



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Consideration of Budget Estimates)

WEDNESDAY, 28 MAY 2003

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Wednesday, 28 May 2003

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

Senators in attendance: Senators Allison, Bartlett, Carr, Jacinta Collins, Kirk, Ludwig, Payne, Robert Ray, Scullion and Sherry

Committee met at 9.04 a.m.

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

In Attendance

Senator Ellison, Minister for Justice and Customs

Senator Troeth, Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry

Department of Immigration and Multicultural and Indigenous Affairs

Executive

Mr Bill Farmer, Secretary

Mr Ed Killesteyn, Deputy Secretary

Ms Philippa Godwin, Deputy Secretary

Outcome 1 – Contributing to Australia’s Society and Its Economic Advancement through the Lawful and Orderly Entry and Stay of People

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

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

Mr Bernie Waters, Assistant Secretary, Business Branch

Ms Jacki Hickman, Acting Assistant Secretary, Migration Branch

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

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Mr John Okely, Assistant Secretary, International Cooperation Branch

Ms Robyn Bicket, Assistant Secretary, Humanitarian Branch

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

Ms Rosemary Greaves, Assistant Secretary, Detention Policy Branch

Mr Jim Williams, Acting Assistant Secretary, Unauthorised Arrivals and Detention Services Branch

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

Mr Vince McMahon PSM, Executive Coordinator, Border Control and Compliance Division

Ms Nelly Siegmund, Assistant Secretary, Border Protection Branch

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

Ms Christine Sykes, Senior Assistant Secretary, Entry Branch

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

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

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

Outcome 2—A Society Which Values Australian Citizenship, Appreciates Cultural Diversity and Enables Migrants to Participate Equitably

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

Ms Jennifer Bryant, Senior Assistant Secretary, Settlement Branch

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

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

Outcome 3 – Sound and Well-Coordinated Policies, Programs and Decision-Making Processes in Relation to Indigenous Affairs and Reconciliation

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

Mr Shephen Oxley, Assistant Secretary, Social Programmes and Reconciliation Branch

Ms Dianne Hawgood, Executive Director, Indigenous Community Coordination Taskforce

Ms Michelle Patterson, Assistant Secretary, Indigenous Community Coordination Taskforce

Mr Geoffrey Richardson, Assistant Secretary, Indigenous Community Coordination Taskforce

Internal Products

Mr John Moorhouse, First Assistant Secretary, Corporate Governance Division

Ms Louise Gray, Chief Financial Officer, Resource Management Branch

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Ms Kate Pope, Assistant Secretary, Ministerial and Communications Branch

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

Indigenous Land Corporation

Mr David Galvin, General Manager

Ms Jodie Lindsay, Chief Finance Officer

Aboriginal Institute of Aboriginal and Torres Strait Islander Studies

Mr Russell Taylor, Principal

Mr Steve Larkin, Deputy Principal

Mr Tony Boxall, Chief Finance Officer

Indigenous Business Australia

Mr Ron Morony, General Manager

Mr Ian Myers, Deputy General Manager

Refugee Review Tribunal

Mr Steve Karas, Principal Member

Mr John Blount, Deputy Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

Migration Review Tribunal

Mr Steve Karas, Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

Migration Agents Registration Authority

Ms Laurette Chao, Chairman, Migration Agents Registration Authority

Mr Ray Brown, Immediate Past Chairman, Migration Agents Registration Authority

Mr David Mawson, Executive Officer, Migration Agents Registration Authority

Aboriginal and Torres Strait Islander Commission

Mr Wayne Gibbons, Chief Executive Officer

Mr Bernie Yates, Executive Coordinator

Mr Mick Gooda, State Manager, Perth

Mr Pat Watson, Group Manager, Corporate

Mr John Kelly, Group Manager, Network

Ms Ros Kenway, Group Manager, Legal and Compliance

Mr Brian Stacey, Group Manager, Land and Development

Mr Peter Taylor, Group Manager for Economic and Social Participation

Mr Russell Patterson, Group Manager, Social and Physical Wellbeing

Mr Les Turner, Group Manager, Culture Rights and Justice

Mr Peter Schnierer, Group Manager, Coordination and Review Policy

Mr Paul Barrett, Chief Finance Officer

Mr Rod Alfredson, Director, Office of Evaluation and Audit

Ms Laura Beacroft, Registrar, Office of the Registrar of Aboriginal Corporations

Mr Joe Mastrolembro, Director, Client Services, Office of the Registrar of Aboriginal Corporations

Mr Garry Fisk, Director, Corporate Relations, Office of the Registrar of Aboriginal Corporations

Mr Peter Armstrong, Director, Regulations, Office of the Registrar of Aboriginal Corporations

CHAIR—Welcome to this consideration of budget estimates 2003-2004 for the Immigration and Multicultural and Indigenous Affairs portfolio. I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. On 13 May 2003 the Senate referred to the committee the particulars of proposed expenditure for the service of the year ending on 30 June 2004 and particulars of certain proposed expenditure in respect of the year ending 30 June 2004 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. The committee will today commence its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding according to the order on the circulated agenda. The committee will start with the department itself and then hear from interstate and local agencies. The committee has authorised the recording and re-broadcasting in accordance with the rules contained in the order of the Senate dated the 31 August 1999. The committee has agreed to the date of 4 July 2003 for the receipt of answers to questions taken on notice and additional information.

I welcome Senator, the Honourable Chris Ellison, Minister for Justice and Customs and Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, and Mr Bill Farmer, secretary of the department, and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or

explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988—Procedures to be observed by Senate Committees for the protection of witnesses—in particular to resolution 1 part 10, which states in part:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken.

And resolution 1 16, which states that:

An officer of a department of the Commonwealth or of a State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

Evidence given to the committee is protected by parliamentary privilege. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

For the record I would note that there are a small number of answers to questions on notice from the additional estimates rounds in February 2003 still outstanding. Mr Farmer has indicated to me this morning that responses to those questions are in the course of being sent to the committee

Department of Immigration and Multicultural and Indigenous Affairs

CHAIR—Minister and Mr Farmer, do you wish to make any opening statement?

Senator Ellison—No, I do not have opening statement nor does Mr Farmer.

CHAIR—Thank you very much. Then we will go to proceedings as they are set out in the published agenda. It begins with general questions. Let me first ascertain whether there are general questions.

Senator SHERRY—In the budget statement DIMIA has been allocated an additional 64 staff members. I am aware that the Minister, Mr Ruddock, has talked about financial savings due to the reduction of boat arrivals, and I am seeking an explanation as to why the extra 64 staff are needed?

Mr Moorhouse—You correctly indicated that there have been reductions in expenditure due to reductions in the number of unauthorised boat arrivals but there have been other areas of departmental business where there have been increases in activity and consequent increases in the numbers of staff. Excuse me for a second, I am just trying to find some particular numbers for you.

Senator SHERRY—Are you looking for breakdown of the figures on page 10-27 in Budget Paper No.1? That shows the number of staff will increase from 4,448 to 4,552, an increase of 64. Have you got some sort of breakdown about where the increases and decreases are occurring? That would be useful.

Mr Moorhouse—What I was seeking to do was find a breakdown of those. There are, for example, increases in staff that are due to increasing visa processing volumes, there are significant increases relating to changes in international education measures, there are some

increases which are the full-year impact of previous decisions such as the increase in the number of airline liaison officers—

Senator SHERRY—If you have a list of the breakdown, it would be useful to have a copy of that please.

Mr Moorhouse—Yes, we can table that for you.

Senator SHERRY—You have mentioned some areas where there will be extra staff employed, are there any other areas that stand out aside from those you have mentioned?

Mr Farmer—While the officers are looking for that information, I will give a bit of perspective on this that might be helpful. In the last five years we have administered the migration program, and the non-humanitarian migration program in that time has risen from 68,000, if I recall correctly, in 1997-98 to 105,000 plus or minus 5,000 last year and this year. The number of student visas that have been granted in the period 1996-97 to 2002-03 has gone up by about 50 per cent—that is, from 100,000 in 1996-97 to around 152,000 in 2002-03. Similarly, in relation to tourists and other visitors in that same 1996-97 to 2002-03 period, the number of visas has gone up by almost 20 per cent from 3.1 million to around 3.7 million. That is a reflection of a large part of the migration work of the department and the quite dramatic increases that we have had in some areas of our operations.

We are not necessarily saying that that sort of increase has to be reflected in a concomitant increase in staff. In some cases, where you have people who have to be looked at across a counter to establish their bona fides or something like that, it will. But more generally we are taking the view that we have to extend our pattern of global working so that whether it is migration visas, humanitarian visas, student visas, tourist visas or what have you, we look for measures—not necessarily staff related—that will deliver the best customer service with integrity. That is why over the last six or seven years we have introduced quite a wide variety of electronic applications in relation to visa processing and also why we have repatriated substantial areas of our case load to processing centres in Australia.

So the facts are quite clear: we do process a much greater volume of work now than we did five years ago and that will explain some of the phenomena we are talking about here—staff increases. But I would not want staff increases to be seen as the whole picture here because that is not necessarily our starting or our end point. We are looking at the most efficient way of delivering customer service with integrity.

If I could as a footnote say something that I hope would be of interest to the committee. In the area of tourist visas—and we could give you the statistics on this if you are interested—the result of a variety of measures by the department in the last few years has been that the approval rates overseas have gone up and the non-return rates for tourists in Australia have gone down. So, as a result of the variety of measures that we have introduced, we are delivering greater integrity to the program while delivering better service to those who have a legitimate reason for travelling to Australia.

Senator SHERRY—The SARS outbreak in Asia, as I understand, has had some impact on tourist visa and student visa application numbers. I do not want to go into any great detail, but has that had an identifiable impact on workload to date? If it does have an identifiable impact

on workload, have any decisions been made yet to readjust the resource and staff allocation, given what has occurred?

Mr Farmer—I will ask my colleague to answer the first question. In relation to the second question, we are really taking staffing decisions all the time. For example, if there are peaks in workload at posts, as there will be in both the tourist and the student areas, then posts will have the capacity to engage extra staff—either permanent, temporary or part time. Similarly, they are also able to run down the numbers.

Mr Rizvi—In respect of visitor visa numbers, yes, there has been an impact over the last month or two. How long-term that will be is very difficult to tell. We have not yet noticed a decline in overseas student numbers, but those numbers are much more seasonal. They tend to be associated with the start of the academic year or midway through the year, so if there is going to be an impact from SARS on overseas student numbers, we are more likely to experience it in June and July than we would have experienced it in April or May.

Senator SHERRY—Do you have any figures on the impact on tourist visas, for example?

Mr Rizvi—Could I take that on notice? Out of some markets out of Asia it has been quite substantial.

Senator SHERRY—I would appreciate it if you could get back to us in the next day or two with those numbers.

Mr Rizvi—We can do that.

Mr Moorhouse—I have a bit more information here for you. The major contributor to the staffing increase was the budget measures relating to international education—that is the most significant area. The next most significant areas are enhanced border protection, the full-year impacts of previous budget measures and additional estimates relating to additional airline liaison officers, and increased parent migration. They are the four most significant elements within that staffing increase.

Senator SHERRY—What do these airline liaison officers do? Can you give me a brief sketch of what their responsibilities are?

Mr McMahan—Essentially, they operate for relatively short-term postings overseas. They are stationed at the airports and have a role in detecting fraudulent documentation. They examine people's passports, try to match the identity of the person to the passport and look for any other anomalies in the documentation.

