



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

ESTIMATES

**(Additional Estimates)**

TUESDAY, 9 FEBRUARY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE LEGAL AND CONSTITUTIONAL AFFAIRS****LEGISLATION COMMITTEE****Tuesday, 9 February 2010**

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

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

**Senators in attendance:** Senators Barnett, Bilyk, Bishop, Crossin, Fielding, Fifield, Hanson-Young, Humphries, McGauran, McLucas, Parry and Trood

**Committee met at 9.01 am**

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

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

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

Mr Andrew Metcalfe, Secretary

Mr Bob Correll PSM, Deputy Secretary

Mr Peter Hughes PSM, Deputy Secretary

Ms Felicity Hand, Deputy Secretary

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

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

Ms Robyn Bicket, Chief Lawyer, Governance and Legal Division

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

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

Mr Peter McKeon, First Assistant Secretary, Systems Division

Mr Todd Frew, First Assistant Secretary, Visa and Offshore Services Division

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

Mr Sandi Logan, National Communications Manager

Mr Steve Biddle, Assistant Secretary, Financial Strategy and Budgets Branch

Mr Damian Carmichael, Assistant Secretary, Operational Performance Branch

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

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

**Program 1.1 Visa and Migration**

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

Mr Kruno Kukoc, Principal Advisor, Migration Strategies Branch

Mr Peter Speldewinde, Assistant Secretary, Labour Market Branch

**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 Stephen Allen, Acting First Assistant Secretary, Border Security Division

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

**Program 4.1 Visa Compliance and Status Resolution**

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

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

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

Mr Dermot Casey, Assistant Secretary, Case Management and Review Branch

**Program 4.2 Onshore Detention Network**

Ms Deborah Jacka, Acting First Assistant Secretary, Community and Detention Services Division

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

**Program 4.3 Offshore Asylum Seeker Management**

Ms Deborah Jacka, Acting First Assistant Secretary, Community and Detention Services Division

Mr Daniel Boyer, Assistant Secretary, Irregular Maritime Arrivals Branch

**Program 4.4 Illegal Foreign Fishers**

Ms Deborah Jacka, Acting First Assistant Secretary, Community and Detention Services Division

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

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

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

Mr Peter Templeton, Assistant Secretary, Settlement Branch

Mr Vincent Giuca, Assistant Secretary, Refugee Support Branch

**Program 6.1 Multicultural and Citizenship Services**

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

Ms Sophie Montgomery, Acting Assistant Secretary, Citizenship Branch

**Office of the Migration Agents Registration Authority**

Ms Christine Sykes, Chief Executive Officer

Mr Stephen Wood, Deputy Chief Executive Officer

**CHAIR**—I declare open this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed additional expenditure for 2009-10 and the particulars of certain proposed additional expenditure for 2009-10 and related documents for the Attorney-General's and the immigration and citizenship portfolios. The committee must report to the Senate on 23 February 2010, and the committee has set Friday, 26 March, as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings but Margaret from our secretariat has a copy of those if you need them. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which will be incorporated into *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

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

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

**CHAIR**—The committee will begin today's proceedings with subprogram 1.1 of the Department of Immigration and Citizenship, which is the Office of MARA, the Migration Agents Registration Authority. Then we will move through the departmental outcomes as per the program agreed to by the committee. I formally welcome you, Minister, Senator Evans, Minister for Immigration and Citizenship. Good morning, officers of the department and Mr Metcalfe. Minister, do you want to start by making an opening statement?

**Senator Chris Evans**—No, thank you, Madam Chair—other than to say good morning to the committee and that it is very nice to be here.

**CHAIR**—Let us move to MARA. I welcome Ms Sykes and Mr Wood. Would you like to make an opening statement?

**Ms Sykes**—Yes, I would.

**Senator BARNETT**—Chair—

**CHAIR**—No, Senator Barnett. I am chairing this and I will ask Mr Metcalfe whether he has an opening statement to make when we get to the department, which is after MARA. Thank you. Ms Sykes?

**Senator BARNETT**—Point of order, Chair.

**CHAIR**—Yes, Senator Barnett.

**Senator BARNETT**—Chair, the officers of MARA are part of the department, are they not?

**Mr Metcalfe**—That is correct.

**Senator BARNETT**—For the sake of logic and rationality, I suggest that it would be helpful for all of us—including the officers of MARA—for Mr Metcalfe to provide his opening statement in advance of the MARA officers presenting their evidence to the committee.

**Senator Chris Evans**—Madam Chair, could I suggest that this is not a fight worth having, as the secretary does not have an opening statement.

**CHAIR**—Thank you.

**Senator Chris Evans**—He has a clarification on one of the financial documents, which he will make then—which is not quite ready now—but there is no opening statement. So we need not have the argument.

**Senator BARNETT**—That is fine. Thank you.

**CHAIR**—Thank you. Anyway, we will be proceeding with his opening statement when we come to the department, as listed, prior to us considering outcome 1. Ms Sykes?

**Ms Sykes**—The office of the MARA has now been operating for seven months and I would like to take this opportunity to provide you with some updates. At the end of December 2009, there were 4,367 registered migration agents, compared to 4,097 on 1 July 2009. This is over a six per cent increase. About a quarter of registered migration agents—that is, 1,161—are Australian legal practitioners, and 230 are non-commercial migration agents. In the six months to December 2009, 2,428 registration applications were received. Of these, 603 were new applicants and 1,825 were for repeat registration.

A total of 215 complaints against registered migration agents were received in the same period and disciplinary action was taken against four agents. Two agents were suspended, one for one year and one for three years, and two former agents were barred from reregistering for the maximum period of five years. At the end of December there were 656 approved continuing professional development activities, which were provided by 43 providers. The majority of these activities were seminars, conferences, workshops and lectures. For reregistration, agents have to complete 10 points of continuing professional development, which in most cases is the equivalent of 15 hours of tuition. I am pleased to confirm that the new office of the MARA's website was launched on 21 December 2009. This is slightly later than anticipated; however, additional security issues were identified. The security and privacy issues have been resolved and the website is now fully functional.

I would like to provide further advice about an answer to a question on notice regarding the cost of transferring from the emergency website to the new upgraded website. The answer stated that the cost would be \$100,000. The cost is now expected to be \$170,000. The extra cost is related to the additional security requirements and the further testing that was required. In addition, I would like to correct some information that was provided about complaints for the last five years. This information was provided in a question on notice and I have an updated question on notice, which I can table after this session. Thank you. I am happy to answer questions from members of the committee.

**Senator BARNETT**—Thank you for being here, MARA officers, and for that update information. On the last point you made: you said you wanted to correct an answer to a question on notice. Can you advise us further on what that correction is?

**Ms Sykes**—Yes. The question concerned the number of complaints—

**Senator BARNETT**—What number was the question?

**Ms Sykes**—I apologise—question No. 65. It referred to the number of complaints for each year for the last five years.

**Senator BARNETT**—All right. So it is a correction to the figures over that period.

**Ms Sykes**—Yes.

**Senator BARNETT**—And you will table that?

**Ms Sykes**—Yes.

**Senator BARNETT**—Thank you very much. Going firstly to the MARA registrations: 4,367 is a six per cent increase. Is there any reason for that increase in your view?

**Ms Sykes**—It is a bit difficult for us to tell. The increase last full year was about eight per cent, so on a pro rata basis six per cent does look like it is above pro rata; however, it is possible that there were a larger number of registrations in the first half of this year both because there were a large number of people completing their graduate certificate but also because on 1 January we brought in higher English language requirements for new registration.

**Senator BARNETT**—All right. In regard to complaints, I did not hear your figures for the most recent number of complaints. Can you just go to that area and provide the most recent figures and whether that is an increase or decrease on the past 12 months?

**Ms Sykes**—In the six months to the end of December, the total number of complaints received was 215. In the full year 2008-09, the total number of complaints was 331. So, again it appears to be tracking, pro rata, a little bit above what it was last year.

**Senator BARNETT**—All right. You said in your opening statement that four were disciplined—two were suspended and two were banned for five years, which is the maximum.

**Ms Sykes**—Yes.

**Senator BARNETT**—Why is that the maximum?

**Ms Sykes**—That is what is provided in the current framework that we have.

**Senator BARNETT**—Do you think that is adequate if there is a gross breach of the law—five years?

**Ms Sykes**—That is something that we are currently looking at, the provisions that are in the code of conduct, to see whether or not things like that are adequate.

**Senator BARNETT**—Does the department or the government have a view on whether that is adequate or whether there should be the possibility of up to a lifetime ban or a more severe disciplining than simply a five-year ban?

**Senator Chris Evans**—Senator, while I have not received specific policy advice on any changes proposed—so it is not before me actively at this stage—I share the concern that we have seen persons who have acted highly inappropriately re-entering the profession after what I regard as a fairly short period of time. That does concern me. If people have behaved very poorly and have abused their position then I really do not see a reason why they ought to be readmitted to the industry or to the profession. Having said that, I have not considered any specific proposal, but I think your fundamental point is right. A minor error or something is one thing, but if you find behaviour that is clearly designed to be misleading or corrupt or to take advantage of people then it seems to me there is no place for them in the industry. Any policy consideration is not yet before me, but that is my personal attitude when it does come before me.

**Senator BARNETT**—Good. Thanks very much for that, Minister. We will note that. Last estimates we had a vigorous discussion about the website, and you have indicated that it went live, I think, in December 2009.

**Ms Sykes**—Yes.

**Senator BARNETT**—Can you advise the number of hits and current access to the site. Have you got the latest figures?

**Ms Sykes**—So far we have had 20,000 hits on the site. That was in the first month.

**Senator BARNETT**—What was your expectation?

**Ms Sykes**—I think that is about what we would have expected.

**Senator BARNETT**—All right. What was the total cost of establishing, or re-establishing, the website?

**Ms Sykes**—\$170,000 to re-establish the website.

**Senator BARNETT**—I thought you indicated that was for the security costs.

**Ms Sykes**—No, that was the total cost to re-establish the website. It was an increase from what we had initially expected, due to security.

**Senator BARNETT**—I am with you. And the original quote was how much?

**Ms Sykes**—The original total was \$100,000.

**Senator BARNETT**—That is quite a big increase, isn't it?

**Ms Sykes**—That is correct.

**Senator BARNETT**—Can you explain in further detail the reasons for that significant increase. That is a very expensive website—not as expensive as GROCERYchoice, of course!

**Ms Sykes**—I will get my colleague Mr Wood to answer that.

**Mr Wood**—The additional costs were associated with the security aspects. We determined that we needed a dedicated web server to address security concerns associated with the functionality that we were providing on the website, and the additional testing of the integrated solution meant that resources had to be extended in order to do that. We were originally hoping, I think, to go live around September, and that is where the \$100,000 figure came from. The additional \$70,000 was to extend resources through to December and January during the period that we were going live and the maintenance period following immediately going live.

**Senator BARNETT**—When was the other website closed down? I thought it was midyear sometime.

**Ms Sykes**—The former MARA website was closed down at midnight on 30 June. We instated a transitional website, which operated until 21 December. On 21 December the former website was reinstated in a security enhanced form.

**Senator BARNETT**—Do you have on your records the cost of establishing the original website?

**Ms Sykes**—I do: \$9,500. Sorry, I have misunderstood the question.

**Senator BARNETT**—The \$9,500 is for the transitional website.

**Ms Sykes**—That is correct.

**Senator BARNETT**—What about the original website? Do you have any details on that, from your records?

**Ms Sykes**—I do not. They were funds that were expended by the former MARA. I do not have that figure at hand.

**Senator BARNETT**—Could you take it on notice.

**Ms Sykes**—I can.

**Senator BARNETT**—That would be good. Thanks very much. In terms of the privacy issues which we discussed last time, are you confident that they have been adequately catered for and met?

**Ms Sykes**—I am confident. The reason I am confident is that the recommendations of the system's security plan and the security risk management plans have been endorsed by our IT security area.

**Senator BARNETT**—Did you get a consultant's report to consider the privacy issues?

**Ms Sykes**—I am not aware of that detail. I do know that our IT security area looked at all of those aspects.

**Senator BARNETT**—Could you take that on notice and, if you do have a report, advise the committee accordingly. We would also like a copy of that report, if it is available. We had an issue last time with the trust funds. A significant amount of funds from MARA—I do not

have the amount with me from last estimates—were held by MARA and then passed through to the department. I think Mr Vardos might know more about it than most of us. Maybe Mr Vardos could give us an updated report on those significant funds, what the amount is and its situation at the moment.

**Mr Vardos**—Yes, Senator. I will work methodically through the numbers so that there is no ambiguity as to where we are at. To date, an amount of \$4,270,683 has been transferred from the MIA, as surplus funds, into consolidated revenue. At the last estimates, I indicated that there were three outstanding issues. One of those outstanding issues has been resolved. The MIA has agreed that a further amount, yet to be finally determined but somewhere between \$61,000 and \$105,000, will be transferred to consolidated revenue in the near future with the resolution of that issue.

**Senator BARNETT**—It is \$61,000 and—

**Mr Vardos**—The final amount is yet to be determined, but it is between \$61,000 and \$105,000. It is yet to be determined, but the MIA has agreed that an amount will be transferred with the resolution of that particular issue.

**Senator BARNETT**—But who is going to determine that issue?

**Mr Vardos**—It relates to the amount of redundancy that went to the former CEO of the MARA. We have advice from Walter Turnbull accountants, who have been involved in the discussions, as to what is an appropriate amount for that item, and it will be resolved in that manner. It will not be a unilateral decision on the part of the department.

**Senator BARNETT**—So the redundancy for the former CEO will be between \$61,000 and \$105,000.

**Mr Vardos**—No. The redundancy package was paid at the time of the transition. The Commonwealth disputed the amount. The difference, which we claimed in dispute, is in that range, to be paid back to the Commonwealth. That is what we are talking about. It is the difference between what the CEO was paid and what the Commonwealth believed was an appropriate redundancy package. There was a small amount of the total package that was in dispute. It now falls within that range that I mentioned—between \$61,000 and \$105,000. Once that figure is finally determined, it will be paid to the Commonwealth.

**Senator BARNETT**—What redundancy amount has been paid to date to the former CEO?

**Mr Vardos**—I had a quick flick through the brief. I do not have that amount with me. I can get it during the day and I will clarify that issue before this session wraps up.

**Senator BARNETT**—It sounds like you have a significant dispute with the former CEO.

**Mr Vardos**—It was not with the CEO; it was with the way the redundancy package was calculated by her employer. It went to discussion and we have reached a position.

**Senator BARNETT**—Did it go to the board of MARA?

**Mr Vardos**—It did not go to the board of MARA; it is between the department and the board of the MIA with our respective advisers.

**Mr Metcalfe**—This throws up one of the issues that we have discussed previously in that the chief executive officer of the former MARA when the role was undertaken by the

Migration Institute of Australia was in fact an employee of both the Migration Institute and the MARA. Since the government's decision to remove that role from the Migration Institute and to place it within government, my understanding is that the chief executive remains in her role in the Migration Institute. So we are talking about an issue relating to the fact that she is no longer chief executive of the MARA but continues on in her role as chief executive of the Migration Institute of Australia.

**Mr Vardos**—I do not want to give the impression that this was in any way an acrimonious dispute. It was simply an amount of money that there was a difference of opinion over. We worked through it and reached a resolution on it.

**Senator BARNETT**—But you have not reached a resolution yet; you are still negotiating.

**Mr Vardos**—The agreement has been made that certain funds will be transferred to the Commonwealth. It is the amount that we do not have a final figure on.

**Senator BARNETT**—All right.

**Mr Vardos**—There are still two issues that we are discussing. We met as recently as last Friday with the CEO of the MIA and the chairman of the board. It relates to expenditure on a survey that was conducted by the MARA and the feasibility study for the fidelity fund. The Commonwealth's position is that they were not expenditures that were appropriate for the MARA to incur. It could possibly have been seen as an MIA function but not for the MARA. The total amount related to those two issues is \$217,789. That amount for those two issues remains the subject of ongoing discussion. We will reach a resolution on those one way or the other. As I said, we had a discussion as recently as last Friday on this matter.

**Senator BARNETT**—When do you see that being finalised?

**Mr Vardos**—I would certainly like to see it wrapped up as soon as possible and most definitely by the end of this financial year.

**Senator BARNETT**—You are saying that there is no acrimony between the department and—

**Mr Vardos**—No, these discussions are held with mutual respect and in a friendly atmosphere. We have a difference of opinion and we work through those issues.

**Senator BARNETT**—It is a significant difference of opinion with hundreds of thousands of dollars at stake.

**Mr Vardos**—Yes, they are significant amounts of money.

**Senator Chris Evans**—I have given very clear instructions that the interests of the Commonwealth be pursued vigorously and we act strictly in accordance with our legal advice, and that will be done. There is not acrimony, but there is a difference of commercial dispute, if you like, at the core of this. The department have received from me very strict instructions to pursue the Commonwealth's best commercial interests in accordance with the appropriate advice, and that is what they are doing.

**Senator BARNETT**—Thank you. I will not delay the committee now and will put questions on notice about those matters. I do want to conclude with the fidelity fund. We had a vigorous discussion at last estimates and possibly the one before about whose money it is.

Over \$4 million has gone from the MIA into consolidated revenue, as you have advised us this morning. That is a significant amount of money. Have you had feedback from the migration agents? Have they expressed views to you or to others about their displeasure that that amount of money has now gone into what they would say is a big black hole in Canberra rather than staying with the MIA or members of the MIA? Is that also one of the reasons you are having this ongoing sort of tit for tat negotiation or working through the issues with the MIA?

**Mr Vardos**—I will take the last question first. The answer is no. They are two separate issues. What the MIA believed was the surplus upon the cessation of the MARA was transferred to the Commonwealth. There was no dispute about that. It was a question of expenditure that was incurred that we believed did not fall within the terms of the deed of agreement that should now be paid to the Commonwealth. The position is that, in the Commonwealth's view, it was not an appropriate expenditure by the MARA. It is a matter to be worked through.

In terms of your first question, I am not personally aware of any protests, concerns or representations on behalf of migration agents in relation to the transfer of the surplus. They may have made comments, but I am personally not aware of them.

**Senator BARNETT**—I will conclude there and am happy to put questions on notice. Thanks very much to the Office of MARA

**Senator HUMPHRIES**—I have a few questions. You may have answered these while I was out of the room earlier. What is the current staffing level of MARA?

**Ms Sykes**—Currently our establishment is 33 positions. Thirty of those are permanent. We have completed the process of permanently filling the positions, so we have 30 permanent and three non-ongoing at present.

**Senator HUMPHRIES**—Are they based around Australia?

**Ms Sykes**—They are all based in Sydney.

**Senator HUMPHRIES**—How many complaints has MARA received involving unregistered agents?

**Ms Sykes**—From 1 July to 31 December we received 22 complaints regarding unregistered practice.

**Senator HUMPHRIES**—Is that about the normal level?

**Ms Sykes**—As I understand it, it is.

**Senator HUMPHRIES**—Lastly, has there been any significant change in the number of registered migration agents since integration of MARA back into the department?

**Ms Sykes**—In the last six months there has been a six per cent increase in the number of registered agents. On a pro-rata basis this is running ahead of what the increase has been in the last couple of years. For example, last year it was eight per cent. However, we are not sure whether that six-month trend will continue for the next of the six months or not.

**Senator HUMPHRIES**—What would you put that down to?

**Ms Sykes**—One of the reasons could be that in the first six months of this financial year quite a large number of intending migration agents have completed their graduate certificate. In addition, from 1 January a higher English language requirement was brought to bear, and we noticed an increase in applications prior to 1 January.

**Senator Chris Evans**—Unfortunately, every time you make a migration change there is a little spike in the weeks leading up to the change, to meet the old criteria. On 1 January there was an increase in the English language requirement. That may explain in part a bit of increased registration, but the numbers are up. Quite frankly, if the economy continues to pick up you would expect the migration registration numbers to pick up as well.

**Senator HUMPHRIES**—What are the new language requirements for migration agents, approximately?

**Ms Sykes**—We increased the English language requirements to make it so that for initial registration people have to have an IELTS score of seven in the academic range. There are a number of exemptions to that. Of course people who have gained their qualifications in an English-speaking country are exempt. But people who are not exempt have to meet an IELTS score of seven academic.

**Senator HUMPHRIES**—What was it previously?

**Ms Sykes**—There were previously more exemptions and the IELTS score was six.

**Senator HUMPHRIES**—Why was it felt necessary to increase that score?

**Ms Sykes**—There had been concern expressed that the capacity to speak English was an important part of a migration agent being able to provide a good service. They deal with complex legislation and often they have to provide complex submissions on issues that represent their clients. There had been quite a lot of discussion and consultation about bringing this in. In fact the former MARA had made a decision to do this when they were in the chair and had announced that this would occur at least 12 months before it came into place. We had another look at the recommendations that came out of the review of the migration agent industry, which did support it. It recommended that the English language requirement be increased to that level. We felt that was the right way to go so, in fact, we confirmed that that would occur.

**CHAIR**—Ms Sykes and Mr Woods, thank you very much and for your time this morning. We head to the department now with outcome 1. Mr Metcalfe, you had some information you wanted to provide to us before we start with the officers.

**Mr Metcalfe**—Thank you, Chair. Can I just advise an error in relation to part of the additional estimates document, the PAES, which came to my attention this morning, and I thought it was important that we correct the record immediately. The error is in table 1.4 at pages 15 to 17. I am advised that that table reflects non-measure variations to our estimates such as changes in forecast activity levels and economic parameter adjustments. The error is that in some instances the variations were shown for the 2009-10 financial year only and not for the forward years. The required figures are reflected in the total program expenses tables from page 25 on in the document and have no impact on the appropriation bills. We have

replacement pages to table and we are happy to provide more detail if necessary so I will now provide those to committee, and my apologies.

[9.31 am]

**CHAIR**—Thank you. We will now deal with 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. Senator Barnett, are you going to start?

**Senator BARNETT**—I just have one question, Mr Metcalfe, and I just wanted to indicate the reason I put that point of order earlier was that, in all my time of being on the legal and constitutional affairs committee and coming to these estimates committees, from my memory—and I might be wrong—you have provided an opening statement. It has usually been quite comprehensive and has set out some of the major issues that have occurred between estimates and reasons for those. I wanted to say that in the past they have been most useful and helpful so the first question is: how come we are not getting one today? Is there anything in particular for that omission?

**Mr Metcalfe**—No, not at all, Senator, and thank you for the question. It has been my practice—not on every occasion, I think there have been probably two or three over the last five years—that I have not thought it appropriate to make an opening statement. When I have made an opening statement it has largely been to report on the progress of the department in relation to its own development, bearing in mind that the first estimates I attended as secretary was in the aftermath of the Cornelia Rau and Vivian Alvarez matters, and there were very clear expectations of the government and, indeed, the parliament that the department would make substantial changes. I took the opportunity through that period to talk about what we were doing and how we were measuring progress in that regard.

More recently, since we regard that reform program as successfully having been completed, I have also taken the opportunity to put on the record some key issues. For example, I recall that at the previous estimates hearings I spoke about the coroner's report into the tragic loss of the *Malu Sara* and what the department had done to ensure that such a tragedy could not recur and how we were seeking to make apologies and reparations to those concerned. While the department continues to develop and change—and I suspect there will be an opportunity for me in the future to talk further about the ongoing development of the department in what is our 65th anniversary year this year—I did not think there was anything that I should specifically draw to the attention of the committee on this occasion.

**Senator Chris Evans**—Can I just say in response to Senator Barnett, if the committee would like me or the secretary to make opening statements as a regular thing, we are happy to do that. The secretary uses his own judgement on these occasions, but if the view of the committee is that they would like him to provide a summary of developments at the start of each hearing, I am sure he would be prepared to do it and I am very relaxed. It is up to the committee. If you would rather we do it, we will certainly do it.

**Senator BARNETT**—Thank you.

**Mr Metcalfe**—Chair, it was always my experience from previous estimates in this committee and in another committee that I have appeared before, Finance and Public

Administration, that opening statements were unusual and I always saw myself as seeking the indulgence of the committee to make an opening statement. But, as the minister says, if people find that useful then I am happy to consider whether there are issues I should perhaps raise at the outset.

**CHAIR**—Thanks, Mr Metcalfe. I am sure it is very useful in the estimates after each budget is handed down. I am not so sure it is as we get further on in the year, but that is your judgement and we will leave it there. Are there any questions?

**Senator HUMPHRIES**—I had a couple of general questions to the department.

**CHAIR**—Cross-portfolio questions?

**Senator HUMPHRIES**—Yes. As of 22 January, there were only three outstanding questions from the last round of estimates that were owed by DIAC. Is that still the case or have they been answered since then?

**Mr Metcalfe**—I am advised that all answers have been provided to the committee. We do aim to do our very best and to ensure that answers are with the committee well before the hearing.

**Senator HUMPHRIES**—Certainly better than some departments.

**Mr Metcalfe**—Thank you, Senator.

**Senator HUMPHRIES**—Were there any involuntary redundancies engineered by this department since the beginning of this financial year?

**Mr Metcalfe**—I will check. I think the answer is no. We have had a major program of voluntary redundancies over the course of the last 12 months. I will need to specifically check. I will come back to you shortly if the answer is anything other than zero.

**Senator HUMPHRIES**—If you are going to check, would you mind also taking on notice whether there were any involuntary redundancies in the previous two financial years as well?

**Mr Metcalfe**—I will then take on notice, and come back to you on notice, whether there have been any involuntary redundancies. If there have, they would be very, very small numbers. I think the answer is probably zero, but I will check. And I will provide you with details of involuntary redundancies over the last three financial years.

**Senator HUMPHRIES**—Thank you very much.

**Senator Chris Evans**—There has been no program of involuntary redundancies, but we may have had a couple. Anyway, we will come back to you with the details.

**Mr Metcalfe**—There have been no involuntary redundancies as an overt act of seeking to reduce the size of the department, but we certainly have sought to reduce the size of our staffing numbers through quite a large program of close to 300 voluntary redundancies, which commenced about this time last year.

**Senator Chris Evans**—There was some publicity I think at the start of the year about a program of involuntary redundancies but there has been no program instituted. We will see whether there has been one of two. There was some press coverage that we were about to embark on one I remember, and we have not embarked on a program per se.

**Senator HUMPHRIES**—Good. I also wanted to ask about what changes have been made by the department in response to the efficiency dividend requirements on the department.

**Mr Metcalfe**—It would be hard to attribute a single measure or measures. Like all departments, apart from defence, we are subject to the efficiency dividend. We are a big department with a large budget. Our operating budget is well over a billion dollars and we are subject each budget to savings measures as well as additional funding and new policy. In determining budgets within the department, we are obviously cognisant of the efficiency dividend. Recently, we have had the lapsing of programs associated with the post-Palmer report measures introduced by the government at that stage. I do not want at all to be evasive, but it would be difficult for me to point and say, ‘As a result of the efficiency dividend, this is not happening,’ because the efficiency dividend is not the only measure that is in play. There are many measures, both savings as well as additional funding, which in a cumulative way add up to the sum total of what we do.

**Senator HUMPHRIES**—Can I ask you then: have they resulted in any specific staff reductions in particular programs in order to meet that and other requirements on the department to save money?

**Mr Metcalfe**—The efficiency dividend essentially shrinks our budget. It would not be possible to attribute particular changes to staffing numbers to the efficiency dividend of itself but, as I have said, there certainly have been efforts to reduce the size of the department. We have grown very rapidly over the last four or five years. We went through a program of voluntary redundancies last year and the year before, but that is the net result of a whole series of measures, of which the efficiency dividend is but one.

**Senator HUMPHRIES**—What is your staffing establishment as of today?

**Mr Metcalfe**—I will give you a precise figure in a minute. In terms of staff employed by the department in Australia, it is above 6,000. We also employ a large number of officers overseas. Of course, those officers employed overseas as local staff are formally employed by the Department of Foreign Affairs and Trade but effectively work for us. They number close to 1,000 staff. I am advised that, at the end of December 2009, our total staffing was 6,857.

**Senator BARNETT**—Is that in Australia and overseas?

**Mr Metcalfe**—The vast majority are in Australia. It includes our 127 staff based overseas—we call them A-based officers, our senior officers who are posted and who supervise the work of locally engaged staff. This number includes the 31 staff of the Office of the MARA. It includes about 30 staff that we have overseas on short-term missions or as airline liaison officers, who work in key airports throughout Asia and the Middle East specifically aiming to identify people travelling to Australia who may be of concern in relation to fraudulent documents. So, roughly, we have 160 staff overseas, with the balance being in Australia.

**Senator Chris Evans**—That did not include the locally employed overseas staff.

**Senator HUMPHRIES**—Has that number increased since the budget was brought down?

**Mr Metcalfe**—I will have to go back and check the budget figure. By way of comparison, on 30 June the figure was 7,027, so it is a slight reduction from the middle of last financial

year. The figure in June 2008 was 7,106, so again it is a slight reduction since 30 June 2008. However, there are of course ons and offs and reallocation of priorities that sit below those very large numbers.

**Senator BARNETT**—What about those overseas in June last year?

**Mr Metcalfe**—In June 2009 there were 124. As at December it was 127.

**Senator BARNETT**—June 2008?

**Mr Metcalfe**—In June 2008 there were 137.

**Senator Chris Evans**—We reduced our overseas representation as part of a budget measure in 2008.

**Mr Metcalfe**—It was the first budget of this government. In 2008 there was a 10 per cent reduction.

**Senator Chris Evans**—There was a 10 per cent reduction in our A-based overseas staff as part of the budget in 2008.

**Mr Metcalfe**—For the sake of completeness though, in January 2008 we had 137 staff overseas but only 18 airline liaison officers or people on short-term missions. In June 2009 we had 124 overseas staff but 28 additional airline liaison officers or people on short-term missions. As I said before, as at 31 December there were 127 long-term posted staff with 30 airline liaison officers and others on short-term missions.

**Senator HUMPHRIES**—I assume you have a pretty hefty travel budget. How has the travel budget been affected since the budget was brought down in May?

**Mr Metcalfe**—Can I take that on notice? Again, we would have the analysis of our expenditure on travel, but I do not have it here. We certainly do seek to minimise travel where we can use alternate means. We are a very heavy user of videoconferencing capabilities with our state and territory offices. For example, my deputy secretary who runs the client service network has regular telephone conferences with overseas directors and state directors. But, as a big, busy department with a significant overseas focus, we do of course incur significant travel expenditure. If I could take that on notice, I will come back to you.

**Senator HUMPHRIES**—I have one specific question. When the department sends officers to Christmas Island, does it tend to charter its own planes or does it use commercial aircraft flying there?

**Mr Metcalfe**—Mr Correll can provide details, but we essentially have a number of providers on a panel and we go to them to source aircraft. We now, more or less, have a weekly or a fortnightly charter because we know there are going to be a certain number of staff and clients moving about, and from time to time we charter aircraft on a needs basis as well. We do not operate our own aircraft; we source those commercially.

**Senator HUMPHRIES**—Okay. I am happy to go to specific questions on outcome 1.

**CHAIR**—Just keep going.

**Senator HUMPHRIES**—Can I start with the 457 visa subclass, please. First of all, what was the budget for outcome 1 in the 2009-10 budget and what is it in the latest budget statement?

**Mr Metcalfe**—I will ask our chief financial officer to come forward, because she can best interpret the figures for us. Perhaps it would assist if you could repeat the question.

**Senator HUMPHRIES**—I just want to know what the budget for outcome 1 was at the time of the 2009-10 budget and what does it stand at today?

**Ms Prothero**—Outcome 1.1—

**Mr Metcalfe**—I am sorry; was it outcome 1 or outcome 1.1, Senator?

**Senator HUMPHRIES**—Outcome 1.

**Ms Prothero**—Sorry. The total of outcome 1 for the department was \$551,529,000. At additional estimates, it is \$528,744,000.

**Senator HUMPHRIES**—So it has gone down.

**Ms Prothero**—It has gone down.

**Senator HUMPHRIES**—What are the reasons for that reduction?

**Ms Prothero**—The primary reason for the reduction is in relation to an expected reduction in activity levels, so that explains about \$19.2 million of that movement.

**Senator HUMPHRIES**—What do you mean by ‘reduction in activity levels’? What are we doing less of?

**Ms Prothero**—The department is funded on a price based model, so, for the number of visa finalisations—visa decisions—we make, for example, we are funded on a certain price for that. So, in relation to where we had originally set those activity levels—the number of decisions we expected to make at the start of the year, reflected in the budget—we have downgraded those as a result of—

**Senator HUMPHRIES**—I understand the case, but why are there fewer decisions?

**Senator Chris Evans**—One classic is the 457s. Someone can take you through it if you want at some stage, but effectively what we have found—to our surprise, in a sense—is that it has responded exactly according to the economy. That is what it is supposed to do. It is an economic theory that actually seems to work—that is, the rate of 457 applications and approvals has followed the economy.

They were going gang busters and then, when the economy came off, the application rates came off, so our 457 centres, which had been built up to deal with a large number of applications, found themselves with much lower levels of processing than they would have had the year before. We have the figures if you want them. Effectively, that then changes the number of business visas we grant, and we have to take people out of those centres because we do not have as many applications, and we distribute them. So, it is driven by the demand for visas. Programs like the 457 and students are driven by demand. We have a control in the sense of the permit applications because we know how many we are going to grant during the year—but those other visa classes are subject to movements in demand.

**Senator HUMPHRIES**—I read that business confidence is returning. Are we seeing signs of an increase in 457 applications at the moment?

**Mr Kukoc**—The economy is on the way to recovery; however, during the downturn employers were more likely to reduce the hours that existing employees worked than cut the number of employees on the books. So despite the recovery phase and despite the fact we are still at a historically low unemployment rate there is still some way to go before employers start to experience the skills shortages that were seen in late 2007 and early 2008. If the economy recovers and takes off full speed, it will still be some time—at least 12 to 18 months—before employers start recruiting new labour, especially from overseas.

**Senator Chris Evans**—But it is true to say that there was a massive drop, I think, in some of the visa classes—down 40 or 50 per cent. We are just seeing some signs of a little bit of a recovery or firming. There is not a massive uptake yet. But there was a huge drop off in 457s, particularly in the trades areas. It has picked up a little bit in the last few months.

**Mr Kukoc**—In October–November there was a drop of almost 50 per cent compared with the same period last year. But we have seen some early recovery signs in 457 applications in the last month or so.

**Senator HUMPHRIES**—So when a budget like that is reduced, do you return that money you no longer require to consolidated revenue or is that transferred to other areas of the department which might be running over budget?

**Ms Prothero**—It is returned to consolidated revenue.

**Senator HUMPHRIES**—So programs have not been affected by those movements in the budget. The programs are still operating, but in some cases at a lower rate of activity.

**Ms Prothero**—That is correct.

**Senator HUMPHRIES**—The government has made substantial changes to the 457 visa through recent legislative amendments and regulations. Have all of those changes been implemented or are they still in the process of being implemented?

**Mr Kukoc**—Yes, all the changes have now been implemented. There are still some policy deliberations on the new accreditation model, and also in terms of the regional employment authorities replacing the existing regional certifying bodies. These are the only two elements of the overall package that are still being deliberated. We are doing the consultation with the Skilled Migration Consultative Panel, which is an external body for the minister to consult on 457 and skilled migration changes.

**Senator Chris Evans**—I think most become effective on 1 September.

**Mr Kukoc**—On 14 September. Most became effective with the commencement of the workers protection act on 14 September. Also there was a transitional period for employers in terms of the market rates, up to 1 January 2010. We can say now that the reforms have been fully implemented.

**Senator HUMPHRIES**—How many 457 visas have been granted, year to date?

**Mr Vardos**—Senator, I have a couple of figures here. As of 31 December 2009, there were 118,840 457 visa holders in the country; 60,310 were primary visa holders and 58,530 were secondary holders.

**Mr Kukoc**—In terms of your specific question, in the period 1 July to 31 December 2009 there were 15,680 subclass 457 visas granted to primary applicants.

**Senator HUMPHRIES**—You said 15,680.

**Mr Kukoc**—Yes.

**Senator HUMPHRIES**—What was the total number granted last financial year?

**Mr Vardos**—In the corresponding period July 2008 to December 2009 there were 30,000 primary applicants.

**Mr Kukoc**—That is the corresponding period in 2008-09. We are talking about July to December—six months.

**Senator HUMPHRIES**—Of the 30,000 applicants, how many visas were granted?

**Mr Vardos**—These were visa grants to primary applicants.

**Senator HUMPHRIES**—So there were 30,000 in the first six months of last financial year and over 15,000 in the first six months of this financial year.

**Mr Metcalfe**—In terms of the 2008-09 financial year the annual report, on page 67, covers this in quite a lot of detail.

**Senator HUMPHRIES**—I know it talks about the economic conditions leading to a reduction.

**Mr Metcalfe**—Yes, it does.

**Senator Chris Evans**—There is more recent information. I will get the officers to confirm this, but there is a regular report on 457s. It has a breakdown by industry, numbers of applications and numbers of grants. We would be pleased to make it available. It is available to the press. Is it quarterly or monthly?

**Mr Kukoc**—It is a quarterly report and it is on our website. The most recent report is as of last month.

**Senator Chris Evans**—Anyway, we can make that available to you. It has a good summary. It breaks the numbers down by industry, by profession, by ASCO 1 to 4 et cetera. We can certainly get a copy for you. We produce those quarterly now, and that is a full summary of all the 457 movements.

**Senator HUMPHRIES**—Okay. There are new enforcement provisions connected with the integrity reforms of the 457 visas. Can you describe briefly what they are and how they work.

**Mr Kukoc**—The new workers protection act, which commenced on 14 September 2009, has increased the administrative and civil sanctions powers to enforce compliance with the new sponsorship obligations that were imposed on sponsors. Previously we only had administrative sanctions, such as barring future sponsorships, but now, under the workers protection act, we can have civil sanctions, including fines. We can take the matter to the courts if need be. In addition to Fair Work Australia workplace inspectors, we also have

inspectors appointed under the Migration Act who go into the workplace and require companies or persons to produce records. They inspect and make copies of documents and interview people. They enter a premises to ensure that the sponsorship obligations are being met by sponsors and to ensure that market rates are paid to 457 visa holders. We also have increased powers under the workers protection act to share the information with other government agencies, specifically with the tax office. If the employer claims that the 457 employee is paid market rates, we can check that through sharing the information with the tax office. We can also share information with the Fair Work Ombudsman and occupational health and safety authorities.

**Senator HUMPHRIES**—What has the general reaction been by employers to these measures? Have they given you feedback on what changes they have had to make to deal with this extra compliance?

**Mr Kukoc**—So far, based on the feedback we have got, there is widespread support for the reforms. We have not seen a large number of complaints from employers. At the time when the new workers protection act came into force there was a bit of uncertainty in terms of what it meant for employers. So we saw a small drop in applications post the 14 September changes, but that quickly recovered as employers became more familiar with the changes. Actually many employers were commenting that the market rates which initially many people had concerns about were actually quite flexible and have ensured that employers have a lot of flexibility to pay the rates in the workplace that they pay to a similar Australian employee.

**Senator Chris Evans**—Can I just make one point. The process by which we developed the legislation and the new arrangements which went through the parliament last year involved a skilled migration consultative committee, which included representatives of ACCI and the Minerals Council of Australia. So we had the senior industry body representatives, unions and state governments work through the details to try to make sure we got it right. I think that process served us well when it came to implementation.

The other broader point I would make is on the public concern about the 457 scheme. You would be aware of the concern of the previous government about a small number of people abusing the scheme and who put the scheme at risk. I think most leading employers realised that the scheme's integrity needed to be improved to protect their capacity to access the scheme. So we have had a lot of support for improving the integrity of the scheme, because I think people knew that if the scheme continued to fall into disrepute because of the actions of a few the whole scheme would be at risk in terms of the Australian public's acceptance. I think we have got there and I think the integrity has been improved. There were issues around market rates because it was a new concept, but we gave people leeway until January to get that in order. It did slow down some of the applications, but now people have got it it seems to be working okay and I think it gives us a much better result. It really makes it very difficult for those who are looking to exploit at the bottom end. You will remember the problems we had in Canberra with some of the restaurants et cetera. It really does close the loophole for some of those operations.

**Mr Vardos**—During the transition period that Mr Kukoc mentioned, when our inspectors visited work sites, the intention was not to go and find something wrong and take punitive action. It was an educative period during the transition to point out where things might not

have been done according to the newer environment. It was deliberately an educative role for employers during the transition period. I think that helped smooth over any concerns people might have had. We have now gone through the transition period, so of course it is business as usual now, but we do have an outreach program to continue to feed information to employers about meeting their obligations under the 457 regime.

**Senator HUMPHRIES**—I appreciate all that. I note that we are dealing with a situation where the number of 457 visas being granted is significantly down—half of what it was this time last year.

**Senator Chris Evans**—But so are the applications. We can only deal with what comes in—

**Senator HUMPHRIES**—So it is hard to know.

**Senator Chris Evans**—It is not hard to know. I will make the point that it is not that we have applications that we are not granting; the number of applications have fallen and so we are responding to what comes in the door.

**Senator HUMPHRIES**—Yes, but the point I am making is that, if there is more difficulty in securing and maintaining a 457 visa from the point of view of an employer, you would not want to see employers making the decision not to use this visa class because it is too difficult or the compliance is too difficult.

**Senator Chris Evans**—There is no evidence of that, in my experience, and I have done a lot of consultations around the country. There are some teething problems when you change a system, and the market rates in particular made some agents baulk a bit because they did not understand it. But now they have got used to it, I think they realise it is actually easier. Effectively you just have to show that you are paying 457 visa holders what you are paying your Australian workers. You do not need complex formulas. If you are employing 100 Australians and 20 457 visa holders as long as you are paying the 457s the same rate as the Australians you are right to go, whereas I think people thought it was a very complicated concept at the start.

**Senator HUMPHRIES**—I get the impression that most of the problems with 457s occurred with small businesses, though, like restaurants and whatever, that had difficulty in working out how a small number of employees would integrate into an already small structure. That is a problem.

**Senator Chris Evans**—No, that is true. That is true.

**Senator HUMPHRIES**—Okay. We will monitor that situation and see what occurs.

**Mr Kukoc**—Senator, if I may add to that. We have seen over a number of years a very high and close correlation between the ANZ job index and 457 visa application rates—an extremely high correlation rate. This correlation rate has not changed. So, even after these changes, we are seeing a very close correlation rate between the ANZ job index and 457 application rates, and I am happy to share that chart with you, Senator. That was the point I wanted to make.

**Senator Chris Evans**—It is the first win the economic market theorists have had, in my experience, Senator.

**Senator HUMPHRIES**—I am sure there will be many more, Minister, in your time, if you live long enough!

**Senator Chris Evans**—My economists are very happy.

**Senator HUMPHRIES**—Have there been any issues associated with business sponsors complying with the new sponsorship obligations set out in the regulations? You mentioned before that major organisations had been involved in the designing of the new arrangements, and you said you have had a few complaints from people about the obligations imposed on them sponsors—or was that a reference to just general problems with 457 visas from an employer point of view?

**Mr Vardos**—I have got some basic factoids here. Between 14 September and 17 November last year there were 260 site visits conducted by inspectors and approximately half those sponsors were non-compliant with their sponsorship obligations during that site visit, mainly relating to new recruitment, payment of market salary rates and maintenance of records. But, as I mentioned earlier on, during that transition period there was an educative process to identify and correct cases of noncompliance. So, during that period, almost half of the 260 site visits resulted in identification of noncompliance with sponsorship obligations.

**Senator HUMPHRIES**—Does the department write to every sponsor and set out their obligations to them?

**Mr Vardos**—I think my electronic signature was used on something like 20,000 pieces of correspondence in the lead-up to the release of the new measures. We had a major communications strategy to ensure that all known business sponsors at the time were aware of the new arrangements. I cannot vouch for whether or not they read the material when it landed in their in-trays, but we certainly made a major effort to get material out to all of the then known 457 business sponsors—whether they were a small enterprise or a large enterprise, it made no difference.

**Mr Kukoc**—Senator, if I may add to that. According to the information from our monitoring activity, over the period July to December 2009, we have seen a 17 per cent drop in sanctions of sponsors. We have also seen a significant drop, 65 per cent, in sponsors that have been formally warned. That is in comparison to the same period, July to December, in 2008. So there was a lot of education, a lot of discussion, rather than a heavy-handed approach in that space.

**Mr Vardos**—Where we did identify non-compliant behaviour during that transition period, we did advise the employer that we would be revisiting during the first half of 2010 to follow up. So they were aware that we would be back.

**Senator HUMPHRIES**—Okay. Can you tell me whether the business representative organisations with which you deal—the sorts of ones, for example, that you consulted with in designing the new 457 arrangements—are reporting a level of satisfaction on their part with the new requirements falling on employers' shoulders?

**Mr Vardos**—Generally, yes.

**Senator Chris Evans**—I think Mr Kukoc may want to explain, but we do an annual consultation around Australia on the permanent migration program prior to setting it in the

budget. That has been our practice for many years. Mr Kukoc and other officers held forums around Australia. I was at the Perth and the only feedback we got on 457 was a concern about processing times in the Perth office, which had been partly caused by people not dealing with the market rate properly. Mr Kukoc would be able to explain whether he got other feedback. We invite industry groups, leading businesses, migration agents, state governments, et cetera, so Mr Kukoc is probably best placed to say whether the feedback included any concerns about 457.

**Mr Kukoc**—There has been general support in the business community. Complaints and concerns were mostly around the removal of ASCOs 5 to 7. We are talking about semiskilled from the standard business arrangements of 457 and redirecting them to labour agreements. This was mostly concerned with the lengthy processes involved with labour agreement negotiations, which we are now addressing through streamlining the labour agreement process, and I can talk about that a bit more if you would like. Removal of ASCOs 5 to 7 from 457 to labour agreements was one set of complaints. The only other was the minimum temporary skilled migration income threshold, which was set at \$45,220 as a minimum threshold before we could allow anyone to come to the country.

**Mr Vardos**—I can confirm, of the consultations that I chaired, the only issue that came up was the one mentioned by Mr Kukoc and that was the limitation on the lower ASCO grades being only accessible via labour agreements. That was the only 457 issue that came up in discussions where I was in attendance.

**Senator HUMPHRIES**—What has been the number of occasions where the minister has exercised his power to disclose personal information, under section 140ZH of the Migration Act, to a visa holder or a former visa holder?

**Mr Vardos**—Senator, I cannot answer that issue as I will need to take advice on that and take it on notice.

**Senator HUMPHRIES**—Okay. Can you also tell me how many times—

**Senator Chris Evans**—Sorry, I did not actually understand the question and could not answer whether I had actually done it or not. Do you want to take me through the question again?

**Senator HUMPHRIES**—I am surprised, Minister, that you are not aware of your power under section 140ZH of the Migration Act.

**Senator Chris Evans**—I have many powers, Senator.

**Senator HUMPHRIES**—Oh, indeed, you are very powerful, Minister. This particular power gives you the right to disclose personal information to a visa holder or former visa holder. I would like to know, firstly, the number of times that discretion has been exercised this year to date and last financial year, secondly, the number of times it has been exercised to disclose information to an approved sponsor or former approved sponsor and, thirdly, to a Commonwealth, state or territory agency, please. What measures are in place to ensure that this power is used for the purpose that it was intended? You might have to take that on notice as well if you are not familiar with it.

**Mr Metcalfe**—I think we should take all that on notice. I do not think it is a provision that is used very often.

**Senator HUMPHRIES**—It sounds like it.

**Mr Metcalfe**—There are certain numbers that stick in your mind and that is not one of them, I must say, Senator.

**Senator HUMPHRIES**—I can see that.

**Senator Chris Evans**—Personal information about a visa holder to someone else: is that it?

**Senator HUMPHRIES**—Yes. I have a copy of the section here.

**Senator Chris Evans**—Like the secretary, it does not ring a bell in terms of a one-off exercise, Senator, so it is best we take it on notice.

**Mr Vardos**—Senator, with your indulgence, could I just complete the picture in relation to the measures that were introduced last year. It was not all about increasing sponsorship obligations and all the rest of it. There were a range of measures taken that streamlined the process and made it a bit easier for some employers, and I will just reel them off very quickly. They were: extending the validity of a 457 sponsorship from two to three years—so increased by a year the time required for looking at sponsorships; removing the ceiling on the number of 457 visas that a sponsor can nominate; and removing the need for existing 457 visa holders to apply for a new visa before they can start work with a new sponsor. There was a bit of flexibility introduced into the process as well.

**Senator HUMPHRIES**—Okay, that is good. The other question on notice was: what measures are in place to ensure this power is used—this is the 140ZH power—for the purpose it was intended and the impact of those measures on the number of visas granted.

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

**Senator HUMPHRIES**—Since those new worker protection provisions have come into effect, how many inspectors have been appointed?

**Mr Vardos**—I believe we have 17 inspectors nation wide. That is correct; we have 17 nation wide.

**Senator HUMPHRIES**—Were all 17 appointed because of the new provisions or were extra appointed?

**Mr Metcalfe**—There were not inspectors before those changes to the legislation in September last year.

**Senator Chris Evans**—As part of the budget measure, we got funding for them.

**Mr Metcalfe**—Essentially, previously there were only powers of so-called monitoring. It was essentially powers that had no legal backing where we essentially relied upon the support and cooperation of the employer. One of the changes with the workers protection legislation was to give departmental officers powers similar to the workplace ombudsman, so where appropriate there were powers to enter and obtain documents. Obviously, we are very much in the start-up phase. I am obviously very concerned to ensure that coercive powers of that

nature are exercised judiciously and by very well trained staff. That new set of powers is being introduced with due regard to ensure that we do it properly.

**Mr Vardos**—Senator, we have 65 monitoring officers. Of those only 17 have full inspector powers. It is a judicious approach because it is a new thing for us, so we are starting gradually.

**Senator HUMPHRIES**—So the monitoring officers sort of watch the paper—do the paperwork—and the inspectors go out to the workplaces?

**Mr Vardos**—I am not entirely sure what the division of responsibilities is, but the inspectors do have powers that they can exercise. The monitoring officer cannot command the employer to produce the same range of documentation as the inspector.

**Mr Kukoc**—Only the authorised inspector can enter the premises and seek information and documents from employers.

**Senator HUMPHRIES**—Okay.

**Mr Vardos**—Every state and territory office is covered by that network.

**Senator HUMPHRIES**—Do the inspectors do other things? Do they have other roles as well? Or are they purely field workers, as it were?

**Mr Vardos**—I would have to take on notice exactly what the breakdown of their duties is, but the overwhelming responsibility that they have is to exercise their inspector powers in relation to 457 business sponsors.

**Senator HUMPHRIES**—Perhaps you could give us a picture of what the monitoring officers do vis-a-vis the inspectors, where they are based and the number of inspections they have conducted since they were appointed.

**Mr Vardos**—We can do that, Senator, yes.

**Senator Chris Evans**—Could I just say that we try and use a light touch. We also have outreach officers, which the former government initiated, in key industry associations providing education and support. They are in the major chambers and it has been extended out to a couple of the key unions as well, where there are lots of 457 members. There are outreach officers working a couple of days a week, running seminars and education services and taking queries from members of the associations to try and build an educative role, not just the punishment role.

**Senator HUMPHRIES**—That is good.

**Mr Metcalfe**—Senator, I do not want to interrupt your chain of questions but our chief lawyer has just shown me a copy of the act. You referred to a certain section before. I just want to clarify that we are talking about the same thing. I think you referred to section 140ZH.

