The movement alert list, for example, is a key system in our electronic decision-making environment, where hundreds of thousands of visas are granted without any human intervention on the basis that there has been a check of our databases and no one of concern has been identified, either precisely or possibly, as being a personal concern. If there is a match and if there is an area of concern, the autgrant does not occur and the intended traveller is advised to contact us for a more detailed assessment. At that stage we would move to identify whether the person is in fact of concern or just someone who has a similar sort of name.

Senator BARNETT—Noted.

Mr Metcalfe—We certainly welcome the report. As you said it covered issues of data quality management, improved performance reporting, systems monitoring and aspect of policy qualification and responsibility. I was pleased that the ANAO commented favourably on our successful implementation of the CMAL project, the central movement alert list project, which has substantially fundamentally change the business model for our alert list operations. It delivers a much stronger checking of visa applicants before visas are granted and significantly improves the contribution to border protection and national security.

I was pleased that the ANAO commented favourably on our successful implementation of the CMAL project, the central movement alert project, which has substantially fundamentally change the business model for our alert list operations. It delivers a much stronger checking of visa applicants before visas are granted and significantly improves the contribution to border protection and national security. The ANAO report notes that in some cases the completeness of records held within MAL has suffered in recent years. I would ask that that is seen in the context of an alert list which has expanded from less than 60,000 records for all categories 12 years ago, in 1997, to nearly 700,000 records now, over which 60 per cent are national security related. So these are not records we have that we put on; these are records supplied to us by other agencies, specifically the security intelligence organisation, on the basis that the person with that name or those details or that passport may be of national security concern. So

quite deliberately, even if we have vague information, we list it, because to not list it and then have a terrorist come to Australia and do something awful would obviously be a serious failure. So the presumption is of caution, and that mitigates against precise records, it in fact encourages less precise records so that we can operate the alert list properly.

We have agreed with the Audit Office's recommendations to improve the monitoring and aspects of data quality, but we do note that in some cases the overriding need to manage the risk of entry of high-risk individuals will require us or the relevant security organisations or the relevant law enforcement bodies to include records with less than complete information. I note that the ANAO report does state that it may be better to have a sparse record of a person of concern than none at all. Mr Correll or Mr Frew might now be able to respond to the precise questions you had, Senator.

Senator BARNETT—Thanks for that. I am not sure we are going to get through this tonight, but it is a good introduction and I appreciate your initial feedback.

Mr Metcalfe—I thought it was important because it is an important report and it is an extremely important capability that we have. We resource it well. It is critical. There are some areas where we will always want to improve performance and we are happy we have agreed with the recommendations and we are certainly committed to working on them to get improvement.

Senator BARNETT—It is a critical list, as you say. One issue that we have as legislators is, do we have a system error? If we have, I know your objective is to fix it, but can it be fixed? So we need to work through some of those issues so that we know where we stand.

Mr Metcalfe—That is right. The point the department will make and we have made with the Audit Office is that we would prefer, if there is an error, for the error to be in there being a sparse record rather than there being no record. The much greater error is for there to be no record where there should be a record. So perfectness in data quality is an elusive concept, and this is deliberately a system that sweeps up possible matches and then refers them for a more detailed assessment as to whether or not this particular person is in fact the person of concern, in which case they should not travel or they should be monitored carefully.

Senator BARNETT—It should raise a flag for you and then you go on.

Mr Metcalfe—That is exactly right.

Senator Chris Evans—If we have a piece of information that says a people smuggler might have used an alias, in this case of Andrew Metcalfe, I would rather Andrew Metcalfe's name was on the list than not on the list, because it alerts us. That is the point. In fact it may be wrong: Andrew Metcalfe may not be a people smuggler, but the alert allows us to then do the proper checks. You can criticise the system by saying why the hell was his name on the list, but the risk is all on the other side. The risk is not having—

Senator BARNETT—That is the key question, Minister, if the risk is all on the other side or if it is on both sides and whether we are actually letting people in who should not be getting in—this is one of the key queries that I want to pursue—or whether we are actually stopping too many at the border for the reasons that you have just pronounced regarding Mr Metcalfe and we are delaying them for perhaps seemingly unnecessary reasons.

Mr Metcalfe—I mentioned earlier that we now have this new and very major development in the central movement alert list which means that the system is being run out of our national office border operations centre rather than in a highly distributed way across all of our posts. We believe that we have now struck a good balance between ensuring that a person of concern is in fact detected while reducing mismatches of people who are not of concern, even though they may have a name similar to a person of concern. For example, in the case of the electronic travel authority, the referral rate for more careful checking has dropped from between nine to 14 per cent of cases to under one per cent. But we believe that we have managed to reduce that referral rate without compromising the potential for a person of concern to slip through the process.

If I could indulge in a slightly humorous note, my Cantonese name or nickname that was given to me when I was in Hong Kong by some of those local staff that you referred to earlier is also the name of a well-known people smuggler. But I will not go into exactly why we share the same name.

Senator Chris Evans—That is two matches we have on him now as being a person of concern!

CHAIR—That is a good note to finish on for the evening, being 11 o'clock. We will wind up there.

Committee adjourned at 11.01 pm