Senator SHERRY—I do not want it now, but could you give us a list in greater detail of where these officers are located?

Mr McMahan—Yes, we have 15 offshore. I can readily give you that list.

Senator SHERRY—I assume they are only located at major airports and access points to Australia.

Mr McMahan—Take a sweep around the region starting from Dubai at one end and ending up in Nandi on the other—and KL and all the other major gateways in between.

Mr Farmer—ALOs are an extremely good investment by the parliament. The airline liaison officers, on average, would have to stop 10 people travelling to Australia to pay for

their period of posting. Why 10? It is a rough figure but it is based on a guesstimate that, if you have an unauthorised arrival who is detained and goes through a variety of processes, it could cost you—us—up to \$50,000. So that is how we arrive at that rough figure. On average, if my memory serves me correctly, the airline liaison officers would stop four or five times that number, so it is a very good investment.

Senator SHERRY—It is drawing me into detail that I did not want to go into at this stage, but could you take on notice to provide the number of intercepts at each post by each officer or offices?

Mr McMahon—We will take it on notice.

Senator SHERRY—If you could give it to us in writing in the course of the next day or two that would be fine. I do appreciate that these budget figures would have been prepared prior to the outbreak of SARS or its identified impact.

Mr Farmer—Yes.

Senator SHERRY—Coming back to the new staff, how will they be recruited?

Mr Killesteyn—Can I make a clarification about these new staff. One of the things that is interesting about the way in which the budget figures were put together is that the \$97 million-odd that we are talking about, which has been translated into a figure of 64 staff, effectively works on the basis of an addition to the forward year estimate—that is for 2003-04. That forward year estimate in the budget papers would have been in the order of \$630 million. That figure has been artificially driven by the function of the purchasing agreements that the department has been operating under for the last couple of years.

As a consequence of things like the reduction in unauthorised arrivals, that number is quite low for the forward years in comparison to our basic cost structures in the department. So, in many respects, the additional moneys that have been allocated through the budget are, in effect, compensating the department for costs which are already incurred or have already been incurred. The sorts of things that Mr Moorhouse has described have been building up over time. We were asking government to cover the costs that were already there. It is not as if there is going to be a recruitment drive to add 64 staff. Those staff are already there and have been building up over time to deal with the sorts of pressures that we have been under—the growing complexity and volume of our work and the growing risk and shift in the risk profile of our work. From the department's point of view, we are seeking to reaffirm the way in which we have been working and the way in which the environment that we are operating in has been changing over the last few years.

Senator SHERRY—How will recruitment of new staff occur?

Mr Moorhouse—The sorts of measures we have described work right across the organisation, ranging from locally engaged staff overseas and possibly additional Australian based staff overseas which will be drawn from the population of Australian immigration staff. They include, as we said, additional Airline liaison officers who are drawn from staff in Australia on short-term assignments normally of three months and additional processing staff in Australia. Many of those staff may have been redeployed from other areas where there are

reductions in activity. There may be a small increase in some areas, but it is not likely that there will be significant recruitment in any particular area of the organisation.

Mr Killesteyn—We are recruiting almost every day.

Senator SHERRY—I appreciate that. Do you know your average turnover in a year?

Mr Killesteyn—I do not know the precise figure. I guess it is around six per cent or something like that. The last figure I saw was—

Mr Moorhouse—That is a fairly standard attrition rate.

Mr Killesteyn—We recruit every day and, in particular, we invest a lot of energy into recruiting new graduates. We have had a fairly strong graduate program for the last couple of years and they feed in through the process, obviously, as they come in at the base grade level. We give them a lot of training and gradually they filter through all of our positions, but many of the positions that we are talking about in relation to these additional activities are people not at the base grade; they are senior officers or people with plenty of project experience and they come from the whole of the organisation or from outside the organisation as part of our normal recruitment process.

Senator SHERRY—So your recruitment process has not changed on past practice?

Mr Killesteyn—No, it is fairly standard. We identify the vacancies and needs that we have and place advertisements in newspapers and in the Commonwealth *Gazette*. We have a constant round of selection processes and selection committees. Apart from the graduate recruitment, which is a particular program that we have introduced in the last couple of years, there is nothing different in what we have done in the past or in what other departments do.

Senator SHERRY—Can you provide the committee with some sort of information about additional staff requirements: what level of the Public Service Act they will be employed? Is there a change in the mix or is it your normal standard mix of levels?

Mr Killesteyn—It would depend on the position. For instance, airline liaison officers are generally recruited at the APS 6 or EL1 level. We look for people with considerable experience in passenger processing and in examining documents. There is money allocated for particular projects, so we look for people with experience in project type works, systems design and that sort of thing, and they would also invariably be at the APS 6, EL1 level. Some of the processing work—to the extent that there are additional volumes to be worked through—will be at the APS 4 and 5 level, and will essentially involve decision makers looking at visa applications. It is quite a mix. If you want that sort of detail, we could look at each of the individual components and give you a broad description of the general level that we would be seeking to recruit.

Senator SHERRY—If you could take that on notice. I do not have any more general questions.

Senator JACINTA COLLINS—Can I pass down to you a copy of some answers to questions on notice from Finance and Public Administration that were only received on 21 May this year. The question that you will probably have to take on notice flows from these. The last two pages of that document are a copy of a brief that was forwarded to the Prime Minister on 24 October 2001 in relation to, amongst other things, the sinking of SIEVX.

There is a heading at the bottom of the first page of that brief which says ‘Boat sank in Indonesian waters’.

We have since been advised by PM&C—and you will see that in the answers on questions on notice in the pages ahead of that—that the advice may have been collected from the agencies listed in the consultation section of that brief of which DIMA, as it was named at the time, is one of those agencies. My question is: did DIMA provide to PM&C any information that would have led an officer of PM&C to the conclusion that the boat sank in Indonesian waters as described in that brief to the Prime Minister?

Mr Farmer—You are asking us to take that on notice?

Senator JACINTA COLLINS—I am assuming that you will not be able to deal with it now.

Mr Farmer—I think that is probably the best thing. I would like to give you an accurate answer.

Senator JACINTA COLLINS—I have another question which you might be able to deal with as a general question, or it might come under output 1.1.

CHAIR—If it is under output 1.1, I will make the decision that we will move to 1.1 so that we proceed in some sensible order. Do you think this might be under output 1.1—Non-humanitarian entry and stay?

Senator JACINTA COLLINS—No, it might relate to refugees, under output 1.2.

[9.30 a.m.]

CHAIR—We will then move to output 1.1—Non-humanitarian entry and stay, if you do not mind. Senator.

Senator KIRK—Thank you. I had some questions arising out of media reports in relation to two Indonesian men—former members of Jemaah Islamiah, as I understand it, who have been granted visas in Australia. I wondered if you could firstly identify when it was that these two men arrived in Australia and perhaps their names as well, if that is possible?

Mr Rizvi—Would it be possible to pin down which particular media reports you are referring to?

Senator KIRK—I am referring to media reports in the *Australian* on the 22 and 23 May.

Mr Rizvi—I have references here to reports in the *Courier Mail* and on the *7.30 Report* and in the *Sydney Morning Herald*. Unfortunately, I do not have references to the *Australian* although it may well have been carried there as well. In those reports there were references to a person who was granted a spouse visa. That person initially entered Australia on the 25 October 1985 on a spouse visa and was granted Australian citizenship on the 20 April 1988. He has left Australia on seven occasions including his last departure on the 15 October 2002. We do not have a record of that person’s return to Australia.

There were, as I recall, two other persons identified in those media reports. Those two persons obtained the visas under subclass 816—established on 1 November 1993. It related to groups of persons who had been in Australia under various circumstances and who were allowed to apply for visas under concessionary arrangements. They included that the person

had to have been in Australia before 1 November 1993; they had to be aged less than 45 years; they had to have travelled to Australia on or before 12 March 1992; they had to have entered Australia on or before 1 November 1993 and they had to have sought refugee status, but not necessarily attained it, on or before 1 November 1993. There are two people under those circumstances that were referred to in media reports who obtained visas under that particular subclass.

Senator KIRK—Are you sure they are the ones that we are referring to here?

Mr Rizvi—Sorry?

Senator KIRK—The latter two are the ones that you think the media reports refer to—because there are three people you have identified, isn't there?

Mr Rizvi—Unfortunately I do not have a reference here to media reports in the *Australian*. I do have others and there were three persons that appeared to be referred to in those media reports who obtained permanent residency—one of them as a spouse and the other two as a subclass 816.

Senator KIRK—There is a reference here to a current issues brief—are you familiar with that? It revealed that the two men had obtained resident return visas. This was prepared by the Minister on the 20 November 2002.

Mr Rizvi—A resident return visa is obtained by a person that already has permanent residence in Australia and is a facility to enable that person to travel in and out of Australia.

Senator KIRK—I am just trying to see if we are talking about the same person here—bear with me.

Senator LUDWIG—Do you know whether they have applied for permanent residence and then have also sought a resident return visa?

Mr Rizvi—Certainly they have obtained permanent residence, as I indicated—the first on a spouse visa—

Senator LUDWIG—Do you know whether the other two have a resident return visa? You know one is a citizen, so he does not need a resident return visa. Have those two left the country on a resident return visa?

Mr Rizvi—The first person holds a resident return visa. That person departed Australia on 4 November 2002. The second person also holds a resident return visa. That person departed Australia on 21 December 2000 and returned on 19 January 2001. That is the last movement record for that person that I have here. Of course that would depend on the date at which this was produced, whether he or she has moved in or out of Australia since that time.

Senator LUDWIG—The *Courier Mail* report that you are referring to is what date?

Mr Rizvi—I am referring to an article in the *Courier Mail* of 30 October 2002, and I am referring to a *7.30 Report* of 19 November 2002.

Senator KIRK—With your permission, Madam Chair, it might be useful if I showed the article to which I am referring to the witnesses, short of me reading out the detail.

CHAIR—A very helpful initiative, Senator Kirk.

Mr Rizvi—There are no names in this, so it is hard to be exactly sure that we are talking about the same people. However, the article does refer to a spouse visa and we believe it is the spouse visa that I referred to earlier. It could be another one—it is supposition. The other two refer to concessions introduced following the Tiananmen Square massacre. The subclass 816 visa is indeed a concession introduced following, and related to, Tiananmen Square.

Senator KIRK—My interest in this matter primarily relates to the health and character checks that were completed on these individuals prior to their return to Australia. As I identified at the beginning, there were concerns that they were members of Jemaah Islamiah, so I would like to know what sorts of checks were done as to their health and character, and also security checks.

Mr McMahan—It may be useful for me to give some background about the way our checking works. As you know, we have the movement alert list. It is basically formed from a whole range of interests that we have in people movements. It may be that the person has a criminal record; it may be that they have an immigration history. Part of it relates to security issues which are identified by ASIO, which has direct access to it to be able to include names. Obviously, they are alerted whenever there is a visa application and, indeed, movement through the border.

We then have a second layer in which particular checks need to be undertaken as a result of security assessments in respect of certain nationalities. We also have issues which arise because of concerns identified by our own staff. Once a person has been granted a visa, if a subsequent issue arises in respect of their activities—domestically or whatever—and is identified by ASIO, they would actually include that name on MAL and a notification would be given as they pass through the border.