**Senator HUMPHRIES**—Yes.

**Mr Metcalfe**—Section 140ZH in the version of the act that I have in front of me is a definitions section that does not appear to provide the powers that you were describing previously. Section 140V does have a power relating to disclosure of personal information in prescribed circumstances, which sounds very much like what you read before. We might just

double check with you perhaps during the break to make sure we are both talking about the same thing. This is a reprint of the act done on 18 August 2008, so prior to the commencement of the workers protection act. I have taken this on notice and we will come back to you, but I imagine this provision has been there for some time and that it was not a provision that was brought in by the workers protection act.

**Senator HUMPHRIES**—I suspect that you have, with respect, an old version. I see that you have a printed copy. I have a download from Austlii, Commonwealth Consolidated Acts, as a print-out of the Migration Act 1958. Section 140ZH states:

(1) The Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of the following ...

This was printed on 8 February.

**Mr Metcalfe**—That is interesting. We may well have thrown up a problem in one of the reprints, because there has not been a renumbering of the act in that period of time. We may have stumbled upon someone else's error that we fixed. We know what section we are talking about; it is a question of which is the correct numbering, and we will seek to address that. If it raises an issue either with the official consolidation or with the Austlii consolidation, we will seek to address that by the by.

**Senator HUMPHRIES**—That would be good. Thank you. What proportion of the department's investigative activities of business sponsors comprise—and this is can be taken on notice as with the other questions—education and awareness actions, desk audits, interviews and site visits? I think that is inherent in what you have promised to provide already.

**Mr Vardos**—We will take it on notice.

**Senator HUMPHRIES**—Thank you. Have any actions been taken against a sponsor using the new monitoring investigation powers provided by the worker protection amendments in the Migration Act?

**Mr Vardos**—I do not have any data with me, but we will include that in the response to the previous questions.

**Senator HUMPHRIES**—I do not want to know names but rather how many people and what states they are in. I assume that has not led to any prosecutions.

**Mr Kukoc**—While we will take this on notice and provide you with the full information, I seriously doubt that we have used all the powers that we have under the act in such a short period of time. As Peter Vardos mentioned earlier, this was a period of education of sponsors and employers about the new requirements. We have a lot of other instruments to use—such as educational visits, formal warnings and information provision—before we go to civil sanctions, and we are not likely to use civil sanctions in a heavy-handed mode.

**Senator Chris Evans**—We also basically gave people until the end of the year to get sorted both formally and informally. The changes came in in September. People knew that there would be an adjustment period. In terms of how we responded, we made it very clear that up until the end of December we were supporting people to understand the changes.

Obviously, if we have problems from now on in, we are more likely to take action if we think someone is not doing the right thing.

**Senator HUMPHRIES**—Sure.

**Mr Vardos**—The revisit that I mentioned earlier—when we found the non-compliant sponsors towards the end of last year and we said to them that we would be back in the early 2010—is the follow-up action. If there were to be any further action such as legal action, it would flow from further visits not from what has happened to date.

**Senator HUMPHRIES**—That is fine. I support the approach you are taking; I think that is good. But I want to make sure that we are getting information to people so that they know what their obligations are and no-one is getting into trouble for inadvertence or ignorance of the law. I assume that no sponsors have been barred or had approvals cancelled to date. It does not sound as if that has been necessary yet; but, if there are such cases, could you include them in the information you provide.

**Mr Vardos**—We will.

**Senator HUMPHRIES**—I assume that no civil penalties have been imposed as a consequence of a contravention of a sponsorship obligation prescribed in the regulations to date, although, there would have been obligations on sponsors before these changes.

**Senator Chris Evans**—That is right. I am just being a bit cautious about it. We will take those questions on notice but we do want to make the distinction between the powers that were there before in the sense of the normal approach of stopping people doing the wrong thing and any changes that might have come about as a result of the changes to the act. I think it unlikely that you would have seen much activity arising from the new act because of that period of grace, but there may well have been action taken in the normal course of events. To my knowledge, there has not been a lot of activity arising out of the act at this stage, but we will give you a detailed answer.

**Mr Vardos**—I should add that, even under the previous regime, when we came across inadvertent non-compliance the objective was to educate the employer if it was an honest mistake rather than immediately jump into courses of action. We have had a consistent approach, even before September last year.

**Senator HUMPHRIES**—The information that I am interested in is the penalties and so on arising from the changes that have occurred, so do not worry about previous enforcement actions. You can issue infringement notices, can't you?

**Mr Vardos**—Yes.

**Senator HUMPHRIES**—If an employer is faced with one of those—it is issued against him or her—what appeal options are available to them to lift that?

**Mr Vardos**—I will have to take that on notice and give you a detailed response of what is in place for responses.

**Senator HUMPHRIES**—You have described the market salary rate obligations on employers as a simple requirement to pay 457 visa holders the same wages as a worker who is not a 457 visa holder would have to be paid. Have I succinctly summarised the obligation?

**Senator Chris Evans**—That is the underlying principle. That is what we tried to move to, where we were able to say that the costs of a overseas worker in terms of the wages and conditions are the same as a local worker and add two objectives: (1) to ensure that Australian workers were not undercut by overseas workers working for less and (2) to ensure that overseas workers when in the country receive the appropriate wages and conditions that are payable in that society. The problem we had before with the minimum salary level is that it was a blunt industry that saw some industries where the MSL was higher than the going rate for Australians—

**Senator HUMPHRIES**—What is the MSL?

**Senator Chris Evans**—Minimum salary level, which was the old way. There were a couple of rates but, without getting too complicated, it was basically a rate which said you bring in a worker and you have to pay them \$42,000 or whatever the MSL was. In a couple of industries Australians were on less because the going market rate was \$38,000 and overseas workers were on \$42,000, but in most industries you had a situation where the Australian worker might be on \$60,000 and the overseas worker on \$42,000. The concerns there were that the overseas worker was not getting the appropriate wages and conditions and that there was a financial incentive for an employer to bring in an overseas worker. The principle was to try to address those two issues. Ms Barbara Deegan, the industrial commissioner, did a review for us of those issues. She went around Australia and did a very good, comprehensive report. We adopted most of those recommendations and they were to try to have a better mechanism for ensuring we met those two objectives. Obviously we will make an assessment after a while as to how that is going. That was worked through with a consultative committee with the unions, employers and state governments, to try to address that problem.

**Senator HUMPHRIES**—You have mentioned salary. Are there any differences in the treatment of 457 visa holders and other workers with respect to things like long service leave, superannuation, sickness leave and things like that?

**Mr Kukoc**—When we talk about market rates, we are actually talking about terms and conditions of employment which must be equal to the terms and conditions of employment of an Australian with similar skills and work experience in the same work location—the total terms and conditions.

**Senator Chris Evans**—To make one proviso there though, we insist on the 457 worker retaining private health insurance and there was a change made—the obligation before the changes was on the employer to ensure that and we placed that back on the worker. I think that is right.

**Mr Kukoc**—Yes, that is correct.

**Senator Chris Evans**—That was a change, that the worker coming in has an obligation to maintain private health insurance, similar to what we do with students. It is partly protecting the Australian health system, that they have taken out private health insurance. In terms of the wages and conditions, the idea is that they be on the same wages and conditions as Australian workers employed with the same skill in the same place of employment.

**Senator HUMPHRIES**—And again, you have had no serious representations from employer organisations about there being any complications or difficulties with the administration of these obligations with respect to 457 visa holders?

**Mr Vardos**—No, not at any serious level. We have had inquiries, people seeking clarifications, and we have responded.

**Senator Chris Evans**—We do need to be clear, though, Senator, that there was always going to be an area where, for instance, the only employee was an overseas worker. It is not as simple as it first sounds. For 99 per cent of cases it is quite simple, but there is obviously the odd occasion, where we work through with the representative groups, that raises the question: what if the only person you employ is an overseas worker because you need whatever they are and you cannot get one in Australia. Mr Kukoc could take you through the way we resolve that. Broadly speaking, it is an acceptance of the market rates and how they apply. But there are obviously unusual circumstances where you have to sit down with the employer and work out what the point of comparison is in an odd occupation, or a situation where there is only one worker, or what have you.

**Senator HUMPHRIES**—Okay.

**Mr Kukoc**—There are very few such cases, but in those cases the onus of proof is on the sponsor. The sponsor has to come forward with the information, which could be from labour market surveys, regional surveys or industry surveys, that would show that these rates are applicable to a similar level of skill and experience. So we are very flexible in such circumstances.

**Senator HUMPHRIES**—Okay.

**CHAIR**—That is a good time for us to stop for morning tea.

**Proceedings suspended from 10.30 am to 10.50 am**

**CHAIR**—Are we ready to come back, amongst that laughter, happiness and clapping? I hope we did not miss out on anything.

**Mr Metcalfe**—It was my 30th anniversary of becoming a public servant last week. The minister very kindly gave me a little certificate to commemorate the occasion. It seems like only yesterday!

**CHAIR**—We should commemorate that.

**Senator Chris Evans**—I am not sure it is the most cheery time for him in the middle of estimates. I do not know how many estimates hearings that means you have attended.

**Mr Metcalfe**—I have been a regular attendee since 1993.

**CHAIR**—So, Mr Metcalfe, this is your 30th year in the Public Service; is that right?

**Mr Metcalfe**—Yes, I commenced as an administrative trainee in the Prime Minister's department on 29 January 1980. Primarily I have worked in the department of immigration, but also in PM&C along the way. It does not seem like 30 years. It has been a very enjoyable career. Hopefully, there will be many more years to come.

**CHAIR**—I think we might have crossed paths many times.

**Mr Metcalfe**—I was very young when I started.

**CHAIR**—So how is the gold watch? Does it fit?

**Mr Metcalfe**—The minister is going to go out at lunchtime and get me one I think!

**CHAIR**—Congratulations.

**Mr Metcalfe**—Thank you, Senator.

**CHAIR**—Well done. We are considering outcome 1.

**Senator McLUCAS**—I understand there was a review of the Migration Occupations in Demand List. Can somebody give me an understanding of how that review was conducted, its motivation and the process the department undertook.

**Mr Kukoc**—We conducted a joint review with the Department of Education, Employment and Workplace Relations over the last few months. We have engaged a large number of stakeholders in the consultative process. It started with the issuing of a discussion paper, which was then followed up with a second discussion paper. We received feedback and written submissions from a range of stakeholders from the education industry, business, unions and NGOs. We have met with at least 50 stakeholders, ranging from the education sector, such as Universities Australia, TAFE and ACPET, to peak business bodies and unions. We discussed the issues that have arisen with the Migration Occupations in Demand List. That was the consultative process that finally ended up with the advice to government and recommendations to government. That was followed up with the decision and the announcement.

**Senator McLUCAS**—You say you spoke to over 50 stakeholders and you have given me the range, and I thank you for that. Give me a feeling and an understanding of their views about the operation of MODL as it was previously functioning.

**Mr Kukoc**—The general, prevailing view was that MODL had effectively failed to serve its purpose. Actually, it was aimed at an objective that it could never achieve. I will explain that further by saying that MODL, the Migration Occupations in Demand List, was initially designed as a list of occupations that are currently in demand in the labour market. Now, the way MODL is constructed, the process involves retrospective review of the labour market over the previous six to 12 months. That process then leads into the advice from the Department of Education, Employment and Workplace Relations in terms of what occupations may have been in demand over the last six to 12 months. Then the advice goes to the minister for immigration. The list is created as one of the tools to select prospective migrants. By the time you select prospective migrants and by the time those migrants come to the country, the time lag—between the start of the process and the final outcome—in the labour market sense can be two to three years, which means that MODL could never serve the purpose of targeting the skills in which there is currently a shortage. We have schemes that are much better suited to this purpose, such as the 457 and employer sponsor schemes, where the turnaround time for recruiting overseas skilled migrants is very quick. It takes a few weeks for 457s and a few months for employer-sponsored migrants. So these programs and schemes are much better placed to meet the current labour market demands.

Also, over time, MODL became dominated by a couple of occupations. Initially, MODL was made up of 20 or 30 occupations that were really in demand in the labour market. Later, it grew up to over 100 occupations. When the economic downturn hit Australia, the government had to react quickly to meet the changing labour market needs, and a decision was made at the time that the whole focus of skilled migration should be directed to the employer sponsored, so-called demand driven, skilled migration program, which is better placed to quickly adjust to the changing labour market conditions. That opened up the issue of what to do with MODL and, given that general skilled migration is usually not very well placed to target the immediate labour market needs because of the time lag I explained, the view was taken that general skilled migration needed to target prospective medium- to long-term skill needs and target high-value occupations that would suit the economy in the medium to long term. That reflected pretty much the view of the major stakeholders during the consultation.

**Mr Vardos**—If I could just add one point of clarification. We received 50 formal submissions in response to the two discussion papers, but we actually spoke to a lot more people across the country in the face-to-face consultation process. So it could number in the hundreds. But there were 50 formal submissions.

**Senator McLUCAS**—Thank you, Mr Vardos. On the time delay question—I think I know the answer, but let us make sure we have got it right—I understand there is going to be a Skilled Occupations List. Do you think this list will avoid that two- to three-year time delay issue that you alerted me to? And, if you do, how will that happen?

**Mr Kukoc**—The new list—which will be designed by Skills Australia, an independent and professional body that the government has created to advise on these issues—will clearly focus on the medium- to long-term needs in terms of what skills this country will need in the future rather than looking retrospectively or at what the current labour market needs are. That list is likely to focus on occupations and skills that are highly specialised, skills that take a lot of time and effort to gain, skills which any shortage of in the labour market in future will result in a huge opportunity cost to the economy and society. So, effectively, they are skills that are specialised, forward looking, take a lot of time to gain and are more likely to be deployed in the jobs in which such persons have skills.

**Senator McLUCAS**—And Skills Australia will manage that list?

**Mr Kukoc**—Skills Australia will actually advise the government on that future skills list in consultation, of course, with the Department of Education, Employment and Workplace Relations and the department of immigration. Where immigration will come in is deciding, even when this list of future skill needs is established, whether migrants are able to fill those gaps in terms of future skills shortages based on their past workforce performance. It will be an interactive process, but Skills Australia is the independent, professional body that will try to put this future skills list into the context of the broader government education and skilling agenda.

**Senator McLUCAS**—What will be the basis on which occupations are to be included on the SOL then, or is that a question I should direct to Skills Australia?

**Mr Kukoc**—I think Skills Australia is better placed to advise, but I am happy to say that at the moment we are looking for skills that are highly specialised, require significant time and

effort to obtain, are most likely to be deployed in the jobs that these people will be taking, and are in areas where any skills shortage in future will cause a significant opportunity cost to the economy and to society. So we are talking about high-level skills across a broad range of occupations, from professions to traditional trades.

**Senator McLUCAS**—What about those areas where we will have or may have a skill shortage in occupations that are lower skilled? What way can those people work in Australia?

**Mr Kukoc**—We have other schemes, such as 457 visas and employer sponsored and regional skilled migration sponsored schemes. They are well placed to respond to skills shortages and labour shortages in the immediate future and to current shortages. As I mentioned, the processing turnaround time with these schemes is much faster than the general skilled migration. We are talking about a few weeks to a few months. At the moment, for example, 80 per cent of 457 visa holders are sponsored by small and medium businesses in Australia. So the 457 scheme is very responsive to the immediate labour market needs across the wide spectrum of employers and skills. There may be an issue with the recent removal of the semiskilled occupations in ASCO levels 5 to 7 from the standard 457 scheme, but as I mentioned earlier to Senator Humphries, these occupations have been directed to labour agreements and we have significantly streamlined the process with labour agreements. While we still do labour agreements in consultation with the Department of Education, Employment and Workplace Relations, it is actually the department of immigration that is now negotiating and signing those labour agreements. So the process has been significantly streamlined in recent months.

**Senator McLUCAS**—Is it just that an occupation is a higher skilled occupation that allows it to get onto the SOL, or is there a broader analysis of demand or potential demand in the community? I am just trying to get my head around how you get engineer on the list.

**Mr Kukoc**—As I mentioned earlier, Skills Australia will be looking into the future needs of the country and the economy and will be focusing on future skill gaps based on the current labour market trends and future labour market outcomes, and will also put that into the context of what will become available through the domestic training and skill industry in future.

**Senator McLUCAS**—Can you give me an understanding of the current points test and how—I understand from the minister's comments on Monday—is it, using the points test mechanism, that someone who is a highly skilled person would actually receive fewer points than someone who is much less skilled? Even though we might very much want very highly skilled university graduates, for example, in the points system those graduates would not achieve the level of points that, say, a hairdresser may.

**Mr Kukoc**—The points test has served us well for a number of years and it has served the Australian skilled migration program really well for a number of years. However in recent years with some changes, and particularly with MODL changes and expansion of MODL to a wide range of lower value skills, the system has started producing some distorted outcomes. As the minister mentioned, we have a situation where, for example, a PhD scholar from Harvard with three years work experience in a general occupation such as an environmental scientist at age 30 and with good English would not pass that points test—he would get only

100 points—whilst, for example, a person who studied a vocational course certificate III in hairdressing for only two years in Australia with work experience of only 12 months would get almost 135 points and would pass that test. This is an extreme example but this is an example of the distorted outcomes that our points test is currently producing.

It all started with the notion that additional MODL points would add to the labour force that we currently need and to our current needs in the labour market. But, as I said, because of this time gap and time lag and because general skill migration was never well suited to respond to immediate labour market needs, but was more meant to meet our future human capital needs, the whole system started to produce those distorted outcomes. That is one of the examples. I can take you through the various points that are allocated. But mostly, if your occupation is a MODL, that adds around 15 points. Also some occupations such as hairdressing have an assessment authority in Australia so through that occupation gets more points as an occupation than a general occupation such as an environmental scientists. There are also a number of others. The certificate of Australian education gets some bonus points in comparison to overseas educational qualifications, despite the fact that that overseas educational qualification may be from some top university such as Harvard or Cambridge.

**Mr Vardos**—There are 11 elements that attract points and it ranges from five points to 60 points depending on the element. We can relate to you the 11 elements if you wish but that is fundamentally how the points test is.

**Senator McLUCAS**—I think that is on the website, Mr Vardos.

**Mr Vardos**—Yes, there is data there in great detail.

**Senator McLUCAS**—No, you do not need to provide it. The committee can find it on the website. I understand there is a points test review that is occurring. Can you give me an understanding of what is happening there? What is the timing? Who is going to be involved with that?

**Mr Kukoc**—With the announcement of MODL changes the government has also announced the commencement of the consultative process and the points test review. That process will start with us issuing a discussion paper similar to what we did with the MODL review. We intend to do the same consultative process jointly with the Department of Education, Employment and Workplace Relations. We will receive feedback on our discussion paper. We will go and meet key stakeholders and discuss issues directly face to face. The process will end up with a final paper, maybe a second discussion paper, but certainly the final advice to the government. We hope to wrap up and finalise the process by May this year.

**Senator McLUCAS**—Good. One final question: what is now the English language requirement for trade occupations? It is not directly relevant.

**Mr Kukoc**—It is level 6, which is competent, across all four streams: speaking, reading, listening and writing.

**Senator McLUCAS**—I will leave it there.

**Senator HUMPHRIES**—My questions relate to the transitional provisions that surround the announcement made yesterday. I understand that the new skilled occupation list that is

being foreshadowed will be available in April, and it will be effective from the middle of the year—after June. What happens in the meantime? What do people who are already in that system do towards getting their visa? They suddenly have the rules changed around them.

**Senator Chris Evans**—I would like to make a key point before officers answer this question. Some of the reporting today has missed this key point. I understand that there are a lot of changes; it is quite a complex package. Effectively, all students who held a student visa as of yesterday's date have, if you like, some grand-fathered entitlements. That has not been widely reported in many of the press articles, which have focused on the new SOL, as if that was the only way currently enrolled students could get access to a pathway to permanent residency in this country. That is not right. That will apply to future students—students enrolling after yesterday. But there is a set of transitional/grand fathering arrangements—I use that word; I know it is not a great term, but people understand what that means—for students who are currently enrolled. It certainly tightens the conditions. It makes them meet a range of conditions that more strongly link them to the labour market, and their capacity to seek permanent residency is very much linked to whether they get skilled labour market outcomes. But they do have a range of conditions which give them the opportunity to pursue permanency if they so wish. I make the key point that if you have applied for a student visa to come to Australia then you come here to study. There is no necessary link between that and permanent residency. I will get the officers to take you through that but it is important. We are dealing with two sets of things: the conditions which apply to students who were enrolled as of yesterday's date, they held student visas, and those that come and enrol after yesterday's date. I will get the officers to take you through those sets of conditions—first, those who were currently enrolled as of yesterday's date, and then that will lead on logically to the next stage.

**Mr Vardos**—I will start with applicants for skilled graduates, subclass 485 visa. If the application is lodged for a subclass 485 before the new SOL commences in the middle of the year, applications will be processed under the current arrangements in legislation. That 485 visa gives the holder until the end of 2012, if my memory serves me correctly, to gain experience in the Australian workforce and to seek sponsorship by an Australian employer for permanent residence.

**Senator HUMPHRIES**—An application made after today can still attract the old provisions?

**Senator Chris Evans**—That is for the graduate visa.

**Mr Vardos**—I am carrying on from the minister's point about the students onshore and then we will move on from there. They have 18 months validity from the grant of that visa to find a sponsor.

**Senator HUMPHRIES**—So, roughly, to the end of 2011?

**Mr Kukoc**—It will end at the end of 2012.

**Mr Vardos**—The visa itself has a validity of 18 months.

**Mr Kukoc**—May I just add that there are three groups of people that could have been affected by these changes. The first group are the people who have already lodged an application for permanent residence onshore. They are all protected; they can use the MODL

points as previously and nothing will change for them. There is a second group: all people who are currently holders of 485 or have applied for 485, which is a temporary skilled graduate visa for 18 months. They are also protected and they can use the MODL points. All current students who have not applied for 485 or are not former students on 485 or have not applied for permanent residence—so we are talking about students who still have not had a chance to apply for 485 or permanent residence—will still be eligible to apply for 485 under the old list, get 18 months work experience in Australia, try to find an employer sponsorship or state sponsorship and have that pathway to permanent residence. And that grandfathering will continue until the end of 2012.

**Senator HUMPHRIES**—2012?

**Mr Kukoc**—Yes.

**Senator Chris Evans**—The key difference, Senator, is that those people currently studying will not get access to the independent general skilled migration program if they do not have an occupation on the new list. They will be able to use the current MODL to get their points to allow them to get the 485 visa. Effectively that says: ‘If you’ve got sufficient English skills, you’ve got a qualification and you’ve got an employer prepared to employ you on the basis of that qualification, then you have a pathway through to permanent residency, but you don’t have a pathway through if you don’t meet those criteria.’ The problem with the current system was that people would have a qualification but no capacity or prospect of working in that particular trade or qualification. So there is a pathway, but it is a tougher pathway.

**Senator HUMPHRIES**—Yes, but it is a pathway that they have already commenced on. They are already here studying for a qualification that was previously, presumably, on the list. It is no longer on the list, and they have to then effectively acquire a different set of skills.

**Senator Chris Evans**—That is where the fundamental misunderstanding is, Senator. They do not have to change course. What we are saying is they will get recognition for their MODL points based on the current course of study, the current MODL, and they will have a pathway under that skill. Say they are enrolled in cooking. They will have the MODL points that currently apply for cooking, even though it is unlikely that will be the case in the future. They will get the recognition of those points under the current system which will allow them to apply for and get a 485 visa, which is the ability to stay for 18 months to gain work experience and to seek to gain a sponsor to stay permanently, by accessing permanent residency. So the fact that their qualification may not be on the new list does not rule them out. What we have done, though, is made the high bar higher in the sense that they have to have that link to an employment outcome, not just a qualification.

**Senator HUMPHRIES**—Okay. How many students will be affected by that change, by having to go over that higher bar, as you put it?

**Senator Chris Evans**—The first point I make is that students are here to study and we are the immigration department. People here who are studying are here in the education sector. They then may apply down the track for immigration, and they apply under the rules that apply at the time, as administered by my department. We can give you information about the numbers of students in the country who are currently studying et cetera. But, clearly, whether

or not they seek to apply for permanent residency is a matter for them and a decision they make at that time if they are qualified.

It has been the case that the number of students seeking permanent residency has gone up quite dramatically in recent times. For instance, we had lot of students from China and other places in Asia studying accountancy and economics et cetera in this country and many of them never sought to apply for permanent residency. They were students who then went back to work in their own countries. In recent times, we have seen a growth in the number of applicants, particularly in the trades area. We have some evidence and anecdotal information which suggest a higher percentage of them would be seeking permanent residency.

We can give you numbers for students; but, clearly, from our point of view, it is when they apply for a new visa other than a student visa that they come into the immigration system. The changes announced yesterday provided some grandfathering arrangements for all those persons who held student visas yesterday. As I said, we can take you through the specifics of those. It effectively maintained a pathway for them, but it was a pathway that had a higher high bar and that enforced a link with an employment outcome that was not present in the old rules. Mr Kukoc or someone else can take you through the details of that.

**Mr Kukoc**—It is very hard to estimate the number of students who may miss out on the permanent resident outcome which they hope to achieve based on these changes, because we still do not know what occupations will be on the new Skills Australia list. The other thing is that, for example, many students who have been applying onshore do not need MODL points at all. We expect that only 10 per cent of them will use MODL points to qualify. Quite a few of them will get other points and reach the pass mark. It is very difficult to estimate. If we use the 485 pathway, we know that last year there were 20,000 applicants for 485 visas. Quite a few of them were in only a handful of occupations. More than half of them were cooks, hairdressers and accountants. It all depends on what occupations are on the list. We understand that it will be a broad list, involving a significant number of professions and traditional trades.

**Senator HUMPHRIES**—I assume that 20,000 are not lined up for this financial year. Will the 20,000 actually be processed or will they be rejected because the new arrangements require a different application? Is it true that the fees for the 20,000 applications which have already been lodged will be refunded?

**Senator Chris Evans**—Senator, I will let the officers explain the detail, but there is a distinction here that I think you are missing. We were having a conversation about student applications. The 20,000 applications that will be ceased and the cost refunded are not student applications. They are offshore general skilled migration applications which were lodged pre-September 2007, when the previous government changed the rules and increased some of the requirements. Because of this government's attitude to priority processing, we formed the view that those applications were unlikely to ever be processed and be successful in their migration outcome because of the qualifications the applicants held at the time and where they were. Mr Kukoc can take you through the detail. We decided to introduce—and I got some criticism after it was done—the critical skills list and the priority processing, which effectively said that we were going to take doctors, nurses and other professionals in need first and then employer nominations, state nominations and independent skilled nominations last

or lower down the list. Effectively, they were going miss out. The criticism I got said: 'You really should treat them more fairly. If you are not going to give them a visa, you ought to refund them and cancel them.' So we have said: 'You're not going make it. There are 20,000 of you who have been there since the previous government's changes under an old visa class. You're not going get there. It's better that we are frank with you and say, "You're not going to get there. We'll pay you back your visa application charge and end your application rather than leave you hanging there."' They are not students. That is a separate argument. They are 20,000 or so offshore applications that have been in the pipeline for at least 2½ years and many of them longer who are not going to get there. So we have effectively ended those. The students are separate to that. Unfortunately, the officer used the number 20,000, which was the number of student applications for 485 visas.

**Mr Kukoc**—It is the number of 485 applications last year, which is a temporary skilled graduate visa. It is a pathway visa to permanent residency.

**Senator Chris Evans**—But it is a completely separate 20,000.

**Mr Kukoc**—These 485 holders and applicants are all protected—there are grandfathering rules that apply to that group. But I was just using this as an example of the sorts of occupations that are coming through for permanent residency.

**Senator HUMPHRIES**—Okay. Talking about onshore applications, what does a person who wants to apply now do if they were previously on a skilled occupation list?

**Senator Chris Evans**—Are you talking about students?

**Senator HUMPHRIES**—I was talking about students.

**Senator Chris Evans**—Yes. Sorry, we just need to be careful.

**Senator HUMPHRIES**—I was talking about students onshore.

**Senator Chris Evans**—An onshore student.

**Senator HUMPHRIES**—Yes.

**Mr Kukoc**—From yesterday, the only thing that will change for them is that they will not get additional MODL points. They can still apply on the basis of the current skilled occupation list, which is more than 400 occupations, until the middle of this year when the new skills list comes into force. That is when the full scope of changes will come through.

**Senator HUMPHRIES**—What is the difference in points? How many more points would they have got under the old arrangements than they will get under the new ones?

**Mr Kukoc**—You can get 15 to 20 additional points as part of the points test if your occupation is on the MODL.

**Senator HUMPHRIES**—Okay.

**Senator Chris Evans**—The point to make—sorry this is complex—is that many of the overseas students in this country who apply for permanent migration do not actually need the MODL points to get them to the pass mark because they are young, they have got an Australian qualification et cetera.

**Senator HUMPHRIES**—I am not talking about them, obviously.

**Senator Chris Evans**—So the vast majority of them get there without the MODL points. We think there are probably 10 per cent or so, maybe a bit more, who need them, but the vast majority do not actually need them by virtue of the other points they get assessed for.

**Senator HUMPHRIES**—So at this point you cannot estimate how many students are likely to be affected by these changes?

**Senator Chris Evans**—It depends what ‘affected’ means.

**Senator HUMPHRIES**—Well, affected adversely, as in having, as you put it, a higher threshold or a higher benchmark to meet to get a visa.

**Senator Chris Evans**—It is probably true to say that the vast majority of them are affected in the sense that there are those who have not finished their courses yet.

**Mr Kukoc**—It will all depend on the new list that comes into force from midyear. We can also say that there are a number of them who are grandfathered and all of them will still have access to a 485 visa under the old list and the potential for an employer sponsorship. So really we cannot definitely say who will miss out on a permanent residency outcome, but we know that without these changes we would be expecting more than 300,000 students to apply for permanent residency—

**Senator HUMPHRIES**—Onshore?

**Mr Kukoc**—no, altogether, but they are all former students—over the next couple of years. The general skilled migration program only has 65,000 places. That includes partners and dependants. So, with the general skilled migration space or places being around 40,000, we are talking about more than 300,000 former students applying for permanent residency over the next few years, without these changes. With the changes, fewer of those students will be able to lodge a valid application.

**Senator BARNETT**—Mr Kukoc, to be specific, rather than asking the question which you say you cannot answer until midyear—until after the new list is promulgated at the end of June—how many of those students onshore will potentially be affected? I am not saying ‘adversely’. How many will potentially be affected under this new system?

**Mr Kukoc**—I would like to take this question on notice because there are a number of variables that will affect that number. The variables are, first of all, based on what occupations will be in that Skills Australia list. That is the key variable.

**Senator BARNETT**—But you must have a breakdown of how many students are studying what professions—cooking or whatever—at the moment. Can you give us the total number that currently exist and the breakdown of their professions?

**Senator Chris Evans**—I will get the officer to see if he can help you with some of those figures, but I just want to make the primary point that I made earlier: the intentions of students studying to apply for permanent residency is not known to us. They hold a student visa to study in Australia and at the end of that student visa they are expected to leave. That is their immigration status. Many have come with an expectation of seeking permanent residence and many have been sold that package in terms of the advantages of studying in Australia, that is true. But, technically and factually, at the current time they are students holding student visas

with no rights to stay. Just so you understand, from our point of view we cannot tell you how many of them will. We can see what our past experience has been. That is all we can tell you.

**Senator BARNETT**—Let us go on the past experience. You can take this on notice. Can you tell us how many students there are currently studying and how many, say, in the last financial year applied for permanent residence?

**Mr Vardos**—Let us look at the order of magnitude we are talking about. At the present time there are somewhere between 380,000 and 400,000 international students studying in Australia. Historically, between 100,000 and 120,000 graduate each year in a range of disciplines and from a range of course lengths and levels. Historically, approximately 30 per cent apply for permanent residence. These are estimates based on past trends, so it is hard to predict what future students may do. That is what the trend data suggests.

**Senator Chris Evans**—It is important to note that our assumption is that the trend of those seeking permanent residency is increasing and will increase significantly.

**Senator BARNETT**—But based on that data and the 30 per cent of the 120,000—

**Mr Vardos**—Between 100,000 and 120,000 graduates each year and approximately 30 per cent would apply for PR.

**Senator BARNETT**—So, under your scenario, if you take those figures does that mean that 30 per cent of the 100,000 to 120,000 may be affected by the new system?

**Mr Vardos**—They may apply for permanent residence and, as Mr Kukoc said, may be impacted in different ways depending on their individual circumstances.

**Senator BARNETT**—That is between 30,000 and 40,000 students currently in Australia based on those figures; is that correct?

**Senator Chris Evans**—I would think that the number is higher than that in the sense that I think the trend line for numbers seeking permanent residency is going up and of course the number of graduates each year is going up because the number of students coming each year has been going up. So the trend line on all these things is up. The key point I would make is that those persons currently enrolled still have a pathway to permanent residency but the requirements on them are more stringent.

**Senator BARNETT**—You made the announcement yesterday, but I assume you have been working on it for some time. There is a no-man's-land, there is a gap, here until midyear. I am wondering why you have not done the work or the research to promulgate the new lists so that people know exactly where they stand rather than having to wait till midyear to get the details, because the devil is in the detail.

**Mr Kukoc**—The situation until mid next year remains unchanged apart from removal of the additional MODL points. As I mentioned earlier, that is expected to affect only 10 per cent of onshore students because most of them do not need additional MODL points to meet the pass mark. As I mentioned earlier, the situation for the general skilled migration program has become almost unsustainable with the large number of applications that cannot be processed because of the limited number of places available. There was a need to use the levers available to the government to ensure that we have the growth in the pipeline, consistent with

the number of places that will be available over the next few years, in the general skilled migration program.

**Senator BARNETT**—I suppose the point I am trying to make is that you have the education,—and I think it is said to be about \$15.5 million in benefit to Australia’s international education business—you have made this decision, and there is going to be this level of uncertainty flowing through until at least April and then the further detail is in June. That has created obviously an understandable level of anxiety.

**Senator Chris Evans**—That is right, Senator, I appreciate that but I make the key point again, the education sector is supposed to be selling an education, not a visa. We are not selling visas.

**Senator HUMPHRIES**—But that is what happens. People apply—

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

**Senator HUMPHRIES**—with the expectation that they will obtain.

**Senator Chris Evans**—Your government may have set up that system but it is not a system I support. What I am saying to you is: I run a migration system with integrity. Australia has to run a migration system with integrity. If people take out a student visa, they have a right to come here and study. If they then want to seek permanent residency they have to meet our requirements, have the skills that we want and present as good applicants that we want to take. What has happened is there has been—

**Senator HUMPHRIES**—Requirements have changed. That is the problem.

**Senator Chris Evans**—a creation of an industry and, quite frankly, the numbers coming through were unsustainable and the growth in the student sector has been exponential. As a result we had the situation whereby, if we met all those demands, we would either have to double that size of the program each year to meet those needs or have a large number of former students in country who were qualified but could not get into the program. Something had to be done. What we have done is make it clear that there is a separation between the education services offered by education providers and the migration policies of the Australian government. Yes, there is a concern there because, as you heard from the sector today, they say that they have to have the lists so that they can sell the courses, not based on their educational merit but based on whether or not they can sell it as a visa outcome. That is fundamentally what we are trying to fix.

**Senator HUMPHRIES**—I take all those points, Minister, but I sat through a recent inquiry, with Senator Hanson-Young, into Indian students and international student welfare generally. There is something of an industry around students coming to this country, doing certain courses that they believe are priorities for the Australian community and skills and then taking on an application for a visa. We have considerable problems in places like India in maintaining their perception of integrity in Australia’s international education market and we need to protect that. If we change the rules in a way which affects the commitments people have made, we damage that market potentially. Wouldn’t you agree?

**Senator Chris Evans**—Senator, there is a point there that I accept. The alternative though is to say that we continue to allow tens of thousands of students to flood into the country with

the expectation that they can stay on completion of their course and eventually be granted permanent residency. Those numbers are unsustainable in terms of the permanent residency outcome. Unless you and the Liberal Party are going to advocate a trebling, say, of the migration program we cannot meet those expectations.

**Senator HUMPHRIES**—I agree we have to change them but the transition is the issue.

**Senator Chris Evans**—That is why we have grandfathered those in country. It was described by Dr Birrell in the papers today, who is often a critic of this government and our policies, that there has been a generous grandfathering. We have attempted to try and protect the interests of those students while sending a very clear message that Australia chooses applicants who meet our national priorities and our needs, not those that have done the easiest course through an education provider as a passageway to permanent residency. I know there is going to be some pain in that shake-up but, quite frankly, it is long overdue. It had to happen and I think it is in the national interest now. We have tried to ameliorate the pain and the impact on individuals and give them opportunities but, at the end of the day, what we are effectively saying is: ‘If you do not have the skills or the English language to be employable in that skill in Australia, you should not be successful in an application for permanent residency because you are not meeting our skill demand.’ That is the bottom line.

**Senator HUMPHRIES**—That point is taken.

**Senator BARNETT**—On that point, Minister, what consultation or feedback have you had from the education services sector or the private training colleges or the students who have had the rules changed around them with respect to ‘the pain’—using your words—that they are currently experiencing and will experience in the period ahead?

**Senator Chris Evans**—Obviously the major liaison with the education sector is through the relevant minister, the Deputy Prime Minister. But I have made it my business to meet with the education sector over the last couple of years because such a strong link has grown up between their activities and immigration. Most of them knew something had to be done. They knew the growth was unsustainable.

**Senator BARNETT**—So you consulted them on this position?

**Senator Chris Evans**—Not the particular announcement but I have been talking to the sector about these issues.

**Senator BARNETT**—Why didn’t you?

**Senator Chris Evans**—For the very point I made: I am the immigration minister setting rules—

**Senator BARNETT**—But it has a direct effect on and in fact causes pain to the education services sector of some \$15 billion. So why didn’t you talk to them?

**Senator Chris Evans**—Well, I have spoken to them. The point I am making is that I did not actually run this particular decision past them. But we have been in contact with the education organisations.

**Senator BARNETT**—But why not? If you knew it was going to cause them pain, why didn’t you?

**Senator Chris Evans**—Because the liaison with the education sector is handled by the Deputy Prime Minister. She and I have worked closely on the package.

**Senator BARNETT**—It has a direct impact on them. You have said yourself that it is causing them pain. Why didn't you or your department liaise and talk to them directly and ask for their input?

**Senator Chris Evans**—Senator, I told you that I had liaised with them over the last couple of years. Secondly, the relevant minister, the education minister, has been dealing with them on a daily basis on all these issues.

**Senator BARNETT**—About this announcement?

**Senator Chris Evans**—The issues about control of the sector. As you know, there is a lot going on in the education sector in relation to overseas students at the moment.

**Senator BARNETT**—Did the minister talk to them about this announcement?

**Senator Chris Evans**—I will have to take on notice the level of discussions between them. We certainly briefed people in the lead up to the decision. I want to make the key point that—

**Senator BARNETT**—Who did you brief?

**Senator Chris Evans**—The department briefed a range of stakeholders. I can get them to give you the details.

**Senator BARNETT**—We are certainly keen to know exactly who you briefed about this announcement in advance of the announcement.

**Senator Chris Evans**—I make the point that most people in the sector knew something had to change. I am very happy to defend the decision because it had to be done. There will be an impact in the sector; that is right.

**Senator BARNETT**—How big an impact?

**Senator Chris Evans**—We will have to see.

**Senator BARNETT**—You should know. You would have already done that assessment—modelling to assess the level of impact on the sector.

**Senator Chris Evans**—No, Senator. You are falling into the same trap as the education sector falls into. I am the immigration minister; my job is to deliver an immigration program that serves the national interest, not to prop up some provider who may have built their business on telling students that their chances of permanent residency rest on doing a particular course with them. We are concerned about the impact on the sector. I have consulted closely with the education minister, the Deputy Prime Minister, about these things. I have been very clear with people that we know it will have some impact, as will the other changes that are occurring to basically clean up some problems. Fundamentally, this is an immigration decision to best place this nation to attract the right candidates for migration to this country to meet the skills needs of this country. That is the basis on which the decision is taken.

**Senator BARNETT**—I take what you have said but you and the government have taken a decision knowing full well it will have a direct and adverse impact on the education services

sector in this country, which is valued at some \$15 billion. You have known that. We would like to know, as a committee, exactly who you briefed in advance about the decision and what steps you have taken to ameliorate, using your words, the adverse impact of this decision on the education services sector.

**Senator Chris Evans**—The answer to the second bit is the transitional arrangements, the grand fathering clauses, if you like, that I have just taken Senator Humphries through. There are major measures in place that deal with those students who are currently enrolled, as of 8 February, and they have conditions applying to them that will not apply to new students. So we have major transitional arrangements in place to serve their interests. What we are not doing is guaranteeing them all a permanent residence visa. I understand that among others that our department briefed was ACPET, which is the Australian Council for Private Education and Training, the TAFE directors and Universities Australia. My office or I have had discussions with most of them in recent times.

**Senator BARNETT**—About this decision or specifically about the announcement?

**Senator Chris Evans**—About the need for migration changes. I have not told people the detail of what we were going to do, but the department briefed them prior to the announcement.

**Senator BARNETT**—Could the department tell us exactly what they briefed them on?

**Mr Vardos**—Officers of my division briefed the three organisations that the minister mentioned—ACPET, TAFE Directors Australia and Universities Australia—on the actual announcement last week, so they had advance notice. I think it is also fair to say—

**Senator BARNETT**—So they had less than a weeks notice.

**Mr Vardos**—That is in terms of the announcement. They were party to the MODL review and we have been engaging with ACPET, as one example, for over 12 months about the sorts of issues that we are grappling with.

**Senator BARNETT**—What feedback did they give you?

**Mr Vardos**—My recollection is that ACPET put out a position paper sometime in the last 12 months—

**Senator BARNETT**—What feedback did they give to you last week when you advised them of the announcement?

**Mr Vardos**—I would have to consult with the officers who actually did the direct briefing.

**Senator BARNETT**—If you could take that on notice, we would very much like to have that brief.

**Mr Vardos**—We will advise of the process that has taken place. I will just finish the last comment that I was making that ACPET put out a position paper within the last 12 months that broadly supported the thrust of the changes.

**Senator BARNETT**—This is my final question because I know time is tight. Is the minister or the department aware of the impact this has had on Australia's reputation internationally—whether it be China or India, it does not matter—in the countries from

whence the students come? Are you aware of the impact, specifically the adverse impact, on our reputation as a result of this announcement?

**Senator Chris Evans**—Clearly I do not know as a result of this announcement, but I can assure you that there has been a lot of concern overseas about the quality of the education some of their students have been getting in Australia, particularly in the vocational education area, and some concern that the reputation of Australia's education industry has been undermined by what they saw as the fraudulent practices involved in recruiting young people to do courses in Australia as part of a package to permanent residency. I think our education reputation was suffering very much because of the developments in that sector and how it reflected on Australia and the quality education provided by so many providers in Australia.

**Senator BARNETT**—So you are not aware of the impact of this decision on our reputation internationally?

**Senator Chris Evans**—I made the announcement yesterday, so I have not yet had a chance to assess international reaction. But I do know there was concern in a number of the major markets about the quality of the education many of their nationals were receiving, given the developments in the sector and the concern, which you know has been expressed widely in Australia, about the quality of the education some of the providers were providing.

**Mr Metcalfe**—I accompanied the minister on a visit to India in the middle of last year. From memory we met with four Indian ministers, including two cabinet ministers, and that was a very strong theme. There was a very strong concern that in fact Australia needed to overhaul its education immigration arrangements because of large numbers of students entering relatively low-skill courses and doing so on the basis that they were simply seeking a permanent residency outcome, and that this was actively being marketed by education agents overseas. I met with the Indian High Commissioner yesterday and we have had ongoing discussions with the High Commissioner to advise her of the minister's announcements. I think it is fair to say, without disclosing any confidences between the governments, there has been a concern about the students in Australia who may have come with a particular set of understandings that have been marketed to them and that was one of the measures that led to the quite substantial grandfathering arrangements that the minister has outlined.

**Senator HANSON-YOUNG**—A lot of my questions have been covered, so I will try to cover those which have not. I am surprised that you are not able to tell us the projected change in numbers. I understand you are not able to give specifics because you need to wait to see what those applications are, but surely you have had a think about what the projected change will be. I must say I was surprised, Minister, that you used the word 'flooded', but if the position of the government is that they believe Australia is being flooded by international students who then want to apply for permanent residency and that that is an issues because the migration intake will blow out, surely you have some idea of your projected change in the number of applications.

**Senator Chris Evans**—Senator, I will get the officer to take you through it, but the point I was making is that, first of all, we have about 400,000 students in country already and the numbers in the voc ed sector were growing exponentially. If you look at the net overseas migration figures, and there has been some debate about the population issue recently, you see

that the largest driver of those increases, net overseas migration numbers, are in fact student arrivals—because they stay for more than one year, they are counted in the net overseas migration. So the whole debate is in part being driven by the large numbers of student arrivals. I used the word ‘flooded’ because you have to put it in relation to our annual programs. We have the potential of having four, five or six years worth of students with an expectation and a right, if you like, to become permanent migrants to this country—that is, five or six times the annual program. If you followed that to the logical conclusion, you could have a situation where, for the next five or six years, all we take as permanent migrants are overseas students, most of whom have qualifications in cooking and hairdressing. That would not be a legitimate migration outcome. So something had to be done.

**Senator HANSON-YOUNG**—That is not necessarily correct, though, is it? We do have a set intake under that criteria.

**Senator Chris Evans**—Yes.

**Senator HANSON-YOUNG**—So just because an extra 40,000 people apply, it does not mean that that 40,000 people are given entry.

**Senator Chris Evans**—No, but because they have been accepted, they remain in country waiting for a visa. Even worse, they—

**Senator HANSON-YOUNG**—So they are overstayers then.

**Senator Chris Evans**—No, they are not overstayers—that is the point—they are legally here. They may not get through the program but they are actually in country. They are legal but their situation is unresolved. They have work rights and they are here. It is an unhappy circumstance for them and not a desirable outcome.

**Senator HANSON-YOUNG**—I take your point. I do not necessarily disagree that things had to be changed. The Greens called for a review of the list some 12 months ago.

**Senator Chris Evans**—Well, I listened and acted.

**CHAIR**—You always listen to the Greens do you, Minister?

**Senator HANSON-YOUNG**—I wish you would listen a bit more.

**CHAIR**—We will make a note of that.

**Senator HANSON-YOUNG**—The issue I have is that, if you have made these changes, you must have some idea that these changes are going to reduce that number. There must be some projection.

**Senator Chris Evans**—We do. Mr Kukoc will take you through some of that figuring but there are two key points which I want to make to you. First of all, the evidence we have had and the anecdotal feedback is that the numbers of students coming to the country with a view to taking out permanent residence as a large factor in their decision making had increased. The percentage of students we have been attracting who are looking to stay permanently, particularly those in higher education, from source countries like China, was relatively low. From the numbers of people flowing into the vocational educational market from India, Nepal, Pakistan and other countries there was probably a higher expectation. We have not seen all those figures because they are doing a two- or three-year course and we have not yet seen

them flow through to permanent migration. But all the anecdotal evidence and the early signs we have had was that we were dealing with that group. That is the first point to make. The historical figures are not necessarily the best guide, but we can give you those.

The second point I want to make is one that was well made in a FECCA, Federation of Ethnic Communities Councils of Australia, release yesterday. It made the point that under the current arrangements there were a lot of young people from overseas getting permanent residency who did not have the skills or English language ability to get employed in the area in which they trained and that they were getting trapped into low-paid jobs in Australia without much prospect, because they were getting through the system but were not equipped to actually succeed in Australia. That is the other aspect of this problem.

**Senator HANSON-YOUNG**—And doesn't this link directly to the interaction between the visa process and the enrolment process into courses because if they do not have the skill and abilities to enter the workforce then how are they able to participate in their courses effectively?

**Senator Chris Evans**—That is a good question. My job is to fix the migration problem. As you know, the Deputy Prime Minister has been trying to drive reform in the education sector, and Bruce Baird is doing his inquiry. Fundamentally, there were problems, in my view, about English language requirements. We have increased them across the migration programs because there is a direct link between people's English language ability and their capacity to gain work in a skilled area and to be successful in the Australian community.

**Senator HANSON-YOUNG**—And not be exploited in the workplace.

**Senator Chris Evans**—That as well—that is one of the other considerations, and we found that in the 457 area. So we think English language is important. The other thing we did, which took effect from 1 January—which was not widely reported, I suspect because it is not in the interests of some agents to report this—was that we introduced a job readiness test whereby all former students seeking permanent migration had to meet effectively a trades test arrangement to test that they have the skills that they claimed. We do this overseas. We introduced it domestically from 1 January so that if someone claimed they had a cooking qualification they actually had to prove that they could cook and they had some experience. I think that will help drive up the standards in the industry because graduates will know whether or not the colleges that they go to are actually producing people who pass the test. I think that will be a major improvement and a driver of change in the system as well.

So we have tried to address all those issues in terms of the migration program, but you are right that a lot of this goes back to the starting point. Quite frankly, one of the things we also did was we really tightened up on the visa application process in key countries—

**Senator HANSON-YOUNG**—The student visas?

**Senator Chris Evans**—Student visas—because, when looking back at the growth, we realised that there was some fraudulent activity, particularly in relation to statements about financial viability. One of the reasons students were having to work long hours here and were in difficult circumstances is that the documentation they provided saying they had \$12,000—now \$18,000—in the bank was fraudulent or they had taken out a loan and had to repay it before they came. So they did not have the financial means that they had claimed and

therefore, as you know from your inquiry, were in this cycle of having to pay off debt and support themselves without sufficient financial means. So we have tightened up on our end, at the visa processing end, but there are questions about educational institutions, English language skills and quality of courses that are being addressed but are fundamental to solving the problem.

**Senator HANSON-YOUNG**—My main concern with yesterday's announcement is the timing. I accept the things you have tried to do in terms of grandfathering, the consultation with the sector, the consultation with the education department. But if you wanted to make this type of change, why would you do it on 8 February when a lot of courses have started for the year? Why would you not have made this announcement last year before people has enrolled in courses for 2010?

**Senator Chris Evans**—If I had made it last year, those people would not have got the grandfathering provisions and you would have criticised me, saying, 'What about those students who are on the way, coming in with an expectation?' You cannot win on that. Quite frankly, if you announce a date in advance you get perverse behaviour. We get a lot of applications coming in, so we had to have a drop-dead date, if you like. There is no good time to do it, and you can make an argument either side about the impact on people. But what we did was we grandfathered or made transitional provisions for all those currently enrolled. Quite frankly, we could have had a much harder provision, a much less generous provision, but we went for what we thought was on the generous side, understanding the conditions of those students and the expectations they had, not expectations fostered by the government or the immigration department but expectations that they had been given by others.

We think those transition arrangements are pretty generous. But the bottom line in all of those is that for people to be eligible for permanent residency in this country they will have to have adequate English skills, a proper qualification and a capacity to get a job in that qualification in Australia. I do not think those are unreasonable tests to ask of someone seeking permanent residency in this country.

**Senator HANSON-YOUNG**—Underlying much of the reports about the announcement yesterday is the idea that somehow these students were rorting the system. They were not rorting the system; they were clearly following the pathway that was set. Whether we agree or not whether that was good or bad policy, you are suggesting that it was bad policy and you are trying to fix it. There is this underlying reporting that is suggesting that these students are rorting the system. I think it needs to be clearly identified by the government that that is not your position, that you do not believe these students are rorting the system.