Senator KIRK—Did that occur in the case of at least one of these individuals upon his return to Australia?

Mr McMahan—All I can say is that, if they moved through the border, they were either not on MAL or they were on MAL and, subsequent to the notification, a decision was made to enter them. That would have been done in accordance with the national security assessment by ASIO.

Senator KIRK—Correct me if I am wrong: so there is no separate ASIO check; it is all just done through the DIMIA process?

Mr McMahan—ASIO, through their own investigations, identify people of concern. Having identified them, one of the things ASIO do is to include that name on MAL and they would receive notification upon movement through the border.

Senator KIRK—Is it fair to say that these people were not included on MAL? I think you said it is referred to as MAL.

Mr McMahan—You cannot necessarily conclude that, because it may well be that their movement was noted and there may be a continuing interest by ASIO. All we can say is that it was not an issue that was of sufficient magnitude or of a nature that resulted in a visa cancellation.

Senator LUDWIG—Do you know the point of destination?

Mr McMahon—That information would not be available to the Commonwealth. It is generally through self-identification through the passenger card. We would know from the passenger card where the flight was coming from.

Senator LUDWIG—Do you have that detail, Mr Rizvi?

Mr Rizvi—I do not believe we have that information here.

Mr Killesteyn—We would not know the point of destination. We would know, as Mr McMahon said, the flight number and we would know that that flight was going to a particular port. Whether the individual disembarks at that port or continues on with a connecting flight, is something that our records—

Senator LUDWIG—I assumed that you would only know the port. I will rephrase my question: do you know what the destination port was? You would also then know the port from re-entry into Australia for that one individual.

Mr Killesteyn—We know where the plane has gone; we do not necessarily know where the individual has gone.

Mr McMahon—We do not have that information here. The passenger card, as I said, does ask people to identify where they have been. But it is self-identification of the country in which they have stayed for the longest period of time. So there is information on the passenger card. But, presumably, if people want to be deceptive, it would not be correct.

Senator LUDWIG—No, I was not assuming that. On the basis that Mr Rizvi had been helpful in being able to identify at least the passenger movement of that individual who exited Australia, I assumed they would also have on his record the port of call or the port they departed from. If he has that, I am sure he could help the committee. If he has not, he could indicate that.

Mr Rizvi—The data I read out relates to our movements database and would be drawn from that. The information that Mr McMahon is referring to would be on the passenger card, and that is not incorporated into the movements database. So, in order to obtain the information, one would actually have to go to the card.

Senator LUDWIG—What is contained on what you called the movements database?

Mr McMahon—Just the date and time of the movement through the border.

Senator LUDWIG—I see. Thank you very much.

Senator KIRK—In relation to the second individual, you mentioned that a class of visa was created following the Tiananmen Square massacre. How was it that an Indonesian national was able to access this type of visa?

Mr Rizvi—As I recall, in around 1992, to resolve the status of a significant number of people who were in Australia on temporary protection visas and a range of other temporary humanitarian visas, the government decided to create a range of visa classes—I think it was actually five separate classes—to resolve the status of those individuals. One of those classes was subclass 816. The visa requirements or criteria related to that visa class were the ones that I read out earlier, and the people concerned fitted the profile to be able to obtain that particular visa class and, hence, by law they were granted.

Senator KIRK—So it was not limited to people who were somehow associated with the Tiananmen Square incident?

Mr Rizvi—The Tiananmen Square reference is used colloquially because the bulk of the people who benefited were associated with that, but not all of the people who benefited were associated with that.

Senator KIRK—Do you know if there are any other known members of Jemaah Islamiah that have been granted visas to enter Australia?

Mr Hughes—I thought I might mention some of the wider work that we are doing following the disclosure that there had been some applicants in the protection visa process who mentioned the existence of JI links in their application. This is what gave rise to those media reports in late 2002. Shortly after that we commenced an examination of files—principally protection visa files—to see the extent to which there had been, over quite a long period, any mention in applications of JI links. This work is being done in connection with ASIO and, in fact, looks at a far wider profile than simply JI links. It looks at other possible mentions in protection visa applications of things that might be of interest to ASIO. That work is ongoing and, as a result of that process, we have referred a number of files to ASIO for their examination to see if there is any information that would be of use to them or issues of security concern. So we have an ongoing project there.

Senator KIRK—You say it is ongoing and yet you also say that some files have been referred. How many have been referred to ASIO?

Mr Hughes—At this stage, I would rather not say as the work is ongoing with them and I think it is a matter of security.

Senator KIRK—You can refer to numbers and not specific cases though, can't you?

Mr Hughes—I would rather not refer to the numbers at this stage.

Senator SHERRY—Why not?

Mr Hughes—I think that it is inappropriate while the work is ongoing with them and the project is incomplete to talk about the numbers referred. I can take it on notice and consult with them.

Senator SHERRY—Why is it inappropriate? We are not asking for the personal details. I would not have thought that a number is a risk to national security in any way, shape or form.

Senator Ellison—Madam Chair, I think taking it on notice might be the compromise here. As Mr Hughes has said, he can have a chat to ASIO, and, if we can, we will advise the committee. We certainly do not want to be obstructive, but there is another agency involved and they might not want us to reveal that number for some reason that we do not know of. I think the safer way is to take it on notice. We will be able to get back to you fairly soon, I imagine, on that.

CHAIR—Thank you, Minister. I think that the suggestion to take it on notice is a helpful one and this committee can accept that.

Senator SHERRY—Can I suggest another compromise? Can we have a ballpark figure? Are we talking here about a single digit number, less than 100 or more than 100?

Senator Ellison—Next they will have threat alerts in relation to ballparks.

CHAIR—The officer and the minister have both indicated that the question will be taken on notice and an answer provided as soon as possible.

Senator Ellison—We will try and get back to you as soon as we can—we are dinkum about that.

Senator JACINTA COLLINS—Taking questions on notice as opposed to coming back to us during the next couple of days are two different things. Is the minister suggesting that—

CHAIR—The minister has given you a clear undertaking, Senator.

Senator Ellison—I have undertaken to get back, if I can, in these sittings in these hearings.

CHAIR—That was certainly my understanding.

Senator SCULLION—Perhaps Mr Farmer will be able to help me with this. I am not sure if it is a question specifically for DIMIA, but you may be able to help me. When was JI recognised as a terrorist organisation?

Mr Farmer—I cannot give you the exact answer; one of my colleagues may be able to. Certainly, in terms of our processing, it is only relatively recently that we have had an alarm bell against JI, in effect. I do not know whether any of my colleagues are able to help me on that, but I know that it was quite recently.

Mr McMahon—We understand that it was in December of last year.

Senator SCULLION—When someone puts: ‘I’m a member of JI’ on their application to become a permanent resident of Australia, one must associate it with a scout group at the time. ‘I’m happily a member of a terrorist organisation,’ is not something you would put down. So, in view of the fact that it was recognised internationally only last year, do you have any idea of when the group was formed? Perhaps that is a question for someone else.

Mr Farmer—I am sorry, but I do not know the answer to that. I believe there are references in a number of Refugee Review Tribunal matters that go back some years. The references are not always to people being members of Jemaah Islamiah; occasionally, they simply refer to it in passing. There are a number of references in the documents that we have, not all of which relate to membership. But, certainly, the organisation goes back some years.

Senator SCULLION—Is there any real reason that an application from someone from JI would have triggered any concern prior to December last year? Was there any reason for DIMIA or ASIO to even have been interested in that particular issue prior to that time?

Mr Farmer—If we had had any indication from ASIO that membership of any organisation was of concern to them, yes, that would have been a trigger. That applies to JI, among other organisations.

Senator SCULLION—Since that was not the case, because they were internationally declared a terrorist organisation in December of last year, it is evident that anything in terms of an application to visit, enter or have a visa for Australia would have been of no real import to DIMIA in that regard.

Mr Farmer—In the sense that you are talking about—in terms of ringing an alarm on a security basis—that is right. If someone were making a refugee claim which adduced in some way a relationship with JI, that would have been of interest to a decision maker—but not in a security sense, I believe.

Mr Killesteyn—It may be helpful to know that, in terms of the visas we are talking about, one was granted in 1985, another was granted in 1995 and the last was granted in 1996.

Senator SCULLION—So they were all granted well before this organisation would have been a concern in any event. I turn to the movement alert list. I understand that, since the changes in 2002 and in the time since September 11, a number of organisations internationally have been declared. What changes in terms of accessing more sophisticated technology and those sorts of things are you making to the movement alert list? Are there some opportunities we can take to improve that?

Mr McMahon—We have, over a long period of time, had progressive system development with the movement alert list. It has never been static in the sense that we believed that the job had been done. One of the most important components in the movement alert list is the way in which names are processed. Progressively, over time, we have probably had the most sophisticated name searching capabilities. The trick really has been to move to the more sophisticated platforms with more search variations in names and to be able to support those with lower thresholds for matches. So we have quite a sophisticated system of name matching. Over time, we will try to extend the more sophisticated versions to more IT platforms.

There is also some money in the existing budget to look at how we can move the movement alert system on, including the possibility that we will include some biometrics within the system. Over time we have extended the number of people on the list very significantly, which is quite important, and that is a result of international cooperation in terms of securing names. At the moment, we have somewhat less than a quarter of a million names, but we also have 1.7 million documents on MAL. More broadly, you would say that we are progressing the technology, with more sophisticated name searching, the extension of names and the use of advanced passenger processing to make sure that the intercepts are taking place offshore rather than onshore.

Senator SCULLION—For clarification, are the 1.7 million documents you are talking about travel documents like passports?

Mr McMahon—Yes. For example, there may be stolen passports of other countries and such. They could be linked to a birth certificate or something like that, and they could also be linked to a name.

Mr Killesteyn—Mr McMahon has given you figures as to where the movement alert list is at the moment, but it is worth knowing that the movement alert list is changing quite considerably. In the mid-nineties, we probably would have had somewhere in the order of 50,000 to 70,000 names on the list. We have worked very hard over the last few years to make that list as comprehensive as possible, and that includes developing very strong relations with organisations such as the AFP and ASIO to ensure that they have the proper processes to get their names onto that list. We now have facilities that enable them to directly input those

names. Everything we have done has been not only to strengthen the links in DIMIA but also to strengthen those links DIMIA has with the agencies that are likely to have the sort of information that we need to be able to do our job properly. That has worked. You can see it from our having moved from 50,000 to 70,000 names to well over 200,000 names now—and that number will continue to increase as new sources of information arrive. A lot of the names that have arrived more recently are obviously in relation to terrorist activities, but the names include people involved in organised crime, drug work and war crimes. A whole range of very serious offences is now being included on the movement alert list.

Mr Farmer—As a footnote, Mr McMahon mentioned the new measures. For the senators' information, they are set out on pages 56 and 63 of the budget statements.

Mr McMahon—Madam Chair, I will amend an answer that I gave Senator Ludwig earlier. I said that basically the TRIPS system only recorded the point of entry and the timing of the entry. It apparently also incorporates the port of embarkation and the flight number.

Senator LUDWIG—If it has a flight number, can you identify where it came from?

Mr McMahon—We would be able to do that.

Senator LUDWIG—Could you take that on notice and come back to us with that.

Mr McMahon—We will take it on notice.

CHAIR—We are still on 1.1 as far as I am aware. Are there any further questions on nonhumanitarian entry and stay?

Senator SHERRY—There was an investigation to do with some illegal work issues. The investigation resulted from the case of Mr Oagile Malothane, the South African worker, and there has been some public controversy over it. It has been claimed that he did not sign an application for a visa. Is that correct? Who was his sponsor, what visa did he apply for and what supporting documents were included in his application?

Mr Rizvi—He applied for a subclass 456 business visitor visa, which permits entry and stay for a period of up to three months.

Senator SHERRY—Did he sign the visa himself?

Mr Rizvi—There was a signature on the application form. We have not been able to establish whether it was his signature or somebody else's signature.

Senator SHERRY—Why haven't you been able to establish it? Presumably you have asked him.

Mr Rizvi—We have asked him. The first time we interviewed him he indicated that he had signed various documents. The second time we interviewed him he seemed to deny that. So we remain unclear as to whether he or somebody else signed that document.

Senator SHERRY—Have you subjected the documentation to some sort of forensic analysis to determine whether it is his first or his second statement which is true?

Mr Rizvi—We have not gone beyond the two interviews that we did with him.

Senator SHERRY—With his second claim, that he did not sign the documentation, has he nominated who he thought may have signed that documentation on his behalf?

Mr Rizvi—He indicated in the interviews that the arrangements for his entry to Australia were made by his employer.

Senator SHERRY—Has that employer been interviewed about this?

Mr Rizvi—The employer has passed away.

Senator SHERRY—What supporting documents were included in the application?

Mr Rizvi—I would have to take that on notice and look through our files to determine what supporting documentation was with the application.

Senator SHERRY—Who was the sponsor? I assume it was the person who has died.

Mr Rizvi—Yes.

Senator SHERRY—What was his name?

Mr Rizvi—I would have to take that on notice. I cannot remember his name.

Senator SHERRY—Was the sponsor operating as a sole business or was it a company? Is this a business still in operation despite the death of the proprietor?

Mr Rizvi—I am not sure whether the business is still in operation. I would have to also take that on notice. Following the passing away of, I think, the main operator of the business, circumstances may well have changed.

Senator SHERRY—Yes, but it does not mean that the business necessarily would have ceased to trade.

Mr Rizvi—That is true. It was a relatively small business, as I understand it.

Senator SHERRY—How many people have been detected working without work rights in the last financial year and in previous years?

Mr McMahan—This year we expect to have about 20,000 locations of people in the community who have either breached a visa or are without work rights. That will result in around 10,000 removals.

Senator SHERRY—I want to concentrate on those working without work rights. Can you give me an approximate figure?

Mr McMahan—I do not have the data in that form. We could certainly take that on notice and get back to you on it very quickly.

Senator SHERRY—Could you give me the data in the form you have it? You said approximately 20,000 in this financial year. What about in previous financial years?

Mr McMahan—In 2000-01, the number of locations was 14,238. In 2001-02, it was 17,307. I extrapolated the year to date figure and, from memory, it was about 20,800.

Senator SHERRY—I accept that is an estimate. You do not have any idea of the approximate number of people working without work rights versus other visa breaches? Is that the main visa breach? Is it a significant proportion of the breaches?

Mr McMahan—I do not have the material in front of me at the moment. However, this is actually an issue for 1.3. By the time we get to 1.3, I can have that information for you.

CHAIR—Perfect, Mr McMahon. What great service.

Senator SHERRY—That is very useful. Can you also come back to us with the number of people who are deported in this working without work rights category?

Mr McMahon—We can. As I indicated, we expect to have about 10,000 removals for the year, but I will try to find the break-up.

Senator SHERRY—Approximately how many fall into the category of those found to be working without a work permit but not deported? Is it possible to give an estimate of the number of people who are currently in Australia illegally?

Mr McMahon—We have an estimate. The latest estimate is around 60,000 people.

Senator SHERRY—Do you have an estimate of the number of those who would be working?

Mr McMahon—No. I do not believe that estimate has ever been available. I have just been reminded that there was a study of illegal workers that did some basic soundings on that issue. It believed the number was probably in the order of 50 per cent.

Senator SHERRY—How do you identify sites to investigate and visit?

Mr McMahon—By far the largest percentage of our compliance action is based on tip-offs from people in the community. It could also be union groups, who, as you know, have been quite active in supplying us with information. In fact, one in two of all tip-offs from the community result in a successful location. We then do some systematic analysis. The area that we are looking at improving significantly is using our own databases and data matching with Tax to identify illegal workers.

Senator SHERRY—Do you have a risk profile of certain industries and occupations where illegal workers are more likely to be?

Mr McMahon—The data is very strong in respect of where they are likely to be. Obviously, some of the recreational areas—

Senator SHERRY—And hospitality—food service.

Mr McMahon—Yes. The hospitality industry is quite large. There is a reasonably large component in the construction industry. The number is not large among sex workers, but it is an area of focus because of the nature of the business. I believe I have some data—

Senator SHERRY—I am not going to go to the sex worker issue at the moment. I will get to it later. Do you visit sites on more than one occasion?

Mr McMahon—Very frequently we do. Where we see substantial noncompliance, with hiring of illegal workers and that stuff, we have every justification for going back when we have a reasonable belief that illegal workers will be there. We have also been involving the tax office and Centrelink for some time because, if there are illegal workers there, there will often also be some other concomitant forms of abuse, and we have found that to be quite a powerful tool. The employee may fear Immigration more than the employer, but the employer fears Tax more than the employee.

Senator SHERRY—You visit at least some sites on more than one occasion, so presumably you find illegal workers at some sites on more than one occasion.

Mr McMahon—That is correct.

Senator SHERRY—Who gets a bridging visa if they are detained as working without work rights?

Mr McMahon—At any one time we would probably have over 30,000 bridging visas in operation, but by far the largest proportion of those are people who can legitimately make another application or have an application in process. The second group of people are what we call the bridging visa E group. They are people who we are satisfied will make preparations to return to their home country or to remove themselves from Australia. As a general principle, over 80 per cent of the people located working illegally will be given a bridging visa of some form. The people we will not give a bridging visa to are the people who do not have a valid application in place and who we cannot satisfy ourselves would not disappear into the community—in other words, would not cooperate and return.

Senator SHERRY—How many of those who are given a bridging visa and not held in detention would disappear and be difficult or impossible to locate?

Mr McMahon—I do not have any data on that. I have asked the question myself, and I think it is a pretty difficult one to determine, particularly with the way that people can make multiple applications and particularly with bridging visa A. They could remain legal for quite a long period of time after we have given them a bridging visa, so that number is a bit difficult to develop. But, in general, if they disappear once they will not get a bridging visa the next time.

Senator SHERRY—If you catch them.

Mr McMahon—And indeed I think we do in general.

Senator SHERRY—Who makes the decision as to the granting of a bridging visa?

Mr McMahon—We have various levels of delegation within the department. In general, the compliance team would make the decision. For particular categories of people we may elevate it. For example, with the current arrangements on bridging visas, any decision to remove a sex worker who we believe may be involved in trafficking will now be made in the central office at section head or branch head level. However, in general, it would be people around the APS6 level. In some cases, we ask for the team leader to make the decision, particularly in respect of women and children in detention.

Senator SHERRY—If they are detained, where would they be detained?

Mr McMahon—It is normally the local place. If you are detected in Sydney, you would go to Villawood as a general principle. But bear in mind we have two broad categories of detention centres—immigration reception and processing centres for asylum seekers and the normal IDCs for overstayers and people found in the community. For example, an escaped asylum seeker may well be brought back to one of the IRPCs, which may involve moving them to Baxter or wherever.

Senator SHERRY—But the vast majority of people we are talking about here are not asylum seekers, are they?

Mr McMahan—No, and they are also in detention for very short periods of time in general. Often they are removed within two to three days. They go to a centre, transportation is arranged—sometimes they buy their own tickets or, if they are destitute, we will pay for them—and then they are removed. The centre is obviously the one nearest an airport in the city in which they are found.

Senator SHERRY—Why don't we detain all workers who are caught working illegally?

Mr McMahan—The detention is not punitive; the detention is really about trying to satisfy ourselves under the law about whether or not the person is going to continue to be a problem for Australia at a more general level. The fact of the matter is that all people caught working illegally are formally detained and then a decision is made immediately after that as to whether the person is eligible for a bridging visa A or one of the other bridging visas which are not very much used or whether the person can be released because they will be removing themselves from Australia. If we could not satisfy ourselves that they were going to remove themselves or that they would not continue to operate in breach of their conditions—for instance, that they would go back to employment—we would not issue the BVE.

Senator SHERRY—I understand that, but what follow-through do we have to know that the person has left the country? Do you check to see that they have left?

Mr McMahan—Yes, we do.

Senator SHERRY—What proportion do not leave the country?

Mr McMahan—I would have to take that on notice, but I believe that it would be a very small number of bridging visa Es, because it is a direct assessment upon their reliability. When we find somebody who has broken a previous visa condition—for example, they absconded—we would not generally issue it again.

Senator SHERRY—But it would be difficult to check whether they are continuing to work in some other location or some other business.

Mr McMahan—When we interview them we have to go about satisfying ourselves about how they are making their preparations and how they are tying up their affairs. So there would be a discussion about exactly what is going to happen and there is certainly some monitoring and follow-up. I would not suggest for a moment that we race around the next day to check to see whether they have turned up to their employer, but we would establish an address and there may well be reporting conditions in respect of the BVE.

Mr Farmer—I would also explicitly make the point—though it may be an obvious one—that in those circumstances a bridging visa is not granted for a lengthy period, so the system will automatically reveal to us if someone has not left by the expiration of the visa. We have been developing our systems in our compliance operations essentially to make better use of our IT technology, or to develop our IT technology so that it is of better use to us, so that there is a much more automatic referral to us of new cases of overstayers. In the immigration compliance offices around Australia, there is a developing pattern of quicker action on those new cases of overstayers because of the procedures we have implemented.

Senator SHERRY—What penalties are in place for employers who employ workers without work rights? I appreciate that it would probably overlap with tax et cetera, and there are various penalties there, but what are the specific penalties for breaching—

Mr McMahan—There are no specific penalties under the Migration Act. Over the last two years we have done an enormous amount on trying to identify the responsibilities of employers, doing employee awareness, training and issuing notices in respect of breaches. It is a very complex area and legislation is being developed in respect of this.

One of the primary issues we are trying to grapple with is how an employer actually identifies that the person is illegal. I think it is pretty clear that some employers do know that the person they are employing is illegal but there is also a much wider catchment within the economy of people who find it extremely difficult to establish the identity and the employment rights of a person, including if the person simply says, ‘I am an Australian citizen. I don’t have to provide evidence.’ That is the fundamental issue that will need to be resolved in respect of an employer sanction in the legislation.

Senator SHERRY—You say that legislation is being prepared. What is the time frame?

Mr McMahan—There is no specific time frame. It is a priority for the government. The minister has indicated that he is minded to increase the priority in respect of that legislation. I think part of the problem in progressing the legislation rapidly is the fundamental issues around the issue of identity and the identification of work rights.

Mr Killesteyn—I just wanted to emphasise that this is not totally devoid of any action by the department. For instance, if an employer has been involved in sponsoring individuals and we subsequently find that there is some illegal activity, then that will be part and parcel of our consideration for future sponsorship arrangements that the employer might enter into. So I just want to emphasise that it is not totally free here. We are making sure, as best we can, that the history of employers involved in illegal activity is reflected in other types of visa processes, and particularly sponsorship.