**Senator Chris Evans**—No.

**Senator HANSON-YOUNG**—You do not believe the students are rorting the system. In fact, if Mr Metcalfe is correct in terms of saying that, when you went to India the Indian ministers suggested that Australia had to take responsibility and to tighten the policy, then it is the policy that is wrong, not the students.

**Senator Chris Evans**—I think that is a fair point to make. It is the case that people have, if you like, integrated to the point where someone is effectively saying to someone in India: 'I will organise you a student visa. I will organise you a course. I will organise you a job. I will

organise you a pathway to permanent residency. By the way, give me \$40,000. I will also fix up your bank accounts to reflect the fact that you have income to support yourself. Buy the whole package deal.’ Then there is the issue about spouses as well. People have joined up to that system. Not all of them are doing this, but there is that element to it. Are they rorting it or is it a rorted system? The semantics do not worry me. A lot of these people—

**Senator HANSON-YOUNG**—I think that is important in the context of the current debate around the international education sector. I think it is important for the government to be very clear that you either do or do not believe that this needed to be fixed because students were rorting the system.

**Senator Chris Evans**—The way I would put it is that there are a lot of genuine applicants who came here to get an education and as part of that hope to proceed to permanent residency and a new life in Australia. That is a perfectly understandable aspiration and one that promised them a better life. We still want to attract the best and brightest of those students. We do not want to be in the situation of saying we have to take everyone who came to study in Australia. That is the difference. I still want to attract the best and brightest Chinese, Indian, South Korean and Malaysian students who have skills we need. We will need those young people, but we want to be able to make the decision in terms of what skills we need and which people have the abilities that will best serve Australia and its economy.

It is not about casting aspersions on students. As we all know, and you have done the inquiry so you will understand, there are a lot of things that have developed in this area that are very unsavoury. People have been almost told that you do not have to come and study. We have all got in a taxi in Melbourne and somebody has told them: ‘Yes, I am enrolled in a cooking course. It is great.’ One bloke told me: ‘I only have to go on Wednesdays from seven till nine. That is the course requirement. I drive the taxi the rest of the time.’ He had been sold a package. Do I call him a rorter? No. He is just someone taking his economic opportunity. But is the system rorted? Yes. Does it need fixing? Yes.

**Senator HANSON-YOUNG**—Is not necessarily the students who come to Australia on a student visa, study the course based on a list that Australia suggested was a skill of demand and then apply to stay here and work, because that skill is apparently in demand. They are not rorting the system.

**Senator Chris Evans**—No.

**Senator HANSON-YOUNG**—It is just bad policy.

**Senator Chris Evans**—There are two points. Firstly, I do not think you should make a decision to study based on a list of migration occupations. You should make a decision to study based on your interest, your capacities and the trade or occupation in which you want to work. Secondly, the major problem we are confronting is that people were completing courses and applying for permanent residency but never actually working in that skill. So it has not mattered how many accountants we have brought in—and we have brought in 40,000 in the last five years—we still have a shortage of accountants. One would have thought that, if we had brought in 40,000—we totally skewed the program towards accountants—we would have solved our employment problem with accountants—but no. We brought in people who did not have the English language skills or who were not seen by employers as being suitable to be

employed as accountants. It is the same with the cooking. We have brought in thousands of cooks but none of them work as cooks.

**Senator HANSON-YOUNG**—Perhaps it is an issue for the institutions and their linkage with the workforce. This issue is much more complex than simply cancelling someone's visa and saying, 'Okay. You're going to have to find your 15 extra points somewhere else now.' It is much more complex than that. That is why I think yesterday's announcement has caused some anxiety out there. Students feel that they are being tarnished with a brush which says that they have rorted the system, when they have not rorted the system. They have followed policy. They have followed a pathway that has been set. I do not see how, at a time when the international education sector is clearly in a mess, we can get out of this situation, unless immigration department officials and the minister work tightly and closely with the education department, the education minister and the education sector.

**Senator Chris Evans**—We have been.

**Senator HANSON-YOUNG**—It does not seem to be the case, because that is what yesterday's announcement was about.

**Senator Chris Evans**—That is not right. That is wrong. There has been a long development of the proposition. It is a cabinet approved proposition. It is one where I worked with the Deputy Prime Minister. Her department has been closely engaged with my department on the development of these issues. So it is not right to try and characterise it as other than a whole-of-government decision. But the actual levers, if you like, or the changes are in my portfolio.

**Senator HANSON-YOUNG**—Why would this decision be made before we saw the results of the Baird review?

**Senator Chris Evans**—Because this addresses the immigration issues.

**Senator HANSON-YOUNG**—We have spent the last hour and a half talking about how inherently linked this is with the education sector.

**Senator Chris Evans**—You said to me. 'Why did you announce it now?' Do you want me to wait until another 60,000, 70,000 or 80,000 students come into the country on the promise of permanent residency and then act? That is the problem.

**Senator HANSON-YOUNG**—What I am highlighting is that there has been a totally ad hoc approach from the whole of government. If it is a whole-of-government decision, it seems to be quite ad hoc as to when decisions are made, what announcements are made and what the dates are. We have a review that the Prime Minister himself says is going clean up international education and pave the way for its future, yet decisions about that pathway were made by you and your department yesterday, before the results of that review have even been presented.

**Senator Chris Evans**—Senator, you are dealing with two different issues.

**Senator HANSON-YOUNG**—They are not two different issues.

**Senator Chris Evans**—I have met with Mr Baird twice to discuss these issues as part of his review.

**Senator HANSON-YOUNG**—Did you give him the heads-up on yesterday's announcement?

**Senator Chris Evans**—I think he was briefed, yes. I will confirm that, but it was certainly intended that he be briefed on it. I will take that on notice and confirm with you.

**Mr Metcalfe**—I personally saw Mr Baird a few days ago and told him that the announcement was imminent. I did not tell him precisely what was going to occur, but he has certainly met with the minister, he has met with me and the department and he was very much aware that this announcement was going to be made.

**Senator Chris Evans**—I want to make the point that there is nothing ad hoc about this, Senator. You may not like the decision but there is nothing ad hoc about this. I have been talking about this and working with the department and others to try and find a solution to this problem for some time. What you see in the package is the latest in a whole range of policy initiatives. If people work it through, they will find that a more important decision or a more important announcement was made than perhaps yesterday's, which was decision implemented on 1 January that increased the English language test and provided for the job readiness or trade testing. Quite frankly, it said to the education sector: 'If you don't give them a decent education they won't get a pathway to permanent residency.'

**Senator HANSON-YOUNG**—Whether I agree with the decision or not is not the point. What I am highlighting is that things are happening over here, things over happening here and things are happening over here and what we are hearing from the Prime Minister and the Deputy Prime Minister is that it is all going to be okay once the Baird review is completed, yet all these changes are happening in the meantime. Who is going to bring all that together?

The point is that this sector is messy because it has not been dealt with in the systematic, very closely managed way that it should have. We accept that. The numbers have grown. It was very much unregulated—very similar to the childcare sector actually in terms of the issues there. The Prime Minister is saying it is all going to be okay, the foreign minister is telling the Indian Foreign minister it is all going to be okay, 'We're having this review,' and yet decisions are being made external to that. So who is steering the ship here?

**Senator Chris Evans**—Senator, you may think that there is one magic bullet that can be announced by government that will solve all the problems in one go. I do not. There are a series of issues around this area that go back to some of the decisions made in 2001 and 2005, where the education sector's interests got linked very tightly to the migration outcomes, and in hindsight they were errors. What we sought to do yesterday was address some of those issues in the migration space. I think they are really important issues, they give direction and they address those concerns.

We are also doing a range of things in the education space that have to occur and they are not totally reliant on each other but they are interrelated, I accept, in some ways. But there is no way you can do it all in one day. We have been working through the problem and we in the immigration portfolio have taken a series of steps. Tightening up on student visa applications in a range of countries where inappropriate behaviours had developed was one. The changes to the English language test standard on 1 January, the changes introduced to the job readiness test on 1 January, the changes announced yesterday and the changes that will complete the

program, if you like—the points test changes—will all give us a better system, and they do all impact on international students. But I think we are at the stage with this issue where we really do need to take strong action and address all the issues, not paper over the issues. A whole range of the issues were in this portfolio; they needed to be fixed. We have taken that decisive action and, hopefully, that fixes them in this portfolio. As you say, there are a range of other issues in the education portfolio that are being addressed—some decisions are already taken, with more to come. But it is all part of tackling the problem. It is coordinated, it is whole of government and there has been close coordination between the two departments.

**Senator HANSON-YOUNG**—What was the reasoning behind making the announcement yesterday? Why choose 8 February? Why is that significant?

**Senator Chris Evans**—It is not really significant, Senator, other than getting all the ducks in a row, basically. It was about us getting all the ducks in a row. There was no great external driver of the date. It was about being in a position to implement the decisions we had and to be ready to go. So it was just getting the internal ducks in a row, effectively.

**Senator HANSON-YOUNG**—Just so that it is clearly on the record, when will the new list be released and what is the process? It is obviously through regulation.

**Senator Chris Evans**—Skills Australia are responsible for the list—I will get Mr Kukoc to take you through it—but our anticipation is that it will be in April, and I think that is a conservative estimate. Mr Kukoc, you might want to add to that.

**Mr Kukoc**—The draft list will be released by Skills Australia for comment and consultation purposes in April. After that, subject to further consultation and the input from the Department of Education, Employment and Workplace Relations and us, Skills Australia will formulate the final list, which our minister will then make a decision on in terms of its serving as the list for future skilled migration applicants.

**Senator HANSON-YOUNG**—Sorry; when will the consultation be completed?

**Mr Kukoc**—I think Skills Australia is better placed to answer these questions, but the draft list will be released for comment, I think, in April.

**Senator HANSON-YOUNG**—Does the government have a position on when—

**Senator Chris Evans**—We are looking to have this in place by the middle of the year. The reason I have not—

**Senator HANSON-YOUNG**—At the end of the June sitting?

**Senator Chris Evans**—It is not related to the sittings so much. One of the reasons I have not set a specific date is that we are in the hands of Skills Australia. I am not suggesting there will be any delay, but I do not control all the variables. Skills Australia, as I understand it, have said they are likely to put out their draft in April and finalise that fairly quickly after consultations. That will then be available to me to make the formal decision in relation to migration.

**Senator HANSON-YOUNG**—That is all I have, thank you.

**CHAIR**—Senator Fielding, do you want to use up the time until lunch while you are here?

**Senator FIELDING**—Yes, I will follow on from there. Minister, you made a particular point about cooks and hairdressers and you have been making those statements for a while, which is fine. You also made reference a number of times to bricklayers and builders and the numbers being quite small. Can you just go through that a little bit?

**Senator Chris Evans**—I think the main point we have been making is that the migration program has been skewed by virtue of being driven by the number of graduates coming out of Australian institutions and the skills with which they are graduating. For instance, students have been enrolling in large numbers in particular courses—accounting, cooking, hairdressing and more recently welfare studies—because all were on the MODL list and therefore would qualify them to go down the permanent residency path. What we have seen is a supply driven system whereby people were saying, ‘I am going present as a cook or a hairdresser, get ticked off and go through to permanent residency because I am on the list.’ But I think we have had 40,000 accountants in the last five years, so the program has been skewed towards a small number of occupations.

When I took on the portfolio and we had a serious skills shortage in the health area, I was amazed to discover that we processed people in the order in which they applied. So, if 300 people from Brazil applied on a certain date as hairdressers and two Indian doctors applied after them, we processed the 300 Brazilian hairdressers before we got to the doctors. I said: ‘That seems to me to be crazy. Surely we need doctors. Why aren’t they at the front of the queue?’ It was because of this system where you buy a ticket, you get placed in the queue and you get processed. So I changed the processing priorities and introduced the critical skills list that said, ‘Hang on, we need people urgently and desperately with high skills; let’s get them in first.’ The effect of that was that we have largely increased the numbers of doctors and nurses and other critical skills and, if you like, they have been pushed forward in the queue. I do not like talking about queues in immigration because it is always a distorted debate, but we have actually moved them forward in priority processing for the skills in need.

We are saying the longer term system we are trying to set up—if you like, those were seen by me as interim solutions—will make sure we are bringing in who we need, not who applies, even though they may be very good people. We currently have a system where the migration program is driven by who fronts up and says, ‘I would like to come,’ if they meet the points test. We want to have a system that says: ‘No, we actually need 500 doctors in the next couple of years or we will have to close public hospitals. We would like to train Australians first but we are not going to have enough trained up by then. Immigration minister, your job is to make sure we recruit 500 doctors so they can come in and meet those needs.’ That is what a sensible national migration policy should deliver you. That is why I am saying it is distorting it.

The other point I would make about cooks, hairdressers and accountants is that the reason they were on the MODL is because industry said they were in short supply and that they could not get cooks, hairdressers and accountants. And they are right; there is a shortage of them. But we have learnt from recent experience that it did not matter how many we brought in, we did not solve the shortage. You have to ask yourself why is there a disconnect. If we were bringing people who said they were cooks and hairdressers but were not prepared to work as cooks or hairdressers, we were not solving the problem. So we have got to get the connection between the employer and the applicant much tighter. We have found that the outcomes for

people who are employer sponsored or state sponsored are much stronger with much better employment outcomes. So building that link will mean that, if we actually have a shortage of cooks and if employers want to bring them in and sponsor them, they will bring in people they know can (1) cook, (2) speak English and (3) are prepared to work as cooks. That is basically it.

**Senator FIELDING**—Let us look at an even a bigger picture. You are saying, for example, that we are short of doctors and nurses. Where is the link with the bigger picture and the training of our own doctors and nurses? We turn away thousands of kids from studying medicine each year—not just this government; it was also the previous government. There is the ageing population, the intergenerational report and all those things. I am not against overseas nurses or doctors; I am just asking why we do not have a better whole-of-government approach. Hospitals may be closing down or people in regional areas may not be seeing GPs and we are turning away kids in those areas from studying medicine. It just seems odd to me that this continues to happen.

**Senator Chris Evans**—It is a very important point, and it is the key point. That is why we have asked Skills Australia to supply the work about determining the priorities for migration to Australia. We are saying, ‘Skills Australia, you have the job of planning our workforce needs. Tell us which areas we will have shortages in because we have not been able to train enough Australians to do the jobs.’ Their job is obviously to get onto this skills training agenda, which has been a mess in Australia for many years. I am with you. We should be filling our needs for nurses and doctors out of our universities here. Skills Australia’s job is partly to identify how we do those things. My job as immigration minister, it seems to me, is to fill the gaps. That is why we want to get a strong link with Skills Australia because they should be telling me where the gaps are, who we should be bringing in and what sort of numbers to meet those gaps. Skills Australia’s task is to address the very problem you have mentioned. We do not seem to be training enough Australians in key occupations. I am the first to wack up big employers when they come and ask me about getting more 457s. I ask them how many apprentices they employ, and what they have invested in their training and education. It is often a fairly embarrassing discussion for them. They want the quick fix from me but not the commitment from them. Now when they come to see me they come in well-armed with the statistics on their investment in training. But, yours is a key point. We stopped training in a range of trades areas, as you know, with the privatisation of big state government utilities, and a lot of big employers gave up training. We are paying the price for that. There is a role for immigration in filling those temporary skills but the bigger picture, as you say, is that national vision about training our own people to meet the skill shortages.

**Senator FIELDING**—The reason I ask the question is that both sides of politics have, I think, let Australians down in this. Is it cheaper for a government to take trained doctors and nurses from overseas than for us to train them ourselves? Then there is a moral dilemma. Some of these countries need their doctors and nurses in their own countries. We are taking the cream from those countries because Australia is a very attractive destination, and it is all because it is cheaper economically to import doctors and nurses than train our own kids. That really rubs a lot of people up the wrong way, and I do not see the urgency from even this government in that area. You will probably tell me you have increased places and all this but

it just seems to me that we are continually relying on importing when we are turning our own kids away from studying in these areas.

**Senator Chris Evans**—It is a fair point, Senator. The question about the moral dilemma is a fair one as well. We have had this debate, for instance, out at the refugee camps when someone who, say, is helping to run the health clinic in the camp applies for refugee status. Seriously. Do we take them or do we leave them there because they are doing such a good job? They say that they have a right to apply and that they have been assessed as a refugee. Then we get criticised because we take someone with good skills who was providing a service in the camp. These are real dilemmas. In the end I think you have to say that you cannot discriminate against people on the basis that they do a good job.

If it was not for overseas doctors and nurses, our public and private health systems would be in very serious trouble. I always tell people that, if it was not for Indian doctors and Irish nurses, we would be completely bugged. While it is easy to say that we should not be bringing people in the reality is, if we were not and had not been for the last 10 years, we would be in very, very serious trouble in our workforce. Your key point is the right one. We actually have to put more effort into training Australians and that is what Skills Australia's agenda is very much about. Having said that, nurses are internationally very mobile. If you look all around the world, people are bringing in nurses from other countries. So, although we have Irish nurses, there are a lot of Australian nurses working in Ireland. It is interesting in that it is a very mobile workforce. Anyway, that is another issue.

**Senator FIELDING**—With the bricklayers, farmers and those sorts of areas, are you saying we are upping that a bit? What is the story there? You have made the reference between hairdressers and cooks and then you have mentioned that only so many—

**Senator Chris Evans**—I was making the point that we are more likely to see shortages in the next little while in key engineering, construction and trades areas as the economy picks up and because of the investment in infrastructure we are starting to see some shortages in those areas. Skills Australia and others will make assessments as to which trades may be in short supply. For instance, in my own state of Western Australia a number of very large projects are likely to take off in the next year or two—oil and gas and mining with Rio, BHP et cetera. Construction workforces are going to be required in their thousands. Already we are starting to hear concerns about skills shortages in some of those construction and mining trades areas. I am just signalling clearly that that is where pressure is going to be in the next little while.

**Senator FIELDING**—Back in March last year you removed building and manufacturing trades from the critical skills list. It looks like you are going to be adding it back. What is the story? It seems to be back and forward a bit over short timeframes.

**Senator Chris Evans**—Senator, it is about running a program that is responsive to the economy. I think you would be the first to criticise me if I was bringing in lots of brickies and carpenters if you had unemployed brickies and carpenters knocking on your door. The critical skills list was done in consultation with business, unions and state governments based on economic data about skill shortages. If the accusation is that we change it, you are absolutely right. We change it in relation to the economy. The point I made yesterday in the announcement is that it varies from state to state. What I know is that in Western Australia, if

it is going at this rate, we will have serious skill shortages in the next year. But that may not be true of Victoria or New South Wales. We will have different labour markets. Unfortunately in Australia we do not have a very mobile movement of labour. I do not know why in God's own country of Western Australia we have trouble getting people to move from Victoria and New South Wales to take up jobs there.

**Senator FIELDING**—The last question I have is back on the doctors and nurses. Does your department have sort a five- or 10-year list on the demand and requirements for that area. It is long term as it does take a lot of time to train a doctor and a nurse. I am trying to get a feel of whether this department has a handle on it. I am not so sure that the government has. You are dealing with saying that we are short today and had better get some for tomorrow rather than saying that we are going to be short in five years time and 10 years time.

**Senator Chris Evans**—That is exactly what we talked about yesterday, Senator. This is about Skills Australia identifying those longer term needs, working out what we have to do in terms of local training and education to produce those skills and advising Immigration which skills should be on the list for migration because we are not going to be able to meet the demand in the short term. That is that connection you have been talking about, which is really important, and at the moment we do not have that. The main change we have made was to increase the linkage between employers and migration so that they know what they are short of, otherwise they would not sponsor someone. The second change is to get Skills Australia to do the sort of work that you rightly point out has not been done before which has a longer term framework about our skills needs. I would have to say that, at the moment, the architecture around that is very poor, and that is why we need Skills Australia to do that job.

**Senator FIELDING**—Thank you.

**CHAIR**—Before we go to lunch I think Senator Barnett wanted to ask something about a question on notice answer.

**Senator BARNETT**—Through you, Chair, I wanted to mention two things. I wanted to thank the department for the answer to question on notice No. 50 about border management and the list of irregular maritime arrivals from July 2008 to 4 November 2009. Thank you for that. Also I wanted to put on notice that I would like that updated to the best of your ability and to the latest possible time. It is obviously through until 4 November and we are now in February, so if you could have a look at that and we will deal with that after lunch under program 3. And I just flag with you that after lunch we are still in outcome 1 so I will have questions about the population issue. Also we wanted to let you know we are advised that the *Oceanic Viking* matter comes up under 2.1 and 4.3, and we would like to deal with it under outcome 2 so that we do not flick from one to the other. I just wanted to let you know in advance, Mr Metcalfe, about that.

**Mr Metcalfe**—We are expecting program 2.

**CHAIR**—We will reconvene after lunch.

**Proceedings suspended from 12.31 pm to 1.32 pm**

**CHAIR**—I reconvene this public hearing of the Senate Legal and Constitutional Affairs Legislation Committee and our consideration of the additional estimates for 2009-10. We are

considering outcome 1 in the Immigration and Citizenship portfolio. Senator Trood is going first. Senator Trood?

**Senator TROOD**—Thank you, Chair. I want to ask a couple of questions about 410 visas. Could you give me a current accounting of the number of people who are here on 410 visas, please.

**Senator Chris Evans**—We will just get those figures for you, Senator Trood. As you are probably aware, there are grants to 410 visa holders, but a number of them are not actually in the country currently. So there are two sets of figures, I think. One is the total number of 410 visas granted, and some of them have converted to other visas while in Australia, but there are also a reasonable number who were abroad, last time I looked. I will just see if we can get you the exact figures.

**Mr Vardos**—It is somewhere between 5,000 and 8,000. I cannot actually find—

**Senator TROOD**—Sorry, Mr Vardos, somewhere between—what?

**Mr Vardos**—Between 5,000 and 8,000. I am just trying to find the exact figure. I am not sure that I actually have it with me. No. It is easy enough to get.

**Mr Metcalfe**—Senator, we could probably get that information sent over to us in the course of the afternoon, if that would help.

**Senator TROOD**—Would you mind doing that, please. And, if there is in fact a division of those visa holders, could you provide me with a breakdown of them, please.

**Senator Chris Evans**—We certainly have that information. I was just making the point that not all of them are actually on shore at the moment.

**Senator TROOD**—Now, in response to a budget estimates question on notice, No. 84, the department advised me:

The Department of Immigration and Citizenship is continuing to investigate possible options with other agencies.

That was ‘to provide retirees with a pathway to permanent residence’. I was wondering whether or not there has been any progress on this matter.

**Senator Chris Evans**—I will answer first up. I have indicated to 410 visa holders and others interested in the issue that I thought there ought to be a pathway for those persons. The previous government undertook to provide a pathway at one stage and actually had it in legislation. As I recall, they withdrew that legislation. Certainly it did not pass but I will get one of the officers to check whether I have misled you. In any event, the nature of the visa was that they retired here; they had no right to permanent residency per se. But I was sympathetic to the fact that large numbers of them had made Australia their home and had been here for a number of years. To be frank, large numbers of them were ageing and feeling more vulnerable, particularly where they had lost a partner. So I had women in, say, their 80s who had lost a partner and who felt very vulnerable in terms of the visa conditions. It did not matter how much you assured them they could renew their visa. So I was sympathetic to finding a pathway through. Numbers of them have been able to apply for parent visas where they have had children, et cetera, but for many of them there is no other visa pathway.

I made two changes in the last budget—increased work rights and a 10-year visa—to try to address that problem of security. I figure if you are in your late 80s and you have a 10-year visa you are probably pretty safe. It was the best I could do. Basically, Senator Trood, the hurdle for them is the cost of moving to permanent residency. They are an older group and when you talk to Treasury about the costing of their moving though to permanent residency there are issues of potential access to health care and social security benefits. The numbers are quite high. I have indicated a policy desire to make some progress. I brought in those interim changes. I have always been clear with them that it is a budgetary consideration. I have been frank with them that in the current budgetary context we are unlikely to be able to do anything.

One of the things I have been doing is working with their representative associations, and I organised a meeting for them to sit down with Treasury and argue about the assumptions that Treasury made to try to get a common understanding of the costs. They understand what the barrier to them moving forward is. So we have done quite a bit of work with the groups. I am sympathetic to finding a solution for them because I know a lot of them are feeling vulnerable. But as I say the main argument is really a cost argument. We have moved them to a 10-year visa which was designed to provide some security. They can either take that out now or when they renew they can take the 10-year visa. And we increased their work rights. How are the officers going with the numbers?

**Mr Vardos**—I do not have the number.

**Mr Kukoc**—We will take this on notice, but from my recollection there are around 8,600 visa holders of that closed class of visa—both onshore and offshore. It is very difficult to estimate how many of them are onshore because they fly overseas quite often.

**Senator TROOD**—Thank you, Minister, for your attention to the issue, and your continuing attention. The answer to my question on notice refers to discussions the department is having with other agencies. You have mentioned Treasury. Is that the primary agency that is of concern here?

**Senator Chris Evans**—As always in immigration matters, unfortunately, when we take a policy decision the costs are borne in other agencies. You could say that is an advantage in that we can be all care and no responsibility but in effect we have to get the other agencies and Treasury, for instance, to agree to the costings and the impact. You can imagine the impact of this 410 decision on the health budget. They have to maintain private health insurance now and I argue that most of them would retain it. Nevertheless, there are costings done on the impact to the health budget. We have been having discussions broadly about that and I have engaged the groups in those discussions.

**Mr Kukoc**—We have been consulting with Treasury and the government actuary in terms of the impact on the budget bottom line over the next 10 to 20 years of any options for permanent resident pathway, but we are also consulting with the department of health, as the minister said, on the impact of health costs. We are also consulting with family and community services in terms of the impact on the age pension. As you know there are implications in terms of the social security arrangements with the UK and indexation of

pensions. There are a number of complex interactions throughout our income support system and the health system.

**Senator TROOD**—Mr Kukoc, I know we are waiting for precise figures on the numbers of holders but you said ‘around 8,000 or so’, does that include the people who are now on 10-year visas or is that a separate category now?

**Senator Chris Evans**—They are the same visas and they have just extended the period of the period. When the people rolled over they could apply for the 10-year visa. I think there was a fee attached so they may as well just wait until the end of their four-year visa. We can get you the figures. It was a signal that when they wanted to renew voluntarily the other visa. Effectively, everyone knows they are not going anywhere. No government is going to revoke their right to stay here. It is about providing some reassurance about that, particularly when people feel a bit vulnerable.

**Senator TROOD**—I know your observation about a reasonable assumption of public policy, Minister, that after 10 years there may not be many left or they may not need an extension of visa. Let us assume that, in fact, this is a robust group of Australian residents and that—

**Senator Chris Evans**—Some of them are much younger than that.

**Senator TROOD**—many of them might be here after their 10 years have expired. What plans does the department have in relation to a post 10-year status for them?

**Senator Chris Evans**—They could just roll the next visa over.

**Senator TROOD**—So there is no limit? They could roll it over for the next 10 years if they chose to.

**Senator Chris Evans**—Essentially, all it did was agree that the visa period was extended from four to 10 just to provide that surety. It does not affect their rights at all. It was just designed to send a signal that reassured them about their capacity to remain in Australia. I did not pretend that that addressed their major concern, which is a pathway to permanent residency, which I am sympathetic to but really comes down to a budget argument.

**Senator TROOD**—Thank you. Madam Chair, I will wait for the precise figures.

**CHAIR**—Senator Barnett, we are still dealing with outcome 1.

**Senator BARNETT**—As I said before lunch I just wanted to asked the minister and the department about their estimates and plans for the population. Based on the research I have from ABS stats, Australia’s population is 21.875 million as at 30 June 2009. Australia’s population grew by 2.1 per cent during the 12 months ending 30 June 2009. We had the 2010 Intergenerational Report released recently. We have had the Prime Minister quoting the figure of 36 million by 2050, and as per the Intergenerational Report 35.9 million by 2050. That is an increase of a little more than 13 million or around 60 per cent over the next 40 years. Projections based on research for Sydney is from 4.5 million to seven million by 2049, Melbourne from four million to seven million by 2040 and Brisbane from two million to four million by 2049. Based on a scenario of a fertility rate of two and a zero net migration the ABS estimates that Australia’s population could reach 25.9 million by 2050. That leaves another 10 million for immigration purposes. We have figures in regard to the ageing of the

population. Ken Henry says that the proportion of the population aged 65 and over increased from eight per cent in 1969 to around 13 per cent today, and that is going up to 22 per cent by 2049, apparently, or that is the projection. The Prime Minister stated that the above projection is 22 or 23 per cent.

I have got the department's *Population flows* report for 2007-08. I asked for the most recent report in a question on notice and was advised it was not available today, but it is expected to be available in March. My questions are: are all those figures accurate and supported by the department; does it mean that we will have an extra 10 million odd in terms of net migration between now and 2050; and can you provide some details as to how we achieve those figures and the breakdown of how we achieve those figures and provide further and better particulars?

**Senator Chris Evans**—Perhaps before I let one of the officers answer in detail, Senator, I will just make a couple of points to you. First of all, the department does not make any calculations about the Australian population. It relies on the Bureau of Statistics, the *Intergenerational report* and Treasury et cetera. So we do not calculate those things ourselves. The second point to make is that the Prime Minister referred to a figure which was effectively the figure reflected in the most recent *Intergenerational report* of around 36 million, as I understand it—I think their figure was 35.9 million. Don't quote me, but I suspect the Prime Minister just rounded it to 36 million. So I am sure that was the source of his data. Again, it was not an objective; it was a statement of the advice from the *Intergenerational report*. I might note that I think the last time they had a crack at it, in 2007, they got 29 million. Far be it from me to call into question projections, but I think we ought to note they are projections. If within two years we can have a figure with a difference of seven million, I think it does lead one to have a bit of caution about some of these projections. So I just make the point that they are projections. They are not government policy, they are not objectives for the immigration department and we do not make any calculations ourselves.

Having said that, there are two other points I want to make. One is that we have tried to start getting on top of this issue. There were no mechanisms when we came to government for dealing with how we set migration program numbers and what the impacts were of those numbers. I commissioned work to start on that process, and last year the government introduced for the first time a longer-term migration planning framework, and the officers will take you through how that is to be developed. The other point I would make is that a lot of this is based on projections for net overseas migration and it is the point I made earlier—and Mr Kukoc will no doubt take you through this. If you look at the projections for net overseas migration, the largest single contributor to the increase has been the increase in the student population—the large numbers of students coming into the country. Mr Kukoc will take you through this—and correct me if I am wrong—but because they indicate they are staying for more than a year they are counted in the numbers. So the net overseas migration numbers have been increasing at quite a rate, in part because of the contribution of student numbers and, of course, up until more recent times, the 457 visa class. They were feeding into the net overseas migration projections. Perhaps, if Mr Kukoc wants to take you through the longer-term planning framework and net overseas migration, which is, if you like, the stuff we are

responsible for or which we are involved with, that might give you a bit of help in terms of the picture.

**Senator BARNETT**—Before Mr Kukoc does do that, in response, Minister, I have got the department's *Population flows* report for 2007-08, which is the most recent document, and the figures that it talks about, on page 18, are that the population 'is projected to increase to between 30.9 and 42.5 million people by 2056'. So that was last year's estimate.

**Senator Chris Evans**—And that was with a 10 million range, was it?

**Senator BARNETT**—Well, that is what it says; it is slightly more than the 10 million range. And then it says the population is projected to rise by 'between 33.7 and 62.2 million people by 2101'. But we are just looking at the 2056 figures.

**Senator Chris Evans**—I can get the officers to take you through who gave them those figures, if you like.

**Senator BARNETT**—I am just saying that is what the figures were last year, which is not inconsistent with the *Intergenerational report* of some 36 million. I also quote from the Prime Minister in his address to the Business Council of Australia on 27 October last year:

I have said before that I believe in a big Australia. This is good for our national security. Good for our long-term prosperity. Good in enhancing our role in the region and the world. The time to prepare for this big Australia is now. But managing that population growth will be challenging.

The Prime Minister has made it patently clear to all and sundry that it is a matter for government to manage the population growth. The question for the government is that you do set the parameters for population growth in various ways and immigration is a very important public policy lever that you use to set that. I want to drill down into those figures—the 10 million estimated figure—and how you came about supporting those figures.

**Mr Metcalfe**—As you know, I am not an economist and Mr Kukoc is, so he will talk about the assumptions and the rationale in what he is trying to predict. It is a spread of numbers that are 40 to 50 years into the future and, as the minister said, clearly those numbers can move around quite a lot, as we have seen through the three intergenerational reports so far. What is clear is that our population will be determined by births in Australia, by longevity or how long we live, as well as migration levels. Importantly, the way the Bureau of Statistics counts migration is not purely through the permanent long-term migration program where migrant visas are issued but through people essentially taking up residence in Australia and staying for more than 12 months, which does include students and others.

**Senator BARNETT**—All right, let us just focus on what is in your area of interest, the migration levels. I want to know what migration levels you have calculated between now and 2050.

**Mr Metcalfe**—If I could just make one more point before we pass on to that, the other thing that is important is that it has long been the practice, and I imagine it will continue to be, for successive governments to determine migration levels on an annual basis. While economists may predict based upon past trends, it is open to the government of the day to adjust those numbers. If you look over the last 20 years those numbers have varied very significantly, bearing in mind that there are some numbers which are not directly determined

by government but rather respond to government policy settings, such as the discussion we had on student policy earlier this morning.

**Mr Kukoc**—It is important to know that the Treasury projection in IGR3 is just that: it is a projection. It is not a planned outcome or target.

**Senator BARNETT**—Yes, we know that, thank you.

**Mr Kukoc**—It is not even a forecast; it is a projection based on extrapolating the historical trends. The net overseas migration figure that Treasury has used for the next 40 years is 180,000 as a long-term average per annum. That is close to what has been happening over the last 40 years in the ratio of net overseas migration to the overall population. It is around 0.6 per cent of the total population, and that is the assumption that Treasury used in these long-term projections. Based on these projections—

**Senator BARNETT**—Sorry, that is 0.6 per cent growth?

**Mr Kukoc**—Of the population; 0.6 per cent of the population is the growth rate, noting that this is from—

**Senator BARNETT**—And you are saying that growth rate has occurred in the last 40 years; they have used those figures and it will be consistent in the next 40 years?

**Mr Kukoc**—In terms of the ratio of total population. Which means that, based on their projections, this is around 180,000 per annum, but that is a long-term average starting from 2012. So these are just projections. As we know, the last preliminary estimates of net overseas migration by the ABS for the June quarter of 2009 was 285,000, I think. But we need to note that this is largely driven by temporary migrants, predominantly a significant increase in student arrivals over the last couple of years.

The increase in 457s over the years from 2000 to 2006-07—there is a time lag before the recent drop in applications for 457s translates into stock numbers. So we expect this historically very high level of net overseas immigration is likely to drop quite sharply over the next year or so given the trends that we are currently seeing amongst the temporary entrants, particularly the 457s, where the applications have dropped by 50 per cent.

**Senator BARNETT**—Let us deal with that now. What is the projection for the next, say, three years? Do you have those figures? I think you said it would drop significantly in the next couple of years.

**Mr Kukoc**—All we can project—again, based on the current trends amongst some temporary categories and the permanent migration program—is a drop of at least 15 per cent next year in the levels of net overseas migration.

**Senator BARNETT**—What are the figures? Have you got them with you?

**Mr Kukoc**—If the ABS preliminary estimate was 285,000 in June 2009, we expect that this will drop by 15 to 20 per cent to around 250,000. I do not have the calculations with me. It is certainly on the way down.

**Senator Chris Evans**—I make the point that we do not do official projections. These are internal departmental workings. It is not like the ABS or the IGO where we go and do a detailed piece of research. This is based on our experience—

**Senator BARNETT**—This is your best guess based on the information you have.

**Senator Chris Evans**—Yes.

**Senator BARNETT**—I understand. That is for 2010-11.

**Mr Kukoc**—Yes.

**Senator BARNETT**—What about 2011-12?

**Mr Kukoc**—It is very difficult to forecast these numbers. It all depends on whether the economy picks up to speed. We may see an increase in 457s. What will happen with students with the high value of the Australian dollar, and the overseas integrity measures in the students' places? There are a lot of variables. It would be very difficult to forecast. All we can do is project what was previous.

**Senator BARNETT**—I understand that.

**Senator Chris Evans**—I will mention another thing so that you have a complete picture. The other big factor here is kiwis—whether they are coming or going. That is driven by our economy and their economy. But they have a big impact because of their ability for free movement. I think we have 500,000 or so kiwis in the country at the moment.

**Mr Kukoc**—Yes, that is correct.

**Senator Chris Evans**—So their movement has a huge impact on our net overseas migration as well. That is again outside anyone's control. I understand it tends to move according to the relative states of the economies of the two countries.

**Mr Kukoc**—It is also important to note that in previous years—the post war years, the 60s, 70s and 80s—permanent migration determined up to 90 per cent of the level of net overseas migration. With the expansion of various migration categories, such as temporary categories—students, working holiday makers, 457—the permanent migration program today contributes only 30 per cent to net overseas migration. Almost 70 per cent is driven by temporary migrants—predominantly students, 457s and working holiday makers. New Zealand arrivals are also counted. On the other hand, New Zealand arrivals and departures are somehow offset by the larger number of departures of Australian residents—permanently, long-term overseas.

**Senator BARNETT**—Thank you. I will come back to that. I want to go back to 2011-12. Based on your best estimates and noting that circumstances change, can you advise your best estimate.

**Mr Kukoc**—At this stage, based on the trends we are seeing we can only say that the levels of net overseas migration will be reducing over the next year or so—maybe two years. Anything beyond that is pure speculation.

**Senator BARNETT**—Mr Kukoc, I am asking you for your best estimate. Do you have the figure with you?

**Senator Chris Evans**—I think we have to be careful here. If you are asking Mr Kukoc as an immigration officer what the department's estimate is, I think he said there is not one.

**Senator BARNETT**—He has not said that, Minister. In fact he said to the contrary and if he is aware of that number or that estimate he must advise the committee.

**Senator Chris Evans**—I am not trying to stop him, Senator. I am making the point to you that we have not done that sort of work. The officer is trying to help you to the best of his ability. I made the point at the start that this sort of work is done either by the ABS or by IGR through Treasury et cetera. We do not do detailed population planning analysis inside the department. The officer is trying to help you with his estimates on migration. Although I have a great deal of confidence in his capacity, what he is giving you is his best indication of what we thought might happen.

**Senator BARNETT**—Thank you, Minister. Mr Kukoc, do you want to respond to my question? Do you have that figure? If you do not, that is fine, but if you have it I would like you to advise the committee.

**Mr Kukoc**—The only figure we have is, effectively, the figure over the next year or two.

**Senator BARNETT**—You told us the figure for the next year, which is 2010-11, and you said ‘the next year or two’ so give us the next year after that.

**Mr Kukoc**—We expect a drop in net overseas migration to continue in the second year.

**Senator BARNETT**—In a similar vein?

**Mr Kukoc**—It is purely speculative.

**Senator BARNETT**—To a similar degree based on your best estimate?

**Mr Metcalfe**—I think we are really trying to move into speculation. In what I think Mr Kukoc has described are a whole series of variables.

**Senator BARNETT**—I am aware of that, Mr Metcalfe. If the officer does not know, that is absolutely fine. If the officer does know he is obliged to provide the answer to the committee.

**Mr Metcalfe**—I think that any answer he gave would be necessarily highly speculative because there are so many—

**Senator BARNETT**—That is not relevant.

**Mr Metcalfe**—No, Senator. There are so many variables as the minister has outlined—New Zealand citizen arrivals and departures, Australian arrivals and departures, overseas students—

**Senator BARNETT**—Mr Metcalfe, you know that is in breach of standing orders.

**Senator Chris Evans**—Senator, I do not think you ought to badger the secretary.

**Senator BARNETT**—If he knows, he must provide the committee with the answer.

**Senator Chris Evans**—Senator, that may or may not be the case. What the witness indicated—

**Senator BARNETT**—It is the case and you know it, Minister.

**Senator Chris Evans**—Senator, do you want an answer to your question or do you just want to keep badgering?

**Senator BARNETT**—I would like the answer to my question. I have asked it three times.

**Senator Chris Evans**—The answer to your question is that they have done some indicative analysis for next year that expects a drop in NOM and that the officer is unable to help you with longer predictions because of the number of variables involved. He has tried to be helpful. Our expectation is that NOM will drop. I said to you that the detailed work is done by other departments and, to be honest, beyond that is a statement of the officer's individual opinion. We have not done the work that would allow us to give you an answer in estimates about projections.

**Senator BARNETT**—I am entirely happy, Minister, if you do not have the figures before you and if the officer does not have the figure. If he has the figure he is obliged to advise the committee.

**Senator Chris Evans**—Whether he is obliged or not, he has told you that he does not have the figure.

**Senator BARNETT**—He has not said that. I would like him to say 'no' if he does not have the figure and we will move on. If he does have the figure, I would like it.

**Mr Kukoc**—No, Senator, I do not have the figure here with me.

**Senator BARNETT**—Right. So you have said that the next year or two it will be reducing. You have given us the figure for the next year, 2010-11, but you do not have a figure past 2010-11.

**Mr Kukoc**—No, that is the best I can do at this stage.

**Senator BARNETT**—Thank you very much. Let us go back to the population question and the bigger picture. You have said that at the moment it is 30 per cent permanent and 70 per cent temporary. Do you have projections for what it is going to be in the next decade and the decade after that in terms of that composition? Do you have those sort of projections?

**Mr Kukoc**—No, we do not. We expect a large contribution of temporary entrants to the net overseas migration levels to continue, because the schemes are there and are being used by the industry.

**Senator BARNETT**—That rough proportion you expect to continue into the future.

**Mr Kukoc**—It will vary depending on the trends in particular temporary categories. For example, over the next few years, we might see a smaller proportion of 457s contributing to the net overseas migration and a slightly smaller proportion of students, depending on where they go in terms of the numbers. If future governments decide to increase the permanent migration intake, that may increase the contribution of permanent migration intake to the net overseas migration. So there are a lot of variables. I would expect this large contribution of temporary entrants to NOM to continue.

**Senator BARNETT**—Based on the figures from the Intergenerational report and on what Mr Rudd has said, can we clarify, Minister, that you support the Prime Minister's view on a big Australia: it is good for national security and good for long-term prosperity and the time to prepare for a big Australia is now? Do you support those views?

**Senator Chris Evans**—I agree with Mr Abbott and Mr Rudd, who have both made similar comments. They think there is a national interest in growing the population, but obviously

that has to be matched against sustainability. As I said, I think we have had bipartisan support on that. I was pleased to see Mr Abbot's comments to that effect the other day. But it is important to point out that no-one was endorsing the 36 million figure. It was a reflection of the estimates. As I said, the estimates two years ago were wildly different.

**Senator BARNETT**—So you are not endorsing the figure?

**Senator Chris Evans**—I am certainly not endorsing the figure. I made the point to you at the start that that is a projection under the IGR and that, as with all such projections, I have a healthy level of scepticism of long-term projections of such things. But it is important that that is done. As I said to you, the figure from the 2007 IGR was around 29 million for 2050—but I may be wrong.

**Mr Kukoc**—28.5 million.

**Senator Chris Evans**—Within two years, the IGR had significantly adjusted the figure, which I think in part was based on the NOM and which is why this discussion is important. There has been growth in migration to Australia over the last 40 years. To highlight the point, if you like, in the last year of the Keating government, 273,000 people had come in on permanent or temporary entry visas granted. In the last year of the Howard government, in 2006-07, there were 641,000 people. So we had gone from 273,000 permanent and temporary grants in 1996-97 to 641,000 in 2006-07. While the Howard government had doubled the permanent migration program in that time, the even greater growth was in the temporary migration program where the Howard government had increased the availability of working holiday makers and had facilitated the growth in the 457 scheme and where we had seen a number of other uncapped schemes developed. So while, under the Howard government, we had a doubling of the permanent migration scheme, the growth in the other schemes was even larger—and that has been driving the NOM. There are important public policy issues around those things, including, as we debated today, the students.

No-one has endorsed the target, but I think we have always had concern about the latest projection figure. But, as I said, that is a projection. We do have some levers in our control but, effectively, as you know, the permanent migration program in this country is run largely on the basis of demand for labour, and that is obviously linked to our economy. What we do need to do is discuss—and this government has certainly taken on that agenda—the sustainability issues that go with population growth. I, for one, am very interested in us making progress on that, because I think it has been a neglected area of public policy.

**Senator BARNETT**—As Mr Metcalfe said earlier, the government pulls the levers on this. You decide on an annual basis the level of migration into this country. I see that Bob Carr—

**Senator Chris Evans**—Sorry, Senator, that is not right. That is the point I just made to you. Your government had the lever on permanent migration but you opened up a range of visa classes, like working holiday, like 457s and like students, that you did not have levers on. The huge growth under the Howard government was in part driven by those visa programs, which are not capped. So the question for public policy is, I think, whether or not we ought to have more control over the levers on those programs—but currently they are uncapped.

**Senator BARNETT**—Do you think we should?

**Senator Chris Evans**—It is something that we have to think about. I have not come to a formal view, but I think the students is a classic example of where governments lost control of the program. The numbers were ballooning. That was affecting the net overseas migration program and, because it was an uncapped program, it got out of control.

**Senator BARNETT**—So it should be capped?

**Senator Chris Evans**—I am just suggesting that we need more analysis of these things. One of the reasons, which I addressed yesterday, was that it was being driven by the permanent migration option. I am just saying that the reality of migration to Australia now is that in 2006-07 there were 148,000 permanent visas issued but there were 500,000 temporary visas issued. So the proportion had changed dramatically, and they were uncapped programs.

**Senator BARNETT**—The point I am making is that I am just concurring with what Mr Metcalfe said earlier, which is that those decisions are made by government on an annual basis and that obviously, from time to time, a decision is made like the one yesterday. On 10 November last year, Bob Carr said:

There's no consultation of course. The immigration targets are set by bureaucrats in Canberra [with] ... not a hint of an environmental assessment.

He likened it playing to Russian roulette with water security. There has been a deal of concern raised in the community about our infrastructure and our adequacy to deal with these increased numbers between now and 2050 based on the projections of the Intergenerational report, as referred to by Mr Rudd and others. I have given the figures for Sydney, Melbourne and Brisbane in terms of their significant increase in numbers projected under those scenarios. The question is whether—

**Senator Chris Evans**—Senator, have you got the numbers for the growth in the last 10 years under the former government? I would be interested to see the growth that occurred then.

**Senator BARNETT**—I am not asking—

**Senator Chris Evans**—It just seems to have come as news to you that there has been growth in the population.

**Senator BARNETT**—Sure. But that is not my question. My question is related to the figures between now and 2050. Is there any modelling within the department with respect to the figures for between now and 2050? Have you done some modelling on the figures for between now and 2050?

**Mr Kukoc**—We have not done the modelling. We do have a population model that is used by the ABS. We also have a population model that was designed for us by Professor Peter McDonald from the ANU. Treasury uses a similar model. You just provide input with variable assumptions in net overseas migration, fertility rate and mortality rate and you get the population outcome. That is the model we use.

**Senator BARNETT**—That is exactly my point, Mr Kukoc. You actually put in the assumptions. You have to make certain assumptions to get the 36 million in 2050 or 2049. So you have to put in the assumptions under that model.

**Mr Kukoc**—Yes, that is correct.

**Senator BARNETT**—That is what you have done.

**Mr Kukoc**—That is correct.

**Senator Chris Evans**—That is what the IGR did, though.

**Mr Kukoc**—That is what the ABS has done, and that is what Treasury and IGR modelling has done. Treasury used the assumption of 180 net overseas migration, 1.9 fertility rate—and I am not sure about the mortality rate.

**Senator BARNETT**—Do you have any reason to disagree with the modelling presented by the ABS or Mr Peter McDonald's modelling?

**Mr Kukoc**—No. I think our modelling is pretty consistent with what Treasury came up with, but even more important is the research conducted by Peter McDonald for us, which is available on our website: 'Demographic and labour supply futures for Australia'. It shows that the level of net overseas migration of around 180,000 is optimal in terms of addressing the demographic lift that this country will be facing from 2015.

**Senator BARNETT**—Thank you. I appreciate your feedback on that.

**CHAIR**—Senator Humphries, do you have any more questions for outcome 1?

**Senator HUMPHRIES**—No.

**CHAIR**—Senator Trood?

**Senator TROOD**—I seek clarification on an issue that I want to raise some time during the proceedings, and that is the *Malu Sara* matter.

**Mr Metcalfe**—That would probably best come under program 3, border security, because our Movement Monitoring Officers network in the Torres Strait is covered under that particular program.

**Senator TROOD**—I have no questions under this outcome, Madam Chair.

**CHAIR**—Mr Vardos.

**Mr Vardos**—I have some figures on the 410 visas holders. These figures are as at 30 June 2009 and we will provide the most current data on notice. As at 30 June last year there was a total of 7,834 410 visa holders of which 4,962 were onshore and 2,872 were offshore. We will update that figure on notice.

**Senator Chris Evans**—As you know, Senator, it is closed program so the numbers can only go down.

[2.15 pm]

**CHAIR**—We will now move to 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.

**Senator HUMPHRIES**—I want to ask about the *Oceanic Viking* incident, and I shall be able to cross the issues that straddle both outcomes 2 and 3. Was DIAC the lead agency with

respect to the management of issues associated with the *Oceanic Viking* once the issue had sprung onto the government's agenda?

**Mr Metcalfe**—I would regard DIAC as the lead agency at the later stages in relation to the processing of the people who came off the *Oceanic Viking* into detention in Indonesia, and we were involved in the discussions with the group when they were on the *Oceanic Viking* leading to their decision to disembark.

**Senator HUMPHRIES**—I appreciate that there was the interception of the *Oceanic Viking* in Indonesian waters. I assume that that was essentially a border protection issue—

**Mr Metcalfe**—That is correct.

**Senator HUMPHRIES**—and once they had moored at the Indonesian port DIAC became involved in the exercise. Was the point where they were moored and negotiations were beginning the point at which DIAC became the lead agency?

**Mr Metcalfe**—We became the lead agency at that stage in relation to the people themselves. Obviously the *Oceanic Viking* itself and issues associated with its resupply, management of crew and other issues came squarely within the responsibility of the Customs and Border Protection Service but, as is well known, we had a number of staff available in Tanjung Pinang to go out to the vessel and have briefings and discussions with the people. So I would certainly regard us as having the lead role relating to the discussions with and the management of the group in relation to their decision to disembark and what happened subsequently.

**Senator HUMPHRIES**—On what date precisely did the department first become involved with the passengers on board the boat?

**Mr Metcalfe**—I will have to find the precise date, but I can advise that on 26 October the vessel anchored off the island of Bintan and our officers and a number of other people whose task it was to work with the group in relation to their disembarkation arrived in Bintan on 31 October 2009.

**Senator HUMPHRIES**—You arrived on that date; when did the officials first board the *Oceanic Viking*?

**Mr Metcalfe**—The discussions commenced on 1 November.

**Senator BARNETT**—Sorry, discussions?

**Mr Metcalfe**—Sorry, our officers went on the vessel and commenced the discussions with the refugees and asylum seekers. The first day was 1 November and that continued for a couple of weeks after that.

**Senator HUMPHRIES**—How many DIAC staff travelled to this location, from Australia, Jakarta or somewhere else, to undertake these negotiations?

**Ms Keski-Nummi**—Two officers from the department in Canberra travelled up to Tanjung Pinang and one officer from our embassy in Jakarta also travelled to Tanjung Pinang on 31 October.