Senator SHERRY—That might be the case, but the fact remains that there are not specific penalties—either fines and/or jail—for where an employer engages in this practice.

Mr Killesteyn—That is true but it can affect their future arrangements with the department.

Senator SHERRY—I understand that, but that seems to me to be a bit of a light touch, feather approach.

Mr McMahan—There are no specific penalties under the Migration Act. There are a range of things under the Criminal Code which potentially we can use and have considered. For example, in a recent compliance raid we were told that there was only one woman working, and there were three. We are considering whether or not we can bring forward a change for misleading a Commonwealth officer. They may well not shake in their boots over that one. Nevertheless, it is an indication of our determination to deal with this issue.

Senator SHERRY—Good evidence of your determination would be someone who has been successfully prosecuted under whatever section of the Criminal Code you could find. The fact remains that there are not any so far, are there?

Mr McMahan—That is correct. One of the problems is that the Criminal Code requires to ‘knowingly’ mislead, and that is a high hurdle. If we had an admission from an employer that they knowingly employed an illegal immigrant, then we could do something, but the hurdles are quite high in the Criminal Code at the moment. Consequently, the priority has been put on the legislation.

Senator SHERRY—What is the approximate number of employers that have been identified, say, in the last year as employing people who do not have work rights?

Mr McMahan—I don’t have that number—I believe that we would have to system generate that. It is quite a large number of people.

Senator SHERRY—Can we deal with a ballpark then? Are we talking about fewer than 100, more than 100, 1,000, a couple of thousand?

Mr McMahan—Using a proxy, which is the illegal work notices, 1,202 have been issued from 1 July 2002 to 30 April 2003. But the number of people employed is obviously going to be higher than that. This is where we have satisfied ourselves that they have not undertaken adequate checks or where we believe that they knowingly employed, but we do not have the evidence.

Senator SHERRY—That is 1,202 instances over that time period that you have indicated?

Mr McMahan—That is right.

Mr Farmer—Or instances.

Mr McMahan—Instances, yes.

Senator SHERRY—Would there be any doubling up there?

Mr McMahan—Yes, there would be, but probably not extensive.

Senator SHERRY—Thanks for that. I assume that, where it is your officers who have been involved, they would communicate to the tax office as well. They are probably asked about some tax issues.

Mr McMahan—We certainly have a dialogue with them. If an issue has arisen in which we suspect there may be some form of fraud or inconsistency in respect of another agency’s activities, we would identify it. As I indicated, particularly if we have information about that beforehand, we actually invite them on the compliance activities that we undertake.

Mr Farmer—May I just make a comment. I think it is important to make a point. We have already indicated that the minister is minded to bring forward legislation as soon as possible. That, of course, would deal with the questions of sanctions and so on. I would not, though, like it to be overlooked that what we have generated in the last couple of years are procedures that actually help the businesses out there who have a legitimate interest in establishing whether individual A or B who turns up to work has work rights. The various mechanisms that we have developed—help lines and so on—are there to assist businesses, and do assist businesses which are trying to do the right thing. In terms of the legislation, the minister clearly wants to move on to address those difficult issues involved with employers who have, shall we say, a lesser interest in doing the right thing.

CHAIR—Thank you. Senator Scullion also has some questions on this matter.

Senator SHERRY—I have only a couple more.

CHAIR—We will come back to Senator Scullion.

Mr Rizvi—In terms of an earlier question you asked, I now have some further information. You asked questions about Mr Malothane's sponsor.

Senator SHERRY—Yes.

Mr Rizvi—His name was Mr Anton Beytell. He operated a proprietary limited company. The company was, immediately after the accident, under investigation by New South Wales WorkCover. New South Wales Workcover have not yet advised us of the outcome of their investigation into that company.

Senator SHERRY—Do you know if the company is still trading?

Mr Rizvi—I do not know that. I will have to take that on notice.

Senator SHERRY—Just to finish, I have a couple more questions on working without work rights. We started to go into this area, Mr McMahon. When the person who is detected is working illegally, do you go back to their original application to be in the country?

Mr McMahon—Not generally. If they have breached their conditions, we just need to deal with the breach in the condition—or if it has expired, we have to deal with it on that basis.

Senator SHERRY—Do you make assessments as to the decision made by the DIMIA staff in the overseas post? Do you go back and see if there is some sort of pattern or above average numbers from a particular source or post?

Mr McMahon—This may need to be a joint effort; you can take it from two ends. I will let Mr Rizvi answer the question about the way in which we use the data offshore. But certainly onshore we do look for patterns. For example, if a person's name started to show up as being associated with an address or something, we may make a link and we may provide that information back again. Essentially you will find that over 80 per cent of all overstayers are visitors.

Mr Rizvi—Going forward on that analysis of profiles issue, we do a lot of work, both on the visitor visa case load and on the student case load, where we analyse the characteristics of persons who have entered on those types of visas and have subsequently non-complied in some form or other. That may be a simple overstay, it may be that they have been caught working illegally or whatever. What we have done in both of those areas—both the student area and the visitor area—is develop a series of risk profiles. Those risk profiles guide the nature of the broad visitor visa or student visa processing regime we then put in place. Further, that risk profile then guides decision makers as to what to watch out for.

Senator SHERRY—Are there any particular sources—any particular countries—that stand out?

Mr Rizvi—Yes, we do it by nationality, both in the visitor visa area and in the student visa area. The regulations make the profiling of those sorts of things explicit.

Senator SHERRY—Can you give me some indication of what stands out in terms of nationality?

Mr Rizvi—In terms of people entering on visitor visas and then subsequently not complying?

Senator SHERRY—Yes, legally entering. I am assuming about half are illegally working, but you may not have that information.

Mr McMahan—I could give you some broad information. I am working off the BVEs, which are a pretty good indication of people. Indonesia, PRC, India, Sri Lanka, Fiji, the Philippines, Bangladesh. They are the main ones. You will find that, depending on the nature of the visa that has been cancelled, you get some variations in which countries predominate more.

Senator SHERRY—I do not know if that is publicly available, but can you provide us with a copy of that material?

Mr Rizvi—As I said, we have formal profiling of these sorts of issues, both in the visitor area and in the student area. If it would be helpful at all, we can provide quite extensive documentation on the indicators and benchmarks that we use and the actual data that relates to those indicators and benchmarks and what conclusions that reaches.

Mr Killesteyn—There is a fact sheet on all of this which is publicly available.

Senator SHERRY—If Mr Rizvi has some additional detailed information, that would be useful.

CHAIR—And one of DIMIA's many fact sheets. Senator Scullion, would you like to ask questions in this area, 1.1. Then I will go to Senator Bartlett.

Senator SCULLION—Senator Sherry asked a question in relation to apprehension of non-compliers and detection of noncompliance in regard to visa breaches and overstays. He was, no doubt, as impressed as I was that, over a three-year period, you have increased apprehension of non-compliers by some 25 per cent. You mentioned the 60,000. I would like to be able to factor it against that 60,000 that you currently understand. Is that number remaining static or is that also increasing at 25 per cent every three years?

Mr McMahan—No, it has been relatively static over a period of time.

Senator SCULLION—So that would have been static over the last three years?

Mr McMahan—Yes, over that sort of period. It probably only ranges between, say, 57,000 and 60,000, from memory.

Senator SCULLION—So the 25 per cent every three years increase in detection and apprehension of non-compliers is in real terms?

Mr McMahan—Probably the more interesting comparison is between the total level of overstayers vis-a-vis the total level of visas issued to Australia. It is clearly dropping.

Mr Farmer—Senator, I mentioned earlier that our non-return rates are generally dropping as well, although our approval rates for tourist visas are going up. That is the result of a number of proactive steps that the government has introduced and that the department administers. We are looking at the overstay numbers systematically. We are working through those lists to ensure that the estimates—and to some extent they are estimates—are as accurate as we can make them.

In the environment we deal with now there are, for example, some Australian citizens who do not travel on their Australian passport for much of their time overseas, but travel on another country's passport. Those people, for example, might automatically be given an electronic travel authority visa. They do not know it, but they are given it when they check in at an airport using, let us say, their German passport or their Malaysian passport. They arrive in Australia, they go about their business as Australian citizens and our system some months later will say, 'We have an overstayer from Germany', or from Malaysia. We do not, in fact; we have a dual citizen. So we are moving to look at our systems to take account of some of these developments in the environment we deal with. I think that will, just as a statistical and administrative exercise, bring those numbers down.

Senator SCULLION—So we can expect some sort of mechanism to ensure that we can look at our statistics in the future with a great deal more confidence because that aspect of it will be able to be identified and taken into consideration.

Mr Farmer—We are pretty confident about the statistics, but there are elements in the environment which have changed and we want to make sure that we maintain a high level of confidence in the stats.

Senator BARTLETT—I raise some of the allegations that have been made and some of the publicity recently regarding misuse of the domestic violence provisions to obtain visas. In particular, there was a *60 Minutes* report on 11 May, which I presume you are aware of. Were you made aware of that report in advance or approached by the Nine Network to comment? Secondly, have you investigated the specific claims that were made by, I think, three different men in that program?

Mr Rizvi—Yes, we are aware of the program, Senator. We were approached by *60 Minutes* for background briefing. We provided the producer of the program with background briefing. With regard to the cases that were referred to, yes, we have looked through those cases.

Senator BARTLETT—A woman made an allegation, presumably of domestic violence of a severe nature, and gained permanent residency within the space of three weeks after that complaint was made. Is that accurate?

Mr Rizvi—I cannot be specific about the three weeks. It is certainly true that we give all cases where a person claims domestic violence a high processing priority, and hence almost all domestic violence cases would be processed fairly rapidly.

Senator BARTLETT—The specific statement was made in the program that residency was granted despite there not being a shred of evidence that the claims of domestic violence were true. Could it be true that you would grant a visa without any evidence at all to back up the claim of domestic violence?

Mr Rizvi—The regulations, as you are probably aware, Senator, do not require us to test the evidence in respect of domestic violence where a person applies under the domestic violence provisions. Under what is known as the 'competent persons test', we are required to cite two statutory declarations from two competent persons and, so long as those statutory declarations have indeed been signed by two competent persons, that meets the domestic violence test and we are obliged to grant a visa, irrespective of any view we may have on the veracity or otherwise of the claims.

Senator BARTLETT—But those two statutory declarations are evidence, aren't they?

Mr Rizvi—They are the only pieces of evidence that the regulations require and, on that basis, we are obliged to grant the visa.

Senator BARTLETT—But it would hardly be true to say that you will grant the visa without a shred of evidence if you require two reasonably solid pieces of evidence.

Mr Rizvi—They are two statutory declarations where the person indicates that they believe domestic violence occurred and they sign that piece of paper. I cannot comment on what the program or the individuals believed or did not believe.

Senator BARTLETT—It would seem to me that the department would be concerned about statements made on a major, heavily watched, program that the department grants visas without a shred of evidence.

Mr Farmer—Yes, I agree with you. That comment does not seem to be in accordance with the procedures or the regulations.

Senator BARTLETT—What occurs if you believe, or have reason to believe, that a statutory declaration is false?

Mr Rizvi—I am advised that the legal advice that we have received is that we are not allowed to look behind the two statutory declarations. The regulations and the law on this matter are very clear. We must act on the existence of the two statutory declarations.