**Senator HUMPHRIES**—There were three officers there continuously throughout these negotiations?

**Ms Keski-Nummi**—There were at least three officers continuously there—supplemented at some points in time by other officers.

**Senator HUMPHRIES**—Did all three of those officers board the vessel when negotiations were taking place or only some of them?

**Ms Keski-Nummi**—Those three officers were on the *Oceanic Viking* talking to the passengers, yes.

**Senator HUMPHRIES**—At what point was DIAC able to develop a manifest of the names of the 78 passengers on board the *Oceanic Viking*?

**Ms Keski-Nummi**—I would have to take that on notice. Throughout that period of time our officers had fairly intense discussions with all of them to understand what their situation was and whether they had already been recognised as refugees. That took a while. The final nominal roll was around 10 November but I will have to double-check that.

**Senator HUMPHRIES**—When they were on board negotiating, were they negotiating principally with leaders of the group or were they interviewing, effectively, all 78 passengers?

**Ms Keski-Nummi**—All 78 passengers were engaged in the discussions.

**Senator HUMPHRIES**—All the adults.

**Ms Keski-Nummi**—All the adults, yes.

**Senator HUMPHRIES**—Going to the minister or Mr Metcalfe, who was the authority or the responsible figure in government, or which agency, was the determining authority in relation to the terms of the agreement that were reached with the Indonesian government about the arrangements that ultimately led to the disembarkation of these passengers?

**Senator Chris Evans**—The formal authority came through the Border Protection Committee of Cabinet. The documentation provided to the passengers on the *Oceanic Viking* was authorised by the department and I gave approval for that but the BPC, the Border Protection Committee, was the relevant cabinet committee that authorised arrangements. The BPC had responsibility for managing the matter. I chair that committee.

**Senator HUMPHRIES**—This is a subcommittee of cabinet. What other ministers sit on the BPC?

**Senator Chris Evans**—I can take you through the ministers—or the department may have the exact answer—but clearly the key ministers were myself, Mr Smith and Mr O'Connor, who had customs and border protection responsibilities.

**Senator HUMPHRIES**—Mr McClelland?

**Senator Chris Evans**—Yes, he is involved, but if you are asking me in terms of lead responsibility for working purposes, it was Mr O'Connor. I will get you the list of formal members of the BPC.

**Senator HUMPHRIES**—So the BPC undertook, as it were, supervision on the government's part of the negotiations that were going on with the passengers.

**Senator Chris Evans**—That and a range of matters. The management of the *Oceanic Viking* issue was managed by the BPC and there were working groups of ministers and officials working on various issues associated with it.

**Senator HUMPHRIES**—Did the BPC also manage the negotiations with the Indonesian government?

**Senator Chris Evans**—It was a reporting back mechanism—clearly Minister Smith and the post in Indonesia, Ambassador Farmer, were doing the discussions and representations, engaging with Indonesia. We were not meeting with them as a committee but, if you like, the line of authority was through the Minister for Foreign Affairs. He handled the international relations. I have put on record already that effectively Mr Smith handled the foreign affairs matters and I handled the immigration matters within the structure of the BPC.

**Senator HUMPHRIES**—So Mr Smith, as a member of BPC, reported to BPC on what was happening with these negotiations?

**Senator Chris Evans**—Effectively, there was a BPC authority from managing the incident. We had a working group of the key ministers and key officials and we tick-tacked but obviously various responsibilities were managed in the prime sense by the various ministers. The overall authority was a BPC series of working groups, meetings, telephone for cuts, the normal arrangements.

**Senator HUMPHRIES**—It must have been a quite complex set of phone conversations, negotiations, working parties and so on. I am looking for who had ultimate responsibility for reaching the agreement with Indonesia for the terms which effected the disembarkation of these people.

**Senator Chris Evans**—The authority of the government's agreement with Indonesia was the BPC, if you meant for more government tick off.

**Senator HUMPHRIES**—Yes—not cabinet as a whole; cabinet did not approve the agreement with Indonesia; it was the BPC that approved it?

**Senator Chris Evans**—I am only thinking about formal processes here. In effect, the decision was taken by the BPC. I will double check. I do not think it was considered by cabinet, not to my recollection. Effectively, it was managed by BPC. We called meetings of the BPC colour under my chairmanship, and we managed the incident through that cabinet committee.

**Senator HUMPHRIES**—Presumably there was a meeting at which BPC signed off on the agreement with Indonesia, approved entering into that agreement with Indonesia. You have mentioned that you are going to provide us with a list of ministers who were on the BPC. Can I also ask you to take on notice which ministers were present when the decision was made about the agreement with Indonesia—some may or may not have been present.

**Senator Chris Evans**—I understand, Senator, that it is not normal practice to do that under successive governments. So I do not think I will be taking that on notice.

**Senator HUMPHRIES**—The Prime Minister is not a member of the BPC, I assume.

**Senator Chris Evans**—My understanding of the formal process or the formal rules is that that was evidence given by an earlier committee—he is entitled to attend but he is not a formal member. I will write on the evidence of Senator Ludwig at the PM&C committee on that but I understand that was the evidence. I am only hesitating in terms of a technicality. I understand it was said that he has the right to attend but is not formerly a member. Is that right?

**Mr Metcalfe**—I think that is right. I think this was covered in the Finance and Public Administration hearings yesterday.

**Senator HUMPHRIES**—Was he actually present at any of the discussions about the Indonesian situation with the 78 Tamils?

**Senator Chris Evans**—As I said, it has not been practice—I do not intend it to start—to confirm who was in attendance at meetings of the BPC, but I did indicate to you that the meetings were chaired by me and I have given you the formal membership. The key ministers are as I have described to you.

**Senator HUMPHRIES**—I assume the relevant meeting happened shortly before the passengers disembarked.

**Senator Chris Evans**—I will get the officers to give you more precise information but, as you know, the agreement with Indonesia was struck sometime before and it was a while before the passengers agreed to disembark, knowing what that agreement was. So yes, it was shortly before, but not a couple of days. I guess I am trying to indicate to you that the position of the two governments was agreed and that was conveyed to those on the boat and it was some time before they then decided to disembark.

**Senator HUMPHRIES**—So the department's role in securing the agreement with the passengers was that these officers who were at the port were going on board and negotiating, as it were, with the passengers and in effect transmitting, to the extent that it was appropriate, the terms that had been agreed to by the Australian government for what would happen to them after they left the boat—

**Mr Metcalfe**—I would not use the word 'negotiation'. As the minister has indicated, there was an agreement between Australia and the government of Indonesia in relation to the management of the group when they disembarked, bearing in mind that we were dealing with a group of 78 people, some of whom were by that stage known to be mandated refugees. The role of my officers, which they undertook with great professionalism, was to explain that to the passengers, to gain their confidence that what Australia had indicated would happen would in fact happen, and to progressively help the group come to the acceptance that the only course open to them was to disembark the vessel in Indonesia.

**Senator HUMPHRIES**—All right. You have not told us who was present at the meetings of BPC, but you will give us a list of those who are entitled to be at BPC.

**Senator Chris Evans**—Yes. I will just make sure we are grabbing that for you.

**Senator HUMPHRIES**—Outside of BPC itself, what agencies were consulted as part of the process of reaching the agreement with the Indonesian government? Specifically, were ASIO, Customs and the AFP included in the loop with respect to those negotiations?

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—All three?

**Mr Metcalfe**—Yes.

**Senator HUMPHRIES**—Any others?

**Mr Metcalfe**—There are a range of agencies involved in the management of irregular maritime arrival issues—the agencies you have mentioned as well as our own, the Prime Minister’s department and, depending upon the particular circumstances, it may involve other agencies. For example, in the early stages of this issue, the Maritime Safety Authority had an involvement because of the rescue-at-sea aspect. Their involvement was limited to that and did not reach further issues. But it is fair to say that the principal agencies are Immigration, Customs, Foreign Affairs, ASIO and the Department of the Prime Minister and Cabinet.

**Senator HUMPHRIES**—You have said that the Prime Minister was entitled to come to BPC meetings but you will not tell us whether he in fact was present at those meetings. Did you, as the chair of BPC, Minister, report to the Prime Minister on the progress of this matter, given that it was well exercised in the media at that time and no doubt the Prime Minister had a keen interest in what was going on?

**Senator Chris Evans**—The reporting to the Prime Minister would have been formally through his Prime Minister and Cabinet officers who were engaged as part of the BPC and its working groups. I think the National Security Adviser has indicated his key involvement and he is part of PM&C.

**Senator HUMPHRIES**—So the National Security Adviser was present at those meetings?

**Senator Chris Evans**—I do not want to be drawn down to attendance at meetings because of that long-standing precedent, but I think the National Security Adviser or his deputy were the key PM&C representatives engaged in this incident. I think that is best way to put it.

**Senator BARNETT**—Were they members of the BPC?

**Mr Metcalfe**—No, the only members are ministers.

**Senator BARNETT**—But they come ex officio.

**Mr Metcalfe**—BPC operates fairly similar to the national security committee as it operated under the previous government, where agency heads or senior officials are usually, but not always, present in the room when discussion occur.

**Senator HUMPHRIES**—To be clear, Minister, you are the chair of the BPC?

**Senator Chris Evans**—Yes.

**Senator HUMPHRIES**—You are the third most senior minister in the government?

**Senator Chris Evans**—The fourth, I understand.

**Senator HUMPHRIES**—But you personally did not report the work of BPC to the Prime Minister? You left that to an agency or advisor who is not a member per se of BPC but who attended the BPC.

**Senator Chris Evans**—I think the way to describe it is that there were meetings of BPC, there were meetings of the working group of ministers and key officials and the process was strung out over weeks as you might recall. The main reporting to the Prime Minister would have been through his department. The key management of the issue as I made clear publicly and in the Senate was through Mr Smith, Mr O'Connor and me. Mr O'Connor's engagement was mainly relating to when they were on the Customs vessel and the foreign affairs aspects were handled by Mr Smith and the immigration matters by me, but it was within the BPC framework. Clearly, we were the key ministers who had to make the calls.

**Senator HUMPHRIES**—As this was going on over several weeks, surely you or other ministers reported to cabinet on what was going on.

**Senator Chris Evans**—As I say, I am not in a position to discuss what discussions occur or who reported to cabinet but I can make clear to you who the relevant decision maker and authority was. The authority for decisions was the BPC. I have tried to be as helpful as possible as to who the key ministers are in those decisions. I have indicated publicly that we take responsibility on behalf of the government for those decisions.

**Senator HUMPHRIES**—You would understand that the fact that a man who is sometimes described in the media as a bit of a control freak, the Prime Minister, would have had such a hands-off approach to this particular issue was intensely scrutinised by the media with daily reporting on the progress of these matters. Yet the Prime Minister appears not to have had a very direct role in the negotiations that BPC has undertaken or to have had any direct contact with his most senior ministers on that body as to the progress of those negotiations.

**Senator Chris Evans**—It may come as a surprise to you, Senator, and sometimes others but the Prime Minister actually has confidence in his ministers. As I said the leadership on the issues was through the BPC and through Mr Smith, Mr O'Connor and me. As you know from the nature of the resolution there was a negotiation with the Indonesian government that you would expect to be led by our mission in Indonesia reporting to Mr Smith. The negotiation of the details of the agreement with Indonesia regarding immigration issues was authorised through my department and by me. It just so happened that we were in the fortunate position that the ambassador to Indonesia was also the former secretary of the department of immigration, so he knows a bit about these issues and we had a very useful skill set there. But those were the key portfolios engaged in the issue.

**Senator BARNETT**—Minister could I just come in through you, Chair, and go back one step and ask for the date of the decision by the BPC regarding the settlement of the passengers.

**Senator Chris Evans**—I am not sure that we actually provide information on meeting dates, do we? I am not sure that traditionally we have done that. I will take that on notice but I am not sure that we usually publicly release details of cabinet committee meetings. As I say to you, in the time lines available, the cabinet committee chaired by me made the authorities and it was implemented through the two key portfolios.

**Senator BARNETT**—Tell us the date of when that was made.

**Senator Chris Evans**—I will take that on notice in terms of formal BPC and check on the precedent about that.

**Senator BARNETT**—We will come back to the BPC. Thank you for taking that on notice. When was it made clear to the public and when was it made clear to the passengers on board?

**Senator Chris Evans**—I think the officers can probably get you a date for when the arrangements were made available to the passengers.

**Ms Keski-Nummi**—I do not have that particular date here, but I do know when it did occur. The first group disembarked on 13 November. There were some intense discussions on the days before that about the particular arrangements that could be put in place should they wish to disembark. If you give me five seconds, I will just check a calendar and I will be able to give you those dates.

**Senator BARNETT**—Yes. I just note that Mr Metcalfe said earlier that disembarkation occurred some time after the agreement was settled. I do not want to misquote you, Mr Metcalfe.

**Mr Metcalfe**—It is just a matter of logic that the—

**Senator BARNETT**—What we want to know is: exactly how long after?

**Mr Metcalfe**—We will take on notice precisely when the first discussions occurred with the passengers on board the *Oceanic Viking* and advice was given to them as to the precise arrangements that had been agreed with Indonesia. But, as Ms Keski-Nummi said or as I said, our officers first went on board on 1 November and the first group of 22 people disembarked on the 13th. So it was in that period between the 1st and the 13th that we reached agreement with Indonesia and we communicated that to the passengers on board.

**Senator BARNETT**—Mr Metcalfe, frankly I am a little bit astounded. This has been a very high-profile incident, and it appears that we do not even have the date of the settlement of this matter—the day it was consummated—for the committee.

**Senator Chris Evans**—Senator, I think it is not unreasonable for us to be able to tell you—

**Senator BARNETT**—I am quite puzzled by that.

**Senator Chris Evans**—I think it is not unreasonable for us to be able to tell you when it was presented to the passengers. I think that is a perfectly reasonable question to ask, and we should be able to get you the answer. So, if we have not got it, we will find out as quickly as we can and get it to you. That is not an unreasonable request.

**Ms Keski-Nummi**—I will give you the answer: it was either 8 or 9 November. I just need to double-check on that particular date.

**Senator BARNETT**—All right; thank you. So we can assume, then, that there was a meeting with the BPC prior to 8 or 9 November which consummated the arrangement. Perhaps in the near future, Minister, you can recall—was it a day or two before?

**Senator Chris Evans**—Senator, as I indicated to you, the BPC authorised the finalisation of the agreement with Indonesia. Once that was done, the passengers were advised of the arrangements for their disembarkation and the conditions on which we would seek to have them disembark. The officer says she thinks it was 8 or 9 November when that was made

available to those on the *Oceanic Viking*; it follows that the details were finalised some time before that.

**Senator BARNETT**—All right. Let us just go back a step. From when this first started to that date, how many meetings of the BPC would you have had?

**Senator Chris Evans**—As I say, I am happy to be as helpful as I can, but we do not, as I understand it—this is over many years—reveal information about the meetings, the times, the agendas or the attendees of cabinet committees. It is a longstanding practice. What I have said to you, though, is that the BPC met and authorised the key factors involved in the incident and that a working group of ministers and officials worked through the issues and managed the issues. They varied from ensuring that there was fresh water made available on the boat to the negotiations with the Indonesians.

**Senator BARNETT**—I think we want to come to that. I appreciate where you are coming from. Let us go back to the other question. Would it be fair to say that as chair of the BPC you were 100 per cent confident that all the members of the BPC supported the resolution? Secondly, were you 100 per cent confident that the Prime Minister not only was aware of the decision of the BPC but supported the BPC decision?

**Senator Chris Evans**—I think the way to express it is that the government made a decision in relation to these matters, and the government decision-making authority for that was the border protection committee, which I chair. That was the government decision.

**Senator BARNETT**—I am asking you a question: as the chair of that committee and the fourth most senior person in the Labor government, were you confident that the Prime Minister was aware of that decision and supported the decision?

**Senator Chris Evans**—I am confident that that was the appropriate decision-making authority, that the government took the decision using the vehicle of the BPC and that the relevant ministers—Mr Smith, me and particularly Mr O'Connor—implemented those directions. That was the government decision. I have explained to you who was representing PM&C on that committee. That is the normal process of cabinet committees. As I say, Mr Smith and I took the lead in the particular aspects of the *Oceanic Viking* when it came to disembarkation stage and negotiations with the Indonesian government. But the decision-making authority was the BPC and the relevant ministers implemented it.

**Senator BARNETT**—You have not quite answered my question. You have confirmed that the National Security Adviser or a representative was part of the BPC meeting, and of course they report directly to the Prime Minister. It beggars belief that the Prime Minister would not (1) be aware and (2) support the decision.

**Senator Chris Evans**—All I can say is that the reporting lines formally from BPC are through the Department of the Prime Minister and Cabinet, and I have told you who the representative on the committee is. I have to be careful here: only the cabinet ministers are members, but the way it works is that agency heads like Mr Metcalfe attend virtually all of them, though occasionally there is a ministers-only meeting.

**Senator BARNETT**—I think Mr Metcalfe said earlier that it was the National Security Adviser or his deputy who attended.

**Mr Metcalfe**—That is correct. There were a series of meetings over a series of weeks and the National Security Adviser was there for the majority. He was overseas on one occasion and his deputy routinely attended in that instance.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—Mr Metcalfe, you said that the word ‘negotiation’ was not a reasonable one to describe the discussions happening with the passengers on the *Oceanic Viking*. Obviously, offers were being made to them. Let us assume it was not a question of offer and acceptance, but let us assume that offers were being made. How many offers were made to the passengers collectively on board the *Oceanic Viking*?

**Mr Metcalfe**—I will have to be careful with my language: I would not describe it as ‘offers’ at such. The circumstances, as I am sure you well recall, were that the group had been rescued in the Indonesian search and rescue area by Australian naval vessels, and subsequently there was an agreement that they be taken back to Indonesia from whence they came. It was quite clear they would need to disembark in Indonesia and would need to come to accept the circumstances that would apply to them upon that disembarkation. I would not regard that as an offer because that implies that there was an acceptance. Rather, it was a—

**Senator HUMPHRIES**—Let’s not get stuck on terminology. Clearly, things were being put to the people that were meant to induce them to leave the boat. How many—

**Mr Metcalfe**—There was intensive discussions which occurred in large groups, in small groups and with individuals over that period of time from 1 November until the first group disembarked, and then the second and remaining group disembarked. I would not say that there were a series of offers but there were clearly very intensive discussions. It was largely about providing reassurance to the people as to what would happen to them when they disembarked the vessel, bearing in mind that a number of them were mandated refugees, that others had registered with the UNHCR, that others had not registered with the UNHCR and that there was a variety of personal and family groups, and an assessment that a number of the people were highly vulnerable and needed quite significant support through that process.

**Senator HUMPHRIES**—Were the people on board told at one point that if they were to disembark they would be offered resettlement within one year?

**Mr Metcalfe**—Could you repeat that question?

**Senator HUMPHRIES**—Yes. At any stage, were the passengers told that if they left the boat they would be resettled within one year?

**Ms Keski-Nummi**—Not to my knowledge. I was never given that information. I do not know where that has come from.

**Mr Metcalfe**—We will check that.

**Senator HUMPHRIES**—I think it was reported in the media.

**Mr Metcalfe**—There are lots of things in the media that are not necessarily correct. We will check that on notice and advise you if the answer is incorrect.

**Senator HUMPHRIES**—Can you tell us what was put to the passengers as an inducement, not an offer, for them to leave the vessel?

**Senator Chris Evans**—It has been made clear that there was an agreement struck with the Indonesian government about the time frames for processing those who were on the boat. There was an agreement struck between us and the Indonesian government to resolve the situation. Once that agreement was in place and understood, that was put to them as the basis on which they disembarked. There was not a negotiation about changing the nature of it. To be frank, it was a question of building trust. These were vulnerable people. Many of them had spent time in detention and it was more about developing trust that the conditions we told them would apply would be honoured—that is really what it was about.

**Senator HUMPHRIES**—Are you saying that at no point did the description of what would happen to the people on board the vessel ever change in the course of these discussions with them? We never went back to the boat and changed something that had been said to them earlier to make more attractive their getting off the boat?

**Senator Chris Evans**—Departmental officers were very clear that they were not going to create any expectations until they had the advice as to what the conditions would be, and they then only presented them with those conditions. The officers can explain that, but it was very clear that our people would not be providing advice until the agreement was available. As I say, the main thing was about building confidence that when they disembarked the boat they would be treated appropriately.

**Senator HUMPHRIES**—What was Paris Aristotle's role in these discussions? What was he authorised to say to the occupants of the vessel?

**Mr Metcalfe**—Paris was asked by the government to fulfil a role that he has fulfilled on earlier difficult occasions. For the record, he, of course, is the head of the Victorian Foundation for Survivors of Torture but is also a member of the Immigration Detention Advisory Group, which was established by the previous government and continues to have a key advisory role to government. He is an expert on refugee torture and trauma and dealing with the issues of particularly vulnerable people. He was asked to go with one of his colleagues to the vessel when it had arrived at the port of Bintan to undertake the initial work of getting to understand who the people were and to begin the role of obtaining their confidence that, essentially, they could believe what Australian officials were going to say to them. Bear in mind that, until the people arrived at Bintan, the only contact they had had was largely with Customs officers who were providing for their care and maintenance, but there was no discussion as to what would occur in future.

**Senator HUMPHRIES**—Surely they were wanting to know what was going to happen to them if they got off the boat. What was he authorised to say to them about what would happen to them when they got off the boat?

**Mr Metcalfe**—Ms Keski-Nummi may provide more detail, but essentially his advice upon understanding who the people were and their circumstances, which was obviously quite an intensive process over some days, was to explain to them the normal operation that occurs in those circumstances—that people who are refugees and have been found by the United Nations High Commissioner for Refugees to be so do have settlement in resettlement countries available to them; that people who have not been found to be refugees and have not been assessed need to contact the UNHCR and go through an assessment process; and that

people who are not refugees and have been found not to be refugees have the obligation to return home.

**Senator HUMPHRIES**—I understand all of that. Was information at any stage put to the passengers about how long it would take for them to be resettled in the terms you have just described? Given that there are average time frames for these things to happen, was anything said to them about how long it would take for that resettlement to occur?

**Ms Keski-Nummi**—At that point in time, when Paris Aristotle was on the *Oceanic Viking*, there were no time frames being put on it. The role that Paris had, as the secretary described, to provide us with a professional assessment in relation to—

**Senator HUMPHRIES**—Okay. Can we forget Mr Aristotle for the moment.

**Ms Keski-Nummi**—Yes, sure.

**Senator HUMPHRIES**—At any other time, were representations made about this?

**Ms Keski-Nummi**—No, there were no time frames put to the passengers in terms of resettlement at that point in time.

**Senator HUMPHRIES**—So you are saying to us that discussions were held with these people, and all that happened essentially was that you described to them what their rights would be should they be found to be refugees, in terms of resettlement.

**Ms Keski-Nummi**—That is correct. At that point in time, we did not know who they all were or what their status was, and the general description was of what would normally happen under normal programs and processes in various situations for people who might be refugees or are not refugees and what would happen in terms of how their status would be assessed. So it was more of a description of what normally happens for people in those particular circumstances.

**Senator HUMPHRIES**—Since these passengers disembarked, I understand they have all—with the exception of the four who were found to be a security risk—now been resettled, or resettlement has been arranged for them.

**Mr Metcalfe**—That is right; resettlement has been arranged. A relatively small number have come to Australia, and the balance are in UNHCR processing centres in either Europe or the Philippines, but they are on their way to resettlement countries elsewhere.

**Senator HUMPHRIES**—Okay. How does that settlement processing time compare with the average settlement processing time for a person dealt with offshore?

**Mr Hughes**—I think it is fair to say that processing times offshore vary quite dramatically according to the circumstances.

**Senator HUMPHRIES**—But the average time?

**Mr Hughes**—Just a moment; I will get some figures for you. For the 2008-09 financial year, the average processing time for an offshore refugee visa was about 40 weeks, but quite a number of cases were finalised in much shorter time frames than that. For example, 10 per cent of cases in that category were finalised within 12 weeks. It is not uncommon for the department in circumstances where there is a particular humanitarian need identified to resettle people in a much shorter time frame than the average. For example, if I were to take

the case of the initiative to resettle the locally engaged staff of the Australian defence forces from Iraq, most of those cases were actually finalised within two to four weeks. So time frames do vary quite dramatically.

**Senator HUMPHRIES**—Yes, but the average is 40 weeks. These people were all resettled within eight weeks?

**Mr Hughes**—Of course, Senator, they are not—

**Mr Metcalfe**—12 weeks.

**Senator HUMPHRIES**—How long? Did you say ‘four weeks’, Mr Metcalfe?

**Mr Metcalfe**—No, I said the agreement with Indonesia was that they would have departed Indonesia within 12 weeks of disembarkation, depending upon their status. As it turned out, we had the last group leave Indonesia within about 10 weeks or so, I think was the period.

**Mr Hughes**—And they have—

**Senator HUMPHRIES**—So 10 weeks versus 40 weeks.

**Senator Chris Evans**—I think Mr Hughes wants to correct something he said, Senator Humphries, in the sense that of course a large number of them have not been resettled yet; they have been interviewed by the settlement country. If he could just make that clear, because it is important.

**Mr Hughes**—That is correct. The 57 that have been transferred to UNHCR transit facilities are of course still in the resettlement process.

**Senator HUMPHRIES**—Yes, but the point I am making—and I am sure you can see that point—is that these people have had their resettlement matters dealt with in a fraction of the time that it generally takes to settle other people in similar circumstances. Are there particular humanitarian issues which would necessitate the special treatment of these people?

**Senator Chris Evans**—Senator, we have debated this up hill and down dale in the parliament. I am happy to go through it again if you want, but, as I made clear to you, this was an agreement between the Australian and Indonesian governments to resolve the fact that we were disembarking them on Indonesian territory. The arrangement was driven by the agreement with the Indonesians as to when those persons would depart Indonesian territory, and the agreement provided for the last of them to go within 12 weeks. The officer has made it clear to you that that did not mean resettlement, in the sense that they were not resettled within 12 weeks, and—

**Senator HUMPHRIES**—I appreciate that. This is the arrangement that you said was not a special deal.

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

**Senator HUMPHRIES**—With great respect, processing within a relatively short time looks like a special deal.

**Senator Chris Evans**—The officer can take you through example after example of quicker processing times—

**Senator HUMPHRIES**—Where special circumstances exist.

**Senator Chris Evans**—Yes.

**Senator HUMPHRIES**—And I am sure in those cases you might say that special deals were done too.

**Senator Chris Evans**—I suspect there were a number of quicker processing outcomes under the Howard government, Senator. I am sure we could take you through those if you want. But we have been very clear. There was an agreement with the Indonesian government. We made it public as to the terms of that and we honoured that, and that had the effect of those persons leaving Indonesia. A small number of them have been settled in Australia. Some were taken to Christmas Island because of security assessments and others are in the process of being settled by other countries. The key factor in the dates was not the settlement. The key factor in the dates was the agreement that we would resolve the status of those persons and have them depart Indonesia, and that is effectively what happened.

**Senator HUMPHRIES**—So these people were never led to believe that their processing time would be accelerated from the average or that they would be given a certain time frame parameter for their resettlement matters to be dealt with?

**Mr Metcalfe**—I think it is a matter of public record that following the decision, the agreement with the government of Indonesia, the passengers were advised of the circumstances of that agreement, which indicated that people who were refugees would depart Indonesia within a certain time if they had registered, if they had not registered et cetera. They were given that advice, but that was pursuant to the agreement struck with Indonesia.

**Senator HUMPHRIES**—During the discussions with the Indonesian government with respect to resolving the *Oceanic Viking* matter, was any discussion held at the same time with the Indonesian government about the resolution of the status of the 255 Tamils who were on board a vessel in Merak?

**Mr Metcalfe**—Certainly no discussions involving officials of my department. It was quite clear that the so-called Merak vessel had been the subject of conversation between Australia and Indonesia. We have made it quite clear that those people have to do what is standard practice and make themselves available to the UNHCR and the International Organisation for Migration.

**Senator HUMPHRIES**—The question I am asking is: were you aware of any linkages made between these two sets of circumstances in discussions with Indonesia?

**Mr Metcalfe**—You need to ask the Department of Foreign Affairs about that, Senator.

**Senator HUMPHRIES**—But your officers were not involved in any such discussions?

**Mr Metcalfe**—No.

**Senator HUMPHRIES**—When was the full list of names of the passengers on board established?

**Mr Metcalfe**—I think you asked us before about when we first obtained a manifest, and we were checking on that point, from memory.

**Ms Keski-Nummi**—We received quite a number of different iterations on that, and I am just getting the final version checked.

**Senator HUMPHRIES**—Having established the manifest, I also want to know when those names were referred to the Australian Federal Police and ASIO for the purposes of security checking?

**Mr Hughes**—I think the first time they were sent to ASIO was 10 November. I will confirm that for you.

**Senator BARNETT**—What about AFP?

**Mr Hughes**—I would have to check on that separately for you.

**Senator HUMPHRIES**—Okay, if you could check that. The 10 November was before they disembarked.

**Mr Hughes**—That is correct. Yes, disembarkation was between 13 and 18 November.

**Senator HUMPHRIES**—I believe we were told yesterday—I will have to check this—that nothing was referred to ASIO or the Federal Police before the passengers disembarked.

**Mr Hughes**—As I said, Senator, I will confirm that but I believe it was 10 November.

**Senator BARNETT**—Have you got the date of the deal as yet? You were checking whether it was the 8th or the 9th.

**Ms Keski-Nummi**—9 November. The passengers were advised—

**Senator BARNETT**—Exactly what were they advised?

**Ms Keski-Nummi**—They were advised that should they disembark then what the processing timeframes would be, but that they needed to disembark before any further action could be taken.

**Senator BARNETT**—What were they exactly advised? Was it the 12 weeks?

**Ms Keski-Nummi**—It depended on what their status was, because there were a large number who were already mandated refugees. Many had already been found to be refugees back in 2005-06 by UNHCR, so there was a group who had been refugees for quite a long period of time already. Their processing times would have been shorter because there was not the need for the UNHCR processes to take place.

**Senator BARNETT**—Were you the responsible officer?

**Ms Keski-Nummi**—I was not the responsible officer in Tanjung Pinang. I was here in Canberra.

**Senator BARNETT**—Was that communication forwarded to the responsible officer who then relayed that advice to the passengers?

**Ms Keski-Nummi**—Yes, I was the key contact point for the officers here in Canberra.

**Senator BARNETT**—Who did you relay it to?

**Ms Keski-Nummi**—Our regional director, Jim O'Callaghan, who was in Tanjung Pinang at the time.

**Senator BARNETT**—Have you got a copy of that advice?

**Ms Keski-Nummi**—I think it has been tabled.

**Senator Chris Evans**—I am pretty sure it has been tabled in the parliament.

**Mr Metcalfe**—The letter from Mr O’Callaghan to the people on board I think what tabled in the House of Representatives but it was certainly conveyed in a letter from the minister to the President of the Senate on 3 February in response to a Senate return to order motion from Senator Fierravanti-Wells.

**Senator Chris Evans**—Yes, but it had been presented long before that. It has been in the public domain a long time.

**Senator HANSON-YOUNG**—Not in the Senate until that time.

**Mr Metcalfe**—It has certainly been in the public domain. I think it was communicated to the media quite quickly.

**Senator BARNETT**—In that letter that was what was relayed to the passengers.

**Ms Keski-Nummi**—That is correct.

**Senator BARNETT**—I just want to finish the loop with our discussion about the BPC. I want to confirm with you, Minister, the question did you or did you not relay the answer out of the BPC in terms of the resolution that you had come to personally to the Prime Minister. I understand from your earlier responses that the answer was no, you did not personally provide that advice to the Prime Minister.

**Senator Chris Evans**—I did not give you that answer, but what I said to you was that, one, I do not discuss conversations between myself and the Prime Minister or what occurred at cabinet committee meetings. But I did indicate to you that the lead official for PM&C, the National Security Adviser, was heavily involved in the issue, was representing Prime Minister and Cabinet and that the reporting lines were through PM&C.

**Senator BARNETT**—That is why I am asking the question, when you say that I surmise that you did not personally contact the Prime Minister and advise him of the outcome of the meeting.

**Senator Chris Evans**—You can surmise as much as you like.

**Senator BARNETT**—Is that a yes or no.

**Senator Chris Evans**—I do not discuss conversations I have with the Prime Minister at estimates. You can ask me on official responsibilities and I am happy to help you and be as open as I can be.

**Senator BARNETT**—Surely, Minister, it is not a difficult thing to say whether you advised the Prime Minister of the outcome of that meeting or not.

**Senator Chris Evans**—The reason I do not is not because of the particular issue but because it opens up the precedent of what occurred. I make clear to you that BPC have responsibility and the lead ministers took responsibility for authorisation of the very aspects of that, through the BPC authority. I have been very clear in the Senate and elsewhere about the immigration related issues were authorised by me absolutely.

**Senator BARNETT**—You are the chair of this cabinet committee, which is a very senior role and a very senior cabinet committee. It is a high-profile case, as Senator Humphries and

the rest of us know. We have been discussing it for the last 30-plus minutes or more. It beggars belief that you would not advise the Prime Minister personally of the outcome of that meeting, if he was not already in the meeting. You simply will not answer that question.

**Senator Chris Evans**—I just do not think it is appropriate for me to answer questions about conversations with the Prime Minister. But, as I indicated to you, there was a formal reporting mechanism through PM&C in terms of the decisions of the Border Protection Committee. We had management of the issue. We managed it on a daily basis through a working group of ministers with telephone hook-ups et cetera, but the nature of the agreement with Indonesia was led by Mr Smith and his portfolio, doing the negotiations with the Indonesians, and my officers and myself in terms of the aspects of how people would be treated when they were disembarked in accordance with the normal procedures. That is where the authority came from and I have been very clear about taking responsibility for that.

**Senator BARNETT**—It is just that the Prime Minister was quoted numerous times over the period that we are discussing, including on 30 December, and he said that Australia has great patience in handling these matters and we would wait as long as it takes. He was quoted several times over a number of weeks on this very matter, and it seems that—

**Senator Chris Evans**—He was asked questions in the parliament by the Liberal Party.

**Senator BARNETT**—Not at Christmas time, because the parliament was not sitting.

**Senator Chris Evans**—As you know, during the period that we came back—

**Senator BARNETT**—Yes. We came back in October and November.

**Senator HANSON-YOUNG**—I have some questions which are around the Bali process and where we are going with that. The first thing I want to know is: where have we reached thus far? I know we spoke about it at the last estimates, but in terms of which specific countries we have either draft arrangements or confirmed arrangements with, have we set a number of goals to which we have all agreed?

**Senator Chris Evans**—What do you mean by arrangements, Senator Hanson-Young? What are you talking about?

**Senator HANSON-YOUNG**—The Bali process is continuing to be used and flagged by yourself and the rest of the government as the key cornerstone of working on these issues in the region, but there seems to be very little detail publicly available about how the process is working, where we are up to, what types of arrangements or partnerships there are and where discussions are up to in terms of what we have agreed and with what countries. I am trying to get to where we are up to.

**Senator Chris Evans**—I will ask Ms Arja Keski-Nummi to give you an update, if you like. Since the Bali conference last year, ministers have not been directly involved as a series of working groups. Ms Keski-Nummi will be able to take you through the progress report, if you like.

**Senator HANSON-YOUNG**—Fabulous. Thank you.

**Ms Keski-Nummi**—There are two things to say, first of all. You will also need to ask the Ambassador for People Smuggling Issues, because DFAT has the lead in terms of the Bali process.

**Senator HANSON-YOUNG**—Yes, that is on my list.

**Ms Arja Keski-Nummi**—With respect to the work that we do, there was in early December a meeting of the ad hoc group in Perth to discuss some of the population flows. There was also a workshop on what is called an immigration liaison officer network and to look at the viability of establishing that sort of network within the region. We have been engaging quite closely with a number of different countries including Malaysia, Indonesia, Pakistan, Sri Lanka and others to get some good traction in relation to understanding population flows and so forth. I understand there will probably be a workshop in early March on the immigration liaison officer network, probably in Sri Lanka, but that has not yet been confirmed. That is specific work from an immigration perspective that is being undertaken under the Bali process. We work very closely with DFAT and others in relation to the broader ad hoc working group on Burma and on Afghanistan and Sri Lanka.

**Senator HANSON-YOUNG**—Have we got a set of goals that we want to achieve from this process?

**Ms Keski-Nummi**—I guess the best way to characterise it is that clearly the Australian government would like to see more countries criminalising people-smuggling and putting that into legislation. Quite a few countries have, but others still have not. Also, in a more broader perspective, it is a process, it is an umbrella, under which we work in terms of developing greater regional cooperation and capacity in relation to issues that are of interest to this portfolio around population movements and protection principles in the region.

**Senator HANSON-YOUNG**—Okay. So while we might have our objectives, there is actually nothing set in stone necessarily by those other countries that collectively agreed—

**Ms Keski-Mummi**—That is correct. That is why it is called the Bali process rather than some sort of formal agreement. Part of the beauty of the process as well is that it allows us to build that sort of confidence in terms of some times quite difficult issues and working with other regional countries on those. As I said, we have seen some criminalisation of people smuggling and we are hopeful that in the fullness of time more will criminalise it. It also focuses a bit on trafficking issues, for instance, and AusAID worked closely in relation to those areas as well. So, as I said earlier on, it allows for confidence building in the region around some fairly difficult issues and that allows us then to be able to have an avenue into working more in capacity building areas as well.

**Senator HANSON-YOUNG**—My understanding of it is that UNHCR and the IOM are involved in that process.

**Ms Keski-Mummi**—That is correct, yes.

**Senator HANSON-YOUNG**—Is there any other type of civil society participation in that process aside from the IOM and the UNHCR, which are technically not government?

**Ms Keski-Mummi**—No. They are the two key international organisations that are in the steering group, but the Ambassador for People Smuggling issues will be able to more broadly

talk to you about that. The UNODC, the UN Office on Drugs and Crime, does participate in some of the discussions, but not as a formal member. But in terms of civil society itself, no, they have not been included as part of the Bali process.

**Senator HANSON-YOUNG**—Are you aware—and of course I will put this to DFAT when I speak to them on Thursday, and perhaps this is a question to the minister as well—of the criticism about the lack of transparency specifically because there is not that broader civil participation? There seems to be a lack of updates coming forward in the public domain so people are finding it difficult to keep track of what is going on.

**Senator Chris Evans**—The only point I would make is that certainly at the meeting of ministers if the press were not actually in the room they were certainly at the conference. I did interviews et cetera as did the other ministers there. In terms of the working groups, that is really about government-to-government negotiations about quite sensitive matters including security matters, so it would not be appropriate to open that up. But I think in reporting mechanisms, it is appropriate.

**Ms Keski-Mummi**—There is the Bali process website that updates what events are taking place and there will often be a synopsis and a report on some work that has taken place under that. That website does provide some information in terms of what is happening at any particular time.

**Senator HANSON-YOUNG**—In terms of our expenditure for the efforts to combat people smuggling, how much of that is being put aside specifically to help with this Bali process?

**Ms Keski-Mummi**—Can I take that on notice, because it is split up among a number of different places and we have some capacity building projects in work we are doing with UNHCR under that as well. You would also have to put that question to the Ambassador for People Smuggling issues. But if I can take that on notice I can certainly provide you with the DIAC funding for Bali work.

**Senator HANSON-YOUNG**—That would be great. Do you have with you now information on how much funding we give to the IOM in the region?

**Ms Keski-Mummi**—Yes, if you just give me a few minutes I will get it to you. Again, it is spread across a number of different programs. For instance, we work very closely in Indonesia with IOM in the care and maintenance of irregular migrants. We also have funded them to undertake various border management and other studies for us within the region. I can get it for you fairly quickly.

**Senator HANSON-YOUNG**—I was also wondering whether you could give us an explanation, or your understanding, of who the IOM are. They are not connected to the UN, unlike the UNHCR, so they are not mandated by the UN and therefore the various conventions. I am just trying to figure out who the Australian government thinks the IOM are.

**Mr Hughes**—I can help you with that. The IOM originally started as the Intergovernmental Committee for European Migration, an intergovernmental body in the late 1940s, I think. Initially it was largely composed of European governments, North America, Australia and a number of Latin American countries and it initially had a role in helping to sort out the immigration of vast numbers of people from Europe at the end of the Second

World War. Subsequently it had a major role in facilitating the resettlement of people and supporting governments in resettling Indochinese refugees and it mainly worked as a service organisation organising transport, medical escorts and a whole range of migration services in the context of the Indochinese refugee situation.

It ultimately was renewed in the mid-80s through having its constitution amended into a global body, the International Organization for Migration, with an intergovernmentally agreed charter to facilitate the orderly migration of people around the world and provide a vast range of assistance and services. With the increasing demand for those services from governments around the world, it has become a global organisation with something like 120 members. Frankly, it expands every year because more governments find they benefit from being part of IOM.

**Senator HANSON-YOUNG**—Do you have to be a financial member—like a donor?

**Mr Hughes**—I guess they are not donors as such. There is a certain flat rate, a set amount, that governments pay to be a member. But services can be purchased by any government for use by that government or on behalf of other governments. It is a global organisation which performs services in every part of the world. Australia has used it extensively for transport for the humanitarian program, medical processing for the humanitarian program, and capacity building services in relation to people in Indonesia, that you were speaking to Ms Keski-Nummi about. It has also been involved in things such as relief for the effects of the tsunami in Aceh and it has a role in terms of some of the cluster operations for internally displaced persons. So it works in a partnership relationship with the UN. Nevertheless, it is a non-UN organisation but governed by approximately 120 governments.

**Senator HANSON-YOUNG**—Is there a representative of an Australian government on its governing board? How does that work?

**Mr Hughes**—The IOM is governed by a council that meets annually and there are intersessional governance processes in relation to the budget and other key decisions. In recent years there have been some Australians occupying very senior management positions of IOM—

**Senator HANSON-YOUNG**—But we do not have any official representation?

**Mr Hughes**—We have representation as part of the governance process along with all those other governments that have to approve its constitution, its vote in its leadership, decide on its budget, and comment on its activities.

**Senator HANSON-YOUNG**—Have you been able to find the figure yet?

**Ms Keski-Nummi**—Yes. But the reality is that, while we have the figures, they are in different areas, like what we do in Indonesia, and what in Malaysia and elsewhere. And we have to pull that all together under the humanitarian program. But we will get it to you before dinner.

**Senator HANSON-YOUNG**—Thank you. As to the funding that we do give: Mr Hughes, you used the term ‘service delivery’. Often when we purchase a service we have some type of service agreement in terms of standards, accountability measures and those types of things.

What do we have in relation to our relationship with the IOM to ensure that, for whatever money we are giving, we have a set of standards?

**Mr Hughes**—We obviously reach agreement with them on each type of service that we purchase. Ms Keski-Nummi can speak to you about that.

**Ms Keski-Nummi**—This is just very quick, to give you an idea of the range of the services that we contract from IOM, and we do have a contract for each of the services that is contracted. As Mr Hughes mentioned, they actually arrange all of the assisted passage costs for refugees and all of the health screening for refugees and humanitarian entrants to Australia. Our current budget is around \$11.7 million for assisted passage costs and health screening. They also are contracted to provide cultural orientation programs for humanitarian entrants. So, throughout the countries where we resettle refugees, they put into place a cultural orientation program, which is just a short, five-day program to assist people to start making that transition and to travel to Australia.

Our membership fee is around \$762,000, so that is our annual assessed contribution to IOM. This year we will probably spend about \$7.9 million in Indonesia for IOM to provide care and assistance to people who have been intercepted in Indonesia, and that is to arrange for accommodation and to ensure that they have appropriate medical services and also food, clothing and so forth. In addition to that, with IOM, we have funded outreach offices throughout Indonesia that work closely with Imigrasi so that, if people are intercepted anywhere within the archipelago, they are referred to IOM, who can then make the appropriate arrangements for their care and accommodation. In Cambodia, in the past, we have worked with them in terms of assisting in developing their managed migration systems and in terms of the drafting of legislation and the undertaking of border studies.

So it is a broad range of different sorts of things that we do. But, for each one of those, we have a contract with IOM, and evaluation mechanisms are put in place, as well as regular reporting. For instance, on a monthly basis IOM reports to us and invoices us in relation to people who have been intercepted in Indonesia, and similarly we get very regular invoicing, that we have to double-check and so forth, as people's transport arrangements are made for travel to Australia. So it is a broad range of different things.

**Senator HANSON-YOUNG**—So there is obviously some accountability in terms of numbers of people and how often their service is used. Do we have conditions that are based on those basic human rights standards by which we, of course, abide because we are signatories to the refugee convention? Are they the types of things that are built into these agreements?

**Ms Keski-Nummi**—Well, it depends on what the agreement is as to what we ask in terms of, say, the transport costs. You make sure that people travel in the appropriate sort of way and so forth. If you are actually asking about our arrangements with IOM in Indonesia, and the care and maintenance of people there, clearly the arrangements that we have in place are to have appropriate and adequate accommodation that is up to the appropriate standards for Indonesia; they are applied to people who are housed in IOM funded premises. Normally the premises that they secure are hostel-type arrangements. In some other places they may be able to lease housing, or in yet other places they may lease hotel rooms for that reason.

**CHAIR**—We are now going to an afternoon tea break and we should resume at a quarter to four.

**Proceedings suspended from 3.30 pm to 3.48 pm**

**CHAIR**—Let us reconvene our public hearing of the Senate's Legal and Constitutional Affairs Committee. We are dealing with outcome 2 in the Immigration and citizenship portfolio.

**Mr Metcalfe**—There is an answer I took on notice earlier from Senator Humphries. I can provide some more information on it, if it is convenient to do that now, or I can do it later. I am at the committee's disposal.

**CHAIR**—They are indicating that they would like that now.

**Mr Metcalfe**—Earlier this morning, Chair, Senator Humphries asked me about voluntary and involuntary redundancies in the department in the last three financial years. I indicated some figures for last financial year, I think, and indicated my recollection was that there had been no involuntary redundancies. So I would like to provide that information and add to my answer. In 2009-2010 to 31 January 2010, the department has had 150 voluntary redundancies. In 2008-09 there were 336 voluntary redundancies, and in 2007-08 there were 62 redundancies, 60 of which were voluntary and two involuntary.

The involuntary redundancies are quite unusual. I will indicate why they occurred. They relate to the fact that at that time the department was still operating the immigration detention centre at Baxter at Port Augusta, which closed in August 2007. We were employing three permanent staff at that time. The remainder of the staff were redeployed back to their home locations. Of the three local employees, one accepted a voluntary redundancy while the remaining two elected to remain with the Australian Public Service. Both employees were aged over 45 years and were therefore entitled to a 13-month period in which to seek redeployment in the department or the APS more broadly. We were able to place both the employees locally in Centrelink but I am advised that after a short period of time the employees decided against continuing their placements. We agreed in those circumstances to pay out the balance of their retention periods, which were six and seven months respectively, at the employees' request. So while they were technically involuntary redundancies, they were relatively voluntary in that respect. I am advised that both employees subsequently found employment with the South Australian state government.

**Senator Chris Evans**—It is a good lesson not to make general responses. The answer was no, but then you think, 'maybe'. And there was a couple, so just as well.

**Senator HUMPHRIES**—Just to be clear, in this financial year and last financial year there were no involuntary redundancies.

**Mr Metcalfe**—I am advised there have been no involuntary redundancies. So technically I was correct. I was answering for last year. But we are aware of those two from three years ago.

**Senator Chris Evans**—We checked the cabinet handbook to check the membership of the BPC: the Minister for Immigration and Citizenship is chair, the Minister for Foreign Affairs, the Minister for Defence, the Attorney-General and the Minister for Home Affairs are

members. That is the formal membership. We talked about the roles of the officials. That is the cabinet committee's formal membership. It is available in the cabinet handbook.

**Senator HUMPHRIES**—How do you get the IOM officials who are entitled?

**Senator Chris Evans**—As I understand that generally does not occur. The actual formal membership of the committee is the cabinet members. The BPC has taken to operating a bit like the NSC does in terms of engagement with officials. It is the longstanding practice that the officials are fairly heavily engaged. The actual decision making is with the ministers.

**Senator BARNETT**—Thank you for confirming that and getting back to us. In the normal course of events you have those ministers who are there. Are the secretaries of the relevant departments more often than not also in attendance?

**Senator Chris Evans**—Yes, As I say, it operates a bit like the NSC. I have to be careful how far I go, but I think that is widely understood. On most occasions the heads of departments and the senior officials are present. Obviously, occasionally other officers brief us on particular matters. The Maritime Authority was obviously one of those in this case. The formal membership is those members.

**Senator BARNETT**—In the normal course of events does the National Security Advisor attend such a meeting?

**Senator Chris Evans**—The National Security Advisor attends the meetings in the normal course of events.

**Mr Metcalfe**—There is one other matter we can provide advice on. I think Senator Barnett or Senator Humphries asked about the message to the 78 passengers on the *Oceanic Viking* and when that may have been made formally public. I am advised that the letter to the 78 passengers was tabled by the Prime Minister on 16 November during question time in the House of Representatives.

**Senator HANSON-YOUNG**—The IOM's own financial statement of December 2008—and I recognise that you said you would get me the figures—suggests they spent in that financial year \$33,662,221 in Indonesia. That was with a total funding of almost \$37 million from Australia. It seems as though a lot of Australian dollars are going into their total operations in Indonesia. You have listed a number of the different things that they do. I understand that what you are saying is based on each of the different services and that we have different contracts based on each of them. One of the specific things I wanted to know is what types of criteria there are for their detention facilities. We know that they operate and manage a number of the detention facilities in Indonesia and, based on their own financial statement, this is coming from Australian dollars. What types of criteria do we have for the conditions in those detention centres?

**Ms Keski-Nummi**—Could I just say that IOM does not run detention facilities in Indonesia. What IOM have done is support, through funding of about \$7.5 million, the upgrade of the Tanjung Pinang detention facilities. That was to upgrade them to a more internationally acceptable standard for a detention centre. It was not to run it. What they do provide there is a medical clinic for health services. They have also been asked to support the

recruitment and training of officers of the Indonesian Imigrasi who are recruited to undertake the guarding arrangements. They do not run detention centres.

**Senator HANSON-YOUNG**—So they do not run any detention facilities whatsoever, despite the fact that they are contracted by us to find accommodation?

**Ms Keski-Nummi**—It is not a contract; it is a letter of agreement with IOM to provide accommodation for people who have been intercepted. They also work with Indonesia, through some Australian funding, to upgrade some of the detention facilities. They are two distinct and different areas of work that they do. And they support the training of officers who undertake the guarding of detention centres.

**Senator HANSON-YOUNG**—For those services—training people, managing the medical and clinical supplies in these facilities and finding accommodation, whatever type of accommodation that may be—do we have agreements on standards in our agreements with the IOM, considering that we are funding more than the money they spend in Indonesia? And what is the process for accountability?

**Ms Keski-Nummi**—We have a letter of agreement with IOM—

**Senator HANSON-YOUNG**—Is that something you can table?

**Ms Keski-Nummi**—I would have to take that on advisement because it may well be a document between the two organisations. The letter of agreement with IOM is to provide care and maintenance for people who have been intercepted. They go into community housing, and IOM source that housing so that it is of an appropriate standard in Indonesian conditions. I think that is an important point to make: we do not expect it to be anything over and above the normal conditions for housing in Indonesia.

The arrangement for the upgrade of the detention centre was with Imigrasi. The upgrade was for Tanjung Pinang so that it would be up to accepted international standards for a detention centre. That is not an Australian standard necessarily but it has to be acceptable in the detention centre environment within which Indonesia operates. It is a secure facility. For instance—I see you are looking quizzically at me, Senator Hanson-Young—in Indonesia normal housing is a raised platform with appropriate bedding, and people normally share accommodation. They do not have a single room for each person, which would be the accepted norm in Australia. We have to be culturally sensitive in the way that the detention centres are constructed.

**Senator HANSON-YOUNG**—So IOM is involved in a way that is preventing asylum seekers from reaching Australia? That is part of some of our service agreements: that we have activities that disrupt them from reaching Australia?

**Ms Keski-Nummi**—There is not a service agreement on disruption. There is a service agreement for IOM to provide care and maintenance for people who are intercepted and referred to them.

**Senator HANSON-YOUNG**—So the IOM are obviously involved in the activities on board the boat that is docked in Marek at the moment?

**Ms Keski-Nummi**—IOM have been asked by Imigrasi to provide medical assistance and food for the people on the vessel.

**Senator HANSON-YOUNG**—You would be aware, then, that there have been specific allegations about the conduct of IOM in relation to their provision of medical assistance on board the boat?

**Ms Keski-Nummi**—I have been aware of those allegations, and we have sought reports from IOM in terms of some of those allegations. You would appreciate it is a fairly sensitive and difficult situation down there, and if they are requested by the Indonesians to provide medical assistance they do, and they regularly take people to hospital from the Marek vessel for medical and health services.

**Senator HANSON-YOUNG**—Has Australia conducted any specific investigations into the death of the man on Christmas Eve?

**Ms Keski-Nummi**—That, I think, is for the Indonesian government and for IOM to report to us on, but we have not specifically asked for that.

**Senator HANSON-YOUNG**—We have not? Despite the fact that it is our—

**Ms Keski-Nummi**—Well, not to my knowledge.

**Senator HANSON-YOUNG**—funding that is actually running their operations?

**Ms Keski-Nummi**—I think the Marek vessel at this point in time is one for the Indonesian government.

**Senator Chris Evans**—I think we have got to remember it is an independent sovereign nation and—

**Senator HANSON-YOUNG**—But we are bankrolling them.

**Senator Chris Evans**—We are providing some financial support to IOM—

**Senator HANSON-YOUNG**—We are providing more than financial support. According to them, all of their operations in Indonesia are paid for with Australian funds.

**Senator Chris Evans**—I am not sure, Senator, that you would be arguing that we ought not be supporting their role in providing care to people seeking asylum—

**Senator HANSON-YOUNG**—No, I am suggesting that we cannot just—

**Senator Chris Evans**—So let us just put that to one side. You then moved to the question of the Marek boat. The assumption by a lot of advocates in Australia is that somehow the Australian government ought to take control of the situation because they were seeking to sail to Australia. The point we need to make, I think, is that this is a situation taking place on Indonesian sovereign territory and, while we are keen to be supportive of the Indonesians in resolving the issue and generally supportive of their engagement in dealing with asylum seekers, it is a big step forward from there to say we ought to be telling them what to do and how to manage it. I would just like to make that point because—

**Senator HANSON-YOUNG**—I take your point, Minister. I think that is actually a different argument, as to what role Australia should be taking in helping to end the impasse with what is going on on the boat. But that is not my point. My point is, if there are allegations that the IOM has not been able to offer the medical assistance needed—to the point where the allegations are suggesting that a man died on this boat—and we are funding

the IOM's activities, surely that is where we do have some responsibility to at least investigate.

**Senator Chris Evans**—The earlier point, I think, stands. But the officer can take you through the relationship with IOM. I make the point that there are a lot of allegations made in relation to these matters that turn out to be unfounded—

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

**Senator Chris Evans**—But, in terms of the relationship with IOM engagement on this issue, I would defer to Mr Hughes or Ms Keski-Nummi.

**Senator HANSON-YOUNG**—Ms Keski-Nummi, you did say you were not aware of any investigation.

**Ms Keski-Nummi**—Not to my knowledge, and I will get some further information on it. But, as I said and as the minister said, this is a matter for Indonesia, but we will support—

**Senator HANSON-YOUNG**—I realise that is the government line, that this is an issue for Indonesia—

**Senator Chris Evans**—It is not a line, Senator; it is the truth.

**Senator HANSON-YOUNG**—My point is not about the management of how these people are resettled. We can have that discussion; that is not the point I am making here. The point I am making here is about access to medical assistance.

**Ms Keski-Nummi**—I am aware that people have raised concerns and, as I said to you earlier on, we have each time asked IOM what the circumstances have been in terms of some of the issues that were raised with us late last year that I was aware of, and I can say that when the Indonesian officials have asked IOM to provide medical care and assistance or to transport people to hospital, as they have done, they have done that. To my knowledge they have done as much as they can in relation to providing those health services. Now, I will take on notice to find out more fully the circumstances of the death of one individual, which I think is a tragedy and something that no-one would have wanted to have happen. I will take it on notice and get back to you with a response to that.

**Senator HANSON-YOUNG**—Okay. Thank you. I have just one final question on this issue, Chair. It is specifically about the Australia-Indonesia agreement in respect of the Tanjung Pinang detention centre—and, I guess, if there are any other agreement we do have in terms of other areas of detention—and the issue of children being detained. We spoke about this last time, and the response that I had from a number of you at the table was 'not to your knowledge' and yet, since then, we have seen numerous reports of children being detained. I am wondering what agreement we have with Indonesia in relation to these issues.

**Ms Keski-Nummi**—In relation to Indonesia, as I said to you at the time, we understand that they do not routinely detain children, but there will certainly be circumstances where they may—

**Senator HANSON-YOUNG**—That is actually a different response than you gave me last time.

**Ms Keski-Nummi**—But I think it is also important, again, that we cannot dictate to another country what their detention arrangements are, just as we would not expect anyone to dictate to us—

**Senator HANSON-YOUNG**—Surely, if we are contributing funding to a particular detention facility and we have an arrangement in relation to that, there would be conditions that we would apply. Now, you said before that even their detention facilities are based on Indonesian standards—

**Ms Keski-Nummi**—That is correct.

**Senator HANSON-YOUNG**—yet we have an Australian government that is headstrong about not detaining children in Australian run detention centres here on the Australian mainland, so surely we should be aspiring to the same types of conditions offshore.

**Ms Keski-Nummi**—We will work as diligently and as actively as we have with Indonesia in terms of the protection and other issues that Indonesia provides to people have been intercepted or who are asylum seekers themselves in Indonesia. As for the arrangements in terms of the upgrade of one detention facility, I understand that at this point in time there are no children being held in detention at that particular facility, but I can check that. We do not run that detention centre. We supported it in terms of an upgrade of that particular facility but—

**Senator HANSON-YOUNG**—But we do not have any agreement with the Indonesian government in relation to whether children should or should not be detained?

**Ms Keski-Nummi**—No.

**Senator HANSON-YOUNG**—Okay. Thank you.

**CHAIR**—Senator Barnett, we will go back to you.

**Senator BARNETT**—Thank you, Mr Metcalfe, for advising us earlier about this letter that was tabled in the House of Representatives on 16 November by the Prime Minister. That is the letter from Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta?

**Mr Metcalfe**—Yes, the one headed 'Message to the 78 passengers on the *Oceanic Viking*'.

**Senator BARNETT**—Yes. Thank you. The question is: who instructed Mr O'Callaghan to write that letter?

**Mr Metcalfe**—I think we covered that in earlier evidence in which Ms Keski-Nummi indicated that she conveyed the decision of the ministers to Mr O'Callaghan and it was agreed that he would convey that information to the passengers on board the *Oceanic Viking*.

**Ms Keski-Nummi**—That is correct, and it was drafted in consultation with me. As you may see in the letter, there were a number of other issues that were also addressed, because the passengers did raise concerns about things such as being able to trace their families. Those issues were also addressed in that particular letter.

**Senator BARNETT**—Who instructed you to draft and be involved in communicating this to Mr O'Callaghan?

**Ms Keski-Nummi**—I think it would be fair to say the BPC.

**Senator BARNETT**—But could you advise who specifically instructed you to proceed—was it Mr Metcalfe or someone else within the department?

**Senator Chris Evans**—I think the answer to the question is Ms Keski-Nummi was closely involved in the working groups of the BPC and was one of the responsible officers in the department so was hands-on with these issues and was acting on behalf of the department in implementing BPC decisions and my decisions. That is where the authority comes from.

**Senator BARNETT**—I understand. I am trying to find out exactly who instructed whom. Ms Keski-Nummi has indicated she is involved. Mr Metcalfe, did you have full knowledge and understanding of Ms Keski-Nummi's involvement in the communication of this to Mr O'Callaghan and did you support such involvement?

**Mr Metcalfe**—Absolutely. Ms Keski-Nummi is a very senior officer of the department and was acting with my full knowledge and understanding and indeed, from time to time, involvement in the matters. It was quite clear that she was acting on proper instructions from the responsible ministers.

**Senator BARNETT**—Can we assume, then, as you are a member and participant in the border control committee of cabinet, that other members of the border control committee of cabinet including the various secretaries of the relevant departments were fully aware and cognisant of the content of such a message to the 78 passengers on the *Oceanic Viking*?

**Mr Metcalfe**—It is the Border Protection Committee of cabinet, Senator. The minister indicated earlier that I am not a member; I attend meetings. Some of these matters were discussed in either full meetings or ad hoc working groups, as the minister has indicated. This was clearly an issue that went to immigration responsibility. The minister in his earlier answers essentially described how the lead accountability in relation to immigration matters flows from him as the immigration minister, and similar responsibilities from the foreign minister and the home affairs minister in relation to their areas of activity. I do not think that there should be any doubt that this message was properly conveyed in response to a decision of the appropriate ministers of the government.

**Senator BARNETT**—And specifically the members of the border control committee of cabinet?

**Mr Metcalfe**—I think we have said that several times.

**Senator BARNETT**—Very good.

**Senator Chris Evans**—I have publicly taken responsibility through the BPC as minister and I make it clear the officers acted with the appropriate authority from me and from the BPC—we are happy to acknowledge.

**Senator BARNETT**—Indeed. Again, it just beggars belief that the Prime Minister did not have full knowledge and understanding of such a decision which was fully comprehended and supported by all the members of that cabinet committee, under your chairmanship, Minister, and then directed through the department to Mr O'Callaghan, who is based in Jakarta. Nevertheless, can we go to the next document, which is the agreement between the Australian

government and the Indonesian government. Who within the government instructed the writing and promulgating of such an agreement?

**Mr Metcalfe**—As the minister explained earlier, the lead in relation to discussions with the Indonesian government was our Ambassador to Indonesia, Bill Farmer, and he was acting pursuant to instructions from his department and specifically the minister. The Minister for Foreign Affairs is of course a member of the Border Protection Committee of cabinet and acting, as the minister has described, as part of that cabinet committee.

**Senator BARNETT**—So, again, that decision would have come through the Border Protection Committee of cabinet, through the Minister for Foreign Affairs to Bill Farmer, the ambassador, when that agreement was promulgated and consummated.

**Mr Metcalfe**—That is correct.

**Senator Chris Evans**—The authority for Mr Farmer to speak with the Indonesians and finalise arrangements with them came from the authority of his minister and the authority of the BPC—that is right.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—I have some questions going back to the processing of the passengers on the *Oceanic Viking*. You have told us that ASIO and the AFP were given the names of those on board the *Oceanic Viking*. Mr Hughes provisionally thought that that was in the few days before they left the *Oceanic Viking* but you are taking that question on notice and confirming that. When did the AFP or ASIO actually have the opportunity to interview the 78 asylum seekers on board or, having been on board, off the boat?

**Mr Hughes**—I would rather not go into the processes ASIO used to make their security assessments. I think that is best addressed to them.

**Senator HUMPHRIES**—I am not asking for the processes but the date when this process of interviewing them began.

**Mr Hughes**—The people were disembarked between 13 and 18 November, so ASIO processes would have fully commenced after that.

**Senator HUMPHRIES**—The processes of interview would have fully commenced after that?

**Mr Metcalfe**—It is a matter for ASIO as to what their processes are, so it is not appropriate for us go into how that agency undertakes its role in relation to deciding security assessments.

**Senator Chris Evans**—I have been asked about this publicly, Senator Humphries, and I have had to say I do not have knowledge or visibility of the processes they undertake, and that is true. I think they were asked about it last night at estimates by various senators. We made the information we had available to the security agencies for them to undertake their processes and they undertook their processes.

**Senator HUMPHRIES**—Okay. When did Immigration officials begin their health and other checks of the 78?

**Senator BARNETT**—Can I just interrupted very quickly. When was the first communication from the department, DIAC, to ASIO or from ASIO to DIAC regarding this matter?

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

**Senator Chris Evans**—I think the earlier point was that the membership of the committee—

**Mr Metcalfe**—That is what I was going to say, Minister, that the Director-General of Security is in fact a person who routinely attends Border Protection Committee meetings and so he and/or his senior officials were involved through this matter right from the very first meeting.

**Senator BARNETT**—I am thinking specifically with respect to the security assessment of those passengers. There must have been a communication between DIAC and ASIO or ASIO and DIAC, one way or the other. I am happy for you to take it on notice.

**Mr Metcalfe**—Yes. It was quite clear, of course, as the biographical information about the group started to firm up after our officers first went on board the vessel that ASIO would have a role to a greater or lesser extent in relation to the issues, and so there was involvement. I think Mr Irvine took the matter on notice last night and I think it would make sense for me to take the matter on notice today so that we can ensure there is a proper response to you.

**Senator BARNETT**—That is fine, thanks very much.

**Senator HUMPHRIES**—Can you tell us exactly when the government was formally advised that there were adverse security assessments of four of the passengers on the *Oceanic Viking*?

**Mr Hughes**—I understand that the adverse assessments were completed between 11 and 23 December. I do not have the precise date on which each was advised, but they were advised progressively in that period.

**Senator HUMPHRIES**—Could you take on notice when that advice on each of the four was furnished to the government?

**Mr Metcalfe**—I am advised that Mr Irvine said last night, I think in response to questions from you, that ASIO provided the first advice for three people on 11 December and there was one further one on 18 December. We will double-check to make sure that accords with our records, but that would appear to be his advice as to what they did.

**Senator HUMPHRIES**—All right.

**Senator BARNETT**—Just on that point, when was the minister, as in Minister Evans, advised of that advice?

**Mr Metcalfe**—We will take that on notice. It would have been around that time. It was quite clear the minister was very closely involved in this.

**Senator BARNETT**—You would imagine so.

**Senator HUMPHRIES**—In fact I was going to ask if you could tell us when the minister was advised, if and when the Border Security Committee of cabinet was advised, and if and when the National Security Adviser was advised and/or the office of the Prime Minister.

**Mr Metcalfe**—I suspect that the people doing the advising were ASIO, not us. It may well have been at that advice was provided to a cabinet meeting or a meeting of senior officials. Perhaps we could work with ASIO to ensure that, between us and ASIO, you are provided with advice in relation to that.

**Senator HUMPHRIES**—You appreciate that we are asking these questions at a number of committees, and the fact that other agencies are involved makes it hard to get a total picture. If someone could take responsibility in relation to that, it would be good.

**Mr Metcalfe**—In relation to the security assessments, obviously the originating authority was the Australian Security and Intelligence Organisation. I think they are probably best placed to answer that question as to when others were told.

**Senator BARNETT**—Mr Metcalfe, what you can advise us is when your department communicated with other departments or specifically with the minister or the Border Security Committee of cabinet. Perhaps you could take that on notice in terms of those communications at least. That would be appreciated.

**Senator Chris Evans**—That is not a proper understanding of the process. ASIO would have advised other departments of their findings. We would not have then advised somebody else. We would have received that information. We can check for you when they advised us. We are happy to do that. But then, as far as I know, we did not then convey it to others.

**Mr Metcalfe**—We may have been in a meeting where it was conveyed jointly. It may have been conveyed to us and then we told others. But if you are interested in that level of detail, Senator, then what I think I have taken on notice is, firstly, to work with ASIO so there is a common understanding of when we were advised. Obviously Mr Irvine took some matters on notice last night. You have also asked us about the next step in the process—did we tell others. I can check to see what happened and we can provide that on notice.

**Senator BARNETT**—Thank you. That was my supplementary question, and I appreciate your feedback.

**Senator HUMPHRIES**—When was the decision taken to transfer the four Tamils with adverse security assessments to Christmas Island?

**Mr Hughes**—The decision was taken mid-December.

**Senator HUMPHRIES**—What date in December?

**Mr Hughes**—The decision was taken by the National Security Committee of cabinet.

**Senator HUMPHRIES**—The National Security Committee and not the Border Protection Committee?

**Mr Hughes**—That is correct.

**Senator HUMPHRIES**—And the date?

**Mr Hughes**—I will have to take advice from the minister as to whether he wants me to talk about dates of cabinet and cabinet committee meetings.

**Senator Chris Evans**—We will take that on notice. I am just concerned about the precedent of such things. The officer is trying to be helpful. There was a decision taken by NSC obviously prior to the people being transferred. It was around mid-December.

**Senator HUMPHRIES**—Is it true to say that the cabinet committee was aware of the adverse assessments before the transfer?

**Senator Chris Evans**—That is why we took them to Christmas Island. That was the rationale for the move there.

**Mr Metcalfe**—The whole basis was that they were not to be resettled, they were to be moved to Christmas Island because they needed to leave Indonesia, and that Australia would continue to explore resettlement options elsewhere. That is why they have been treated quite differently.

**Senator HUMPHRIES**—Who are the members of the National Security Committee of cabinet?

**Senator Chris Evans**—Again, that is on the PM&C website, I am sure. But I can get that for you. Effectively it is the group on the BPC but much broader in terms of other ministers.

**Mr Metcalfe**—The Prime Minister, the Deputy Prime Minister, the Treasurer and the other key ministers.

**Senator Chris Evans**—I will get the list for you. It is publicly available.

**Senator BARNETT**—Is it ordinary practice for the Australian government to transfer from Indonesia or some other foreign country people recognised by UNHCR as refugees but with an adverse security assessment back to Australian territory?

**Mr Metcalfe**—There is at least one precedent that I am aware of. This raises some of the most complex interplays of international protection law and security issues. Where people have been found to be refugees they cannot be returned to their own country, otherwise there would be a breach of the refugee convention and the specific requirements not to refoule a person in need of protection. Then there is the proper protection of the domestic population. This is then complicated by the fact that these people are in a third country which has asked that they depart that country. I am aware of at least one precedent involving Nauru.

**Senator BARNETT**—It seems to me that you are confirming that it is an extremely unusual practice—you are familiar with only one case. Perhaps you could take on notice whether there are any other cases and give us the details of that one case and any other cases that you may be aware of. It would appear that it is extremely unusual that you would be taking someone who has an adverse security assessment onto Australian territory—and you knew in advance. Would you agree that it is quite extraordinary?

**Mr Metcalfe**—I would say that it is not without precedent.

**Senator BARNETT**—Is it unusual?

**Mr Metcalfe**—It is not usual for us to bring someone with an adverse security assessment to Australia. But in the circumstances, that was the appropriate course of action, and that is not the first time it has happened.

**Senator BARNETT**—Why do you say it was the appropriate course of action?

**Mr Metcalfe**—We could not send refugees back to Sri Lanka. That would be a clear breach of our international obligations.

**Senator BARNETT**—But they were not in Australian territory.

**Mr Metcalfe**—We had a commitment to the government of Indonesia that all the people from the vessel would depart Indonesia by set dates. Therefore it was decided that they come to a part of Australia—Christmas Island—but not to the Australian mainland, and that they be held there in detention until they were able to be resettled elsewhere.

**Senator BARNETT**—Mr Metcalfe, it seems to me that you are confirming that it is very much a special arrangement—and indeed it was an unusually special arrangement—to take these people with adverse security assessments.

**Senator Chris Evans**—Senator, you are trying to make a political argument, which is a fine, but the officer does not have to respond to that. The government has been perfectly upfront about this decision. It was made—

**Senator BARNETT**—I do not think so, Minister, with the greatest of respect. That is your opinion.

**Senator Chris Evans**—I do not care what you think, Senator. The reason you know about this is that we told you about it. The agreement with the Indonesians was that they would be removed from Indonesian territory. We had security assessments made against those four and we determined to place them in secure detention on Christmas Island while we sought to make arrangements for the longer term settlement of people whom we could not return to their country of origin because they had been found to be refugees. As I say, there is one precedent under the previous government—in Nauru where there was a similar issue. It is a complex situation. That was the decision of government. It is public. You may not agree with it but that is what happened.

**Senator BARNETT**—Was that decision made by the Border Protection Committee?

**Senator Chris Evans**—The officer has just told you that that decision was made by the NSC.

**Senator BARNETT**—Was it approved by the BPC.

**Senator Chris Evans**—I do not know how often I can say this: the National Security Committee of cabinet made the decision.

**Senator HUMPHRIES**—You cannot tell us who was present when that decision was made by NSC?

**Senator Chris Evans**—No.

**Senator HUMPHRIES**—It would be fair to assume, though, that even if the Prime Minister were not present his office was represented or the National Security Adviser would

have been in attendance. The National Security Adviser, of course, advises the Prime Minister on national security matters.

**Mr Metcalfe**—As I think I indicated earlier, the BPC and the NSC tend to operate in a fairly similar way and that is the way NSC has operated for quite a few years, in my personal experience. The National Security Adviser is present at NSC meetings.

**CHAIR**—We went through this yesterday. I understand your answer is consistent with yesterday's evidence, and that is that in respect of those two committees they are attended by cabinet ministers. The Prime Minister is at liberty to attend any committee meeting of cabinet he so chooses. So that is who attends.

**Mr Metcalfe**—Yes, that is quite clear.

**Senator HUMPHRIES**—I think, Minister, you have conceded elsewhere that the government has something of a dilemma in dealing with those four asylum seekers. You cannot repatriate them to Sri Lanka. If they are a security risk then, presumably, they ought not on face value to be taken permanently into Australia. It is hard to see how other nations might accept them in such circumstances either.

**Senator Chris Evans**—Senator, all I can say to you is that that characterisation in terms of what we did is correct. I have also made it clear that these are very difficult circumstances. But it is the case that some countries have in the past settled people who have security concerns to other nations. That is not without precedent. I do not really want to discuss the details, but it is the case that some countries have resettled in the past persons who have been assessed as being of some security concern in a country, and we will be looking to find durable solutions for these now five people—four off the *Oceanic Viking* and one other—and we will be working to find durable solutions for them. But they have failed their security assessment against Australian standards and they will not be given visas to Australia.

**Senator HUMPHRIES**—I assume that you are in the process at the moment of exploring those sorts of options for ways to find a permanent solution to these people's location.

**Senator HANSON-YOUNG**—There are two children involved as well and that complicates things even further. I think that it is an important point.

**Senator Chris Evans**—I have been perfectly upfront with everyone. This is a very complex and difficult situation. Yes, the children do make a complicating factor, but fundamentally we have to find a durable solution for those five people, and of course the two children.

**Senator BARNETT**—Just to clarify for the record, when were these people removed? We have got the answer that the adverse security assessment was granted between 11 and 23 December, and I think you are taking on notice to let us know exactly when that occurred. At what time were these four people transferred—

**Mr Metcalfe**—The four adults and two children were taken to Christmas Island on 29 December.

**Senator BARNETT**—So it is quite clear that the assessment was done well in advance of the transfer?

**Mr Metcalfe**—Absolutely. We did it because we knew what we were doing. Without going through all we have done, there was a careful process of the UNHCR making assessments in relation to the group who had previously not been found to be refugees. There were discussions in relation to resettlement, which were along the lines of where people may have had links to other countries, and there was a proper involvement of the Australian security authorities in relation to people potentially coming to Australia. It was well understood and, indeed, very well planned as to why that particular group of four adults and two children were brought to Christmas Island in circumstances where in fact they would be detained upon arrival in Australia.

**Senator BARNETT**—Mr Metcalfe, you gave us a response just a few moments ago that there was one example where, to your knowledge, this had occurred before.

**Mr Metcalfe**—Yes.

**Senator BARNETT**—But in that example I understand that you mentioned that the person was on Nauru. Had that person been given an adverse security assessment prior to that person entering Australian territory?

**Mr Metcalfe**—Yes, Senator, and indeed they had been given that adverse assessment quite a long period prior to the coming to Australia. I recall Senator Vanstone was minister at the time. Ultimately it was decided by government that the only proper way to manage that particular case was for that person to come to Australia, and indeed that person came to mainland Australia.

**Senator BARNETT**—All right, and you will give us further and better particulars on that on notice—thank you.

**Senator HUMPHRIES**—I will go back to the health checks that DIAC was responsible for conducting. Did you have access to the people on board the *Oceanic Viking* for the purposes of those health checks before they left the vessel?

**Mr Metcalfe**—No. Our role on the vessel, as we have explained previously, was largely about working with the people and explaining the circumstances that would need to occur following their disembarkation. From memory, there was a customs medical officer on board the vessel who was involved in some of the issues including the fact that there had been a sick child on the vessel, for example. But for those people who ultimately came to Australia, the medical processing occurred after decisions were taken in principle that they would come to Australia, and then, as with all of our processing, the medical checks occurred.

**Senator HUMPHRIES**—Was DIAC involved in that processing of their health?

**Ms Keski-Nummi**—The health screening is done by IOM. IOM has a facility and a presence in Tanjung Pinang and they undertook the health screening.

**Senator HUMPHRIES**—So DIAC did not assess the health status of any of these people?

**Ms Keski-Nummi**—Yes, they do inasmuch as the health screening was undertaken by IOM but then the results were sent to our health assessment service in Sydney. They examined the reports and then provided the final approvals.

**Mr Metcalfe**—It is perfectly routine. That is just the way it happens every—

**Senator HUMPHRIES**—To be clear here, we would normally not take responsibility for anybody who was in Indonesia who was seeking to come to Australia as a refugee and who was found to be a security risk. In those circumstances we would not be taking responsibility for transferring these people to Australia.

**Mr Metcalfe**—That is correct.

**Senator HUMPHRIES**—Special arrangements—

**Mr Metcalfe**—It was because of the requirement that all of the 78 people leave Indonesia that this particular arrangement that the minister has described was put into effect. Ordinarily, the answer is no, we do not bring people here who may be subject to an adverse security assessment.

**Senator HUMPHRIES**—Can you guarantee the committee that the circumstances of this arrangement, which necessitated us taking responsibility for at least some of the people on board this boat, might not be replicated when it comes to finalising the situation of the 255 people on board the boat at Merak? Has the apparent involvement of the Australian government in the interception of that boat on its way to Australian waters created the circumstances again where we might be taking responsibility for people we otherwise would not have assumed responsibility for?

**Mr Metcalfe**—I think they are quite a different set of circumstances. You allude to the fact that obviously many of these people are seeking to come to Australia and some are intercepted. The *Oceanic Viking* of course related to a group of people, some of whom were refugees, and all of whom turned out to be refugees, who were on an Australian vessel which was able to sail to Indonesia and return them from whence they had come. That was a particular set of circumstances.

The Merak boat has clearly been intercepted by Indonesian authorities in Indonesian waters and is detained at an Indonesian port. The hope and expectation is that the group would do what appears sensible in that they would disembark the vessel, move into care arrangements by Indonesian immigration officials facilitated by IOM, access UNHCR processes and, if they are refugees, then be available for resettlement in Western countries, as is the norm. If they are not refugees then they should return home to continue their lives back in Sri Lanka.

**Senator HUMPHRIES**—Were these circumstances created because the *Oceanic Viking* was an Australian government owned vessel or could those circumstances be replicated if an Australian owned merchant vessel were to pick up refugees in a similar—

**Senator Chris Evans**—We have been perfectly clear about this and I think you would understand. I think that in fact the Howard government had to deal with a situation once where people refused to disembark a naval vessel—and perhaps Mr Hughes or someone else could help with the details. These people were rescued at sea. They were on an Australian customs vessel. We had an agreement with the Indonesian government to take them back to Indonesia and we entered into an agreement as to how that process would be handled. They were refusing to disembark the vessel. So there was a particular set of circumstances that applied that were unusual, and we had to deal with that situation. I do not think it should be seen as a precedent or having a broader application. This was about the management of a

particularly difficult situation and that is how the matter has been handled in a way that is known to all.

**Mr Metcalfe**—I think it is fair to say, Senator, that ultimately we are dealing with people—people with hopes and expectations, some of whom have paid money to people smugglers and many of whom have left some very difficult circumstances. Overwhelmingly we are dealing with people who are refugees and in need of international protection. That does mean that you are not able to order people around or tell them to do things and expect that they will simply comply. As I explained earlier, a lot of the work that my officers and others did was about winning the trust and confidence of the group that Australia would treat them in a decent and proper Australian manner. We had seen circumstances in the past where, similarly, people have refused to leave Australian vessels. It can be a very difficult situation for all involved. I am pleased that this was able to be resolved with proper dignity for all involved.

**Senator HUMPHRIES**—Minister, when you were asked in the Senate some time ago—or perhaps it was outside by the media—how long it would take to resolve this matter you said that it was a difficult matter and would take some time to resolve. I accept that answer. I am talking about the Tamils that are a security concern, and the two children—I take the point. You also have a policy of opposing indefinite detention. At what point is it reasonable for the Senate or its committees to come back to you and demand to know when the matter is going to be resolved?

**Senator Chris Evans**—I am not sure that you would ‘demand’; Senator, I am sure that you would ask in a polite and courteous way. I have been perfectly clear to people about this. It is a difficult situation. We will be using our best endeavours to find a solution for these people that does not involve them moving to Australia, because they have failed their security assessment. I do not underestimate the difficulty of it. We have set about dealing with that. We do not support indefinite detention. I do not think the Liberal Party supports indefinite detention any longer, although it is not clear to me that there has been a policy statement made recently. I would be interested to hear. It is also the case that under this government the incidence of long-term detention has been greatly reduced and the number of persons who have been in long-term detention is a very small number now compared with when we came to office. It is undesirable to have people in long-term detention. The department and I will be doing everything we can to find a solution for these people. I do not underestimate the difficulty and I would not be so foolish as to hazard a guess as to how and when we resolve this. It is something we take seriously and we are setting about the task.

**Senator HUMPHRIES**—I have one more question. You said that arrangements have been made for the resettlement of the 78 minus four in a number of countries.

**Senator Chris Evans**—Minus six. There are the two kids.

**Senator HUMPHRIES**—Can you give us a list of the countries to which they are being resettled?

**Mr Hughes**—Twenty-eight have gone to the United States, 13 to Canada, three to Norway, 13 to New Zealand and 15 to Australia. That does not include the people who are temporarily at Christmas Island.

**Senator HUMPHRIES**—Would I be right in saying that from a batch of arrivals—IMAs—that would be an unusually large proportion settled in countries other than Australia?

**Senator Chris Evans**—That is right. I think during the period of the Howard government we took about one-third of the total. So if we took 15 or 21, whichever you like, it is a smaller proportion than what we have resettled traditionally out of Indonesia.

**Mr Hughes**—That is correct. Australia has historically been a significant resettler out of Indonesia but so also has the United States, Canada, New Zealand and the Nordic countries.

**Senator HUMPHRIES**—If you could get those figures that would be great, thanks.

**Senator BARNETT**—I would like to follow up on Senator Humphries's question about those matters. With regard to those with an adverse assessment, we know they are on Christmas Island. Can you tell us exactly where they are in the general detention population? Are they at Phosphate Hill, or the north-west construction camp?

**Mr Metcalfe**—The single men are in North West Point. The family group is in an alternate place of detention on the island appropriate for a family. They are not within the confines of a formal immigration detention centre. That is consistent with government policy—both the previous government and this government.

**Senator BARNETT**—Are there any special arrangements that apply to them in terms of security or other matters?

**Mr Metcalfe**—I would not want to go into operational details but certainly care is being taken in relation to them. We are also conscious that we have a couple of young children that we need to ensure are provided proper facilities as well.

**Senator BARNETT**—You are confident that appropriate security arrangements have been made, particularly for the other individual?

**Mr Metcalfe**—Yes, I am.

**Senator BARNETT**—Did you say that the family is at the construction camp site?

**Mr Metcalfe**—I said that the three men were in North West Point. I have been corrected; they are at Phosphate Hill detention centre and the family is in that vicinity but not within the detention centre.

**Senator BARNETT**—They are not at the construction camp site?

**Mr Metcalfe**—The family is but I would really rather not go into more detail than that.

**Senator BARNETT**—Thank you. Can you give us an estimate of how long it is going to take before a decision is made with regard to their future?

**Senator Chris Evans**—I just explained to Senator Humphries in response to his questions: the answer is no but we are working on it.

**Senator BARNETT**—Do you think you will be weeks or months?

**Senator Chris Evans**—I do not know that we should repeat evidence; it wastes the time of the committee. I just had a fairly lengthy discussion with Senator Humphries about it but we can go through it again if you like.

**Senator HANSON-YOUNG**—I have a question in relation to re-settlement numbers—not in relation to the *Oceanic Viking* but overall—from both Indonesia and Malaysia, that is, people who are found by the UNHCR to be refugees and then we have worked through the process of resettlement. How many people in 2008-09 and then to date in the 2009-10 year?

**Ms Keski-Nummi**—In 2008-09 we accepted for resettlement some 120 people from Indonesia. In terms of Malaysia we have a substantial program of resettlement of particularly Karen and Chin Burmese who are in detention as well as a small number of Rohingya Burmese. But the exact numbers I do not have to hand. I will take that on notice. I do not have the breakdown of all nationalities for the year to date, but again I can take that on notice.

**Senator Chris Evans**—I would like to make a general point, and there will be some further development on this. As part of the Bali process and the issues of burden sharing, this government is certainly aware that part of the contribution we need to make is to help those countries who are helping stop irregular movement with the settlement. I think we are the second or third largest resettlement country. We take a lot of the responsibility around the world. I have made it clear that I think we ought to play more of a role in our region and obviously support the efforts of those countries that are looking to help combat people smuggling and irregular movement. As part of that approach we are focusing on our region a bit more. It does not mean to say that we will not meet our responsibilities more broadly. To be fair to the previous government they had also started to take some from Indonesia as part of that sort of burden sharing. Last year when we took some people from Indonesia, we also got cooperation from New Zealand in burden sharing. That is part of the whole ‘let’s get our act together regionally’. Part of that obviously is resettlement countries doing their bit.

**Senator HANSON-YOUNG**—In terms of the Bali process—I know we were talking about this earlier—there has been no solid agreement to say Australia will take x amount, New Zealand will take x amount?

**Ms Keski-Nummi**—No. In terms of resettlement from across the region and elsewhere, we would normally indicate our resettlement program for the coming year through UNHCR and in discussions with UNHCR about the program. We work through, particularly, the resettlement office in Geneva and the Working Group on Resettlement in terms of burden sharing in our resettlement program, as opposed to the programs of New Zealand, Canada, the US or the Nordic countries, who are the largest resettlement countries.

**Senator HANSON-YOUNG**—Sure, but I am particularly interested in the resettlement of refugees from Malaysia and Indonesia, because we know that is where people get desperate and pay people-smugglers and jump on boats.

**Senator Chris Evans**—Sure. Ms Keski-Nummi can give you the detail, but certainly, since I have been minister, we have had discussions with the UNHCR and the Indonesians regarding assisting in dealing with their protracted caseload, recognising that there are people in Indonesia who have been stuck there for many years in need of resettlement. We undertook to, if you like, make inroads into that caseload, and I think the UNHCR provided some information on those who had been there for more than five years.

**Ms Keski-Nummi**—That is right, yes.

**Senator Chris Evans**—Ms Keski-Nummi can take you through the detail—but as you might recall there were the Lombok group and others, people who have been stuck there a long time in need of a solution.

**Senator HANSON-YOUNG**—This might be more relevant for outcome 4, so let me know. When we start going through the process of assessing somebody's claim once they are on Christmas Island, are we keeping a record of the people who have already been found to be refugees by the UNHCR?

**Ms Keski-Nummi**—We consult closely with UNHCR in relation to such people, whether they have registered them or have undertaken refugee status determination of them.

**Senator HANSON-YOUNG**—Do you keep that data?

**Ms Keski-Nummi**—Yes, we do.

**Senator HANSON-YOUNG**—So are you able to tell me the number of people who are currently held on Christmas Island who have already been found to be refugees by the UNHCR?

**Ms Keski-Nummi**—Yes.

**Senator HANSON-YOUNG**—Could you take that on notice?

**Ms Keski-Nummi**—Yes.

**Senator HANSON-YOUNG**—Thank you. That is it from me.

**Ms Keski-Nummi**—Senator, you asked about funding to the Bali process—\$700,000 this year. It is for a series of workshops: one is the immigration liaison officer network; one that was discussed in Perth, the ad-hoc group meeting; and there are a couple of workshops on the immigration aspects of airport security and seaport security—

**Senator HANSON-YOUNG**—Is that in relation to—sorry to interrupt; it is just so I can be very clear about that—the airline liaison officers?

**Ms Keski-Nummi**—No, it is not.

**Senator HANSON-YOUNG**—That is separate?

**Ms Keski-Nummi**—That is quite a separate thing. And then there is some funding for the development of an evidence based project in the region in terms of population movements—how people are moving and where they are transiting. That is still to kick off, but there is some funding set aside for that.

In relation to IOM, while I have been provided with some information, I think I would rather take it on notice for the sake of accuracy—to get you the accurate statistics on that.

**Senator HANSON-YOUNG**—Sure. That is fine. Thank you.

**CHAIR**—Senator Humphries, you are just going to finish now in outcome 2?

**Senator HUMPHRIES**—Yes. I just had a few general questions about humanitarian visa claims processed. How many refugee claims have been assessed by the department during 2009-10 on Christmas Island?

**Ms Keski-Nummi**—2009-10?

**Senator HUMPHRIES**—Yes, year to date.

**Ms Keski-Nummi**—Senator, could I take that on notice? I have got a number of different statistics here but, again, I would like to take it on notice so I can get the accurate breakdown that you have asked for.

**Senator HUMPHRIES**—That would be fine, but when you do I would appreciate information on not only how many claims have been dealt with but also, if possible, the source countries of those who were processed.

**Ms Keski-Nummi**—Yes, sure.

**Senator HUMPHRIES**—I was interested as well in what happens to those people whose claims are refused, putting aside the six that we were talking about just a moment ago. How many people have had their claims refused and how many have been sent elsewhere as a result of their claims being refused?

**Ms Keski-Nummi**—Yes.

**Senator Chris Evans**—We can give you those figures, Senator. There have been a number of voluntary returns and there have been a number of compulsory, or involuntary, returns. But we can get you the statistics on those.

**Senator HUMPHRIES**—That would be great, thank you very much. In relation to any of those refusals, have there been any appeals for merit review?

**Ms Keski-Nummi**—There have been some people who have gone through merit review.

**Senator HUMPHRIES**—Perhaps you could indicate in those figures how many have, for those that have been undertaken, and whether any of them have been successful.

**Ms Keski-Nummi**—There have been a handful that have been successful, but again, I will take that on notice.

**Senator HUMPHRIES**—I am interested as well in the cost of undertaking merit review. Could you give us an idea of the cost associated with that. I assume we supply access to advice for people who seek merit review.

**Ms Keski-Nummi**—That is correct.

**Senator HUMPHRIES**—Of all the claims assessed by the department on Christmas Island this year, what proportion referred to ASIO for security assessment? Could you take it on notice as well.

**Senator Chris Evans**—Perhaps one of the officers might explain the process for that. The persons who are referred are determined by ASIO's guidelines—

**Ms Keski-Nummi**—Yes, ASIO referred all of them. But Bob is probably the person best—

**Mr Correll**—ASIO will form a view whether they wish to interview clients on Christmas Island and that is a view they will form based on looking at the initial entry interview information and other information that may be available to them. So they form the view, rather than it being the case that the department is making referrals to them.

**Senator HUMPHRIES**—If ASIO advises that a person has a security concern associated with them, is the merit review process available to them in respect of that matter?

**Ms Keski-Nummi**—No.

**Senator HUMPHRIES**—On what grounds would a referral not be made by the department to ASIO for a security assessment?

**Mr Correll**—In no circumstances. In all cases we are looking at a security assessment from ASIO. The issue will be the extent to which ASIO requires more detailed interviewing and investigation. Each security assessment would be treated by ASIO on a case-by-case basis.

**Senator HUMPHRIES**—I would appreciate again getting that information on notice.

**Senator Chris Evans**—I just want to make the point that Immigration do not determine who is referred or assessed by ASIO—it is their decision.

**Senator HUMPHRIES**—It is ASIO's decision?

**Senator Chris Evans**—Yes. They run their risk analysis—

**Mr Correll**—Yes.

**Senator HUMPHRIES**—We were told yesterday that in the last financial year—and I think these figures are right—we had 1,039 IMAs and ASIO only assessed 207 of them. Are you saying that that is because ASIO determines the numbers that have some sort of potential security concern associated with them?

**Mr Metcalfe**—We will need to check what ASIO said. There are a number of interpretations from what you said then. ASIO has full access to the entire caseload of people arriving on Christmas Island. It is their guidelines and operational decision-making as to how they wish to make any assessments, whether that requires interviews or other aspects, and obviously there have been a small number of cases identified as being of concern to them. But we will have a look at what ASIO has said and we will come back to you on notice in relation to your question.

**Senator HUMPHRIES**—We were told yesterday that there were 11 adverse assessments out of 988 ASIO checks this financial year to date—but you can confirm that—

**Senator Chris Evans**—Sorry, Senator. Maybe the officers at the table know. ASIO's evidence was not all in relation to people on Christmas Island though.

**Mr Allen**—I believe yesterday ASIO were seeking to provide you with a total figure to the end of December 2009 for adverse assessments for all applicants. They have in fact subsequently corrected the record to date. There were 13 adverse assessments in total, of which only one is for an IMA on Christmas Island and four relate to the *Oceanic Viking*.

**Senator Chris Evans**—So the five we have been discussing are the totality of the adverse security assessments of those people who have been taken to Christmas Island and assessed so far. I think the figure of 11 or 13 was a total of their activity—

**Senator HUMPHRIES**—That includes offshore assessments presumably.

**Senator Chris Evans**—Yes.

**Senator HUMPHRIES**—When did ASIO correct the record? They have advised the committee, have they, that the record was corrected?

**Mr Allen**—I am not quite sure whether they have corrected it formally with you, but they have at least revised the figures that have been provided to the media.

**Senator HUMPHRIES**—Well, I asked the question. I have not had a revision of the answer I was given.

**Mr Allen**—I cannot say more than that about what they have done.

**Senator HUMPHRIES**—I am glad the media have been told.

**Mr Metcalfe**—It would certainly be my hope and expectation that ASIO would be in contact with the committee secretary if there is a clarification. We might just double-check that.

**Senator HUMPHRIES**—I hope so too, Mr Metcalfe.

**Senator Chris Evans**—The interpretation in the media concerned us because that was not our understanding. I think the clarification confirms our understanding, which was that we had five. The figures of 11 and 13 floating around were for a broader group analysed in their activity. I think you are right. I will remind our officers, if ASIO has not done so already, that it would be appropriate to notify the committee.

**Senator HUMPHRIES**—Indeed it would.

**Senator BARNETT**—I have two further matters to raise with the department. I want to highlight again my point before lunch about getting an update on the answer to question No. 50, regarding the border management details of the number and nationality of all the people who have come in on irregular maritime arrival boats since 1 July 2008. I want to check if that has been done to date.

**Mr Correll**—We are working on it at present. We will have it for you shortly.

**Senator BARNETT**—Thank you so much. I want to respond to the minister and the secretary. I have sought advice from the Clerk of the Senate with respect to the refusal to disclose the meeting dates of the Border Protection Committee of cabinet, which is chaired by the minister, and the entitlement or otherwise of the secretary of the department to refuse to disclose the dates of the meetings at which you were in attendance at such cabinet meetings. I want to table the advice I have received.

I would like you to take on notice or provide advice to the committee the reasons why you would refuse such a request. I realise I have asked the minister, but I need to formally ask Mr Metcalfe to advise the committee of the dates of those meetings, and I do so now. If you refuse, we need to know the reasons why. You cannot just say 'cabinet-in-confidence'. That is not good enough, according to the advice. There needs to be public interest immunity and the detail of that needs to be set out. All the details are set out in this two-page letter from Rosemary Laing, the Senate Clerk.

I was in a hearing last night where Senator Brandis asked questions of the secretary of the Attorney-General's Department and they did provide the dates of meetings of cabinet for drafted cabinet submissions that went forward to cabinet. This letter also refers to the courts and says that recent judgments have supported the narrower view that only documents which reveal the decisions or deliberations of cabinet are immune. I am hoping you will give this

serious consideration and then come back to the committee with the reasons why you refuse or if not, then hopefully and better still, provide the dates of those meetings of the Border Protection Committee of cabinet. I table the letter.

**Mr Metcalfe**—Thank you, Senator. I will certainly read the Clerk's advice with great interest, take that on notice and seek appropriate guidance from the Department of Prime Minister and Cabinet, and provide a response.

**Senator BARNETT**—Yes, and obviously I would like a response to the committee as soon as possible and convenient in the course of our deliberations today.

**Mr Metcalfe**—I am not sure that I would have a response today. I certainly would need to seek guidance, as I have previously, from the Department of Prime Minister and Cabinet. We will contact them now and see if that is possible.

**Senator BARNETT**—Sure. Mr Metcalfe, you need to provide reasons why you do not answer that question, and either you or the minister needs to provide those reasons. I am happy to delay it so you have time to consider the reasons for your refusal to answer the question. This is a matter that needs to be dealt with by this committee.

**Senator Chris Evans**—Senator, you can do what you like, but we will read the advice of the Clerk of the Senate—it is advice to you from the Clerk of the Senate—and the government will make a decision about its position. The secretary has indicated he will seek advice from Prime Minister and Cabinet. My earlier advice to you was that I would take on notice whether or not we provided the information you were seeking from us. My recollection was that we did not provide that level of detail about cabinet processes, but I will also seek advice on that. I am indicating to you that we will take that matter on notice and we will come back to the committee when we have a considered view, but I would think that is unlikely to be today.

**CHAIR**—Thank you, Minister. Senator Barnett, before you proceed, I just want to make it very clear that this is advice provided to you as a senator; it is not advice provided to the Senate Legal and Constitutional Affairs Legislation Committee. It will be tabled. I just want to be very clear that the Clerk has provided this advice:

I also understand that the stated ground is that the information is cabinet-in-confidence, although I have not yet had the opportunity to consult a transcript of the proceedings and am therefore not certain of the extent to which the minister has explained the nature of the harm to the public interest that could result from the disclosure of the information about the dates of the meetings in question.

The advice also goes on to say that the process under the order of 13 May is for the committee to consider whether or not the grounds that were stated are sufficient and to decide whether or not 'the statement justifies the withholding of the information'. Now, the committee, if you so wish, will meet and discuss and decide on that. The advice goes on to say that, if the committee decides not to report the matter, that does not prevent you as a senator pursuing the matter in your own right. The advice is very clear:

The decision whether you—

Senator Barnett—

or the committee considers the grounds to be sufficient is a decision for you or the committee, as the case may be. In considering these issues in the past, the point has been made that the ground relates only to the disclosure of the deliberations of cabinet (or of a cabinet committee).

So I just want people to be very clear that this is advice to a single senator, not to this committee, and to pursue this matter further may or may not be the decision of this committee, and it may or may not be pursued by Senator Barnett as an individual, but it would need to be done in the Senate chamber.

**Senator Chris Evans**—Thank you, Madam Chair, for that clarification. I have a copy of the letter; I take your point. But, Senator Barnett, I thought I took it on notice to get advice as to the amount of detail that should be provided in relation to these matters. I have tried to be as frank as possible about the operations of the cabinet committee without revealing things I understood we did not normally reveal in terms of the operations of the cabinet. If I did not take it on notice before—I thought I had—I do so now and I will come back to you with a considered response. Obviously, as always, I respect the advice Ms Laing provides and I will take that into consideration as well.

**Mr Metcalfe**—Chair, just to clarify: we can check the record, but I understood Senator Barnett's earlier question to be to the minister, not to me. If there is now a question to me as to whether I attended meetings, that possibly throws up a slightly different perspective and I think that is certainly something I should take on advice and respond on notice to the senator.

**Senator BARNETT**—Thank you very much, Mr Metcalfe and Minister, for your response and your willingness to follow up. Minister, the reason I obtained that advice is because I interpreted your response earlier in the day as a refusal to provide that. If, upon reading the *Hansard*, I was misled or mistaken then so be it. But the reason I got that advice was because I took it as a refusal, rather than taking it on notice. Now that we have clarified the matter I am entirely happy.

**Senator Chris Evans**—Senator, I may not have been clear. I thought I made it clear I was unsure of the precedent on these matters so I would rather get that advice. But if I did not make that clear, that is certainly my response. We will get some advice and I will come back to you.

**Senator BARNETT**—Thank you.

**Mr Metcalfe**—Chair, can I just add to the point we were discussing before?

**CHAIR**—Yes.

**Mr Metcalfe**—We were discussing the issue of the ASIO security assessments and whether or not there had been some confusion in relation to the figure of 11 or the figure of five. It has been drawn to my attention that in the committee, I assume yesterday afternoon or last night—in the *Hansard* L&C55—there was an exchange in which Mr Fricker sought to clarify that particular issue and made it clear that the numbers in relation to regular maritime arrivals were a total of five, of which four were the *Oceanic Viking* group. The remainder of the 11 may come from other cases that come from other aspects of our overall visa caseload. Senator Barnett responded by saying that there was still some slight confusion, and it was asked to be taken on notice. So it would appear that ASIO did seek to clarify the matter last night—and no doubt that led to their corrections of the media reporting this morning, which

presumably had not picked up that clarification—but have taken on notice the issue and will come back to make sure there is no confusion at all.

**CHAIR**—Thank you.

**Senator HUMPHRIES**—Chair, could I clarify one question I asked before, just to be perfectly clear. I asked before about whether in the course of negotiations dealing with the passengers on the *Oceanic Viking* there were any discussions between the Australian and Indonesian governments that brought in the status of the 255 or so Tamils on the boat that was moored at Merak. I believe, Mr Metcalfe, you said that to your knowledge, the knowledge of DIAC, there was no linkage between any of the *Oceanic Viking* issues and the issues for the passengers at Merak. But I did not ask that question of you, Minister. Could you clarify whether you are aware of any discussions or negotiations between the two governments that linked or suggested a linkage between these two issues?

**Senator Chris Evans**—First of all, I make the point that the discussions were led by the department of foreign affairs. But I have no knowledge of there being a linking between the two events. The resolution of the *Oceanic Viking* was treated as a separate matter and I have no knowledge of linking of the two events in terms of the resolution of the *Oceanic Viking*.

**Mr Metcalfe**—Senator, as you know, I am very cautious on these matters because occasionally one does make a mistake. Routinely, in having giving you that response, I will make inquiries as to whether, if there were such conversations involving the department of foreign affairs, one of my officers may have been present. That may then have led to at least some knowledge. I am not aware that there were such conversations, but I will check just to be absolutely sure.

**Senator HUMPHRIES**—Thank you very much.

**CHAIR**—That finishes outcome 2, as far as I can tell.

**Mr Metcalfe**—Chair, if we have finished for the time being with Ms Keski-Nummi, could I just note that in the Australia Day honours she was awarded the Public Service Medal this year for outstanding public service. It is thoroughly well deserved. She is an absolutely first-class public servant and we very much value the work that she does.