Senator BARTLETT—I accept what you are saying about being required to grant the visa under existing law but do you still not have the ability, if you have concerns that it is deliberately false—and I presume that this would apply with any sort of statutory declaration you would get—to refer it across to some other agency to follow up? You do not do anything about someone making a false declaration?

Mr Rizvi—If we believe the declarations are deliberately false, yes, we could refer that to the appropriate authorities to take action against the relevant competent person. More often than not, however, what we find is that the two competent persons are quite well meaning and genuine in their belief and desire to help the person who is in front of them and claiming domestic violence.

Senator BARTLETT—One of the other accusations or statements made by *60 Minutes* was that a woman named as Natalia on the program—I do not know if the name is accurate or not—made accusations in a statutory declaration and the presenter stated that this document was enough to grant this woman permanent residence in Australia. You have already told me that they need two documents, but a statutory declaration from the applicant themselves is not sufficient or of any weight is it?

Ms Hickman—One statutory declaration is from the applicant and two come from the competent persons.

Senator BARTLETT—So a statutory declaration from the applicant themselves is not sufficient to get a visa?

Ms Hickman—No.

Senator BARTLETT—I know that the minister has released a discussion paper about this and, as always, we will work constructively to try and get a good outcome. The regulations that were disallowed a few years ago, without going over the debate, were portrayed on the program as an attempt to give husbands some protection. It is a few years ago now, but I do not recall that actually being the intent of the changes. From memory, it was more to ensure that the provisions work better in terms of applicants. There is no specific component about giving husbands protection is there?

Mr Rizvi—My recollection was that the minister indicated that the regulations were aimed at reducing abuse of the domestic violence provisions.

Senator BARTLETT—With the progress of that latest attempt to try and work to an improved system, have you got more specific statistics about the levels and extent of alleged abuse?

Ms Hickman—We have been conducting an analysis of last year's files for successful cases of claims for domestic violence and, from what we can see from the files, about 80 per cent of those claims were clearly genuine. As for the other 20 per cent, in some cases it is really difficult to tell, because all we have is the statutory declaration and that does not say very much. In some of those cases it would appear that there has been misuse.

Senator BARTLETT—How much is 'some' of the 20 per cent?

Ms Hickman—It is very difficult to tell because, as we said before, we only have the statutory declarations and we cannot investigate behind them. It would appear to be some but we would have to do further checking to be able to tell. We cannot do that under the law.

Senator BARTLETT—Obviously, if there is abuse, everybody wants to try and address it. I am concerned about a perception being created that there is widespread abuse if you do not have evidence to back that up. I am not saying you are using the word 'widespread' but, particularly when there are other programs such as *60 Minutes* around, it can create that perception. From the other figures that were in the discussion paper about 30,000 people came on spouse visas last year, is that about right?

Ms Hickman—About 33,000 last year.

Senator BARTLETT—And how many of those applied for domestic violence?

Ms Hickman—Last year it was 473.

Senator BARTLETT—Is that about 1.3 per cent?

Ms Hickman—It has been increasing. It is still very small numbers but the percentages are increasing.

Senator BARTLETT—How many of the 473 were approved?

Ms Hickman—There were 473 successful applications.

Senator BARTLETT—I thought you said 473 applied. Do you know how many were unsuccessful?

Ms Hickman—We only get the figures of the claims that have been successful because, generally speaking, if they provide the correct evidence they are granted.

Senator BARTLETT—Are you saying that you do not know how many unsuccessful ones that there have been, or that there have not been any?

Ms Hickman—No, I do not have those figures, I am sorry.

Senator BARTLETT—Could you chase that up?

Ms Hickman—I will be able to get those for you.

Senator BARTLETT—Was that 473 or 437?

Ms Hickman—It was 473.

Senator BARTLETT—So 80 per cent of those, you assure us, were all definitely above board and some of the rest may or may not be a bit dodgy.

Ms Hickman—From looking at the files, it would appear that 80 per cent are genuine.

Senator BARTLETT—So about 95 claims, at a maximum, from 33,000 may have been dubious?

Ms Hickman—Yes.

Senator BARTLETT—So it is not exactly a massive problem that you are trying to address. It is a small tightening.

Ms Hickman—Our concern is the increase that is occurring. Some of the figures showing some of the claims that are made appear, to us, to be getting worse in terms of misuse.

Senator BARTLETT—Do you do any comparison with the incidence of domestic violence claims and restraining orders in the wider community?

Ms Hickman—We did have a report that we looked at for the wider community which was done in Queensland some years ago, and it would appear that one of the issues that we have is that the number of males claiming domestic violence is much higher in this program than it is in the wider community. That is one of the key things that we think is showing abuse in the system.

Senator BARTLETT—It is male spouses that are claiming domestic violence?

Ms Hickman—We have a proportion of males as well as females and it was quite small, but it has been increasing.

Senator BARTLETT—Is that the area of potential abuse that you are worried about?

Ms Hickman—That is another area. There could be misuse among the females as well.

Mr Rizvi—That is not to say that the males are necessarily misusing it, it just raises questions.

Senator BARTLETT—But if there is a greater proportion of males claiming domestic violence than there are in the general community it is a different picture from hordes of conniving Russian brides coming over here and making fools of our men. We usually do a pretty good job of that ourselves, I think, we do not need Russian brides to help us.

CHAIR—You took the words right out of my mouth, Senator Bartlett. Perhaps it is an appropriate moment to acknowledge that we have a very distinguished delegation from Pakistan with us in the main committee room this morning. I would like to acknowledge and

welcome the Minister for Revenue and members of the Jammu and Kashmir Legislative Assembly, I hope you enjoy your brief visit to a Senate estimates committee.

Senator SHERRY—I earlier asked about the preparation of the legislation for penalties in respect to employers that employ workers without work rights. Has the legislation been prepared?

Mr McMahon—No, not yet because we are still trying to determine the precise means in which the scheme has taken place. We have had discussions with drafters, but of course they remain in confidence for the moment.

Senator SHERRY—So we do not have legislation ready to go to the Minister for consideration by cabinet yet?

Mr McMahon—That is correct.

Senator SHERRY—You have no idea when that will be?

Mr Farmer—The minister has said that he is minded to introduce or bring forward legislation as soon as possible, and we have been discussing this issue with the minister and within government, because there are issues that are broader than the immigration portfolio.

Senator SHERRY—I appreciate that, but I do recall the minister saying that this was a matter of urgency two years ago.

Mr McMahon—Can I comment on what has happened in between? Clearly a major issue that arose at that time was employers, particularly small employers, were genuinely concerned about the imposition of the identification on them as to the work rights —simply, the cost of trying to identify those, particularly within a short period. A number of things have happened. One of them is that we undertook to do a lot more employer awareness, which we have done. We introduced the system of employer notices for breaches to make sure that the issue was clearly identified. We also had a trial with the taxation office. It was a harvest trial that sought to work through the issues of people filling out and appropriately lodging tax returns and also identifying and working through the identification issues for people in respect to work rights. That was a very interesting study because it did show some of the difficulties facing employers in respect of the immigration components. In other words, you could say that the trial was half successful for the taxation office and less successful for us. But it is illustrative of the difficulties that everyone genuinely faces in respect of proceeding with a scheme. So it is not as if nothing has been done.

Senator SHERRY—I am not suggesting that. I just recall the minister saying it was a matter of urgency two years ago and here we are, we do not even have the legislation yet.

Mr McMahon—He has made it clear to us that he sees it as remaining a priority and is looking at ways in which we can escalate the resolution of some of the core issues.

Mr Farmer—I wonder if I could go back to a comment made by Senator Bartlett. I was not quite sure if I heard you correctly, but when you were talking about the figure of 94 or 20 per cent of applications, I think you may have commented that you did not think that this was a large problem or words to that effect. I would not like that to pass unremarked on from our side, because any migration fraud is a serious problem from the department's point of view and more so if we believe that there is any indication of systemic abuse of the system. That is

why this sort of area, for us, is important. It is a bit redolent of some of the issues that we had with spouse visas in the last five or six years. I think that we have gone a very long way to overcoming them, but this is an area of concern and the numbers, I think, are not insignificant.

Senator BARTLETT—As you have raised it again, the point I was trying to nail down was, say, if it was 20 per cent around 1993-94 out of 33,000 spouse visas—and we do not know how big that sum is, whether it is one or whether it is 93. I acknowledge that any abuse, particularly if it is systemic and looks like it is being targeted, always needs to be examined. However, I am concerned about a perception being created that there is this massive loophole that is being widely exploited rather than a small number of people that may be abusing it.

Mr Farmer—Yes. I really was not endorsing anything that *60 Minutes* had to say—I would need a lot of monetary inducement to do that—but was just making a comment from our perspective that abuse of the migration program is something that we take very seriously.

CHAIR—Thank you very much, Mr Farmer. Back to you, Senator Sherry.

Senator SHERRY—I wanted to ask some questions about turnarounds. Was it 15 airports overseas that DIMIA has staff based at? I think that number was given to me earlier.

Mr Killesteyn—That is the airline liaison officers?

Senator SHERRY—Yes.

Mr Killesteyn—Yes.

Senator SHERRY—Are there any other officers at other airports?

Mr Killesteyn—It is the airline liaison officers that operate at the airport. We obviously have other DIMIA officers in our overseas posts, but they are the ones that operate at the airports.

CHAIR—Is this still in 1.1—or are we in 1.3 on turnarounds?

Mr Killesteyn—It is 1.3.

Senator SHERRY—Okay. That was easy, wasn't it? We will turn it around to 1.3 and I am sure we will get to it this afternoon.

CHAIR—Is that okay with you, Senator Sherry?

Senator SHERRY—That is fine. I have an issue relating to superannuation that crosses over students, temporary residents, visitors and working holiday-makers. Perhaps I should just explain the background and then there may be an officer who can assist. There was a change to the superannuation provisions that allow a variety of categories of temporary residents who can work legally when they leave the country to collect their superannuation and transfer it back to their country of origin. The government gets a cut via the tax system. Do we have someone that can give me some information on this issue?

Mr Waters—What information are you looking for?

Senator SHERRY—I assume you are the officer that has been liaising with the tax office about informing temporary residents as to their rights.

Mr Waters—I have.

Senator SHERRY—What has been the extent of the campaign to inform people that they can do this?

Mr Waters—I am not completely across the full range of information material which the tax office is in fact providing to people in Australia, but information is in fact provided to people at our overseas posts through our department in the form of a booklet available in the immigration offices overseas.

Senator SHERRY—So that is now universally made available to people seeking temporary residents in Australia.

Mr Waters—We have contacted our overseas posts about the placement of material from the Treasury in our waiting rooms, and the like, overseas. I must admit it is a relatively recent development.

Senator SHERRY—Yes, it is. It only became law last year.

Mr Killesteyn—Can I add that the tax office has obviously been concerned about ensuring that people who fall into this category are aware of the information. Not only are we trying to do it at the front end, if you like, in the way Mr Waters has described but we are also trying to doing at the back end.

Senator SHERRY—Can I just leave that for the moment because we will work our way through it. Front end—it is the provision of a pamphlet. Is that given to them specifically? Are they informed by your officers face-to-face about this particular provision?

Mr Waters—No, it is not, it is simply available now in our waiting rooms.

Senator SHERRY—So if they choose to read it, pick it up amongst the other information that is in your waiting rooms, that is their call.

Mr Waters—Exactly.