**CHAIR**—Thank you, Mr Metcalfe. My diligent secretary here had pointed that out to me. We place on record our congratulations and recognition of your service, Ms Keski-Nummi. It is a very fine achievement to be recognised in such a way nationally. We commend you very much and appreciate your work for the Australian community. Well done.

**Senator Chris Evans**—Can I also add my congratulations and put on the record that Ms Keski-Nummi is a fine representative of the Finnish migration to Australia.

**Ms Keski-Nummi**—All five of us!

**Senator Chris Evans**—They made small but important contributions to the development of the nation, of which hers is probably the most notable!

[5.15 pm]

**CHAIR**—Let us move onto outcome 3. I do not know if we need to swap officers or chairs.

**Mr Metcalfe**—I know that Senator McLucas wanted to ask questions on one matter and our Chief Lawyer needs to be here for that, and I think Senator Trood wanted to ask questions that relate to the *Malu Sara* issue, which can be dealt with under outcome 3 either now or during the course of the questions.

**CHAIR**—For those people who might actually be wondering what outcome 3 is, if they are watching the broadcast via the computer or some other channel, it is:

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.

Senator McLucas, do you want to start with your questions?

**Senator McLUCAS**—Yes, thank you. I know Senator Trood may have some questions along the same line. I wonder, Mr Metcalfe, if you could update the committee from our last discussion at estimates in terms of where we have got to in the mediation process with the families of the victims from the tragedy of the loss of the *Malu Sara*?

**Mr Metcalfe**—I will ask Ms Bicket to provide that update. You will recall that when we discussed this last time, in particular when Senator Trood asked me some questions, we indicated that the department would certainly be doing everything it possibly could to ensure that those matters proceeded promptly. Before I hand over to Ms Bicket, could I just also say that as part of the overall departmental response to the tragedy I took the occasion at the last estimates to formally place on the record our deep sorrow. Following that, I wrote to affected family members and expressed that to them in writing. I am sorry I could not do it in person, but I have done it in writing. We have recently provided a permanent memorial of our two deceased officers in the department in Canberra by naming two of our training rooms, which are adjoining and are usually one room, in memory of our two officers. There was a very moving blessing ceremony. Some of our staff from the Torres Strait came down for that. As far as I know, we have only ever had three officers actually die on active duty. One was tragically killed in an air crash near Bangkok over 20 years ago. These two officers will always be remembered through the many thousands of departmental staff who will actually use these facilities over the years ahead. I will ask Ms Bicket to update you on the compensation matters.

**Ms Bicket**—I think we might have indicated at the last estimates that there were two matters where there was compensation being sought by family members of people who had tragically passed away on the *Malu Sara* when it was lost. The first of those matters related to the family of Valerie Saub. That matter is actually being mediated tomorrow in Queensland. It had originally been scheduled for mediation at the end of November but, with the agreement of the parties, when the Queensland state government agreed to participate in that mediation, it was delayed until tomorrow. For that mediation, again with the consent of the various parties and so forth that are involved, we have Andrew Phillips, who is a senior counsel who specialises in alternative dispute resolution mediating, mediating that particular conference. Of course, I cannot speculate as to what the outcomes of that specific mediation might be tomorrow, but we would also hope that shortly after that we would move into mediation for the second claim as well, which related to family members from Flora Enosa's family. Both families are being represented by the same solicitors. They are ably represented by Maurice

Blackburn and it is certainly an assistance to us to have the same solicitors involved. If there is anything else that I might be able to assist you with, I would be very happy to.

**Senator McLUCAS**—There is another matter that I understand is pending. Has that been lodged with the department yet?

**Ms Bicket**—Another matter in relation to?

**Senator McLUCAS**—Compensation.

**Ms Bicket**—Compensation? Not that I am aware of. There are the two matters that I am aware of. We do have a Comcare civil prosecution that we are pursuing in cooperation with Comcare. There may be, in some other matters, things that are going on with different parties that we are not a party to. To the best of my knowledge they are the only matters that we are involved with.

**Senator McLUCAS**—I am sorry. I confused it with the Comcare matter. Where is the mediation occurring?

**Ms Bicket**—I do not have that information. I presume it is in Brisbane. I will double-check that. I will take it on notice and get back to you this evening.

**Senator McLUCAS**—In terms of Ms Saub's and Ms Enosa's families being present at the mediation, is the department providing any assistance in that respect?

**Ms Bicket**—I am not aware that we have had any requests of that nature. If such a request had been made then certainly we would entertain it. But, as I said, I do not believe we have had any requests of that nature.

**Senator McLUCAS**—Thank you. I appreciate the update.

**Senator Chris Evans**—Senator Trood has just made a dramatic entrance, Madam Chair. I suspect he has questions on the same subject, on the *Malu Sara*.

**Senator TROOD**—I do have some questions on that. I understand that Mr Metcalfe may have made a few remarks on that subject.

**Mr Metcalfe**—Just in response to some questions to Senator McLucas we have now on the record talked about action I have taken since the last estimates in terms of a permanent memorial and Ms Bicket has provided an update in relation to the compensation matters.

**Senator TROOD**—I will get a briefing from Senator McLucas.

**Mr Metcalfe**—In short, the minister personally indicated and I indicated that we would do everything we possibly could to ensure that artificial claims around the statute of limitations or various other issues would be swept away, and that has certainly occurred. The minister has been active in that respect, as have I. Mediation in relation to the first compensation matter is actually happening tomorrow. We have been successful in ensuring that the Queensland authorities as well as the Commonwealth authorities are working together on that matter to try to speed the process of mediation.

**Senator TROOD**—Thank you, Mr Metcalfe. I am sorry you have had to repeat those remarks just for my benefit. I am grateful to you. I might have a word to Senator McLucas before I ask you some questions.

**Senator HUMPHRIES**—I want to ask about the budget for compliance activities in the department in this area.

**Mr Metcalfe**—Just to clarify, we are on border management. You have used the word ‘compliance’. Program 4.1 covers visa compliance and status resolution. By ‘budget’ do you mean border management or visa compliance?

**Senator HUMPHRIES**—I am not really sure what I mean. I will find out for you.

**Mr Metcalfe**—If I can assist, a long-term term of art in immigration around compliance has largely meant activity relating to visa overstayers or integrity risks to the program, and that is dealt with under program 4. Program 3, border management, deals with people-smuggling issues and associated matters more relating to border management than post-arrival onshore management of issues.

**Senator HUMPHRIES**—I think you are probably right; I am probably asking this in the wrong area. I will put these questions on notice if we have already covered them in another outcome. I have a couple of other areas. Visa cancellations and refusals—

**Mr Metcalfe**—That is under program 4 as well, Senator.

**Senator HUMPHRIES**—In that case, that is probably all I need to ask on outcome 3.

**Mr Metcalfe**—Senator Barnett did flag earlier just an update in relation to boat arrivals and that sort of thing. That is something we are working on. We will provide data to you as soon as we can.

**Senator TROOD**—Mr Metcalfe, my inquiries were around these matters which you have mentioned and which you have been good enough to answer questions about. I obviously had a question about the progress of mediation, and I am grateful for the advice that one case is proceeding and is taking place tomorrow. I understand from my colleague that is taking place in Queensland, but you are not sure, Ms Bicket, where that is happening. My concern is that it be held in a place which is readily accessible to the claimants and that they not be put at financial risk or disadvantage by the need to attend mediation. If you can provide me with that assurance I would be grateful. Is that the case?

**Ms Bicket**—As I said to Senator McLucas, I am not exactly sure about whether it is occurring in Brisbane, Cairns or the Torres Strait. I will have to take the exact details on notice. I said to Senator McLucas that I do not believe that we had actually been asked to provide any assistance. But of course if we were asked then it would be a matter that we would look at. But I will take that on notice and certainly try and get back to you this evening if I can.

**Senator TROOD**—In relation to the second mediation, what is the position there?

**Ms Bicket**—My understanding in relation to the second mediation is that we would hope that, once this mediation has occurred, that one could happen shortly thereafter. I understand from our solicitors that they are waiting on some further information in relation to Mr Joe’s claims and so forth. But, as I said, we hope to take that forward as soon as this first one has taken place.

**Senator TROOD**—Do we know whether we are talking weeks or months here?

**Ms Bicket**—We would be talking weeks. My advice is that we expect it to be held shortly after the current mediation.

**Senator Chris Evans**—Both the secretary and I have been very keen to resolve the matter and honour the assurances we gave to you. I have written to various ministers and they have been very cooperative. So there is a whole-of-government commitment to fair resolution quickly, and it is going pretty well.

**Senator TROOD**—I am very grateful for the cooperation that you and the department have given to resolve these matters. It has now been quite a long time, of course. We are up to four years since the events. As I said on the last occasion we were discussing this matter, there are matters of financial distress that need to be attended to. I am grateful that we have actually made what seems to be quite significant progress from the last occasion we were discussing these matters. I was assured and reassured by what had happened last time, and this is an encouraging development. Leaving those mediation matters to one side, you said, Mr Metcalfe, that the matters that might prove to be an obstruction because of statutes of limitations have also been waived. On the last occasion you gave me an assurance that you, the department and the minister would do everything possible to ensure that artificial barriers to claiming compensation would not be erected. Do I take it from your remarks that the Commonwealth or the Attorney-General's Department has agreed not to insist on those statutes of limitations, where they apply.

**Mr Metcalfe**—My understanding was that it was a discretion for the Attorney-General in relation to that matter. It was somewhat ironic, in that the statute of limitations arose from the timing of the event, whereas of course the full knowledge of what occurred only became apparent with the coroner's report around a year ago. The minister wrote to the Attorney and I spoke and wrote to the secretary of his department. As a result, the Attorney agreed to waive that, which has allowed this mediation process to continue.

The other thing we were keen to ensure was, given there are multiple agencies involved in this matter—both Commonwealth and Queensland—that the resolution of the compensation matter be done expeditiously and in a unified manner rather than the plaintiffs having to deal with multiple agencies. I think we have also been successful in ensuring that government has come together. We are working closely with the solicitors for the bereaved to ensure that their handling of the matter is as expeditious and as straightforward as possible. I think that is a fair summary.

**Senator TROOD**—That is encouraging. Since the last time we discussed this, Comcare has completed its report, as I understand it. At least some of the conclusions that Comcare reached are available but I think I am right in saying that the Comcare report itself has not been released. Is that correct?

**Ms Bicket**—That is not my understanding. The final report, I understood, was published on 17 December last year. Indeed, Comcare commenced civil prosecution proceedings against the department on 24 December.

**Senator TROOD**—I am certainly aware of the Comcare report's findings, at least in part, and that it intends to begin prosecutions against the department. The point I wanted to pick up on is the finding, apparently, that no proceedings could be issued against Mr Chaston.

**Ms Bicket**—That is a matter you would have to take up with Comcare. It is not something I am competent to comment upon.

**Senator TROOD**—I see. The findings of the Comcare report are that proceedings should be launched against the department and the boat builder. Proceedings have begun in both cases—on 24th. Is that correct?

**Ms Bicket**—That is correct. My understanding is that proceedings were commenced against the Commonwealth on 24 December and proceedings were commenced against Subsee Explorer, who were the boat builders, on 23 December last year.

**Senator Chris Evans**—Does this confirm my position as the most litigated against person in Australia?

**Mr Metcalfe**—No, it is the tax commissioner. You have lost your No. 1 spot, I am sorry.

**Senator Chris Evans**—They did not tell me that when I took the job. Then I started looking at the court lists! I was there all the time.

**Mr Metcalfe**—It is probably more correct that you ask Comcare directly. The understanding I have is that on the issue of whether Mr Chaston had breached his duties as an employee under the relevant occupational health and safety legislation, Comcare concluded that there was not enough admissible evidence on which to build a successful prosecution. That is entirely a matter for Comcare. You may wish to talk with them about how they reached that conclusion.

**Senator TROOD**—It strikes me as a curious conclusion in the circumstances. They do not need to rely just on that evidence to prosecute him. But you are right; you are clearly not the agency that can explain how they have reached that particular view, so I will not press the matter. Have you made a decision about how you are going to respond to the proceedings that have been launched against the department?

**Mr Metcalfe**—It is pretty clear that there was an egregious breach of occupational health and safety standards. Depending on how the litigation progresses it is open for a civil penalty to be imposed on the department. As I have said in earlier evidence to the committee, we have done a huge amount to ensure that such a tragedy could never occur. First and foremost, we do not any longer operate immigration response vessels in the Torres Strait, or anywhere else for that matter. But we have undertaken a very substantial series of remedial actions to ensure our compliance with occupational health and safety obligations are appropriately managed.

While I certainly accept that the department very properly deserves sanctioning for what occurred going on five years ago, it should be taken into account that since that time we have done a great deal to ensure that there would not be a repeat. We have indeed been a regular finalist in Comcare's annual awards as an organisation that has done a great deal to promote proper occupational health and safety amongst its employees.

**Ms Bicket**—I might also add that we are still awaiting some further advice from our senior counsel on the matter before finalising the position that we will take to a directions hearing which will occur on 23 February in relation to the matter. But as the secretary indicated, there is no doubt that there were deficiencies in our practices here. The question that remains is working out how we finalise that matter with Comcare.

**Senator TROOD**—Where are the proceedings being—

**Ms Bicket**—In relation to the compensation matters or the—

**Senator TROOD**—No, against the department?

**Ms Bicket**—Against the department?

**Mr Metcalfe**—It is in the Federal Court. We are not sure which registry.

**Ms Bicket**—I do not know which registry, I am afraid. It is not included in my notes. I can just update you on the mediation which is occurring tomorrow. I am advised that it is happening in Cairns.

**Senator TROOD**—I see.

**Mr Metcalfe**—Just to give some weight to what I said before; Mr Correll has just pointed out to me that our workers compensation premium rate, which is a percentage of our overall payroll for 2009-10, is 1.17 per cent. It is a 22 per cent reduction from the previous financial year and that now places us under the premium rate for organisations under the Comcare scheme. It is the first time that has happened for some time. We obviously operate in a number of significant environments; we are not only a major office-based organisation but we have staff all over the world and all around Australia. One of the outcomes of this tragedy has been to absolutely reinforce how important proper occupational health and safety is within the department.

**Senator TROOD**—You might find that your premium is going to spike as a result of these proceedings for a short time, as commendable a record as that may be.

**Mr Metcalfe**—There is an issue of a premium as opposed to our insurance cover as well. But yes, certainly there will be compensation payable.

**Senator TROOD**—There is one other final matter I wanted to raise on this issue. In December I think you put out a statement which referred to the fact that you had been in contact with the families. You said in the statement:

... I have recently written personally to the families of those who were lost to say sorry and again extend our sympathy to them.

I think those are your words. Is that the first time you have written to the families on this matter?

**Mr Metcalfe**—It was the first time that I had personally written to the families. We had been in contact with the families through various levels of the department, including through our regional manager in the Torres Strait, and of course there had been a lot of contact immediately following the tragedy as we arranged memorial services. But following the coroner's report we obviously wanted to ensure that a whole range of things happened.

As I said at the previous estimates, although the department had publicly said on many occasions how much we regretted the tragedy—and I had given that evidence to this committee both in 2005 and subsequently—it was not until I went to the Torres Strait last year and had discussions with a number of people, including the editor of the Torres Strait newspaper, that it was indicated to me how important a formal apology and the use of the word sorry was in this particular set of circumstances. I regret that that was not something I

had been focused on until that time. So I took the opportunity—through a media interview, my appearance at the last estimates and then, as soon as I could, in writing to the family members directly involved—to express my deep sorrow.

As I outlined to Senator McLucas earlier, we have also done a lot to work with our own staff, both in the Torres Strait and through the dedication and blessing of a training suite in Canberra, to ensure a long-term memorial to our officers who died and to also remember the other three people who were on the vessel that night.

**Senator TROOD**—The only thing I say, Mr Metcalfe, is that you have indeed before this committee shown great contrition about this matter, and I well recall that on the last occasion we were here you did say sorry and reflected your recent trip to the Torres Strait. I suppose what I would have said is that it perhaps would have been preferable if you had written relatively quickly after the last meeting, in October, to the families. Maybe you did that—

**Mr Metcalfe**—Yes, I did—

**Senator TROOD**—The impression I have from your statement is that it took some months before that—

**Mr Metcalfe**—No, Senator. Because the sequence of my visit to the Torres Strait, the memorial service on the 4th anniversary on 15 October, my discussions with Mr Bousen from *Torres News* and my appearance before this committee were actually within the space of a few days. I then certainly ensured that within a week or two following that, as soon as a letter was able to be drafted—particularly to ensure that we had the right contact details for family members—I wrote at that stage. The reason that I referred to it in a public statement in December was, I think, that that would have been on the day that the Comcare report was released. I issued a press release noting that that had been released and indicating what I had done, but I had actually done that a couple of months previously and, indeed, as we discussed earlier, both the minister and I wrote quite promptly after that estimates hearing to the Attorney-General and the secretary of the department, which resulted in the Attorney making a decision on 13 November relating to waiving the time limitation to Defence through the compensation claim. So we did act promptly and, if there was a week or two delay, it was to ensure that my staff on Thursday Island had the right contact details and that we were appropriately contacting the family members concerned.

**Senator TROOD**—That clarifies that. I am grateful that that occurred promptly. I think it was the appropriate thing to do, and I think the families welcomed both your public remarks at this committee and I am sure the private correspondence that they received from you.

Ms Bicket, have there been any other claims for compensation—apart from the two that you are dealing with?

**Ms Bicket**—In relation to general compensation or in relation to the *Malu Sara*?

**Senator TROOD**—In relation to the *Malu Sara*.

**Ms Bicket**—No, just the two. Perhaps I could add, just to add to your questions that I have perhaps taken on notice. In relation to the mediation, I am advised that Mr Saub, the actual plaintiff in that, will be attending the mediation in Cairns; but we have not had any request for

financial assistance for him to attend. In relation to the Comcare matter, Comcare have lodged the matter through the Brisbane registry of the Federal Court.

**Senator BARNETT**—I would like to get an update on the movement alert list. Does that come under outcome 3?

**Mr Metcalfe**—Yes, it does.

**Senator BARNETT**—If I could, Chair. Apologies for the delay in advising the committee accordingly, but we are still on outcome 3 and I had some questions regarding Audit report No. 35 of 2008-09, the movement alert list and I am seeking an update to the department's response to that audit report. I am a member of the Joint Committee of Public Accounts and Audit and have a lot of faith and confidence in the Auditor-General's reports. They have named five main areas for action and the department has responded to those, either in full or in part, in writing. I would like an update in terms of the movement alert list and the department's response to that in terms of its progress.

**Mr Metcalfe**—You are right: it is an absolutely critical part of our overall infrastructure. I will ask Mr Allen, who is the acting head of the Border Security Division, to provide a response to you.

**Mr Allen**—I will go through the recommendations one by one to give you an update on what has happened since the JCPAA hearing. As we mentioned at the hearing, the new version of central MAL is operating in all of our systems and all of our MAL processing is occurring centrally in the Border Operations Centre. Since that hearing we have also established a MAL audit report steering group to oversee the changes that we are making to our MAL operations as a result of the ANAO audit and we are about to commence with a malpractice management group, which is to be established this year and which will provide us with an oversight process for the use of MAL within the department. That group will be instrumental in helping to develop the plan for the population and maintenance of MAL.

In terms of ANAO recommendation 2, the ANAO recommended that DIAC clarify the circumstances in which it can properly record Australian citizens. You will recall, Senator, that we had completed an initial review of all Australian records held on MAL. That initial review was completed in May 2009, at which stage there were 578 records of Australians held on MAL. We have now completed a full review of Australian PAL records held on MAL. That review was completed in September 2009, at which point there were 163 records of Australians held on MAL. The current figure for Australian records held on MAL is now down to 153. There has been a process of ongoing review of those records.

**Senator BARNETT**—Do you have further and better particulars regarding those 153 Australians on MAL and the reasons for their remaining on MAL?

**Mr Allen**—I was about to get to the policy concerning the reasons for listing them on MAL. We have now changed our policy settings. We have developed a policy to ensure that any new alert on MAL for an Australian requires written approval from the businessowner for the movement alert list. That is me. We now also have a practice of regularly ongoing reviews of Australian citizens listed on MAL—that is, basically we have applied a very short review

date to each of the records, which means that every few months each record is reviewed individually to determine whether it should remain.

**Senator BARNETT**—So each of the 153?

**Mr Allen**—That is correct.

**Senator BARNETT**—And you oversee that and oversight it?

**Mr Allen**—Yes, I do, Senator. We are also about to release a new procedural advice manual for CMAL. Procedural advice manuals are the department's internal administrative instructions for guidance in our operations. The new PAM will provide further policy and guidance for the circumstances under which Australians can be placed on MAL. So we have substantially upgraded our procedures in that regard. The third ANAO recommendation—

**Senator BARNETT**—Just on recommendation 2: what are the examples and reasons for those 153 Australians being on MAL? Can you give us some scenarios?

**Mr Allen**—Really, the only reason for which we list Australians on MAL now is for concerns regarding involvement in immigration malpractice or people-smuggling.

**Senator BARNETT**—Frankly, that is the reason that I asked the question. It is still a high number of people who are on MAL who have, I assume, some sort of security risk to the community. Can you give further and better particulars? Are they involved in people-smuggling? Do they have a criminal record? Can you provide some sort of overview of the type of people on this list?

**Mr Allen**—I think I would have to take that on notice. Obviously, we are not in a position to discuss the particular details of each of the 153.

**Senator BARNETT**—I am not asking for that.

**Mr Allen**—I am sure we can come back with some further information about the more general reasons that these people are listed. Certainly the alert reason codes for which they are listed are specific to immigration malpractice and people-smuggling.

**Senator BARNETT**—Would it be fair to say that most of them would have a criminal record?

**Mr Allen**—I would have to check to determine whether that is the case.

**Senator BARNETT**—What restrictions would apply to those 153 Australians with respect to their movements in and out of Australia or around the country? Are they under any sort of control order or restrictions with regard to their passports or movement restrictions?

**Mr Allen**—From the perspective of the department of immigration, we cannot restrict the movement of Australians either internally or going to and from the country. Their listing on MAL in most instances will result in information being kept on their movements in and out of the country. It may also be an opportunity, for example, for law enforcement to interview them upon arrival in Australia. But we do not actually restrict the movements.

**Senator BARNETT**—Where are these 153 Australians at the moment?

**Mr Allen**—Again, I would not be able to tell you the circumstances of each of them?

**Senator BARNETT**—But are they in the country or outside?

**Mr Allen**—There would be a mixture—both inside and outside the country.

**Senator BARNETT**—But would they have ready access to enter Australia or would there be restrictions—I assume serious restrictions—on their entry into Australia, for example?

**Mr Correll**—Mr Allen has indicated that he needs to take that detail on notice, and I think that is fair. It needs to be remembered that not only can these be individuals; they can be just an identity as well. So I think we should get the information rather than speculate on it.

**Senator BARNETT**—That is fine, but we are just getting an understanding of the process and procedure that you have for the movement alert list. It is there to ensure that your officers, at their various stations around the country—around the world, in fact—are alert to these identities, whether they be real or otherwise, when they are moving in and out of Australia. Is that a fair comment?

**Mr Allen**—That is generally correct, but the principal reason that MAL is used is to provide information in relation to our visa application processes and entry of non-Australian nationals. With Australian nationals, of course, they do not enter our visa application processes and there are separate arrangements and conditions under which Australians enter and leave the country. Those are not dictated by the Migration Act.

**Senator BARNETT**—We know that some of them might just have an identity and may not be real, but can we assume that the vast majority are real individuals?

**Mr Allen**—Yes.

**Senator BARNETT**—Would some of those within Australia be under some sort of surveillance from the AFP or other police or security agency representatives?

**Mr Allen**—I would be speculating on any individual case. I think it would be better if we could take that on notice.

**Senator BARNETT**—Sure.

**Mr Allen**—Recommendation 3 was a recommendation that DIAC improve its reporting on the performance of MAL by identifying instances where MAL has alerted decision makers to information that has been the reason or part of the reason for decisions on visa and citizenship applications. We are currently reviewing the reporting tools associated with MAL in order to determine what upgrades are necessary to allow us to better identify where MAL has been a factor in a visa application decision. Of course, a MAL listing in itself is not necessarily a guarantee that a person will or will not get a visa; it is information taken into account. So this is a process that we are going through at the moment to improve the way we can determine what role MAL is playing in visa application decision making.

**Senator BARNETT**—What number of DIAC officers—how many—have direct access to the MAL database?

**Mr Allen**—I will have to take that one on notice.

**Senator BARNETT**—Please go on.

**Mr Allen**—The fourth recommendation from the ANAO was that DIAC seek to measure and report—

**Senator BARNETT**—Sorry; when you answer that on notice, could you please indicate the level of positions that we are talking about rather than just the number—the types of officers we are talking about?

**Mr Allen**—Sure. The fourth recommendation goes to measuring and reporting on data quality, MAL's reliability and client service measured by the service level agreements agreed internally. We are in fact at the moment cutting over from our old MAL systems to the new reporting from the CMAL system. We are planning to further strengthen our operational reporting in this regard. We are planning this year to develop a data quality scorecard for MAL, which will go to each of those areas, both the data quality and the reliability—meaning when MAL is available—and whether or not we are meeting the service level agreements agreed internally with our client areas. Those service level agreements basically relate to how quickly for each class of visa application we actually resolve any potential match with MAL. So we are planning to report more formally on that through the mechanism of the CMAL audit steering group within the department itself.

**Senator BARNETT**—Could you take on notice to provide a report on the outcome of that inquiry when it is complete?

**Mr Allen**—Yes.

**Senator BARNETT**—I understand you have appointed a consultant on the activity in the first quarter of 2010. Can you advise the committee about the consultant and the nature of the consultancy arrangement?

**Mr Allen**—I am not quite sure what consultancy you are referring to.

**Senator BARNETT**—I am advised under point 4 of the ANAO report, in regard to the privacy impact assessment on MAL, that a consultancy was appointed in the first quarter of 2010.

**Mr Allen**—I believe we indicated that we would be appointing a consultant to undertake a privacy impact assessment. That is in the early stages of actually being undertaken.

**Senator BARNETT**—Perhaps you could take that on notice and tell us when that is appointed: the name of the consultant and the nature of that consultancy, without going into operational matters.

**Mr Allen**—Yes. The fifth recommendation was that we implement a mechanism for providing regular assurance that all key parts of the MAL system are operating satisfactorily. The department has in fact completed this. The performance of CMAL is monitored on a regular basis. We also monitor all changes to the CMAL system to ensure that there are no adverse impacts. Before changes are made, teams test all of our system enhancements. We have a business-as-usual team, which is a team within our IT area, which coordinates and prioritises all proposed changes. But the monitoring for the new system is effectively real time. It occurs so that we have effectively immediate notification of any faults in the system.

**Senator BARNETT**—So you are confident that the system has improved markedly. Would you say it is flawless or would you say it has improved markedly but is still not flawless?

**Mr Allen**—We are always trying to improve the performance of key systems like CMAL but, yes, I would say that the system has improved markedly in performance and reliability.

**Senator BARNETT**—But it is still not flawless.

**Mr Allen**—No system is.

**Senator Chris Evans**—It would be a very stupid public servant or minister who claimed anything was flawless.

**Senator BARNETT**—That is a tough question.

**Senator Chris Evans**—What is the old saying? Repent at leisure.

**Senator BARNETT**—Do you have an up-to-date number of how many people are on the movement alert list?

**Mr Allen**—Yes. The current total number of records we hold on individual identities in the movement alert list is 666,244. Obviously that is a figure that may change very slightly from day to day, but that is the figure year to date as at the time this brief was provided.

**Senator BARNETT**—What about the numbers on the person alert list and the document alert list?

**Mr Allen**—That was the figure for the person alert list. The year-to-date figure for the document alert list is 1,817,319 records.

**Senator BARNETT**—Finally, with regard to AFP and Customs and court orders, you have a relationship with both law enforcement agencies, I understand. How do you interact with them to ensure that their concerns are put into your system? Is there a particular protocol or procedure in terms of your interactions with AFP and Customs?

**Mr Allen**—Are you referring to departure prohibition orders?

**Senator BARNETT**—They would have people on their list—and I am not sure what they call them in terms of security risks; they have some sort of security risk assessment and ASIO would be another one. I assume that they would advise and communicate that list to you. What procedures do you have in place to receive that list and then implement it?

**Mr Allen**—In terms of those agencies providing information for the movement alert list, we do have very long established liaison relationships by which they provide us with records of people of criminal concern, national security and other forms of concern. The reason I asked about the DPOs was that, if you like, orders to prevent people from leaving Australia for particular court related matters are generally dealt with through the Customs system at the border. They have a separate alert management system which is generally used for those sorts of specific reasons for stopping people—for an example, for child support—

**Senator BARNETT**—Child custody matters.

**Mr Allen**—But in fact probably the most important of those relationships is our relationship with ASIO for national security. I think that, as the committee would be aware, there is a very large proportion of the database which consists of national security records. With the introduction of our new system, CMAL, ASIO has direct access to our database and they have the opportunity to directly input records into the database.

**Senator BARNETT**—Thank you very much.

[6.01 pm]

**CHAIR**—We will move on to 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.

**Senator HUMPHRIES**—I want to ask about Christmas Island. We have had some adjustments between the budget statements in May and the additional estimates statements recently on the cost of asylum seeker programs. The original budget provided for \$80 million in administered expenses under program 4.3 and \$40 million or so under 4.3.1. Those figures have now risen to \$106 million under program 4.3 and \$113.5 million under 4.3.1. I want to clarify where that money comes from. Is that money taken from consolidated revenue or is it transferred from other programs within DIAC?

**Ms Prothero**—It is new money to the department, so it comes from the CRF.

**Senator HUMPHRIES**—You have sought additional money for accommodation on Christmas Island. The two figures on page 12 of the PAES are \$11.2 million for accommodation on Christmas Island and \$34.2 million for capital expenses. I assume there are other expenses associated with that. Can we break down that cost to the costs associated with the detention contract, interpreting services, air charter, freight charter, health services and so forth?

**Mr Correll**—We would need to take that level of disaggregation on notice. We are happy to take it on notice.

**Senator HUMPHRIES**—That would be useful, thank you. How have you calculated this additional level of need? You obviously have increased the amount allocated here on the expectation of having a larger number of asylum seekers to deal with on the island. What is the estimated flow-through of asylum seekers on the island that you have predicated these figures on?

**Mr Correll**—The original estimates were based on a broad average arrivals number of around 200 and that has been increased to an estimate of 1,400.

**Senator HUMPHRIES**—Do you anticipate that their flow-through will be at the same rate as previously—that is, they will be leaving the island at the same rate that they arrive?

**Senator Chris Evans**—Maybe one of the officers can take you through how this has traditionally been funded. In a sense, it is funded for a minimum and then applied for post-event, if you like. Maybe one of the officers can take you through how this has traditionally been funded, which will explain why you see the figures that you do.

**Mr Correll**—The funding for Christmas Island is through a funding arrangement which is called quarantine funding—that is, the money is allocated for a very specific purpose: for operations on Christmas Island. Essentially, it is influenced by the flow of arrivals. Historically what has happened is that the budget has expanded or contracted based on the arrivals that have been coming through to Christmas Island. Essentially, therefore, the additional estimates process represents a revision of the estimates.

**Senator HUMPHRIES**—I understand. So you are basing it on the expectation of an increase from 200 to 1,400 arrivals on the island in the course in the 2009-10 financial year?

**Mr Correll**—Yes, and that is based on what we have seen already through the year.

**Senator HUMPHRIES**—But that figure is not moderated by any expectation about whether they will stay for the average period of time; it is just based on the number of arrivals?

**Mr Correll**—No, we looked at the broad average duration on the island and what that would then imply in terms of the overall cost for the island. We take all those factors into account.

**Senator HUMPHRIES**—You have revised the figure from 200 to 1,400. Have you revised also the estimate of how long each asylum seeker would remain at the facility?

**Mr Correll**—No. The average duration at Christmas Island has been a relatively stable figure.

**Senator HUMPHRIES**—What is it?

**Mr Correll**—It is a little over 100 days.

**Senator HUMPHRIES**—So you anticipate that the the figure of 100 days would remain for the 1,400? The figures are based on that?

**Mr Correll**—That is the figure we are using, yes.

**Senator HUMPHRIES**—How many people do you expect to arrive in boats this financial year and be brought to Christmas Island?

**Mr Correll**—Based on the revision, 1,400. Bear in mind that this is an average through the year.

**Senator HUMPHRIES**—The population of Christmas Island Detention Centre at the moment is 1,700. Given your processing time of 100 days, I assume the vast majority of those would have arrived since the beginning of this financial year.

**Mr Correll**—No. The majority would have arrived after the commencement of this financial year.

**Senator HUMPHRIES**—That is what I said. Okay. With something like 1,700 arrivals already this year, do you think the estimate of 1,400 is realistic?

**Senator Chris Evans**—Senator Humphries, I think there is a leap in your logic there. The officer said that a majority of the 1,700 had arrived post July this financial year, not that all of them had. We can check the 31 July figure for you, but it is a leap to say the 1,700 had already arrived this financial year. That is not correct.

**Senator HUMPHRIES**—I postulated that the majority had arrived since the beginning of the financial year.

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

**Senator HUMPHRIES**—We are only just over halfway through the financial year. Looking at the figures, it would seem to me a conservative estimate that the expected load the centre would have to deal with in 2009-10 is 1,400 arrivals.

**Mr Correll**—Bear in mind that this is an average figure. We would have calculated that based on year-to-date arrivals at that point. It is a crystal ball exercise to look at what would happen beyond that in the remainder of the financial year.

**Senator HUMPHRIES**—So you are saying that you anticipate at this point in time that there would be 1,400 arrivals at the facility in 2009-10?

**Mr Correll**—Yes. That is the estimate we made when the PAS was prepared.

**Senator HUMPHRIES**—So how many have arrived as at the beginning of the financial year?

**Mr Correll**—I do not have that precise figure to hand, but I can give you a point in time figure. As at 31 January, there were 1,628 passengers and 12 crew on Christmas Island. So the total figure on the island was 1,628.

**Senator HUMPHRIES**—Is that the total figure on the island, or total arrivals on the island?

**Mr Correll**—Is the total figure on the island as at 31 January.

**Senator BARNETT**—It is 1628, plus the 12 crew?

**Mr Correll**—That includes the 12 crew.

**Senator HUMPHRIES**—It seems to me that 1,400 is a very conservative estimate and it is very likely to be exceeded.

**Mr Metcalfe**—As Mr Correll said, that was an estimate made at the time of the preparation of the PAS document in November.

**Senator BARNETT**—What are you saying by that?

**Mr Metcalfe**—I am saying that that was a point-in-time estimate four months ago.

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

**Mr Metcalfe**—I do not like to be drawn on estimates in this area. I am not trying to be difficult or cute, it is simply that this is about as unpredictable an issue as you can possibly have.

**Senator BARNETT**—But it is predicably going up, Mr Metcalfe. Is that a fair assessment?

**Mr Metcalfe**—It is certainly running at a significant level.

**Senator BARNETT**—And increasing.

**Mr Metcalfe**—There are enormous efforts underway to deal with the issue, but there are significant pressures associated with arrivals as well. So I would not want to be drawn into an estimate as to what might happen in the future, given there are so many variables at play.

**Senator BARNETT**—But you agree that the numbers are increasing.

**Mr Metcalfe**—We have seen more people arrive than we expected when we made the estimate in November.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—My understanding of the figure is that, since the beginning of the financial year, more than 2,500 people either have been intercepted and transferred to Christmas Island or are en route to Australia and therefore could be expected to be accommodated at Christmas Island.

**Senator Chris Evans**—En route to Australia?

**Senator HUMPHRIES**—If they are en route to Australia in a boat, they are en route to Christmas Island, aren't they?

**Senator Chris Evans**—So you are suggesting that you know how many people are about to embark from Indonesia?

**Senator HUMPHRIES**—No. There was another boat—was it yesterday?

**Senator Chris Evans**—You gave a figure which you said included people who are on their way. Are you talking about people detained by the Navy, or are you talking about people—

**Senator HUMPHRIES**—I was talking about people who might be about to get aboard a boat in Indonesia. I am talking about people who have been identified as being actually in our waters and who are being or have been intercepted.

**Senator Chris Evans**—People on Christmas Island and those intercepted.

**Senator HUMPHRIES**—Yes.

**Senator Chris Evans**—I just want to be clear, because the former spokesperson of the Liberal Party used to put out releases, including numbers that she had been told would be coming. I just wanted to make sure that we were not still in that universe.

**Mr Metcalfe**—Earlier on, Senator Barnett asked for an update on the statistics of arrivals. We expect to have that available after dinner and it will provide a clear, factual advice as to the actual arrivals that we have seen since that earlier figure was provided.

**Senator HUMPHRIES**—It follows that, if there has been anything like 2,500 arrivals since the beginning of the year, that estimate will have to be revised. On the logic you have presented, there would have to be a further revision of the size of the boats.

**Mr Metcalfe**—From a financial point of view, as Mr Correll and Ms Prothero indicated, that is quite routine in that we are essentially funded for activity that occurs rather than someone trying to come up with an estimate as to something that may or may not be in fact true.

**Senator HUMPHRIES**—I am not questioning the way in which you are funded. I think that is a perfectly logical way of being funded. What I am questioning is the wisdom of maintaining that a figure of 1,400 is in any way realistic. We are clearly looking at a much, much larger figure for arrivals and, therefore, costs of accommodating them.

**Senator Chris Evans**—The answer is: we can give you the factual number of arrivals and then one can form one's own judgement about what one thinks will happen for the rest of the year. The funding reflects the level of activity, as with our visa process. We get funded for the number, if you like. If the number is above the expectation, we will get funded for it. If it is below the expectation, they will take the money back. If the implication is that we have done some scientific analysis of the numbers expected for the rest of the year, the answer is no. The

secretary has made it clear to you that predicting such things is difficult, but we have seen an increased level of activity. We are having to cope with that, and the funding follows that. But we certainly do not make predictions in any sort of detailed sense because, quite frankly, we are not able to do that. The funding, as you say, was determined on the basis of a number presented in time for this process. If the numbers arriving on the island are greater, that will be funded according to those numbers.

**Senator HUMPHRIES**—If it is clear that the estimate is no longer reliable and you expect to increase the size of the budget, at what point do you go to the department of finance and say, ‘We need to up this budget?’

**Mr Correll**—You do that through the regular budgetary process or additional estimates process with the department of finance. There is a regular cycle of updating the estimate based on the latest numbers coming through.

**Senator HUMPHRIES**—Okay. So that may happen before the end of the financial year. You might have to go back to Finance and say, ‘We need another X million dollars to accommodate the extra arrivals we have not previously allowed for.’

**Mr Correll**—The next step would probably be the next budget for the inclusion of the estimates.

**Senator HUMPHRIES**—Can you tell me the marginal costs associated with accommodating each additional arrival. What are the administered and departmental expenses? I assume that that sort of calculation is part of the way in which you go back to Finance and say, ‘This is how much more money we need.’

**Mr Correll**—Yes. I cannot give you an individual marginal cost figure, but we are loosely calculating our overall total costs. We have fixed and broad variable cost components for Christmas Island. We do the calculations for the total estimate based on those two factors. I cannot give you an individual marginal cost, however, of the additional cost of one person going on to Christmas Island. That is not a figure we would calculate in the way that you asked the question.

**Senator HUMPHRIES**—Because there are fixed and marginal costs associated with it.

**Mr Correll**—They are fixed and variable. Marginal is a different cost.

**Ms Prothero**—We are funded for the costs we actually incur. Unlike some of the rest of our activity, where it is a set price per finalisation, it is for the actual costs associated with the arrivals. Depending on the composition of the arrivals, those costs vary quite significantly. That is why it is not possible to say what is the cost of one additional arrival. We can certainly get the details—

**Senator HUMPHRIES**—I appreciate that, but I am working out what method of calculation you use to estimate what your budget will be before you know how much you actually have to spend by the end of the year.

**Senator BARNETT**—Just on that point, could I go back one step to Senator Humphries’s earlier question about the budget appropriation where you requested the earlier funds and obtained them. I think it was \$132 million extra or thereabouts. That was in the 2008-09 budget. Is that right?

**Mr Correll**—It was in the additional estimates process, for the 2009-10 budget.

**Senator BARNETT**—When was that decision made?

**Ms Prothero**—It was made in late September.

**Senator BARNETT**—At that time, when that request was made, what number of arrivals were you anticipating coming on to Christmas Island.?

**Mr Correll**—Our best estimate at that stage would have been 1,400. That is why we would have put forward that figure.

**Senator BARNETT**—So at that time you were estimating 1,400. Mr Metcalfe, I thought you had indicated that that decision was made in November.

**Mr Metcalfe**—I was working off this document associated with the bills, which was probably tabled then. There is obviously a process leading up to decisions as to what numbers go in here.

**Senator BARNETT**—So can we say that at September last year you were expecting 1,400 arrivals in the 2009-10 year. Based on that assessment, you requested the \$132 million extra.

**Mr Correll**—That is accurate, yes.

**Senator HUMPHRIES**—So the 1,400 figure, you have admitted, may well be obsolete and will have to be revised.

**Mr Metcalfe**—It was a point in time estimate.

**Senator HUMPHRIES**—Is that a figure for total numbers on the island or a figure for arrivals?

**Mr Correll**—It is a figure for arrivals. The number I have given you of 1,628 is a total number on the island snapshot as at 31 January. So I am not comparing apples with apples there. I do not have the arrivals figure. As Mr Metcalfe has indicated, in the work we are pulling together for Senator Barnett we should have that figure after the dinner break.

**Senator HUMPHRIES**—That will be your estimate of the total number of arrivals, not the total detention population.

**Mr Correll**—The information we will have after the dinner break will be an update of the actual boat arrivals, the numbers of arrivals that have occurred through the current financial year up to the current point in time. That will allow an easy calculation of the total number of arrivals through the year.

**Senator HUMPHRIES**—Okay. We will wait till after dinner to see those figures. You said that the expected length of stay is still estimated to be about 100 days.

**Mr Correll**—That continues to be the average.

**Senator HUMPHRIES**—Your target, I think, is 90 days for processing, but your actual outcome is about 100 days. Have I got that right?

**Mr Correll**—No, there are two different numbers here. The figure of 90 days is an indicative number for the refugee status assessment process.

**Senator HUMPHRIES**—Right.

**Mr Correll**—The average time on the island is the average time actually on the island: from the date of arrival to the date of departure.

**Senator HUMPHRIES**—When did the government decide that \$34 million was the appropriate expenditure requirement for capital works on Christmas Island? At what point, since the budget was prepared, did it reach that decision?

**Mr Correll**—This was looking at increasing accommodation options on the island and involved looking at additional demountable accommodation going into the island. There is work that has been progressively underway to increase the accommodation on the island. That is continuing to build the overall capacity of the island up to around 2,300 beds and we are not far away from completing that work. That was done—I am trying to think back to the dates of the timing of that capital submission—Octoberish.

**Senator HUMPHRIES**—The point I am getting to is that I assume that, looking at the total number of arrivals you have had since the beginning of the financial year, you are probably looking at that figure of \$34 million itself being out of date and needing to be upgraded to represent the actual costs of accommodating people on the island.

**Mr Correll**—I think we are talking about two different figures, Senator. The first is the capital cost associated with additional accommodation going into the island, which is a one-off additional cost. The arrivals figure influences the overall operating costs for the island and that will influence both the actual departmental expense and administered expense, including payments to contracted service providers. Those are influenced, clearly, by the arrival numbers—the more arrivals there are, the higher those costs are.

**Senator HUMPHRIES**—Okay. We were told in the Senate last week that if there is an overflow on the present or expected, or soon to be expected, capacity of the island people will be transferred to the mainland, which I suppose indicates that the capacity of the island is expected to be exceeded even in this financial year.

**Senator Chris Evans**—Senator, I have made clear for months and months, publicly, that the first option for the government, if we found ourselves at capacity on Christmas Island, would be to move people in the final stages of processing, prior to grant of visa, to the Darwin detention centre—a centre built by the Howard government, according to Mr Ruddock, for that very purpose. There is a 500-bed capacity at Darwin that the previous government built for dealing with asylum seekers.

**Senator HUMPHRIES**—That is not the point I am making.

**Senator Chris Evans**—I know it is not, Senator, but I am just telling you that, thankfully, you provided that capacity for us and if we need to use it we will.

**Senator HUMPHRIES**—Indeed, and I am not debating that point; I am just making the point that if you had anticipated the number of arrivals that you are looking at now for 2009-10 would you have increased the expenditure on capital works on Christmas Island to cope with that extra demand?

**Mr Correll**—As additional boat arrivals numbers come in, we are constantly looking at opportunities to further increase accommodation options. We are also constantly focusing on accommodation contingencies. We think we have to, from the point of view of effective

management of the operation. Come what may, we will always be focusing on the question of the adequacy of accommodation on the island and the need to maintain contingency options on the mainland, should those numbers be exceeded at any point.

**Senator BARNETT**—Just on that point, Mr Correll, I have got an answer here to question on notice No. 101 from Senator Fierravanti-Wells at the October estimates, under program 4.3. It says:

Christmas Island can accommodate about 1380 people across a range of facilities and family configurations.

A range of measures is being taken to increase accommodation capacity on the Island to around 2200. This is expected to be completed by the end of the first quarter of 2010.

Contingency planning has been made for the use of the Northern Immigration Detention Centre in Darwin, should accommodation on Christmas Island become fully utilised.

Do you stand by that, Mr Correll?

**Mr Correll**—Yes. That was in fact a very precise answer. That is spot-on.

**Senator BARNETT**—So it is still accurate today?

**Mr Correll**—Yes.

**Senator Chris Evans**—Sorry, no, that is not quite right. Progress has been made towards that goal. The answer was perfectly correct at the time, but we have increased capacity between the time of that answer and now.

**Senator BARNETT**—Perhaps after dinner you can give us the exact details in terms of the capacity and whether you will achieve that by the end of the first quarter of 2010.

**Senator Chris Evans**—Yes.

**Senator BARNETT**—We will deal with that after dinner.

**Senator Chris Evans**—Yes.

**Mr Correll**—Yes.

**CHAIR**—We are going to the dinner break now and we are actually going to commence on outcome 4 when we come back. Thank you.

#### **Proceedings suspended from 6.31 pm to 7.32 pm**

**CHAIR**—I reconvene this public hearing of the Senate Legal and Constitutional Legislation Committee and our consideration of additional estimates for 2009-10. We were dealing with outcome 4 and we will go to you, Senator Humphries, to continue your questions.

**Senator HUMPHRIES**—Before I ask any more questions, do you have an update on the number of arrivals so far this year on Christmas Island?

**Mr Correll**—We think it is about five minutes away. The calculation is still being done. In about five minutes we should have it.

**Senator HUMPHRIES**—Okay. That is fine. Thank you.

**Senator Chris Evans**—I asked my office, Senator, and I think they got about the same figure as you, but we will get it confirmed.

**Senator HUMPHRIES**—Okay. That would be great. I just want to clarify something. Last week, according to the announcements by the Minister for Home Affairs, we had three boats arrive: the boat that arrived on the 1st had about 181 passengers; the boat on the 4th, 89 passengers; and, the boat on the 6th, a further 45 passengers. Can you tell me whether all three of those boats have now unloaded their passengers into the centre at Christmas Island. Are all those passengers now on Christmas Island?

**Mr Correll**—No, not all of them have arrived at Christmas Island at this point. There is one arrival that was picked up at Ashmore Reef that is travelling to Christmas Island at the present stage.

**Senator HUMPHRIES**—Is that the boat arrival that was announced on 4 February, with 89 passengers and four crew?

**Mr Correll**—Yes. The data I have is that the actual number was 84 passengers, to be confirmed—and that will be confirmed on arrival—with four crew.

**Senator HUMPHRIES**—Okay. So the boat is travelling from Ashmore Reef to Christmas Island.

**Mr Correll**—Correct.

**Senator HUMPHRIES**—Is it not normal practice to have the occupants disembark from their boat and get on the naval vessel that has intercepted them to travel—

**Mr Correll**—Yes, and that is what is occurring in this case. It is a question of how the Border Protection Command deploys its assets. This boat, the naval vessel, would be sailing to Christmas Island now with these people onboard, for disembarkation.

**Senator HUMPHRIES**—What is the approximate travelling time between Ashmore Reef and Christmas Island?

**Mr Correll**—It varies, but it is three to four days.

**Senator Chris Evans**—I know there is a conspiracy theory being advanced by some, who remain nameless, but these decisions about movement are made by Border Protection Command in relation to deployment of assets. For instance, on occasions they have held in position because they had other reports or they might hold because they are waiting for another vessel to arrive to take up their patrol—those sorts of operational decisions. I want to make it clear that Immigration and the government do not determine those movements based on any needs or requests from us. They are done on an operational basis by the relevant authority. Sometimes they come straight to Christmas Island and sometimes they are held up for a couple of days. On one occasion I recall, they had intercepted another boat and they waited to collect another group of passengers before moving. They are operational decisions. When they arrive they will be disembarked and will go through our processes.

**Senator HUMPHRIES**—I am grateful to hear that, Minister, thank you. Can you tell me what the design capacity of the recently completed North West Point Immigration Reception and Processing Centre is?

**Mr Correll**—The overall capacity at the present stage is around 1,550. I say ‘around’ because it is almost a fallacy to be absolutely precise with the numbers here. The beds are relocated and repositioned virtually on a day-by-day basis on Christmas Island, but the overall numbers are around 1,550.

**Senator HUMPHRIES**—At the North West Point facility?

**Mr Correll**—At North West Point, yes.

**Senator HUMPHRIES**—Are there demountables being erected there as well?

**Mr Correll**—Yes, that includes demountables at the present stage. There is work underway to put in an additional compound area at North West Point that has around half of the additional demountables already in play and in use at the present stage, and there are a further 190-200 beds, through demountables, still to go in at North West Point.

**Senator HUMPHRIES**—When is it expected that they will be available for use?

**Mr Correll**—That is based on the earlier comment. We are still expecting that work to be completed by the end of the first quarter of 2010, so at the end of March.

**Senator HUMPHRIES**—What is the design capacity of the Phosphate Hill temporary facility?

**Mr Correll**—The Phosphate Hill capacity is about 48-50 beds.

**Senator BARNETT**—Can I just come in there, briefly. I may have missed it, but do you have the exact number there now?

**Mr Correll**—Yes. The precise bed number today would be 48. I would just emphasise that these bed numbers will vary.

**Senator BARNETT**—I know—and I think it was discussed earlier—you make decisions on a point in time, so, as at the most recent time, just give us the exact numbers.

**Mr Metcalfe**—I just wonder if we misheard you. Were you asking for how many people were in the centre, or how many beds are available in total?

**Senator BARNETT**—I would like to know the actual number of detainees being held there.

**Mr Correll**—Detainees? Sorry, that is a different number.

**Senator BARNETT**—Maybe you could go from Christmas Island and then we will just break it down to the different processing centres. Can you do that?

**Mr Correll**—Overall, as at 31 January, on Christmas Island we had 1,628. In other processing centres—

**Senator BARNETT**—We can come to that later. I am interested in Christmas Island and a breakdown of where they are on Christmas Island. You have 1,628?

**Mr Correll**—The total is 1,628 on Christmas Island. As at 31 January the numbers are 1,331 in the North West Point immigration detention centre, 244 in the construction camp, 45 in the Phosphate Hill compound B, eight in the duplex accommodation, giving a total of 1,628.