Senator SHERRY—Okay. Anything else done on the entry side?

Mr Waters—Not at the entry side; no.

Senator SHERRY—I now move to what happens in Australia on exit where the department is involved. What is happening there?

Mr Killesteyn—The tax office approached us to look at the possibility of putting a question on the outgoing passenger card. Essentially, it is a general question that in effect says, 'If you are a person in this category, please send your details to this particular web site address.' It was agreed with the tax office that we would throw that question on the outgoing passenger card. I would need advice on when that question will appear because, obviously, it is a new passenger card and a new question, so we need to print that and get it into the system. I could get some advice on that.

Senator SHERRY—If you could. Obviously, from what you say, it has not appeared on the card yet. When was the issue about putting this question on the card raised?

Mr Killesteyn—As I recall, it was maybe six or eight weeks ago. I would have to take that on notice, but I think it was of that order.

Senator SHERRY—Obviously, then, it was not raised with you prior to the legislation becoming law, which I think was about a year ago or slightly more than that.

Mr Killesteyn—I will take that on notice. I do not know. All I know is that, when I got across the issue of determining whether the card ought to be amended to include the question, it was about six or eight weeks ago.

Senator SHERRY—You have agreed that this will happen?

Mr Killesteyn—Yes.

Senator SHERRY—Is there a time by which these new cards will be printed?

Mr Killesteyn—That is what I am seeking to get advice on now.

Mr Farmer—The passenger card issue is one of those perennial issues, because lots of government agencies want things included on the card. Of course, we also want to maintain ease of entry and exit for passengers. So the CEOs of Immigration, Quarantine and Customs are looking at the question of the passenger card and at what information should be included on a revised version of that. That work is live right now.

Senator SHERRY—But it has been agreed that the question about transferring your super back to your country of origin will be included on the card?

Mr Farmer—I think we have indicated to Tax that, at Immigration, we believe that is appropriate. I am not aware that that has been agreed between the three CEOs.

Senator SHERRY—I am not sure where that leaves us. Is it going to appear on the new card at some time or not?

Mr Farmer—Where it leaves us is that we are talking at the moment about a process that is under discussion. I do not know whether Mr McMahon knows the answer to that.

Senator SHERRY—Mr McMahon, can you throw some more light on this?

Mr McMahon—Essentially, we are proceeding. I do not know whether I am now going to get the cuts from the secretary for not having sought his agreement—

CHAIR—It is always important to announce these in estimates.

Mr McMahon—But, clearly, it is something that is quite beneficial for Tax.

Senator SHERRY—Exactly. I am not going to have a go at you about this; I am going to have a go at Tax later on.

Mr McMahon—The key question for us was: could we put it on without compromising the way in which we scan? The answer was that there was no compromise. A second question was: every time there is a change to a card, it results in significant write-offs of existing cards: who is going to meet those costs? Tax has agreed to do so.

Senator SHERRY—What will that cost be?

Mr McMahon—We do not yet have an estimate for it. Obviously, it is going to be in the thousands.

Senator SHERRY—How many cards will you have to write off as a result of this?

Mr McMahan—I would need to take that on notice. It really depends on the stock we have at any one time and on whether we go cold turkey on it or phase it in. That is a decision on the cost management of doing so. The costs are probably not great relative to the issues of revenue and the need to get the information out. It is just another area of close cooperation between the two agencies.

Senator SHERRY—How many other questions are on the card? Is this new question one of 10 or one of 20?

Mr McMahan—I could not answer that. The departure card does not have nearly as many questions on it as the incoming passenger card. We were putting it on the back on which there were virtually no questions. I think that there are only about 10 questions or something like that. We can confirm that quite readily.

Senator SHERRY—What is the success rate of the card? Have you done any surveys about whether people actually read and understand it?

Mr McMahan—It has a very high level of compliance. One of the responsibilities of the ACS, as our agent, is making sure that it is filled in correctly and we put a high priority on that. In terms of the scanned in card, the success rate is now extremely high; we are getting a very small number of rejections.

Senator SHERRY—Do you have a wording of the question about temporary residence super? What is it intended to do? Is it to alert them to the fact that they can transfer it out?

Mr McMahan—The first part of the question seeks to identify whether they fall within that category.

Ms Sykes—The purpose of the question is twofold. Firstly, it is to alert people, and secondly to get contact details which are then forwarded to the Australian Taxation Office so that they can contact the people.

Senator SHERRY—If a person does have superannuation accrued in Australia as a temporary resident, they can tick the box and you will forward that information on to the tax office?

Mr McMahan—The way that it would work is that the tax office would be directly accessing that part of the information. Once they have got the contact details, they will then seek to make direct contact with the person who has identified themselves on the card.

Senator SHERRY—So it is not an authorisation to the tax office for the super to be taken out of the super fund and sent overseas, it is purely for contact purposes.

Mr McMahan—It is a contact basis, yes.

Senator SHERRY—So the tax office is forwarded that information and it then has to contact that individual overseas, presumably?

Mr McMahan—Correct—or on return.

Senator SHERRY—Will you provide the tax office with their address details in the country that they are returning to, if you have them?

Ms Sykes—That information is asked on the card and, if the person provides that information, it will be provided to the tax office, but it will be that person who provides the information.

Senator SHERRY—What proportion of people would provide that information on the card?

Ms Sykes—I do not have that information available. It is a small group of people who fall into the category that we are talking about. At this stage, we do not have any indication of how many of them will self-identify. It is an additional measure by the ATO to try and make these people aware of the provision.

Mr McMahan—I believe that we can get that information for you. It is a very small number, and one of the issues for us was adding to a card a question which the overwhelming majority would not answer.

Senator SHERRY—I appreciate that, but at risk is some hundreds of millions of dollars that the tax office claimed that they would collect in this area. I was always a bit sceptical, to be frank, about whether or not they would they would succeed in collecting what they projected they would collect. Why weren't these measures that are now being put in place put in place a year ago?

Mr McMahan—All that I can say to that is that we have responded to approaches by the tax office and I believe that we have done it reasonably expeditiously.

Senator SHERRY—As I said, I am not having a go at your department—it is a Treasury initiative. It is not something that you would have initiated in the normal course of events. Were there no discussions about this new approach to the questions on the card from Treasury prior to this legislation being passed? They are supposed to have been collecting the money for the last year and I suspect that they are getting very little of it.

Ms Sykes—I need to double check my information but my understanding is that discussions specifically about the card commenced earlier this year.

Senator SHERRY—We are talking about small numbers—the number of people who are eligible to work in Australia who would be receiving superannuation contributions. There are 66,000 student visas. What is the total number of visas issued in a year, approximately, to people who are able to work in Australia?

Mr McMahan—There are about 130,000 or 140,000 student visas a year. All those have work rights. I think there is an equivalent number of temporary entrants. Mr Rizvi may have the number.

Mr Rizvi—I will do some back of the envelope calculations to see if I can work something out for you.

Senator SHERRY—Yes, it only has to be rough.

Mr Rizvi—Probably between 300,000 and 400,000 people have work rights in Australia as temporary entrants.

Senator SHERRY—Out of approximately how many people in a year who visit Australia, would have a visa?

Mr Rizvi—The number of people who would visit Australia in a year would be in excess of three million.

Senator SHERRY—So the point you are making, Mr McMahon, about it being a small proportion is correct. But, when you are dealing with hundreds of thousands of people who work for varying lengths of time and of which at least 9 per cent superannuation is payable—they transfer it out and the tax office takes 30 per cent—there is a significant amount of revenue involved, if they do it, and apparently they are not. Has the tax office indicated why they want this question on there?

Mr McMahon—It was identified for us that it was a high priority and we have just considered it in respect of the cost and management of the passenger card and the wider Commonwealth—

Senator SHERRY—But in terms of the high priority, is the high priority identified by Treasury to actually try and collect a revenue that they believe they should be collecting?

Mr McMahon—Yes, they have identified that as an important issue for them.

Senator SHERRY—Okay, thanks.

Senator KIRK—I have questions in relation to student visas. Could you tell us how many student visas were granted in the last financial year?

Mr Rizvi—We will get the precise figures. Ms Keski-Nummi will be with us shortly to provide those. In providing those figures, I might just explain the nature of the numbers that we will give you. There are student visas that we issue offshore and those people have study rights when they arrive. Secondly, there are people to whom we issue student visas onshore. Some of those people may have entered Australia on a visitor visa and then go on.

Finally, there are other people who enter Australia on a temporary entry visa, which includes the right to study. For example, if you come here as a visitor, you have study rights associated with that visitor visa. If you come here on a working holidaymaker visa, you have study rights. Similarly, if you enter Australia as a long-term temporary entrant, you have study rights. The figures we will give you will relate to student visas, but they are only a subset of the total group of people from overseas who may, at any point in time, actually be studying.

Senator KIRK—I understand. Thank you.

Mr Rizvi—I have a stock figure here of students: as at 30 June 2002, there were 154,000 overseas students in Australia. As of today, I suspect the figure is quite a bit larger than that, probably 15,000 or 20,000 larger than that.

Senator KIRK—Why has the number increased?

Mr Rizvi—The increasing size of the industry.

Senator KIRK—Have you just read out the student visa category?

Mr Rizvi—They would be people here in Australia on a student visa.

Senator KIRK—Of those student visas granted last year, how many were cancelled in the last financial year?

Mr McMahon—If you are talking about the last financial year, we had about 7,000 cancellations and, as a consequence of that, about 2,100 removals. I could give you the exact figures if you like.

Senator KIRK—How many were granted last year? Was that the 154,000 figure?—no, that is the total number.

Mr Rizvi—That was the stock of people on that particular day.

Senator KIRK—Do we have figures of exactly how many were granted last year?

Mr McMahon—It is very hard to actually make the direct link in the way that you have done it. Maybe the stock figures would be better than the number of approvals. Clearly there are people coming and going. Some of these removals may have been from a previous year. I think you can establish some sort of loose relationship but not a definitive one.

Mr Rizvi—We have the figures here: in 2001-02 there were 98,824 student visas issued offshore and 54,244 student visas issued onshore.

Senator KIRK—What sort of period are they issued for?

Mr Rizvi—They would be issued for the period of study that the person has been approved for, plus some buffer to enable the person to make arrangements to then further their status.

Senator KIRK—As for those 7,000-odd that were cancelled last financial year, are you able to provide us with a breakdown of the reason why those visas were cancelled?

Mr McMahon—The answer is yes—but how quickly is another matter.

Senator KIRK—You could take on notice to provide the detail, but perhaps you can give us some sort of guidance here today.

Mr McMahon—We are able to provide that.

Ms Haughton—In relation to student visa cancellations for this program year—that is from the 1 July to 30 April—there were 1,983 which were automatic cancellations, 26 which related to incorrect information, just a little over 2,000 that were the general power under section 116, and 2,176 which related to the holder being outside Australia. In total there were 6,418 visa cancellations so far this year to date.

Mr McMahon—This does not relate directly to the 7,000 figure. Unfortunately, we have the break-up in respect of the current financial year, but I think we will run towards quite similar numbers.

Senator KIRK—Could you provide me with a bit more detail on the nature of the automatic cancellations at the end of the period. Could you explain that for me?

Mr McMahon—The automatic cancellations that we have just given were between 1 July 2002 and 30 April 2003. As you know, the way it works is that the student service providers issue the notice themselves. If there is not a response, a cancellation takes place. That is the effect. Many more notices were issued, but they are the ones where basically people did not make contact or, when they made contact with Immigration, we were not satisfied with the story they gave us.