**Senator BARNETT**—Just to clarify, in terms of the boats that Senator Humphries referred to, how many are on those boats heading the way of Christmas Island.

**Mr Correll**—There is only one boat in transit and that has, to be confirmed, 84 passengers and four crew, so a total of 88.

**Senator BARNETT**—That is a total of 1,704.

**Mr Metcalfe**—That is not a precise figure though, Senator. Mr Correll's figures were at 31 January and there have been three boats since that time, but there have also been people departing the island. There is a constant state of movement.

**Senator BARNETT**—Can you give us the numbers for the three boats, Mr Correll?

**Mr Correll**—Yes. The most recent arrival was 49, the one before that 175 and then one we mentioned which was 88. Nor can you simply add those numbers in because there have been some offs from the island as well in that time. You can only ever do this at a point in time. In the last week we would probably have had close to 100 come off the island.

**Senator BARNETT**—In the last week or the last month?

**Mr Correll**—In the last week. I am trying to relate this to the 31 January date.

**Senator BARNETT**—What are your average departures per week or per month, you can give me the figures for either, I do not mind.

**Mr Correll**—The average departures will vary quite significantly. Over the last few weeks it has been running in the range from about 70 to 100. In one week there were over 100 departures. It is in the range of 70 to 100.

**Senator Chris Evans**—The figure was much lower for a while. It depends on the processing and the arrival times. It would be wrong to suggest that it is a flat figure.

**Senator BARNETT**—I know it is a point in time but that 1,928 less the 100 or so that have departed in the last week makes it a bit over 1,800, and your capacity is 2,200, is that right?

**Mr Correll**—The capacity will go up to around 2,300 by around the end of March.

**Senator BARNETT**—As at today, what is the capacity?

**Mr Correll**—The capacity as at today is around 1,920.

**Senator BARNETT**—Thank you very much.

**Senator HUMPHRIES**—Can I ask that question another way. How close have you come in the last couple of months to needing to use the Darwin facility because you are close to overflow?

**Senator Chris Evans**—As I have made clear publicly, we have been expanding the capacity and we have also had an increased level of activity. The two have been going hand in hand, if you like. We always have some contingency plans on the island where you can 'make do with a few more' sort of thing. There is no doubt—we have been very open about this—that we have currently got an increased number of arrivals and while we are increasing the capacity we are dealing with increased arrivals. A judgment call will be made if we need other capacities. As Mr Correll has told you, the strict numbers do not help much in the sense it

depends on family groups, people we have to separate for security or other reasons, et cetera. So the bed numbers are flexible. There is no doubt that we have a large number on the island now. The capacity is being increased. Mr Correll always sets conservative dates for such things so he overdelivers when I ask him about our capacity—he underpromises and overdelivers generally. There is no doubt we are tight.

**Senator BARNETT**—On that point, in an answer to a question on notice from 20 October last year it said that Christmas Island could accommodate 1,380 people. That was obviously back in October. I understand that a couple of weeks ago it was 1,848. I think that was the figure in the public arena. We have had an increase of 72-odd beds since then. You said the capacity now is 1,920. Where did they come from? How did they come into existence?

**Mr Correll**—When you look at the overall capacity on the island, we have, in addition to North West Point, the construction camp, Phosphate Hill, compound B and duplex housing that is used for people in community based detention. In recent times we have been able to create some additional space in the construction camp. Volunteer groups who have been resident in the construction camp have moved out into other accommodation on the island and that has freed up more space for people who might arrive.

**Senator BARNETT**—Where have they gone to?

**Mr Correll**—They have gone to adjacent duplex accommodation that is also used by departmental staff.

**Senator BARNETT**—The volunteers have had to move out of their accommodation, have they?

**Senator Chris Evans**—I am not sure that moving out of the construction camp is seen as an onerous decision by them.

**Mr Correll**—No. the reality is they have moved across the road.

**Senator BARNETT**—You have created 72 extra bed spaces in the last two weeks as a result of the volunteers moving?

**Mr Correll**—And also in the layout and use of the construction camp facilities. But yes, predominantly through the movement of volunteers.

**CHAIR**—You might say ‘construction camp’, Mr Correll, but it is not technically—it does not look like a construction camp. They are actually demountables. They are joined with concrete pathways, shade cloth and a swimming pool. It is next to the recreation centre.

**Mr Correll**—It was temporary housing that was provided for the workers who built the main North West Point centre. It is colloquially known as the ‘construction camp’ but it is not in a state of construction and it is not a camp.

**CHAIR**—Yes, I just wanted to clarify that. People who have not been there may have a different picture.

**Senator HANSON-YOUNG**—If there are demountables around it is probably in the state of a construction camp.

**Mr Correll**—It has decking that has been installed between the demountables. It is certainly not a raw set of demountable buildings just sitting there.

**Senator BARNETT**—How many families and unaccompanied minors do you have on the island?

**Mr Correll**—As at 31 January there were 61 unaccompanied minors and for family groups the total number was 86.

**Senator BARNETT**—And I presume you are building new capacity for families and unaccompanied minors. Can we assume that? If so, where is that going to come from?

**Mr Correll**—The accommodation for unaccompanied minors and the family groups is within what is called the construction camp facility, which is a community-type setting.

**Senator BARNETT**—And are you building new capacity there as well?

**Mr Correll**—We are looking to be able to extend that setting to a further area in the Phosphate Hill precinct, which is currently utilised for staff housing. There are a number of demountables there. They are currently utilised by staff. We are looking to move the staff out into other unit and flat accommodation that is available on the island and that is being refurbished at the moment. Moving that group out is one of the ways we are increasing the total accommodation up to a figure of around 2,300.

**Senator BARNETT**—You said 86 families. Are they groups or are they individuals? What is the total number if they are groups?

**Mr Correll**—I do not have the precise breakdown. My colleagues might be able to help you.

**Senator Chris Evans**—I think they are persons who are family groups.

**Mr Correll**—Yes, within family groups. They are individual persons; they are not 86 family groups.

**Senator BARNETT**—Maybe you can take on notice and let us know how many family groups there are.

**Senator HANSON-YOUNG**—Based on the figures that were given out today, perhaps it would be good to clarify, then, how many children there are, not just how many family groups. If we have 61 unaccompanied minors, how many children are within those family groups? That does not seem to add up.

**Mr Correll**—I will see if we can produce that figure. We have these numbers in various different formats. How you ask the question determines whether we have it instantly available or not.

**Senator BARNETT**—If you have a chart which is current for 31 July, it might be useful to table that. We would be happy to receive it.

**Mr Correll**—We have that information. That breaks things down on the basis of adult males, adult females, accompanied males, accompanied females and unaccompanied minors, but it does not quite answer the question that has been asked.

**Senator BARNETT**—If you are happy to table that, that would be useful.

**CHAIR**—We will move on to outcome 4.

**Senator HANSON-YOUNG**—While we are talking about numbers and things like that, are you able to tell me how many people since either 1 January or 31 January—whatever is easiest, given how you do your totals—have been in detention for longer than six months?

**Mr Correll**—Is this only Christmas Island?

**Senator HANSON-YOUNG**—This is Christmas Island.

**Mr Correll**—Let me just check.

**Senator Chris Evans**—While he is getting that figure, my information is that there is one gentleman who has been there a considerable amount of time. We will get the time for you. He is one of the gentlemen who landed on the mainland and has pursued both merits review and Federal Court appeals. He failed that initial assessment, but he is awaiting a court decision, so he is the person who has been there about a year, I think. The officers will correct the record. The other group that has been there a while is some of the Sri Lankan arrivals, who have been waiting on completion of processing. Do you have the figures there?

**Mr Correll**—Again, the data is not exactly lined up with the question.

**Senator HANSON-YOUNG**—Sorry, I was trying to be helpful!

**Mr Correll**—Basically we have got details on the number of clients that have been on Christmas Island for 120 days or more. That is a figure of 425 clients, and that is roughly a period of four months.

**Senator HANSON-YOUNG**—That was 425?

**Mr Correll**—Yes, for 120 days or more.

**Senator HANSON-YOUNG**—You do not have the breakdown of their nationalities, do you?

**Mr Correll**—For that group alone or for the total population?

**Senator HANSON-YOUNG**—I was thinking particularly for that group.

**Mr Correll**—No, I do not have that. We would have to take that one on notice to get just the breakdown of that group.

**Senator HANSON-YOUNG**—If you could, that would be helpful.

**Senator Chris Evans**—From my understanding—and the officers can correct me if I am wrong—the issue has been with the processing times of some of the Sri Lankan arrivals because of the difficulties in obtaining security clearances for them. We will come back to you, but I think you will find that the Tamil Sri Lankan people will make up a large part of the group who have had slower processing.

**Mr Correll**—That would be accurate. In terms of the precise breakdown, we will get it, but you would expect intuitively that the majority would be the Sri Lankan Tamil group.

**Senator HANSON-YOUNG**—In terms of the numbers of Afghans that have arrived in the last six months, are their claims being processed relatively quickly? Are you saying that it is faster?

**Mr Metcalfe**—As a general rule, yes. The refugee status determination followed by the security assessment does appear to be moving through more quickly.

**Senator HANSON-YOUNG**—Last time we spoke, I had only just been to Christmas Island and there was talk then of the numbers of people rising to a point where the IDC management there were already talking about having to change some of their operations so that they could manage the numbers of people. Of course, we have seen that number increase since then. I was aware at that stage of the types of activities and excursions and what the process was for giving people some time outside the detention centre. But now I assume that, with the numbers growing, maybe those things have changed. Can you give me some details about how often excursions outside the detention centre occur? They did have quite strict protocols but they were telling me back then that they were having to try and change that to manage the people.

**Mr Correll**—The activities are a very important part of the operations of the centre. I would need to take on notice the incidence of activities conducted outside the North West Point centre. The incidence of activities in relation to families and unaccompanied minors outside the construction camp is extensive. Of course, there is the recreation centre, as you would be aware, across the road effectively. There are a number of activities that are based there and on the adjacent oval.

**Senator HANSON-YOUNG**—Can you take that on notice as well in terms of how those things are being managed now that there are more people. I understand the practicalities of having to manage more people. I guess I am trying to be realistic that they will of course have changed since I was there.

**Mr Correll**—Yes, but there continues to be a very strong focus at North West Point on activities, and that ranges from language related courses to music and sport. Sports are very popular—again, you would have seen that—particularly cricket and soccer. We will take it on notice, particularly the issue of external activities.

**Senator HANSON-YOUNG**—Considering the number of people—we have got 425 who have been there for 120 days or longer—is there any access to short-term training programs in terms of skills and trying to assess where people's abilities are up to so that, when they are given access through the refugee support program, they can continue?

**Mr Correll**—I will check my facts on this to be 100 per cent sure. There is not such a strong emphasis there on specific skills training, although certainly English-language training occurs. That is very popular. There are extensive gym activities that are used. The gym at North West Point is very popular. But the activities are not so much skill based. The emphasis is fitness, health and wellbeing. The volunteers from ALIV, the group that moved recently, have been very impressive and active in providing support in music and a lot of cultural issues. There are some very good painters on the island as well, so painting is undertaken. There is quite a wide range of activities and they are supported by the volunteer groups. There are also some volunteers on the island that come in and assist as well.

**Senator HANSON-YOUNG**—I want to explore some of the health issues in relation to people within the Phosphate Hill and Construction Camp area and the IDC. When I was there the issues of stress related illness and mental health that were referred to me were less in

relation to the asylum seekers and more in relation to the staff, especially about being stuck on the island for three weeks at a time and not having family to download on and be with at the end of each day, and I understood all those things. Increasingly, it seems, through reports at least, that the level of stress on asylum seekers at the detention centre is growing as well, which I would imagine puts extra pressure on the staff. Has there been an increase in mental health specialists or care workers within the facilities in the last few months?

**Mr Correll**—There are very good medical facilities in the medical centre at North West Point, and then there are also the hospital facilities. At North West Point there are mental health nurses on site. In addition, from the point of view of support for staff, we have a full-time member of what we call our employee assistance program who is there to provide support to staff. However, our experience with staff on the island has been that morale and performance have held up extremely well. We have not had huge problems in being able to get staff to go to Christmas Island. We have two types of postings. There are some teams that come in to do assessments or entry interviews that are there for short periods of time, and there are other staff who are there for six-month postings. We try to keep the balance in our workforce in that way on the island, and that has helped. Our staff also contribute actively within community environments, and that helps from the point of view of both their acceptance in the community but also their sense of not just being there for a short period of time. There are staff volunteering on the tourism side and in a range of other volunteering activities on the island.

**Senator HANSON-YOUNG**—From your knowledge, the medical centre is totally compliant with OH&S standards and there are no issues there.

**Mr Correll**—The medical centre would, to my knowledge, be state-of-the-art. It is a very good quality and well-equipped medical facility. When I visit there and talk to the medical staff that are there, they consider it to be a very good facility.

**Senator HANSON-YOUNG**—When was the last time it was audited?

**Mr Correll**—The medical facilities?

**Senator HANSON-YOUNG**—Yes, the equipment and the practice itself.

**Mr Correll**—We have our regional manager and contract management team on the island so they would be monitoring the performance of the health service provider. We directly contract the health service provider—it is not done through Serco; it is direct engagement—and our expectation is that there would be continuing good maintenance of the facilities. We also have a Detention Health Advisory Group. I would need to check, but I am sure their members have visited the island as well to provide us advice on any weaknesses in the medical facilities. But I have never heard any suggestion of weaknesses in the medical facilities; they are very good, and they are backed up by a well-equipped hospital facility on the island as well.

**Senator HANSON-YOUNG**—Yes, I have been to the hospital.

**Mr Metcalfe**—Senator, on mental health in particular, we are very conscious of the issues that have in the past arisen, and can arise, in this situation. We have had invaluable assistance through the Detention Health Advisory Group that Mr Correll mentioned, and we have

developed three new mental health policies: one on the identification and support of people in immigration detention who are survivors of torture and trauma, one on a psychological support program for the prevention of self-harm, and one on mental-health screening.

**Senator HANSON-YOUNG**—You say that these are new—how new are you talking?

**Mr Metcalfe**—They should have been developed by the former Immigration Detention Advisory Group back in 2007. We have been working with the Detention Health Advisory Group since that time, and those policies have now been endorsed and are being implemented at the moment.

**Senator HANSON-YOUNG**—Can you tell me how many psychologists, counsellors and psychiatric nurses are working out of the facilities at the moment?

**Mr Correll**—I know a number working out of both facilities. I will take that on notice to give you the precise figures. I can add that DeHAG, the advisory group, with eminent specialists in this field, visited in September last year and inspected the facilities. They are due to visit again in early March; they are scheduled to be up there again soon to look at the facilities that are available. There are of course health facilities as well. There is a health facility set up at the construction camp, so the medical staff move between the facilities at North West Point and the construction camp, and, if necessary, the hospital can come into play as well.

**Senator HANSON-YOUNG**—Thank you. If you could get the numbers of personnel, that would be wonderful. I assume that you are all aware—and the minister would be aware—that a fellow only a day or so ago attempted to hang himself. I know I have spoken to you numerous times over the past two years about the cases and issues of self-harm, and I accept that there have not been as many of them, particularly since the days when I was a volunteer visiting Baxter and Woomera. But it does seem that that number is increasing on the island. Are you able to give me the numbers of cases of self-harm in the last six months, and are you able to tell me what has happened to this person?

**Mr Correll**—I would not want to go into an individual case in this forum, but in terms of the number—

**Senator HANSON-YOUNG**—Sorry; can I just interrupt you, Mr Correll. Minister, would it be appropriate if we could have a chat at some stage about that? I am concerned about this particular person's health.

**Senator Chris Evans**—Yes, I am certainly happy to get one of the officers to brief you and/or other members of the committee on this individual case in terms of his health—obviously not in terms of any private details. Can I just make a point—and I always get frustrated about this so I will try and control myself—about the two sides of the argument: those who think that we are torturing people on the island and those who think that we are treating them too softly, that we are running a hotel—

**Senator HANSON-YOUNG**—A motel I think.

**Senator Chris Evans**—or that they are getting too many conditions. I would like to play this out through Christmas Island. I would like make the point that first of all staff morale on the island is very good. I was out there two weeks ago. We are not short of people

volunteering to do it. They are very positive and you could not meet a more highly motivated bunch of people, so I have no concerns about that at all. Secondly, I think the thing that everyone who goes there says is that they notice the difference despite the pressure of the numbers on the island in the way that people are treated. There are treated with respect and people say how much better it is than some of the institutions or detention centres that were run in the past and that despite all the pressures and the fact that people are in detention, they are well cared for, treated with respect and therefore the whole atmosphere of the place is different.

**Senator HANSON-YOUNG**—Minister—

**Senator Chris Evans**—I want to get this on the record. I would just make the point also that under earlier regimes there was a great deal of secrecy about what occurred in these detention centres. I know there were volunteer groups that went in and tried to play a role in support in there. When some of the local people said to me that we are ruining tourism on the island I said, ‘I don’t think that’s right, we are responsible for more people visiting the island than ever before.’ They have been inspected within an inch of their lives. We have Amnesty International, Red Cross, the Human Rights Commission, the Ombudsman, the opposition spokesman, you, parliamentary committees, Barnaby Joyce, the mental health detention advisory group, volunteer groups, church groups—we are not short of people on the island visiting and we open the doors to everyone, give them the tour and give them access to all facilities. I want to make that point. When there is good visibility, transparency and knowledge, I wish people would deal with the facts and not perpetrate rumours. The suggestion that staff morale was poor, quite frankly, is a nonsense in my view, an absolute nonsense—

**Senator HANSON-YOUNG**—That was not the phrase I used.

**Senator Chris Evans**—I wanted to make that clear because that is not my experience at all. I am not having a go; I get it from both sides.

**Senator HANSON-YOUNG**—Totally, and part of the transparency process is asking these questions in a Senate process. I am totally upfront with where I am coming from. If your assertion is that for some reason I am spreading rumours, I do not appreciate that at all. I talk to people in the centre, I talk to people who volunteer in the centre, I talk to staff who work in the centre and I talk to people in the community. I do that just as you do, minister, it is my responsibility as well, this is part of the process.

**Senator Chris Evans**—I am quite relaxed about that. You made a comment about staff morale and I wanted to correct that. That is not my view at all but I just wanted to make these other points. They are not necessarily in relation to your comments tonight, but I did want to put those on the record. Please continue.

**Senator HANSON-YOUNG**—My point is that there is clearly an increase in stress within the centre. We have seen that through various reports of how asylum seekers in the centre are feeling and there are various riots as have been reported. Whether or not they are riots I guess is for you to describe, but that is the way they have been reported. There is an increased number of cases of self harm. I have just asked for those details. As late as this week there has been a man who attempted to hang himself. I am not saying that is your fault, Minister, I am

saying this was not happening 12 months ago and if it was that the information was not forthcoming in this committee because I asked exactly the same questions. We obviously know that tensions within the centre are rising. No one can deny that.

**Senator Chris Evans**—There is no doubt that pressure in terms of numbers limits sometimes the capacity for alternative activity et cetera and that is the reality. I would have to say that all the advice I have received both through the department and through my own observations on the island is that the tension that arose recently was largely related to Sri Lankan concern about the delays of processing.

We find—all the advice that I have received and department officials can correct me if I am not right—when clients feel that their claims are being processed, that it is moving along, that they are kept well informed by the case managers, their behaviour, their mental health, their attitudes is fine. When they become concerned is when they think there might be an adverse outcome. So the pressure point for us particularly was the concern among the Sri Lankans because of the delay in approvals and their concern that Afghans were getting preferential treatment. That created some tensions and, as I have explained to you, there were delays for the Sri Lankans because of the longer time for security clearances. That was a major cause of tensions because that, together with publicity about the Sri Lankans on the Merak boat and other things, added to the sense that maybe they were not going to get refugee status. That was a major tension.

The other major tension points have been largely around when we removed people involuntarily, when we removed those fishermen from Sri Lanka—again, a tension point. They see people being removed and returned. Those tend to be the points when tension rises. While the pressure of numbers on the island is a major factor, all the advice I have received is that the major tension has been around those things—expectations about successfully claiming refugee status. I would like to put that on the record because all the advice I have received about the particular incident was the tension which had built up over those issues.

**Senator HANSON-YOUNG**—I would like to know, on the record, the number of cases of self-harm. I would like to know whether anybody has been removed from the island as a result of self-harm, whether they have been taken to Perth or to wherever else to access health care. I would also like to know whether there has been an increase in the distribution of antidepressants or antipsychotic medication and where that distribution is at the moment in comparison to where it was six months ago.

**Mr Correll**—I can indicate to you that since North West Point we have had open three cases of self-harm. My understanding is that one of those cases was related to an individual's family circumstances back in their home country; it was not at all related to any immigration status or solution aspects. So there have been three cases. In terms of movement, I will need to check precisely for you whether there have been any people moved. My recollection is that there have not, but I will confirm that. In terms of an increasing incidence of the allocation of any drugs, we would obviously need to check the facts out in that area. There has been a dramatic reduction in the incidence of self-harm in detention facilities. In the financial year to date, across all detention facilities—both Christmas Island and the mainland—there have been eight incidences. In financial year 2001-02, there were 1,120 instances and it has dropped dramatically since that time.

**Senator HANSON-YOUNG**—I understand the mental state examinations are part of the process of monitoring. Are they mandatory for individuals to have to participate in and, if so, what are the intervals?

**Mr Correll**—I might need to check that again, if I could take that on notice. There is extensive medical checking. Earlier I took on notice questions about the numbers of professionals. The data I have here is a little dated—it is effective as at 26 October—but it gives a feel for the presence that is on the island. At the immigration detention centre at Christmas Island and also the construction camp, as at October 2009 there were two registered general practitioners, one registered psychologist, five registered mental health nurses, five registered nurses and one enrolled nurse, and that was in addition to over 17 health professionals with the Indian Ocean Territories Health Service working out of the hospital base. So there is a substantial health presence on the island. We would need to check the precision of the answer.

**Senator HANSON-YOUNG**—Thank you.

**Mr Metcalfe**—Senator, in response to your earlier question, a standard process for people coming into immigration detention, including on Christmas Island, is that there is a health induction assessment conducted to assess for torture and trauma, mental health issues, physical health conditions and other health issues to inform an ongoing healthcare plan, and that subsequent health assessments occur to identify any emerging health concerns that might arise during a person's time in detention.

**Senator HANSON-YOUNG**—My understanding is that there is a three-month review. My question is whether they are mandatory.

**Mr Correll**—The mental state exams form part of the health induction process, but they are not mandatory. If they are declined first time up, for example, they are re-offered at a subsequent points but it is not mandatory.

**Senator HANSON-YOUNG**—Are there more than that for children?

**Mr Correll**—Can I suggest we give you a written response with the precise arrangements that are in place.

**Senator HANSON-YOUNG**—Okay. It would be good to know if children, for example, get them fortnightly or what it is.

**Senator Chris Evans**—Children and family groups get priority processing. Their time on the island is generally shorter because they receive priority processing from the department. We can give you the figures on the average time for children, but they get processed first basically.

**Senator HANSON-YOUNG**—I accept that, but my question is about whether there are more regular reviews of the mental health of children in particular. Is there an independent party present when children and minors are interviewed?

**Mr Correll**—When a boat arrives at Christmas Island and the initial induction processes are underway, the unaccompanied minors are immediately identified as are children and family groups. A person is then allocated with the unaccompanied minors at that immediate stage. This was something I was able to observe recently on the island when one of the

representatives from the Life Without Barriers organisation was there with the unaccompanied minors as they were going through the induction process. Then, of course, there are interpreters with the group as well who are interpreting to ensure that everyone understands fully what the processes are.

**Senator HANSON-YOUNG**—Is that always the case? Is it the protocol that they are never interviewed without an independent person with them?

**Mr Correll**—I will check that precisely to make sure of our facts, but that would be my understanding.

**Senator HANSON-YOUNG**—I would like to know whether it is protocol. If the person accompanying is not from Life Without Barriers, who would it be?

**Mr Correll**—It is certainly part of our processes. Life Without Barriers is the key organisation providing this service on the island. I will check because you have asked if I can give you a 100 per cent guarantee. I would like to check before I give you that guarantee.

**Senator HANSON-YOUNG**—Thank you.

**Mr Metcalfe**—Senator, can I just say that I very much appreciated your comments about departmental staff as well. Having experienced some of these issues over many years, I think occasionally people do forget about the impact some of these issues can have on staff of the department is well. We have taken great care, as the minister said and Mr Correll said, to ensure that our own staff are supported and it has very good to hear that our morale is high but particularly that staff are recognised as showing respect for clients who, regardless of the circumstances of their arrival, are all people and deserve respect. That is something the department is very much emphasising in its own work.

**Senator HUMPHRIES**—You were promising us about an hour ago some figures on the expected arrivals.

**Mr Correll**—We are just clearing off and about to table the listing of the boat arrivals. That updates that earlier question you had asked, Senator Barnett. That is duly tabled. The other data that you requested in terms of the overall arrivals, we are having difficulty with the last five to 10 in the number, but I do not think that is a huge issue. The answer is that it is approximately 2,600.

**Senator HUMPHRIES**—What is that figure exactly?

**Mr Correll**—It is the arrivals in 2009-10 financial year to date.

**Senator HUMPHRIES**—So it includes the most recent boat.

**Senator BARNETT**—To what date: today?

**Mr Correll**—As at the latest date, today's date.

**Senator HUMPHRIES**—So that includes the second-last vote that has not yet arrived. You have incorporated that figure as well into that.

**Mr Correll**—I believe so but I would like to answer the question at this point saying it is approximately 2,600 because there is some conjecture about the numbers here.

**Senator BARNETT**—You are not sure whether to include the last boat, which has 84 plus four crew. You want to take that on notice?

**Mr Correll**—Yes, we will take that on notice and give a precise figure. There is also a slight question of the additions in it. But we can be confident that the number at approximately 2,600.

**Senator Chris Evans**—I point out the other complications sometimes is, talking about the most recent boat arrival, determining who are crew and who are seeking asylum. Sometimes the numbers are used together and some are used without the crew and it is not always clear to authorities until people are interviewed when they have arrived as to the exact status.

**Senator BARNETT**—Can you advise—I am happy on notice—how many detainees have departed Christmas Island by month since 1 July of the current financial year?

**Mr Correll**—Yes, we can take that on notice.

**Senator BARNETT**—And when you answer that can you advise who were granted a permanent protection visa and how many were failed asylum seekers and returned to their country of origin or some other country.

**Mr Correll**—Yes, we can take it all on notice.

**Senator HUMPHRIES**—Can you confirm that at the time you made the estimates of the number of arrivals you expected for the rest of the financial year, in October, when you were bidding for additional estimates revisions, that the actual arrivals at that point were in the order of 1,018?

**Mr Correll**—I would need to check that point in time, but it would have been, I would have thought, in that ballpark.

**Senator HUMPHRIES**—That is based on a calculation of how many boats the minister has announced have been intercepted. It surprises me that with over 1,000 arrivals in the first third of the year you would assume that you only have another 400 throughout the rest of the year. That would have been a very conservative estimate based on what has actually happened.

**Mr Correll**—It is very difficult to predict the movements that occur in this area, though, and of course as events have transpired that has probably been an underestimate.

**Senator Chris Evans**—The point I make, Senator Humphries, is that we are not pretending there is a science to this. The funding follows the processing. They had to submit a supplementary estimates figure and you have to get that past Treasury and Finance. But no-one is claiming there is a prediction about the numbers, merely a funding figure that was advanced that appears to have been an underestimate. But from the department's point of view the funding follows the actual reality, so nothing hinges on it from the department's point of view, as it were.

**Senator HUMPHRIES**—Yes, but could I suggest to you that it is an extremely gross underestimate. There is no way you could be realistically be expected to only have 400 arrivals when you had already had a thousand in the first third of the year.

**Senator Chris Evans**—That is the point I am trying to make. This is about a government process about getting a tick-off for funding. It is not about a projection of boats.

**Senator HUMPHRIES**—Isn't it also about creating a perception. You have got to dramatically increase the size of the budget to cover the cost of asylum seekers on Christmas Island and by doing so, by severely underestimating the number of people who are likely to arrive, you create the impression that there are fewer people turning up than actually is the case.

**Senator Chris Evans**—Seriously, Senator, I know these conspiracy theories abound, but quite frankly every time a boat arrives the minister puts out a press release—

**Senator HUMPHRIES**—He does not have much choice, does he?

**Senator Chris Evans**—Whether he has got choice or not, the suggestion that there is a conspiracy to underestimate the numbers is just a nonsense. I point out to you that there is a press release announced by the Minister, the numbers on Christmas Island are made routinely available to journalists who ring daily, and this is all transparent and on the public record. What the discussion is about the night is a funding issue where we get approval, if you like, in arrears for numbers processed. That has been the system for a long time. But if you want confirmation about numbers, it is all on the public record. It is confirmed as soon as we confirm the numbers on a boat arrival. My department deals with journalists every day making up-to-date figures available. So it is all transparent and on the record. I am not quite sure what the alleged conspiracy is about.

**Senator HUMPHRIES**—All right. I am not sure if this question has been taken on notice already, but you were not able to give me a figure for what the marginal cost of each additional person going onto the island might be. Are you able to give me the average cost per day of each person? I do not mean what you project but back-casting, as it were, what the average cost per day per additional person actually is.

**Mr Correll**—We can certainly give you some further breakdown and we have taken that on notice in terms of the costings for the island. Effectively the way the island operates is that there is a fixed cost and then a variable cost, although the variable is, if you like, an average variable cost rather than a marginal cost for the increment of one person on the island. The marginal cost would in fact be a different number again. And it would depend on the circumstances of the individual greatly. We certainly do not do the calculation on the basis of a type of marginal cost but we would certainly be able to provide further information on the basis of fixed and average variable costs.

**Senator HUMPHRIES**—You have obviously got to have a calculation of some sort in order to go to Finance and say, 'We expect this number of people that will need this number of dollars.' That is the figure that I am after.

Can I ask you about the casino on Christmas Island. Are there any plans for the casino to be used for accommodation for either detainees or staff at the IDC?

**CHAIR**—That would be a question for Territories, wouldn't it, and the Attorney General's Department.

**Senator Chris Evans**—I think from the department's point of view the accommodation at the casino is one of the options open to us in terms of accommodation of staff. There is no consideration of accommodation for detainees but it is one of the accommodation options we have looked at in terms of accommodation for staff and contractors. There has been repair work and upgrading going on there. I had a look at it the last time I was out at the island. A lot of it is in pretty good nick, surprisingly good nick actually. So certainly it is an option for us in terms of accommodation for staff.

**Senator HUMPHRIES**—It is an option you still have currently under review.

**Mr Correll**—As the minister has flagged, we are certainly looking at that as an accommodation option on the island—that we would utilise for staff, I would emphasise.

**Senator HUMPHRIES**—I would like to switch for a moment to the Berrimah facility in Darwin. Earlier today, Minister, I think you described this as a facility that was expressly built for the purpose of handling the overflow from Christmas Island.

**Senator Chris Evans**—Yes, I have taken to reading Phillip Ruddock's old press releases. It is fascinating.

**Senator HUMPHRIES**—Good on you.

**Senator Chris Evans**—I will read some of them to you if we have time.

**Senator HUMPHRIES**—My impression was that the facility at Darwin was actually built before Christmas Island. Do I have that wrong?

**Mr Correll**—The facility at Darwin has been in play for at least the last 4½ to five years, which is my time in the department.

**CHAIR**—I think you are about right.

**Mr Correll**—Its predominant use has been for illegal foreign fishers. The illegal foreign fishers numbers have certainly come down.

**Senator HUMPHRIES**—I will come to that in a moment, but the question was—

**Senator Chris Evans**—I think it was built in 2001. I know that Mr Ruddock announced in 2000 that the government was investing in a 'long-term strategy to increase detention accommodation'. According to his press release: 'For those entering Australia illegally or overstaying their visas, two new detention centres will be built in Darwin and Brisbane and existing facilities will be upgraded.' The new detention arrangement included '\$52.1 million over four years to establish a 500-bed immigration reception and processing centre at Darwin, primarily for unauthorised boat arrivals' and 'a 200-bed centre at Brisbane to accommodate unauthorised air arrivals and overstayers'. I think it was finally established in 2001 as a contingency facility for the surge in boat arrivals and extensively upgraded during 2006 to accommodate the then spike in the illegal foreign fishers. That is based on Mr Ruddock old press releases, but if that is not correct I will correct the record.

**Senator HUMPHRIES**—But clearly it was built and operational before the Christmas Island detention facility was built.

**Mr Metcalfe**—I am just trying to recall. There had been facilities on Christmas Island, but they were quite inadequate. I recall that we used to use the gymnasium or whatever, and then

a temporary facility was erected at Phosphate Hill. That would have been around the same time, from memory—2000 or 2001. I recall that it largely utilised excess mining camp facilities from Collie in Western Australia, where there was a subsequent fire that destroyed it. But in Darwin there were no facilities and there were a number of boat arrivals on the mainland. Again, there were very inadequate facilities to accommodate people and that was the genesis of the northern centre.

We can take on notice, if you are interested, the precise commissioning times for those two centres, but they would both date back to around the end of the last century.

**Senator HUMPHRIES**—Minister Evans, you were quoting Minister Ruddock a minute ago to the effect that the facility was originally intended to provide 500 beds. Is that its current capacity? Are there any plans to upgrade it or modify it as the prospect of it being an overflow facility for Christmas Island looms large?

**Mr Correll**—There are no specific plans at this stage to upgrade it. It currently has a capacity of just under 550 beds. It has relatively low use—it would have an occupancy capability of around 40 at present. So there is significant capacity available there at quite short notice from a contingency point of view.

**Senator HUMPHRIES**—All right. How many staff are employed currently at Berrimah?

**Mr Correll**—I would have to take that on notice. Off the top of my head, we would not have a significant staff contingent there, but of course our contracted service provider, Serco, would have the main presence in numbers at Berrimah.

**Senator HUMPHRIES**—So they have the flexibility to ramp up staffing and other services if it is required for overflow, then.

**Mr Correll**—Yes, and Serco are well aware that that is part of contingency planning.

**Senator HUMPHRIES**—Okay.

**Senator BARNETT**—On that point, Mr Correll: in a question from Senator Fierravanti-Wells, No. 109, she asked:

Are there any plans to expand and/or redevelop the Darwin Detention Centre due to an expected increase in unauthorised arrivals?

The answer was no. In your answer then you just said there were no specific plans.

**Mr Correll**—Yes.

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

**Mr Correll**—No, not at this stage. But that does not mean that in a week or two weeks we will not start looking at a range of further options. We are always looking at our accommodation layouts and options.

**Senator BARNETT**—Are you looking at Darwin as an option?

**Mr Correll**—Not as at today.

**Senator BARNETT**—Do you expect to look at Darwin as an option in the weeks and months ahead?

**Mr Correll**—As part of ongoing contingency planning, if there were continued numbers of arrivals, we would be constantly looking at further updating our contingency efforts.

**Senator Chris Evans**—I will just say that no proposition has been put to me about expanding Darwin and no decision has been taken to expand Darwin. No proposition has been put to me to expand Darwin, so there are no plans to expand Darwin.

**Senator BARNETT**—But there are options to expand Darwin?

**Senator Chris Evans**—Not that I am aware of. What Mr Correll is doing is just being careful that he does not mislead you, in the sense that we do contingency planning and we will adjust and continue to do that. No proposition has even been put to me about extending Darwin, let alone any decision having been taken to extend it.

**Senator BARNETT**—In an answer to question No. 101, the department says:

Contingency planning has been made for the use of the Northern Immigration Detention Centre in Darwin, should accommodation on Christmas Island become fully utilised.

So I would like to know what contingency planning has been made—

**Mr Correll**—That is on the basis—

**Senator BARNETT**—because that seems to contradict the earlier answer. I am happy for you to clarify it.

**Senator Chris Evans**—I have said on the public record for a long time now that the first contingency for us in terms of a problem of capacity at Christmas Island is to open the current 500-bed facility at Darwin and use it for the final stages of processing of unauthorised boat arrivals. What we are saying is that our contingency is the capacity to use the 500 or so beds there. That is not to say that there are plans to expand that facility.

**Senator BARNETT**—Okay. It says, ‘Contingency planning has been made,’ so I am asking what contingency planning has been made.

**Mr Correll**—The contingency planning is how we would be able to quickly bring into play the 540- or 550-odd beds that are available at that location at the present stage and be able to do it at short notice and have our contracted provider with the capacity to provide and support that level of occupancy. That is the contingency planning that has been prepared for and undertaken.

**Senator BARNETT**—Have you got a copy of those plans, Mr Correll?

**Mr Correll**—We would—

**Senator BARNETT**—They have been planned and undertaken. Do you have a copy of the plans?

**Senator Chris Evans**—Senator, I think you are missing the point. There is not a plan. We have a purpose-built facility that the Howard government built and that is sitting there. The contingency plan is that, if we need to use it, we will. That is the contingency plan. So there is no document. We have advised Serco and we have taken steps inside the department so that, if we need it, we will be able to bring it online quickly. That is the contingency.

**Senator BARNETT**—Mr Correll has advised the committee that there is a plan and it has been undertaken. Is there a—

**Mr Correll**—The undertaking of the plan was to (1) ensure that the facility and the beds were able to be ramped up quickly and (2) make sure our contracted service providers were effectively engaged. It is not just Serco; it is other support services as well.

**Senator BARNETT**—So you have written to them and communicated with them accordingly.

**Mr Correll**—I am not sure whether we have written to them. We have certainly communicated with them, yes.

**Senator BARNETT**—And you have asked them to be ready.

**Mr Correll**—Yes, absolutely. We just see that as part of normal business.

**Senator BARNETT**—All right.

**Senator HUMPHRIES**—Thank you. Can you give me the date of that media release from Minister Ruddock that you were reading from before, please.

**Senator Chris Evans**—I was just checking that. I have a series of releases from around May 2000. I will double-check and summarise the series of releases. I also have a PPQ which talks about it coming on in 2001. I will get you the reference for the media release, but we will also take on notice when it actually came online. I thought the corporate memory here would be as good as normal, but that was a very busy period.

**CHAIR**—I am happy to help, but, like the Christmas Island detention centre, there was a very long delay between the announcement and the actual establishment of the facility.

**Senator HUMPHRIES**—That presumably was because this announcement happened before the Pacific solution was announced in September 2001.

**Senator Chris Evans**—On that basis, you would not have built Christmas Island.

**Senator HUMPHRIES**—That was for offshore processing. Surely that was precisely why Christmas Island was built—because of the desire to have offshore processing.

**Senator Chris Evans**—That was to replace the Pacific solution, was it?

**Senator HUMPHRIES**—No, it was part of the Pacific solution.

**Senator Chris Evans**—The Christmas Island development was part of the Pacific solution?

**Senator HUMPHRIES**—I am giving you the reason I think that the facilities did not proceed as quickly, as Senator Crossin has suggested, as they might have been—because government policy changed in September 2001. There were different policies which did not necessitate the building of the Darwin facility as quickly as had been expected.

**Senator Chris Evans**—Nevertheless, it was built and was upgraded, as I understand it, in 2006. Anyway, we are all interested in knowing the answer about those decisions.

**CHAIR**—I am sure there are many officers in this department who will recollect my many questions about barbed wire, palm trees, occupation of Defence land, the choice of the land,

the impact on the tourists driving up the Stuart Highway and the impact on the community, at estimate after estimate. Mr Hughes is nodding.

**Senator Chris Evans**—I will get my staff to go to ParInfo and enter ‘Crossin’ and ‘Darwin’ and ‘detention facility’ and I am sure all will be revealed—‘palm trees’ as well.

**CHAIR**—The department, if I am right, put about \$38,000 worth of palm trees around the fences that border the Stuart Highway and Amy Johnson Avenue to disguise the facility, because the general public in Darwin did not like it. Eventually palm trees were put up to make it a little bit more homely, I think. Then I think the barbed wire was moved from the top of the fence to the bottom of the fence. One thing I do not think you did was make the entrance on Amy Johnson Avenue—in fact, if you use the facility you are still going to have to drive through the Defence establishment at Berrimah to get into the facility. Further modification was stopped when the Christmas Island facility was built. There is a long history and a long saga. I can see many people with smiles on their faces. They remember those many questions.

**Senator Chris Evans**—We will take on notice the dates and arrangements around that. I think we are all interested to get a clear time line on it.

**Senator HUMPHRIES**—Could I ask about security at Christmas Island, please. How many security staff are currently employed at the centre?

**Mr Correll**—When you say ‘the centre’, do you mean North West Point?

**Senator HUMPHRIES**—The IDC.

**Mr Correll**—I will give an approximate number. In excess of 100 to 150 at least are employed there. We would need to take on notice the precise number at North West Point that Serco have engaged there.

**Senator HUMPHRIES**—They are all Serco employees, not—

**Mr Correll**—Engaged in security work; it is Serco’s responsibility.

**Senator HUMPHRIES**—Is the department satisfied with those security arrangements at the IDC?

**Mr Correll**—Yes. That is obviously something that is subject to up-close monitoring, but we are quite happy with the security arrangements there.

**Senator HUMPHRIES**—Given that there was a riot there not long ago and that you are close to capacity, I assume there are particular pressures on the centre’s security arrangements. I note from those figures that have been just tabled that there is careful separation of certain sorts of detainees. Have some of those divisions of detainees been engineered from a security point of view in order to minimise the likelihood of friction?

**Mr Correll**—Yes, certainly the location of people within the various compounds in North West Point is an important operational management consideration in overall management from a behavioural point of view in the facility. There was a significant disturbance but it has been a one-off event that has occurred in relation to North West Point. There has been very close monitoring. While Serco has overall responsibility for security; the Australian Federal Police have overall policing responsibilities on the island. Following that disturbance there

has been considerable liaison between the department, the Australian Federal Police and Serco to ensure that effective arrangements always will be in place to handle any types of disturbances that might emerge.

We emphasise that that was very much a one-off incident that occurred. It was sparked by a relatively minor issue that became more significant and was perhaps associated with some tensions over awaiting the outcome of visas. There has been very active management of arrangements since that time. The risks are also very carefully monitored in the centre and actively managed. That is a key part of the role that Serco has.

**Senator HUMPHRIES**—I understand that some of the detainees who were involved in the riot have been charged and appeared in court. Is that correct?

**Mr Correll**—That is correct.

**Senator HUMPHRIES**—They are, I assume, still detained in the IDC. They are not in a lockup in Darwin or on Christmas Island or anything like that.

**Mr Correll**—They are detained in secure facilities on Christmas Island.

**Senator HUMPHRIES**—But not in the IDC?

**Mr Correll**—They are currently detained in the secure Phosphate Hill compound area. They were detained until recently in the North West Point in the most secure area. They have recently been moved to Phosphate Hill compound B, which is also a secure facility. The location we had them in initially was not a location that was sensible for their long-term placement.

**Senator HUMPHRIES**—Why exactly?

**Mr Correll**—It is basically a high-security area—

**Senator HUMPHRIES**—Phosphate Hill is?

**Mr Correll**—No, there is a high-security area within North West Point. That was where they were initially held. It is not an area where people are held for any lengthy period of time. They have recently been moved to Phosphate Hill, which keeps them separated from North West Point but maintains a high level of security.

**Senator Chris Evans**—For your information, the dates for their next mention in the Magistrates Court is in March. They are being held pending that. Of course, if a trial date is set or what have you then we will make a decision about what we do to them. It is not clear to me yet—I have asked for this information—whether they will be tried in Perth or on the island. Obviously, that would require us to make a decision then about where we detain them. But they are in secure detention and, on advice, are separate from the remainder of the community inside the centre. As you might understand, witness statements have been taken from other detainees and will be used in the prosecution case, I assume, by the police. There are issues there about separation et cetera that have to be managed.

**Mr Correll**—The way we have been managing these clients has been in close consultation with advice from the Australian Federal Police, as well as advice from Serco from their overall security point of view as well.

**Senator HUMPHRIES**—Will their claims for refugee status or visas be suspended until their court matters are determined?

**Mr Correll**—A colleague may wish to comment on that, but I think it is unlikely that there would be a completion of their assessments until there is resolution of the court matters.

**Senator HUMPHRIES**—How many are we talking about?

**Mr Correll**—Eleven people have been charged.

**Senator HUMPHRIES**—Right. Do they all belong to the one ethnic group?

**Mr Correll**—No.

**Senator Chris Evans**—We will make some further decisions in relation to this group when some more information comes in. I have asked the department for this information, but one of the issues we will have to consider is, yes, where they are going to be tried and the timing of that—when it will come to trial. I spoke to the two police officers, who did a very good job in investigating the incident on the island, and they described to me the breadth and depth of the case they want to bring. It will not be a one-day job, so we have got to get some advice about the logistics of all that before we make any longer term decisions. So I have asked for that advice from the department and they will talk to the police about it.

They took an awful lot of witness statements and what-have-you before the charges, so we just have to work through where the trial is at, when it is likely to be on and how we will manage all that.

**Senator HUMPHRIES**—Historically, how likely is it that a person with a conviction for something committed while in immigration detention would be precluded from obtaining permanent residence in Australia?

**Mr Metcalfe**—It depends very much on the nature of the offence and the sentence, including any sentencing remarks. The Refugee Convention does place obligations on state parties in relation to their obligations about the return or the non-return of refugees, and there are limited exceptions to refugee status being obtained depending upon the nature of any criminal records. Usually, it has to be on the very serious end of the continuum of criminal offences before that would impinge on their refugee status itself.

As far as Australian visas are concerned, there is a character requirement, so those are matters that would need to be resolved as part of the resolution of their immigration status. We really need an outcome in relation to the court matters for that to be determined.

**Senator Chris Evans**—But when making an assessment, the department will have to consider the character provisions. The decision maker will then take into account any convictions or what have you in making that decision. So we are a long way from the end of the process in that sense.

**Senator HUMPHRIES**—I want to ask some questions about the impact of the IDC on the Christmas Island population and the services and infrastructure there.

**CHAIR**—Before you do, this is a good time to take our scheduled break, and we might take it tonight, seeing we came back at 7.30 pm.

**Proceedings suspended from 8.59 pm to 9.15 pm**

**CHAIR**—We are continuing our questions in relation to outcome 4.

**Senator HUMPHRIES**—I wanted to ask about economic effects on the island of the IDC. I think in the last estimates there might have been a question asked about the sewerage system on Christmas Island and its ability to cope. Is it the case that the sewerage system is under stress, and is the government planning to contribute to the cost of an expansion of the system or to build a new one?

**Senator Chris Evans**—This obviously is a matter for the territories in terms of the infrastructure on the island. The Minister for Home Affairs, Mr O'Connor, announced a \$50 million infrastructure package in December. I think that included some work on the sewerage system. So that was an investment in some of those facilities or infrastructures that were under strain. I can take it on notice for you and get you a copy of that press release et cetera, but they are strictly responsible.

We accept that we are now having a major impact on the island. We are probably now the island's largest employer by a long way. We have a lot of people on the island working for the department or for the detention centre through Serco and other providers. I was out there a couple of weeks ago and met with the administrator of the island, community leaders, the shire president et cetera and talked about the fact that we accepted that we were putting a strain on infrastructure there and that we wanted to be good community citizens and put back into the island. I think the view of the local leadership is very much that they want some lasting benefit from the presence on the island. There are issues to do with roads et cetera that we are using and adding to the impact. So we are very conscious of that. I have had a discussion with the Minister for Home Affairs, Mr O'Connor, about these things, and we are looking to see what we can do about longer term planning and investment with the community there.

I just want to make this point. Sometimes it is said that there is a terrible impact on the island. But one of the things we have been very keen to do—and I have pushed very hard—is to provide local employment. There was quite large unemployment, particularly among the Malay and Chinese populations on the island, and we have encouraged Serco and the other contractors to employ locally, and we have started to take some steps ourselves. Serco is currently employing about 30 local staff. They have also offered some positions to people on Cocos Island—about five positions. I think the catering contractors have about 25 local staff. Facilities and maintenance contractors have about 40 or more staff. We have recruited three in facilities management roles. What we are trying to do is show there is some benefit to the island as well, and that is reflected in employment. It was certainly acknowledged while I was there that the community are very pleased that we are actually employing locals, and that of course has enormous economic benefit on the island.

But we do accept that the footprint that we have on the island is putting strains on in a range of ways. We are very serious about responding to any community concerns about that and making that investment. As I say, the Minister for Home Affairs made an initial investment in the infrastructure package as a responsible minister, but immigration understands we have to play our role in meeting part of the strain that we put on infrastructure.

**Senator HUMPHRIES**—Do you think that the presence of the IDC causes an inflation in prices and wages on the island?

**Senator Chris Evans**—I have had some engagement with the island and island issues in a very peripheral way for probably 30 years. As long as I have had anything to do with the island—and I am no expert; I do not pretend to be—the cost of food on the island has been an issue. But there certainly is a serious concern that we have impacted on the price of food on the island. We have done a number of things to try and address that concern, in terms of our purchasing policy and how we bring food and other supplies in. I am not sure where we have got to on this but the shire and others were putting into us a proposition about some sort of price-monitoring mechanism. There is an argument about whether there is price gouging going on or prices are being deflated, but Mr Correll can probably take you through a couple of measures we have taken to try and minimise our impact on the island in that regard. As I say, the island community have been talking to us about a bit of monitoring to see what is the cause of what seems to be some quite extraordinary prices on occasions on the island.

**Mr Correll**—The price-monitoring facility, I understand, has gone into play. It is a collaborative issue between the local shire council and the department to watch that carefully. I think it is also fair that there were perhaps at some point some opportunistic pricing practices being followed on the island. On my last visit to the island I was advised by Serco that in fact some of the prices have come down from individual traders when they have been dealing more individually with them, rather than the traders acting in a conglomerate, you might say, and holding prices higher. There are arrangements in the contract that require Serco to purchase a substantial amount through local contractors, but also they will bring in food supplies for North West Point construction camp, for example, so that there is not enormous pressure placed on the local produce facilities.

There is, and has always been, an issue with produce at times on the island because it tends to be shipped in by boat and if there are significant tidal movements and swells coming into Flying Fish Cove then the main ship can have to wait off the island for what can be several weeks. That can create food shortages on the island. So the food position on the island tends to link with the arrival of the ship.

We are trying to connect in very closely with the community on all of those things. We have a community reference group on the island. It meets monthly and it has all of the key community groups represented on it, together with the shire council, the main phosphate mine and the tourism areas. It is about trying to keep that group closely informed and for us to stay closely in tune with community thinking. We have also linked in with the shire to establish a position on the shire of community liaison officer. There has been a bit of an elongated process to fill that position, but it is going to be filled from March. A person has been selected to go into that role. Its prime linkage is to connect into the Malay and Chinese communities to a greater degree and have a greater communication flow to those community groups on the island.

Perhaps one of first questions asked of DIAC representatives about the island is: are you here as a sort of blow-in, blow-out operation or are you here on a longer term basis? It is very hard to predict, but what we have done is establish our core staffing groups on the island on a

much more stable basis. Our manager on the island has been made for a longer period of time and is coming up for a 12-month stint now, if she has not already passed that.

All of those have been important factors in building strengthened relations with the community and have increased understanding. Significant investments have gone into the school. There is a very good and effective school operation on the island. A significant number of children are using the school facilities; they are well supported and there are good relationships there. As I mentioned in a response to an earlier question, the other thing that we have been trying to do is to strongly encourage very active engagement by our staff with the community through volunteering. About a week ago a trivia night was run out of the golf club. There was an open invitation to a wide range of people to attend. Those are important events in trying to get things to go.

Serco has also been active. They recently conducted an event which raised about \$800 for the local charities. That went from the Serco employees straight into local charities. Many contributions are being made. Having said that, we feel we have to constantly work on it because the impact is substantial. There is a large influx of population to the island and naturally that has an impact, but it has also reached a point where I guess you would say there is close to full employment on the island. Indeed, a quite interesting feature of the island is that many of the locals work in two or three jobs. It can be quite disarming when you arrive at the airport and meet someone, and then see them working in another shop later in the day. It is quite a common practice on the island for people to be working several jobs.

**Senator HUMPHRIES**—I heard it is understood that this in fact leads to a sort of cash economy where a lot of people want cash payment rather than through the books.

**Senator Chris Evans**—The key point is that when I was on the island I asked how many people were still employed by the phosphate mine. The local employment numbers on the island are down to just over 100. As I indicated to you already, through our contractors we are already employing about 100 locals so that is a huge contribution to the local economy. It has had a huge impact on local employment. In fact, we have had difficulties with contractors who said we were offering them too much work and asked could we slow down because they would like to go fishing. There is that upside in economic activity that we bring. We are very committed to buying and employing locally and trying to be good citizens. When I flew out the other day I walked past the community shop at the airport and who was staffing it but one of the immigration officers I had seen at the detention centre earlier. He was doing his stint in the community shop. They are making a real effort to fit in.

**Senator HUMPHRIES**—That claim about a cash economy, can you respond to that? This is a claim made by a person who works on the island and who says that it is a major problem. He is a contractor who is finding it hard to attract staff since he is not willing to make those cash payments. He finds it difficult to get staff to work for him. Do you have any evidence of that?

**Mr Correll**—It is the first time I have heard the comment that there have been concerns about the cash economy there. Certainly, the employment arrangements with either DIAC or our contractor would not be on the basis of cash payments. They would be under proper payroll arrangements. There is a strong demand for labour on the island—there is no question

of that. It is not an issue which we have seen emerging strongly to date or as a major issue being raised with us on the island. As you have raised it here, Senator, that is something that we might investigate a little further.

**Senator HUMPHRIES**—There is a Western Australian citizen who has raised related issues, if not that issue itself, with you, Minister. The letter he wrote to you has been responded to by departmental officials.

**Senator Chris Evans**—A local resident?

**Senator HUMPHRIES**—Not a resident of Christmas Island but a resident of Perth who does contracting work on Christmas Island. I am happy to show you details of his correspondence.

**Senator Chris Evans**—In terms of the cash economy or other issues?

**Senator HUMPHRIES**—He has raised that issue with me and with others.

**Senator Chris Evans**—I must admit I have not seen that but I will get the officers to take a copy of the reference number from you, if we can, and then I will have a look at it.

**Senator HUMPHRIES**—He has made allegations about local firms—there being an avoidance of tendering arrangements because of sweetheart deals being done on the island. I will refer his correspondence to you. I do not wish to receive a reply to his allegations. I would be grateful if you were to take on board the things that he is raised.

**Senator Chris Evans**—They sound as though they are pretty serious allegations so I will undertake to make inquiries.

**Senator HUMPHRIES**—One of the things he specifically questioned about the way in which the department deals with the island—this is more Serco than the department, I suppose—is that, for example, rather than using the island bakery for bread to be produced for the IDC, frozen bread is shipped in to the island and used on the island in that way. He says that it could not possibly be cheaper to ship frozen bread from Darwin or somewhere in great big containers. It would be much better to use the island bakery, but that is not done. Do you have any comments?

**Senator Chris Evans**—Mr Correll might like to reply but I think this is a classic case that if we were buying it all on the island the price of bread on the island would go through the roof on the basis that we were consuming all the baker could bake, but I will let Mr Correll respond. That is just a theory on my part.

**Mr Correll**—That is very true. The cooking facility at North West Point, for example, is a very large, sophisticated commercial cooking operation providing meals for, at the moment, 1,550 people in North West Point, and then meals go to a construction camp and other locations.

**Senator HUMPHRIES**—Does that cooking facility include a bakery to bake bread?

**Mr Correll**—I do not think they are baking bread on the site but they would be bringing bread and other supplies in—just because of the quantum of the food involved in doing that. I am aware, for example, that just before Christmas a cruise ship came in to Christmas Island for the first time and a number of people disembarked, and it was a great, positive economic

day for Christmas Island. I think the economy was stimulated to the tune of \$40,000 on the one day, but the main street ran out of food for the group that arrived. So managing that issue and the demand from North West Point is an important consideration. So the balance has to be: yes, be an active purchaser of local produce but not to the extent that it completely drives prices up or consumes all the produce that is available on the island.

**Senator HUMPHRIES**—I get the impression that the supermarket, or whoever it is that does the baking there, has actually made this complaint and it has reached the ears of a constituent of yours, Senator Evans, who has written to me. Can I ask you to take a question on notice and pose it to Serco as to why it imports frozen bread rather than uses the island bakery?

**Senator Chris Evans**—We certainly will, but I think you would except the point that if you asked a small bakery on the island to suddenly bake for an extra 1,500 to 2,000 people—

**Senator HUMPHRIES**—Yes, of course, but if you came to an arrangement with the bakery, where you are going to purchase a certain amount of bread over a regular period of time—

**Senator Chris Evans**—That is the sort of arrangement we have. We buy locally and we ship in. But we will take up the particular bakery issue.

**Senator HUMPHRIES**—Can we see whether it makes sense in this particular case. It would be useful, if that were the case. As I say, I will pass that on to you, Minister; I would be grateful if you could respond directly. The constituent has some other concerns which I might raise with you privately.

**Mr Correll**—I have a little bit of supplementary information. Based on that letter and the staff who are working on it, there has been some investigation. Apparently the baker could not physically produce even up to one-half of the bread requirements on a daily basis at North West Point, and those needs are being met by frozen bread. The bottom line would be that we would always be looking at the opportunity to utilise local produce if it can meet the requirements, and we will follow this through.

**Senator HUMPHRIES**—That would be good. I have a couple of questions about services provided in the IDC, particularly recreational facilities for the centre. What internet facilities are available for detainees?

**Mr Correll**—There are two internet PC rooms in North West Point. There is an internet room at the construction camp, and there is essentially a booking or rostering arrangement for use of the PCs in both locations.

**Senator HUMPHRIES**—How many PCs are in the IDC altogether?

**Mr Correll**—At North West Point, in the two rooms—this is approximate—I would estimate that there would be 15-odd PCs in each room, so roughly 30. If that is in any way inaccurate I will come back to you. But it is of that order.

**Senator Chris Evans**—Can I make the point that internet access for detainees in immigration centres was introduced in early 2007 by the Howard government. They took the decision to make the internet available to detainees. We have now got filters in place to block access to inappropriate content such as pornographic material.

**Senator HUMPHRIES**—You block that content?

**Senator Chris Evans**—Yes.

**Senator HUMPHRIES**—I understand that the centre provides a number of recreational facilities: yoga, sewing classes, cooking classes and dance training.

**Senator Chris Evans**—Sorry, Senator; I am laughing. When I first went to the centre, when there were much smaller numbers there, there was a volunteer group with a religious base who had been engaged by the previous contractor. A very attractive young woman had a very full class of Afghan men learning bootscooting to the tunes of Kenny Rogers. It was only when I saw the young woman that I worked out why they were all so into bootscooting. The class run by a male compatriot on something much more cerebral was not getting much in the way of attendance. When you walked into the gymnasium and saw all these Afghan blokes learning bootscooting it was a bit incongruous!

**CHAIR**—That is because not last year but the year before, when Christmas Islanders celebrated their 50th anniversary of being declared an external territory, they had quite a contingent of expert bootscooters has come from Asia. They have managed to inculcate the community into liking that form of dance and exercise. So it is not entirely unusual; it is just something that community likes to do, other than karaoke. If I mentioned Mr Foo and his karaoke efforts, I would probably be rewarded for that. They are two of the things on the island that they like doing. I am glad the Afghans have caught on.

**Senator HUMPHRIES**—I obviously move in the wrong circles. I will have to think about that. Is a dance teacher currently provided to the centre?

**Mr Correll**—I am not sure if it is a dance teacher, but Serco have a dedicated activities manager who is constantly organising activities. In addition, there are dedicated gym staff as well. The gym is very popular within the centre. There are a range of other dedicated staff supporting those sorts of activities. I can confirm the internet terminal numbers, by the way. There are 26—so I was nearly right—internet terminals at North West Point, 12 terminals at construction camp and two terminals at the Phosphate Hill compound.

**Senator HUMPHRIES**—Coming back to the dance teacher, you are not aware of a dance teacher being provided specifically for teaching dance in the centre?

**Mr Correll**—I am sure that there has at various stages been a dance teacher there. I would have to check whether there is currently a dance teacher.

**Senator Chris Evans**—I think the responsibility for that is with Serco.

**Mr Correll**—It is, yes.

**Senator HUMPHRIES**—That is part of their contract?

**Senator Chris Evans**—Yes. The activities manager I met was with the previous provider. He is very good; he had a great relationship with them. He does not look like a dance teacher; he looks like a weightlifter. We could ask Serco to provide details of who they are using at the moment, but part of their contract is to supply some activities and employ a couple of local people doing some of those activities.

**Mr Correll**—And also the volunteers, particularly and most recently the Alive group, as they are called. They are very active in supporting those activities.

**Senator HUMPHRIES**—Good. Going back to the dance teacher, can you find out if this dance teacher is provided and if that person, as part of the Serco contract, is flown to Christmas Island for the purpose of teaching dance, or whether it is a local person who has been recruited for that purpose? I do not know how many dance teachers are ordinarily resident on Christmas Island, but could you find out whether that is part of the provision that Serco make.

**Senator Chris Evans**—There is a one of everything on Christmas Island, Senator.

**Senator HUMPHRIES**—Indeed, but it is a question of what is important and what is not important, isn't it?

**Senator Chris Evans**—I am just saying it is a very mixed community: there are all sorts of people with all sorts of skills there for all sorts of reasons. It is a really interesting place like that.

**Senator HUMPHRIES**—Well there might be lots of boot scooters, but I would like to know—perhaps you can tell me what sort of dancing the dance teacher teaches please. That would be useful. I assume that any of the staff that Serco employ in the centre are accommodated at Serco's expense as part of their contract rather than provided for by the department directly.

**Mr Correll**—Yes. Serco have their own accommodation arrangements. There are times when we will obviously work closely with Serco in the sharing of the use of accommodation on the island if accommodation is tight on the island, so there is a lot of collaboration between ourselves and Serco—and for that matter the broader community—in relation to accommodation.

**Senator HUMPHRIES**—I have other questions about facilities and services in the centre; I will put those on notice.

**Senator BARNETT**—In answer to question No. 100, as of 6 November 2009 there were 56 departmental staff and 1,178 clients on Christmas Island. How many staff are on Christmas Island now? Do you have those figures with you?

**Mr Correll**—The figure varies because we have the short-term assessing teams going on and off the island quite quickly and we have the core group there. But at any point in time it is in the order of around 60 to 70, and the stats I have in front of me are that as at 31 January we had a total of 63 DIAC staff on island, three of whom were locally engaged.

**Senator BARNETT**—And how many at 30 June last year and at 30 June the year before? Do you have those figures?

**Mr Correll**—No, I would need to take those on notice.

**Senator BARNETT**—All right. Do you know the staff-to-client ratio? As of 6 November it was 21 to one. I am happy for you to take that on notice.

**Mr Metcalfe**—Are you talking about DIAC staff, Senator, or detention service providers?

**Senator BARNETT**—I am trying to compare apples with apples from answer No. 100. If you could just advise based on what—

**Senator Chris Evans**—The point we want to make is that management of the centres is with Serco, so our staff perform different functions. There is the management group and then we have assessors who come on and off in teams. So a client-to-staff ratio on Christmas Island would not be all that helpful as an indicator of anything much. I am happy to give you the staff numbers, I am just saying for you to keep in mind that the contractors are doing the catering, the management of the clients et cetera, and our staff are doing the immigration function and the interviewing teams.

**Senator BARNETT**—What we are interested in is the number of people providing a service to the clients, so if you want to include the departmental staff plus the contract people—

**Mr Correll**—We will probably need to give you that, Senator, because having now read that answer it is a fairly irrelevant statistic as to the proportion of departmental staff to the number of clients because, as the minister has said, we have a number of staff now on the island for significant periods of time involved in the overall management of the centre. We will have teams of staff moving through to assess particular groups and their claims. That will of course vary in terms of numbers and frequency, depending on the pattern of arrivals.

**Senator BARNETT**—Well why don't we do a global figure from 30 June 2008, 30 June 2009 and then 31 January 2010 for the staff plus the contract staff—that is, the people who are actually providing the service—and then we do the ratio to the clients on each occasion at that point in time.

**Mr Metcalfe**—We will provide you with those three dates with the number of departmental staff, the number of service provider staff and the number of clients at that time.

**Senator BARNETT**—Thank you. How many charter planes does the department bring to and from the mainland?

**Mr Correll**—Generally we would have about one charter flight per week going to Christmas Island. We use to the greatest extent possible the commercial flights that are operating there and back, but—

**Senator BARNETT**—How many commercial flights are there per week, and what is the capacity of that and what is the capacity of your charter per week?

**Mr Correll**—With regard to the last item, the charter capacity can vary depending on the overall number of movements, including client movements.

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

**Mr Correll**—On average it would be, as I said, around one charter per week. I am just looking at the specific data: in the 2009 calendar year we had a total of 54 charter aircraft occurring, so that is not far away from the one per week.

**Senator BARNETT**—Yes.

**Mr Correll**—I would need to take a bit of advice on the numbers but, as I said, seating capacity on charter aircraft can range from 100-plus down to more likely the thirties to forties

on smaller aircraft. The charters are directly linked to the number of movements, in particular and invariably movement off the island. And so where there is a big movement in any given week then we will obviously hire a larger flight.

**Senator BARNETT**—Yes, thank you. For the 2009 calendar year, 54 charters—nearly one a week, or a bit more than one a week, as you said. Can you provide the details—I am happy for you to take them on notice—for the number of people into the island and out of the island? When you say a charter, is that into and out of?

**Mr Correll**—Yes. It would always be taking and delivering.

**Senator BARNETT**—I anticipated that, so if you could advise the number of people going in and the number of people in going out in the last calendar year in those 54 charges. What is the cost (1) for the 2009 financial year for the charters and (2) what is the cost on average per charter? Do you have those figures with you?

**Mr Correll**—No, not the ins and outs and the individual costs, so we will take that on notice.

**Mr Metcalfe**—Senator, you also asked about regular scheduled services. I think they have increased over time. We could find that information, but that essentially is information that probably sits with the Territories department. They have the more direct relationship with the providers of that regular scheduled service.

**Senator BARNETT**—I assume your officers would regularly use the commercial flights.

**Mr Metcalfe**—We do regularly use that to the greatest extent that we possibly can.

**Senator Chris Evans**—But again there has been an issue about not taking up all the seats, so again it is balancing local needs. But I think there is a new service opening, Mr Correll?

**Mr Correll**—There is. Territories have recently announced that Virgin is providing a contracted service. I think that is due to start in April. At the present stage there are four flights per week.

**Mr Metcalfe**—So just to be absolutely clear, Senator: I do not think we have taken that part on notice, but the Attorney-General's Department and Territories are within this committee and I am sure you can raise it with them.

**Senator BARNETT**—Does DIAC provide the island with any form of gratuity or compensation for the impact on infrastructure made by staff and the detainee population? We have touched on sewerage before, but power and water. Do you have those figures there in terms of those funding allocations?

**Mr Correll**—DIAC provides a community contribution to the Christmas Island shire of around \$280,000 per annum. That is an arrangement that has been in place for a number of years on Christmas Island.

**Senator BARNETT**—That is for the local council or the shire is it?

**Mr Correll**—Yes. In terms of the infrastructure and services on the island, some of the infrastructure and services are provided by the territories department and other services are provided by the shire. This is something that you may wish to explore further with territories.

**Senator BARNETT**—For the purposes of the committee, clearly that is a very small amount of money in the scheme of things. Who actually funds the infrastructure services? Is it DIAC or territories?

**Mr Correll**—Territories funds the services associated with overall waste management, management of infrastructure, airports and roads—all the normal range of infrastructure services are managed through the territories.

**Senator BARNETT**—I understand there was a contract with the independent reviewer on Christmas Island that expired on 31 December 2009. There was a contract called the independent reviewer.

**Mr Metcalfe**—I imagine that would be the merits review process for persons assessed as not being refugees by departmental officers who have administratively based merits review rights.

**Senator BARNETT**—I think you might be right.

**Ms Keski-Nummi**—That is correct.

**Senator BARNETT**—How many reviews have the independent reviewers on Christmas Island conducted.

**Ms Keski-Nummi**—I have left my notes back there. Could I take that on notice? I took a lot of questions on notice from Senator Humphries and I could add that to them.

**Senator BARNETT**—All right. I have two further questions. What was the outcome of the reviews?

**Ms Keski-Nummi**—Some of the reviews I can say have been affirmed and some have overturned the original decision, but we can provide that information.

**Senator BARNETT**—Have any negative decisions of the independent reviewer been challenged in the original jurisdiction, the High Court or the Federal Court?

**Ms Keski-Nummi**—No, they have not.

**Senator BARNETT**—Thank you.

**Senator HUMPHRIES**—I will just come back to a couple of questions I asked before. On the internet access by detainees: you mentioned that they had restrictions on the sites that they can visit so they cannot view pornographic sites. Do they have unrestricted email access?

**Mr Correll**—Yes, they can utilise email and other Twitter sorts of facilities et cetera.

**Senator HUMPHRIES**—Twitter and Facebook and things like that?

**Mr Correll**—Yes, they have that access. There are standard filters in play against covering pornographic sites in particular.

**Senator HUMPHRIES**—On the question of the bakery: I might say that one of my colleagues who has visited the island tells me quite categorically that the local baker has said that he has never been approached about producing bread for the IDC. He is adamant that he would be able to supply the needs of the IDC if asked. It would need a bit of lead-in time to obtain additional supplies but, if given due notice, he would be able to supply the IDC.

**Mr Correll**—We are happy to raise that with Serco and follow that up.

**Senator HUMPHRIES**—Thank you very much. I had a question about visa cancellations. Can I ask that in outcome 4?

**CHAIR**—Yes. Shall we go to Senator McLucas's question first?

**Senator Chris Evans**—Just to check before we move on: Senator Humphries, you wanted to ask a question about what?

**Senator HUMPHRIES**—Visa cancellations under section 501 of the Migration Act.

**Mr Metcalfe**—That is program 4.1, so we are in that broad space.

**Senator Chris Evans**—It might be best if we finish 4.3 and then we will go back to it.

**Senator HUMPHRIES**—I am finished 4.3.

**Senator Chris Evans**—Sorry, I meant after Senator McLucas. If you finish 4.3, we will get the right officer to deal with 4.1.

**Senator McLUCAS**—I have a question about length of detention. I am aware of some risk research into mental health in detention that was undertaken by the University of Wollongong. I am aware that the length of detention has been an issue for the department and for you, Minister. How are things going with the length of detention? What success, if any, have we achieved?

**Senator Chris Evans**—The actual Wollongong research was commissioned by the department, and it is very useful research. I think it is probably the most comprehensive assessment of the impact of detention on mental health currently published. I think it has been very widely acclaimed, but it clearly confirms that long periods of immigration detention impact on the health of the individual. It also highlights an interesting aspect of that, which is that it seems that people not knowing how long they are going to be there is actually worse, sometimes, than having a prison sentence—you know: good behaviour and out in 18 months. That indeterminate aspect is an issue. But there is much greater awareness about that within the department and, as you know, the government's *New directions in detention: restoring integrity to Australia's immigration system* placed a strong emphasis on trying to prevent indefinite or long-term immigration detention. I can get you the figures on the numbers on the mainland, but we have, effectively, reduced the numbers who have been in detention for more than two years to a bare minimum—and a number of those are in community detention. Those are difficult, longstanding cases. We have had a real effort to knock those numbers down and we are down to a couple of very difficult cases and a few 501 character cancellation cases, but I can get you the figures on those.

We discussed earlier the long-term detention on Christmas Island. We have one particular case of a gentleman who has taken his appeals through the court system, so he has been there a bit longer. We have discussed the issue of some of the Tamil clients being there six or seven months, but we are trying to work very hard to resolve cases more quickly. Ms Larkins can give you some more detail if you like, but we are very conscious of that impact. It is at the forefront of departmental considerations, because all the evidence in terms of the deterioration of people's mental health is that the longer the detention goes on the bigger the impact will be. But Ms Larkins or someone might be better if you want more detail.

**Senator McLUCAS**—Do you have the figures with you, Ms Larkins?

**Ms Larkins**—I will get the figures brought to the table. I guess the overarching figure is the number who have been in detention over two years, and that is now at 19.

**Senator McLUCAS**—That is down from what?

**Ms Larkins**—I am trying to get the figures for the six-month-to-two-year cohort.

**Senator Chris Evans**—It was in the order of 70 or 80 before.

**Senator McLUCAS**—That is a huge improvement.

**Ms Larkins**—It is much smaller.

**Senator Chris Evans**—And a number of them are in what we call community detention, which means they are not in an IDC. But they are really difficult, bordering-on-intractable cases with special circumstances. We also have a number who are character cancellations—effectively, criminal cases where they are pursuing every legal appeal to prevent deportation. I am probably using the wrong language.

**Senator McLUCAS**—On my visit to Villawood with the Parliamentary Standing Committee on Public Works, we met. I thank Mr Correll for assisting us with that.

**Senator Chris Evans**—You liked being escorted, did you?

**Senator McLUCAS**—It is a pretty special place! I am very pleased that you are spending a lot of money changing it. The point you make about the lack of certainty about what is going to happen to one, I think, adds to the difficulty, but to move from 80 down to 19 is extraordinary, and I commend you.

**Mr Metcalfe**—This is part of broader reforms that have been underway and which were given significant funding in the last budget to substantially increase the early intervention in what we call ‘status resolution’. While we have a very, very high compliance rate as a country generally in relation to foreign nationals coming here—and we can be very proud of our success and the very small proportion of over stayers generally—there are some people who have particularly difficult circumstances. A pilot established by the previous government following the Palmer report, which was deemed fully funded as a national scheme by the current government, is showing that we can intervene at an early stage and achieve proper resolution of status without resorting to immigration detention while maintaining very high levels of visa compliance. It is showing that getting in early and fixing the problems is far better than just leaving it to fester, particularly with people in prolonged detention with the negative consequences that the minister outlined.

**Ms Larkins**—In relation to the length of time in detention as at 22 January 2010, we have 49 people who have been in detention seven days or less; 489 who have been in detention from one week to one month; 862 who have been in detention from one month to three months; 460 who have been in from three months to six months; 131 from six months to 12 months; 19 from 12 months to 18 months; and eight from 18 months to two years. I said 19 before and it is actually 22 who have been in detention for greater than two years. That is the whole detention population onshore and offshore.

**Senator McLUCAS**—That is fantastic, thank you.

**Senator HUMPHRIES**—I simply wanted to know how many visas have been cancelled and how many have been refused under section 501 of the Migration Act?

**Ms Larkins**—In the six months to December 2009, 11 visas had been cancelled under section 501.

**Senator HUMPHRIES**—That is 11 cancelled, were any refused?

**Ms Larkins**—I do not have those figures but I should be able to get them. I will have to take that on notice.

**Senator HUMPHRIES**—Of those 11 decisions and the others that you are going to get for me, how many decisions were made by the department and how many by the minister?

**Ms Larkins**—All of the decisions made in the last six months have been made by the department.

**Mr Hughes**—Senator, I could supplement that answer by saying that one of the initiatives of the minister to standardise the decision making and to get greater expertise involved in the decision making was to advertise for a principal decision maker in the department at a senior level. We have recently recruited someone with a great deal of relevant expertise in this area; a former Victorian county court judge, who will commence with the department and be making these decisions as the prime national decision maker at the beginning of next month.

**Senator Chris Evans**—We have been keen, Senator, to bring a bit of consistency and due process to the system. Previous decisions were made on occasion by ministers but were often made by senior officers by taking home a few files of the weekend and doing 501 cases, which was not part of their normal work. Quite frankly, any cursory examination of it showed there was not much consistency so we are trying to professionalise the way we handle these. We brought all the officers who are dealing with the cancellations into the one unit in Melbourne now.

**Mr Correll**—That is correct. Refusals and cancellations have been brought together.

**Senator Chris Evans**—Refusals and cancellations are together as part of an effort to lift our game to ensure there is due process and proper professionalism in relation to decision making and this appointment is to give us that expertise, seniority and experience to make sure we got it right.

**Senator HUMPHRIES**—What criteria are used to refer a decision on to your desk, Minister?

**Mr Hughes**—Under the current guidelines, national security cases would come to the minister. I am not sure if there are any others.

**Ms Larkins**—No. That is all, at the moment.

**Senator HUMPHRIES**—How many 501 cases are considered each year?

**Ms Larkins**—We will have to take that on notice.

**Senator HUMPHRIES**—Perhaps you could give me the number of cases this year to date and in 2008-09. Chair, that is all I have got for outcome 4.

[10.06 pm]

**CHAIR**—We will now move to outcome 5, settlement services for migrants and refugees.

**Senator HUMPHRIES**—I want to ask about the arrangements for invitations to citizenship ceremonies for representatives of political parties. Minister, this is an issue I wrote to you about some time ago.

**Senator Chris Evans**—It seems to be an ACT issue.

**Senator HUMPHRIES**—I hope it is just an ACT issue.

**Senator Chris Evans**—I know that one of the former ministers had an issue with one of your successors as Chief Minister.

**Senator HUMPHRIES**—Yes. I was going to ask about that. But that is more a personal interest rather than anything relevant to my portfolio. You were kind enough to write to me, Minister, when I raised those issues about non-invitation to citizenship ceremonies. You advised me that you had investigated the matter. You confirmed that there had not been an invitation, and that staff had been advised that I will be invited to future ceremonies. Since you wrote that letter, to the best of my knowledge I have been invited to one ceremony but not to any others. Given that I am the only coalition representative in the ACT, I should in theory be invited to them all. It is not that I am anxious to go to them all. But I should at least be invited to them all, and that has not occurred. Conversations with some of my colleagues suggest that this problem is replicated in other places as well. They report that their invitations to what I gather must be local government organised citizenship ceremonies are sporadic and sometimes nonexistent. You have a code that governs the arrangements for these ceremonies. I wonder what form of compliance is engineered with respect to this code and what reporting occurs by those organisations, who are effectively delegates of the Minister, that conduct the ceremonies.

**Senator Chris Evans**—Mr Fox, might like to respond. I will make the opening point that I thought we had addressed your issue. I am concerned if that has not been followed through. I will certainly take that on board and make sure I am satisfied. I am at pains to make sure that citizenship ceremonies do not become a political football or partisan. I am very concerned at any development that indicated that. It is not in the interests of the Australian body politic or community that we have any partisanship in relation to citizenship ceremonies. I would be most concerned if there was any suggestion that that was occurring.

We obviously from time to time have issues with councils—often through lack of knowledge of procedures et cetera. We occasionally have a situation where one might think there were some other motives involved, but generally it is just a lack of knowledge of procedures. We do work hard on trying to make sure that the code is adhered to. Mr Fox, you might want to take up the details.

**Mr Fox**—The minister is right. We do have a code. We regularly remind people conducting ceremonies of I guess their obligations in terms of both conduct of the ceremonies and making sure that those ceremonies are apolitical in nature. We remind them of our code where we ask that local representatives of both sides of politics be invited to ceremonies. There have been occasions, including the one you raised in correspondence, when that has not happened. Usually that is through either administrative error or lack of knowledge of the rules. We routinely remind people of them. We do not have a formal compliance system

where we go out and audit people's adherence to the code. We do, however, make sure that we address all issues that are raised with us if there are instances like the one you raised with us.

As to whether there have been other ceremonies in Canberra that you ought to have been invited to, I do not know the answer to that. I saw you at the one on Australia Day that was here. I am not aware whether there were any others between that correspondence and the Australia Day one. I will take that on notice and confirm that for you.

**Senator HUMPHRIES**—My office advises me that we have received a list today of the citizens who were conferred at a ceremony on 5 February. That was the first indication we had that there had been a ceremony on 5 February.

**Senator Chris Evans**—Do you know where that was conducted?

**Senator HUMPHRIES**—I assume it was conducted at the Legislative Assembly. That is where all the ones I have previously attended have been.

**Mr Fox**—I am not aware of that one, but I will certainly look into that and get back to you.

**Senator HUMPHRIES**—This would be the third occasion on which I have raised this issue. As I say, there are colleagues who have reported to me that they have similar problems. Can I get your undertaking, Minister, that, if these issues are raised with you or the department, there will be follow through with the delegates, as they all are as I understand it, of yours to ensure that these issues are addressed?

**Senator Chris Evans**—I can assure you that with the two or three incidents that have been raised with me in the past I have made very clear that I wanted them investigated. That people would be told how the code applied and if they were not prepared to comply they would not be conducting ceremonies on our behalf. That is my very firm view. We thought we had addressed your issue. We wrote to you in those terms. If it has not been, that comes as news to me.

If any other members have concerns—and a couple have raised them with me in the past—I will address them immediately. As Mr Fox says, we cannot run an auditing compliance operation. The costs would not be justified. I am sure 99 per cent of them go off without a hitch. Quite frankly, the fact that the councils put the resources they do into it is of great assistance to us. Sometimes the councils suggest we may like to make a financial contribution towards that, and I always tell them that that is something under active consideration. Clearly that would be a huge cost to the Commonwealth.

I am certainly very happy to take up those things. I will get Mr Fox to take that up and get him to report to me quickly. I will correspond with you or ring you about that.

**Senator HUMPHRIES**—I am just indicating that I propose to alert my colleagues to this exchange and suggest to them that if they have a problem they contact, I assume, your office, Minister. Is that right?

**Senator Chris Evans**—Have them contact my office first.

**Senator HUMPHRIES**—Fine, and they can deal with it directly.

**Senator Chris Evans**—I point out that I have actually made a huge effort to encourage more members of parliament to take part and to act as delegates, and we have authorised members who have asked for a standing authorisation to have one, and we have expanded that enormously. I think it is a really good thing if members of parliament participate in citizenship ceremonies and I would encourage the widest possible engagement with them. It is also actually the best part of my job doing them. There is not much good news in immigration, but doing the citizenship ceremonies is a lot of fun!

**Senator HUMPHRIES**—I would agree with that.

**Mr Fox**—Certainly, Senator, if there are instances like that, as well as letting the minister's office know, we would love to know if there are instances where those rules have not been applied so we can make sure that we follow up on them as well, because we run those ceremonies through each of our state and territory offices.

**Senator HUMPHRIES**—Okay. You did raise the question before, Minister, about the capacity of the ACT Chief Minister to conduct these ceremonies. I recall his authority to do that was withdrawn by a previous minister. Has it been restored?

**Senator Chris Evans**—I think the answer is yes. There was some engagement with his office on these issues. I just want to be careful; my understanding was yes, after some discussion after the issues that had arisen. Mr Fox, are you able to give a definitive answer?

**Mr Fox**—I do not have that definitively. That is my understanding, but I would like to confirm that.

**Senator Chris Evans**—Yes, it was restored, Senator, after the requirements of the code were made clear. That was discussed with his office and his status was reinstated. Obviously, we discussed the obligations under the code.

**Senator HUMPHRIES**—Fine. Okay, that is all I have in outcome 6.

**CHAIR**—Senator Fifield—outcome 6?

**Senator FIFIELD**—Yes. I just have a few questions in relation to the processing of citizenship. At the outset—and this might be something that you need to take on notice—could you provide data on the number of applications for citizenship and the number granted, and the average processing times by each of the main CBD offices around Australia since 1 July 2009, by month?

**Mr Fox**—Until when?

**Senator FIFIELD**—Up to now.

**Mr Fox**—I do not have that data with me but I will take that on notice. I would point out that we did have a change in process and, indeed, in the legislation applying in the middle of that period—

**Senator FIFIELD**—Was that in October last year?

**Mr Fox**—Yes, that is correct.

**Senator Chris Evans**—It was quite major change to the way it operates, Senator, so—

**Senator FIFIELD**—I appreciate that.

**Senator Chris Evans**—there were some delays I was aware of, particularly in Sydney, which we are working to address. Mr Fox might be able to help you with that, although you are probably more interested in Victoria. But the legislation that was passed has fundamentally changed things. The point is that people cannot sit the test until they are further down the application path. Maybe, Mr Fox, you might just briefly explain that.

**Mr Fox**—That is right, yes. Apart from the legislative change from the beginning of November, 9 November in fact, we changed our application process. Prior to that, an applicant could come in and sit the test without making a formal application at that time. Once they had passed the test they would make the formal application. The change now is that they arrive at the office and they make an application, and at that time they can make an appointment to sit the test, and that is usually very soon after they have made the application. It enables us to improve our processing time. It was one of the major changes that we made to help us improve our ability to make that processing much more efficient.

**Senator Chris Evans**—But we had people sitting the test a long time in advance of their capacity to qualify. We had people who could qualify and were not able to get into the test because they had people in front of them in the bookings, so we have tried to rearrange that. It is purely an administrative thing for the department; it does not change anyone's qualification.

**Mr Hughes**—I think it is also fair to say that in the second half of last year waiting times for the test had built up and that we streamlined administrative processes around that and put in extra resources in order to reduce backlogs and get the times back down, as well as this major change of process, which we expect to bring the processing times and therefore waiting times down over time.

**Mr Metcalfe**—Senator, I think that in your question that Mr Fox took on notice you asked about processing by CBD offices. Was that a particular requirement? For example, we process citizenship at Parramatta as well.

**Senator FIFIELD**—By the main offices, be they at Parramatta, the Dandenong one, Melbourne or whatever—the main offices.

**Mr Metcalfe**—Understood. Thanks.

**Senator FIFIELD**—Thank you.

**Mr Metcalfe**—I do not want to be pedantic.

**Senator FIFIELD**—No, I appreciate you checking that. What was the average processing time before the October change as opposed to after the October change?

**Mr Fox**—I do not have that data.

**Senator FIFIELD**—Was there a sort of target time frame to complete processing before October and after October?

**Mr Fox**—Yes, there was. With the new process, we aim to have, within two working days of receipt of the application, booked an appointment for a test or interview if that seemed to be the claim. At the moment the appointment is to be scheduled no more than three weeks from the time that we make contact, so that is a pretty quick turnaround time in the client's interests. At the moment we find that we are meeting that timetable at all of our CBD

offices—sorry; at all of our main processing offices, as you were saying. That is our aim there. I do not have with me the exact processing time for before October, so I will provide that when we do provide you with that table.

**Senator Chris Evans**—Certainly it had blown out. I was concerned when I went to the Sydney office that waiting times had become quite lengthy, but it was very different elsewhere. For instance, some people were going to Parramatta because they could get a booking earlier. I know that in Perth their times were quicker at the time and actually some people could do the walk in, basically, if they had spare capacity. So it did vary from office to office, but of course the numbers going through New South Wales were much, much higher. We will get to the figures.

**Senator FIFIELD**—I appreciate the objective to have a short time between seeking a test and getting a test. But, in terms of passing the test and then the formal—not ‘granting’ of the citizenship but—

**Senator Chris Evans**—The conferring.

**Senator FIFIELD**—The conferring. Is there a target time for that?

**Mr Fox**—Yes, there is. I do not have that number with me, but there is a target time for that, and again I will provide that to you.

**Senator FIFIELD**—Would it be 60 days? Ninety days?

**Mr Fox**—From memory it is 60 days, but I will confirm that. The service standard is that 80 per cent of conferral applications be decided within 60 calendar days.

**Senator Chris Evans**—That said, of course, I presided over the largest ceremony in Australia, in the northern suburbs of Perth, this Australia Day. I think it was 2,300 or 2,400 in the end, or 2,600; I did not see the final number. People attended the ceremony sponsored by the three big northern councils. Of course, those people had taken a decision to wait for Australia Day to take the ceremony, so there would be lots of people there who did meet the service standard but who liked the idea of doing it at a really big ceremony on Australia Day. It was a fantastic event; a lot of the Australia Day ones are.

**Senator FIFIELD**—Sure.

**Senator Chris Evans**—So some people actually make that decision, and we sort of encourage it too, because it does give a real significance to Australia Day and a bit of extra meaning and ceremony, if you like, to the event. So, while we have the service standards, I am one of those who actually encourage the department not to necessarily meet them in terms of occasions like Australia Day.

**Senator FIFIELD**—Sure.

**Senator Chris Evans**—I think having large numbers do it on Australia Day is a very good thing.

**Mr Fox**—Senator, I can give you those processing standards as they were before November if that would help you.

**Senator FIFIELD**—Thank you.

**Mr Fox**—Before 9 November, it was 35 per cent of applications finalised on the day of receipt or lodgement, 85 per cent of applications finalised within 30 days of receipt and 95 per cent of applications finalised within 90 days of receipt. The new standard is 80 per cent of conferral applications decided within 60 calendar days, and then we will be improving on that as we bed down that new process as well.

**Senator FIFIELD**—The minister was referring to the backlogs. Are there particular backlogs at the moment at the Melbourne and Dandenong offices that you are aware of?

**Mr Fox**—For conferrals?

**Senator FIFIELD**—Yes.

**Mr Fox**—My understanding is that there is a delay in the Melbourne offices at the moment.

**Senator FIFIELD**—It has been suggested to me that there is something in the order of a 6,000-person backlog. Would that be in the ballpark? That is, 6000 people that are beyond the 90-day turnaround.

**Mr Fox**—I do not have that data with me. I cannot confirm that.

**Senator FIFIELD**—If you could check.

**Mr Fox**—Yes, I will check. I will take that on notice.

**Senator FIFIELD**—Although you might not know the quantum of the backlog, are you aware of what the cause is of the current backlog in Melbourne and Dandenong?

**Mr Fox**—Not specifically, but I have had some discussions with our staff down there and I understand that one of the reasons is some delays in getting councils to conduct those ceremonies. At the moment not all councils in Melbourne are in a position to conduct those ceremonies. So we are working with the local government associations to encourage greater uptake of those ceremonies. We are also conducting an increasing number of departmental ones to try and help address that backlog. I have also been giving some thought, and we have been giving some consideration, to broadening the range of people who can help us by conducting ceremonies. For example, in Queensland some community groups such as Rotary conduct citizenship ceremonies, so we are exploring whether there would be an opportunity to expand to those sorts of communities in other states, including Victoria.

**Senator FIFIELD**—So it is not a problem of changing staffing levels or staff being directed on a short-term basis to undertake other tasks?

**Mr Fox**—No.

**Senator FIFIELD**—Are applicants advised that they have been successful only once a council can be found to actually do the conferring, or are applicants advised prior to that, 'Look you've been successful. We're just now waiting for a date'?

**Mr Fox**—They are advised prior to that, which is why they are aware of the delays.

**Senator FIFIELD**—As Minister Evans was suggesting before, there might be members of parliament who are happy to help out in the conferring.

**Senator Chris Evans**—It is more the sponsorship of the event. I was making the point earlier that we do rely on the councils a great deal. I am the first to admit that it costs them to run the events and they do not get Commonwealth subsidies for that. I am not suggesting we are going to move to that. A lot of the councils do it really well. They put on a good turn. But it is a cost, so we do rely very much on their goodwill. But, as Mr Fox said, we are examining whether there are other sponsorship organisations. One of the things that we have been engaged with is that the Western Bulldogs football club has been doing some of that work with their emerging communities, and we have had a number of citizenship ceremonies at their games. So we are encouraging that sort of participation as well because, again, it is a good community-building and citizenship-building initiative. Some of the footy clubs and other organisations have really taken that on board, which is has been good. I do not know whether you are a Western Bulldogs fan—

**Senator FIFIELD**—No, but apart from the football club it sounds like a good thing in principle.

**Senator Chris Evans**—I have had a discussion with Mr Demetriou from the AFL about encouraging their broader engagement in that. I know my own club, the Fremantle Dockers, have taken an interest in some of these citizenship issues in the past, if not in winning football games.

**Senator FIFIELD**—I appreciate the help of those at the table. A number of potential constituents have expressed concern about the delays. If an individual who sat and passed the test in October last year has not had a notification that they have been successful, what advice would you give them? Who should they contact? Where should they go if they are starting to get concerned?

**Mr Fox**—They should certainly contact our office in Melbourne. There is also a contact centre that they can ring to seek advice on the status from them as well.

**Senator Chris Evans**—If you have any concerns, we have the Parliamentary Liaison Officer.

**Mr Fox**—We also have the parliamentary liaison officer network. They might be able to help, if they are people who have come through your office.

**Senator Chris Evans**—I always encourage members to use that. Often members write me a letter and it is a six- or eight-week turnaround. The parliamentary liaison officers do a great job so I encourage electorate staff to use them, for speed of response. There is no question that, if you use snail mail, it takes longer to get a response, whereas often we can sort it out on the day for the constituent.

**Senator FIFIELD**—Thank you. I appreciate you taking those questions on notice.

**Senator BARNETT**—Is it legally possible for an Australian citizen to officially affirm their citizenship pledge at a citizenship ceremony?

**Senator CHRIS EVANS**—Yes, and they do it all the time. It was reported in the paper recently that someone had this brilliant idea, but we do it all the time.

**Mr Hughes**—It has been in place for quite some years.

**Senator BARNETT**—Yes. I know it is done in some municipalities and in some councils but I am asking: is it officially and legally recognised? Can they get a certificate? Are they recognised on some register and, if so, how?

**Mr Hughes**—There is no legal recognition associated with it. It is as a symbolic gesture which can be conducted as part of a citizenship ceremony by the presiding officer. People are already citizens. The act of saying the affirmation, which was developed some years ago, does not have any legal effect, but it is an opportunity for Australians, in the context of a citizenship ceremony, with new citizens pledging their loyalty to Australia, for them to also, at the end of the event, make an affirmation that is very similar to the citizenship pledge affirming their loyalty to Australia and its people.

**Senator BARNETT**—That is right. I think it is a great idea and I would like to promote it and support it. I think we need to go one step forward because, at the moment, all they can do is affirm their citizenship pledge and loyalty to Australia verbally, together with dozens, maybe hundreds of others, which is a good thing. That is great—no problems. My point is that I would like to give them the opportunity to sign, to register, to get a certificate, so that they can say, ‘I am re-pledging my loyalty to Australia.’ They may have been through a disappointing part of their life. There are a range of examples—whether they were in prison or whether they just want to make a new start in life and they want to re-sign, to pledge their loyalty to Australia in a more official way. At the moment it seems to me under the law they cannot other than together with many others, concurrently, et cetera. How could that be achieved if that were the objective?

**Mr Hughes**—Again, there is not anything in the Citizenship Act relating to that. It is an administrative process, a symbolic administrative process.

**Senator BARNETT**—So who would administer that? Would it require the minister or simply the local mayor who could prepare, say, a certificate of reaffirmation of your citizenship pledge that they could perhaps sign and present to the relevant citizen?

**Mr Metcalfe**—This is fairly hypothetical. We would, of course, want to ensure that, were a person seeking to reaffirm their citizenship in some formal way that in fact the person was an Australian citizen. The way most people become citizens is by being born here, but others are granted citizenship. Were the government or the parliament minded to pass legislation to enable this to occur, I think we would have some suggestions to ensure that there was a checking process so that the person seeking to access such a process was entitled to do so. There has never been any provision in Australian law, that I am aware of, to enable an Australian citizen to formally reaffirm their Australian citizenship and to obtain a lawful certificate which indicates that. The process most people have is to obtain a passport.

**Senator BARNETT**—So there is nothing in the law at the moment that would enable that to happen as I have outlined.

**Mr Metcalfe**—No, there is nothing in the current law. Nothing like that ever has existed. But, as the minister and Mr Hughes have indicated, for some years now we have had a voluntary process that is discretionary but included in many citizenship ceremonies. Senator Humphries and I and quite a few others were at a fantastic ceremony here in Canberra on

Australia Day and the Governor-General led the affirmation. Hundreds and thousands of people stood up and repeated the words of the pledge.

**Senator BARNETT**—I think that is fantastic and tremendous. I was at a similar ceremony in Launceston with the local mayor. There were hundreds of local members of the community and new citizens and it was a great day. I concur entirely. I think I have the answer that I am after.

**Senator Chris Evans**—Mr Hughes has just made an aside to me that it was then Minister Ruddock who introduced the affirmation capacity. If you think about it, to formally recognise it requires a whole set of administrative and legal costs involved with doing that. It is a bigger step, if you like. People might want to think about it, but as I understand it part of the rationale was for the information to allow people to do it without setting up a whole new and costly process. I think that most people at the ceremonies that I have been at have really liked taking the opportunity and I certainly encourage it.

**Senator BARNETT**—Sure, and I think it is great. You should also realise that there are some places and some municipalities where it does not happen and they do not provide that opportunity.

**Mr Fox**—It is certainly within our guidelines for the conduct of ceremonies. Senator Humphries and I were saying earlier that we encourage everyone conducting a citizenship ceremony to take the opportunity of conducting the affirmation.

**Mr Metcalfe**—I think it is becoming better and better known about. The Canberra ceremony and indeed I think ceremonies in several locations on Australia Day were broadcast live on Sky TV this year, so it is becoming better known about and hopefully more and more councils will take it up. Within the department, for Australia Day, we have an annual awards ceremony to recognise meritorious service by staff, and we have now adopted the practice of giving our staff the opportunity to make the affirmation. Even though it is not at a citizenship ceremony, we stand up and say those words and people are very proud to do so.

**Senator BARNETT**—Well done. Thank you.

**Senator HUMPHRIES**—There was a report recently, I think by the Joint Standing Committee on Electoral Matters—and I think this a citizenship question, so if it is not, let me know—in the course of which either the committee as a whole or the chair of the committee suggested that there ought to be a revision of the arrangements which allow British residents who were not Australian citizens pre-1984 to vote in Australian elections. Is that an issue that is currently being examined by the government?

**Senator Chris Evans**—I made it clear at the time when I was asked—I think it was at a doorstep or publicly—and I repeated in correspondence to people who raised it with me that I do not support the idea and it is not under consideration by the government.

**Senator HUMPHRIES**—Thank you.

**CHAIR**—We will return to outcome 5—

**Senator BARNETT**—Very good.

**CHAIR**—unless you have finished for the night.

**Senator BARNETT**—No, and I appreciate that.

**CHAIR**—I'm sorry I reminded you!

**Senator Chris Evans**—But what would I do with the spare time!

**Senator BARNETT**—I want to ask the department about Audit report No. 36 into the Settlement Grants Program and the Joint Committee of Public Accounts and Audit report of 16 November last year, so it is a reasonably recent report. The department has provided some answers to questions on that, so perhaps you could provide a situation update report on those seven questions.

**Mr Fox**—We have provided answers to those questions to the Joint Committee of Public Accounts and Audit.

**Senator BARNETT**—Yes, you have. Some of the answers say there is ongoing activity, and I want to get an update on your progress in implementing the recommendations flowing from that report.

**Mr Fox**—Would you like me to do that against the answers we provided to the questions on notice?

**Senator BARNETT**—Yes, if you could. There are seven of them and you could just run through them as swiftly as you like.

**Mr Fox**—The first one related to whether we had updated the reporting requirements for settlement needs from state and territory offices. As we advised there, we have improved at with a new issues report. While its implementation is ongoing I do not think there is anything to add to the answer that we provided to the Joint Committee of Public Accounts and Audit. Following up on the second question on that audit, a program risk framework has been identified.

The implementation of these is ongoing. You said there is ongoing work. Yes, we have now done the work and we are continuing to deal with the issues.

**Senator BARNETT**—No. 3?

**Mr Fox**—The third one was receiving grant applications without risk evaluations. We have added that risk assessment matrix into funding applications. We are currently assessing the grant applications for the current round and we will be using that risk assessment matrix in that process.

The fourth question was around the publication of grant details on DIAC's website prior to agreement being reached between DIAC and the successful grant applicant. We were asked for an opinion on that. We said that we did not believe that this information would unnecessarily or harmfully raise community expectation and that we will look at implementing that in the next grant round that we have. We have not had an announcement of grants since providing that information.

The fifth question was around the ANAO suggesting that starting the funding year later than 1 July would give more time to negotiate. We still think that the timing around the beginning of the financial year is the right timing for settlement grants projects.

The sixth question was about the computer systems and some concerns around the way in which we monitored grants. We have a project to develop a new grants management system to support the Settlement Grants Program and we are hoping to release that later this year into production.

The seventh question also went to whether we were going to develop a new, more reliable system to support the Settlement Grants Program. The answer is the same, that we developing a grants management system and implementation of that is planned for late this year.

**Senator BARNETT**—Thanks very much for that. Question No. 117 on settlement services for migrants and refugees was from Senator Fierravanti-Wells. You said in your answer that the department has implemented a series of practical measures to monitor and evaluate the performance of the Settlement Grants Program projects and the program as a whole. I am not sure if you have covered that in some of your answers from the audit report. How is that going? Can you provide an update?

**Mr Fox**—We have not yet had a round of grants against which to make that assessment, but we will be having that in place in the next grants round.

**Senator BARNETT**—All right. You have a new reporting template for all SGP grants?

**Mr Fox**—Yes.

**Senator BARNETT**—So that is already in place. The different migrant resource centres and so on are aware of that and can access it?

**Mr Templeton**—The new reporting template has been introduced in the course of the last few months. It was introduced in discussion with service delivery agencies. It is being continually looked at as we develop this current grant program year to make sure that it is consistent with the outcomes and objectives that go with the grants. It is in place and there has been consultation around that, but to say it is finalised would be incorrect.

**Senator BARNETT**—You are still getting feedback from the service providers?

**Mr Templeton**—We are still working through it to make sure it is serving everyone's needs.

**Senator BARNETT**—You also say the department is in the process of trialling a variety of service delivery models through the funding of a number of pilot projects. Are there any particular pilot projects you can advise us of? I am happy for you to take it on notice.

**Mr Templeton**—I am happy to take it on notice. There is one specifically, in South Australia, I would like to mention, which is a mentoring program we have with one of the African communities, the second largest in South Australia, working with the Vietnamese community in community development and growth. It is an innovative project and we are really looking forward to seeing how it works over the next 12 months. It was announced, I think, by the parliamentary secretary—I will double-check that—a couple of months ago.

**Senator BARNETT**—Are there any pilot projects in Tassie?

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

**Mr Metcalfe**—That is a fellow Tasmanian saying that to you.

**Senator BARNETT**—Very good. Yes, the Migrant Resource Centre in Launceston does an excellent job and is well regarded.

**Senator Chris Evans**—I visited it last year for the community cabinet.

**Senator BARNETT**—Well done. Was it a good visit?

**Senator Chris Evans**—It was. I met a lot of people and they are very impressive. Their physical surrounds were the major issue.

**Senator BARNETT**—It could do with a bit of sprucing up.

**Senator Chris Evans**—And they had that fire, didn't they, so they have had some issues. There are good people there and good interactions, but they are in desperate need of a new office building.

**Senator BARNETT**—Maybe we can help.

**Senator Chris Evans**—Yes, they would like me to help!

**Senator BARNETT**—Thank you very much.

**CHAIR**—Mr Metcalfe, I thank you and all of your officers. We look forward to receiving your answers to questions on notice. I thank Minister Evans for his cooperation as well.

**Mr Metcalfe**—And thank you again, Chair, for those kind words this morning.

**Committee adjourned at 10.47 pm**