Senator KIRK—Was it 23 people with incorrect information?

Mr McMahon—Twenty-six.

Senator KIRK—What did you say about section 116 cancellations?

Mr McMahon—There is a general power for visa cancellation. There is a whole series of ways in which we can cancel a visa. It is probably not all that meaningful sometimes to break up the visa cancellation powers because many visa cancellations are on the basis of incorrect information or some inconsistency. It probably would be useful to aggregate those. I notice that of the 6,400 that we mentioned, nearly 2,200 of those were people who were not in the country. Presumably we were not satisfied that they were returning or whatever—in fact, they had removed themselves.

Senator KIRK—That is, by far, the largest proportion of the 6,000 people who have removed themselves, isn't it?

Mr McMahon—It is one of about three equal proportions. You have the automatic cancellation, our general powers of cancellation and then cancellations from people outside Australia. They are roughly equal—you could say that they are about a third each.

Senator KIRK—Of those cancellations that you have given me—the 6,500 or thereabouts—were they cancellations that were effective? Were any subject to appeal and were any of the appeals successful?

Mr McMahon—No. What happens is that the automatic cancellations are subject to the provision of information for an appeal process. We would revoke the cancellation were that to happen. I believe that these figures are net of that.

Senator KIRK—Are very many subject to appeal? Do you have those figures available? Perhaps you could take it on notice.

Mr McMahon—No, but my memory is that around 32,000 notices are sent out because of the automatic nature. Essentially, the notices are sent out where people may not have strictly met a requirement. There is a huge difference between the number of notices going out and the number of consequential visa cancellations.

Senator KIRK—Is there an appeal process available if there is an automatic cancellation?

Mr McMahon—I think that it is two-stepped. Mr Rizvi can probably give you more detail. As I understand it, once the notice goes out, they present themselves within 28 days. Having presented themselves within that 28-day period, the general pattern is that we receive an explanation that would not lead to the cancellation—in other words, we revoke the cancellation notice. But there is a review mechanism as well.

Mr Rizvi—Essentially it operates on the basis of that 28-day clock. Within the 28 days, when the provider issues a notice to the student, the student must report to an immigration office within 28 days. If they do not report within 28 days, the visa is automatically cancelled. If they report within the 28 days, the clock stops and they are then required to provide information to us as to why the visa should not be cancelled. If they provide adequate information and an explanation, the visa is not cancelled; if they are unable to do so, then the visa does get cancelled. Where the visa is automatically cancelled and they come back to us and say, 'It was all a mistake and something went wrong,' there is a revocation process, but

the test for that revocation process is greater than if they had turned up within the 28-day clock.

Senator KIRK—What do they need to provide at that point—just additional information which is then considered?

Mr Rizvi—Yes. It may simply have been that they moved from one provider to another without telling the provider with whom they were originally enrolled.

Senator KIRK—Then it is easily remedied?

Mr Rizvi—If they can explain what happened and it is all above board, then that is fine. On the cancellations, Mr McMahon gave you cancellations by the power of the act that was used. Another way to look at the cancellations is the reason for the cancellation, which goes to issues that relate to the reason the provider gives as to why they initiated the notice of intention to cancel.

Senator KIRK—I was coming to that. My next lot of questions were on the types of reasons the service providers give for cancellations.

Mr Rizvi—We have data here on six main reasons. The first is ‘Student completed the course early’—and for the period 1 July to 31 March 2003 there were 343 cancellations for that reason. The next reason is ‘Student did not commence the course’—and we have 257 cancellations in that category to the period 31 March 2003. The third reason is ‘Student non-attendance of classes’—this is the first one that you might regard as the student having done something naughty—and there were 1,299 cancellations. Other reasons that I have are ‘Student failed to meet course requirements’ and there were 1,157 cancellations; ‘Student deferred the course’—that is, 128 people decided not to proceed and perhaps decided to study elsewhere; and, finally, ‘Cessation of studies: enrolment cancelled’ and there were 1,025 cancellations. Then there is a whole collection of minor reasons which, when all put together, add to 1,439 cancellations which gives you a total of 5,648 cancellations to the end of March 2003.

Senator KIRK—Thank you for those figures. You talked about the service providers and their issuing of notices for these sorts of reasons—that the students have either failed to attend or are failing subjects. Who sets those conditions? Is it the service providers who make those determinations about the reasons or the conditions which would then be followed by a cancellation of the visa, or is it DIMIA?

Mr Rizvi—My understanding is that those reasons are set out in the legislation developed in conjunction with the Department of Education, Science and Training and in consultation with the provider peak bodies.

Senator KIRK—So it is in the legislation but it is essentially monitored by the service providers?

Mr Rizvi—Effectively, when they issue a notice of intent to cancel through the system, they have to give a reason code and the figures that I gave you were on the basis of the reason code that the providers entered.

Senator KIRK—And then DIMIA accepts the reason through the reason code without any further investigation?

Mr Rizvi—That is where the clock and revocation issues come in. When the notice of intent to cancel is issued, the student is given a letter and told to report to DIMIA within 28 days. When they report to DIMIA, they then explain why the visa should not be cancelled and we may make a decision not to cancel on that basis, in which case, they would not show up in those figures. Alternatively, we may proceed to cancellation in which case they would show up.

Senator KIRK—Given that the service providers are required to monitor the attendance of students and whether they have met the subject requirements, and that a number of courses go over a term or over a semester, at what point is the educational institution meant to make an assessment about these matters—non-attendance in particular? I guess if a student failed the course, that is a fairly obvious criteria, but what about such things as non-attendance or other matters?

Mr Rizvi—Those are obligations that are outlined in the ESOS act and in the code of practice, but my understanding is that monitoring of attendance and monitoring of whether the student is missing course requirements is an ongoing responsibility of all providers.

Senator KIRK—Have DIMIA discovered many cases or examples of where an educational institution has not been performing this monitoring role very well, for example, not reporting non-attendance of a student when clearly this has been happening?

Mr Rizvi—Yes, we have encountered those instances. Where it comes to our attention that that may be a possibility, we can issue what is known as a production notice asking the provider to give us evidence of their record keeping regarding attendance and such matters, and we will then consider those. Where those requests for production notices raise further concerns, we refer the matter to either DEST and/or the relevant state education authority and they have powers under the ESOS act to then investigate those matters and take whatever appropriate action.

Senator KIRK—How would such a matter come to your attention? One would have thought that it is not via the student.

Mr Rizvi—Sometimes a student will, to use the vernacular, ‘dob’ someone in. That can happen. It can happen through community information, it can happen because compliance staff may simply become aware of providers who appear to be more lax than others. That information can come to us in a variety of ways.

Senator KIRK—Do you keep figures on how often these production notices are issued to educational institutions?

Mr Rizvi—Yes, we do. In the period 1 July 2002 to 15 May 2003 there were 43 production notices issued. Thirty-nine of those were issued to education providers in New South Wales and four to education providers in Queensland.

Senator KIRK—Why is it so high in New South Wales, relatively speaking? Any explanation for that?

Mr Rizvi—One of the explanations would be that the concentration of overseas students in New South Wales is greater than anywhere else. Outside that I could only speculate.

Senator KIRK—I take it there were no production notices in any of the other states—only those two states.

Mr Rizvi—There have not been any in the other states. That is not to say we are not monitoring education providers in the other states where we may have concerns and may, down the track, issue production notices. There are education providers in those other states with investigations we are aware of being undertaken by DEST and/or the relevant state government authority. Once investigations by those authorities begin, we tend not to become involved in production notices unless DEST or the education authority seeks our assistance in gathering information.

Senator KIRK—You mentioned that figure of 43. Is that over a period of nine months since the last financial year?

Mr Rizvi—That figure would be from 1 July to 15 May—10½ months.

Senator KIRK—So the annual figure would be a little bit higher, I suppose.

Mr Rizvi—Yes, I think so.

Senator KIRK—Is that the average type of figure that you would see every year?

Mr Rizvi—That is about in line with the previous year.

Senator KIRK—Is an educational institution or one of these service providers required to be registered?

Mr Rizvi—Yes, they are required to be registered. The registration process involves them approaching their relevant state education authority who will make an assessment and make a recommendation to the Department of Education, Science and Training, who would then make their own assessments and place the education institution on what is known as CRICOS, which is the Commonwealth Register of Institutions and Courses for Overseas Students.

Senator KIRK—Are those registration requirements virtually the same throughout all of the states?

Mr Rizvi—The ESOS Act and CRICOS is a national requirement—different states administer those sorts of things in slightly different ways but yes, broadly it is similar.

Senator KIRK—Have there been many examples recently of an educational provider being de-registered as a service provider? Does that occur?

Mr Rizvi—Yes, it does occur. Fourteen providers have had sanctions applied under section 83 of the ESOS Act—that is either suspension or cancellation for breaches of the ESOS Act or of the national code. Four have been suspended, five have been cancelled and five have had conditions imposed on their registration.

Senator KIRK—What would amount to a breach that would result in a removal from registration? What sort of breaches would amount to such serious consequences?

Mr Rizvi—It would relate to the national code which is contained in the ESOS Act. The specific breaches are really something more for the department of education because they are the ones who administer those breaches, and it would probably be best that DEST answer those questions.

Senator KIRK—Thank you.

[11.33]

CHAIR—We will move on then from Non-humanitarian entry and stay, to output 1.2—Refugee and humanitarian entry and stay. We will try to stay within the confines of 1.2 as far as possible. I ask those officers from the area to come forward.

Senator Ellison—Madam Chair, I know that we will have the lunch break from one to two. Is there any way we can just say that officers concerned with a certain output can go away and come back later?

CHAIR—I would like to be able to say that but we do not necessarily have the same coherence in the approach across the outcomes that we have in A-G's.

Senator Ellison—Outcome 2 is a very different section.

CHAIR—If the question is, are we going to reach outcome 2 before lunch—I am confident in saying no. It is up to Mr Farmer as to what he wants to do with his officers in that area. So, yes, Minister, you are right in that regard.

Senator Ellison—That is helpful. Thank you.

CHAIR—I will try to get some guidance as to timeframes as we progress towards lunch.

Senator Ellison—Realistically, I would see us on outcome 1 for the rest of the day—

CHAIR—Quite.

Senator Ellison—and I would be amazed if we were not. Being realistic about it, I would not have thought that we would reach outcome 2 before afternoon tea.

CHAIR—At least the lunch deadline will give some clarity. Refugee and humanitarian entry and stay. Senator Kirk.

Senator KIRK—I have some questions in relation to temporary protection visas. How many people are current holders of TPVs?

Mr Illingworth—There are currently 8,736 temporary protection visa holders.

Senator KIRK—Do you have a breakdown as to the countries where those people are from?

Mr Illingworth—At the highest level, there are 3,642 Afghans, 4,193 Iraqis and 901 other nationalities. There is a range of nationalities in there. The predominant ones would be Iranians and Palestinians.

Senator KIRK—Could you provide the committee with that breakdown?

Mr Illingworth—The further breakdown or the figures?

Senator KIRK—Just the figures. Take it on notice or provide it to us when you can. Of those current holders of TPVs, how many have expired, or are they the current figures that you have given me?

Mr Illingworth—We have arrangements in place which enable the status of the individuals to continue on. So, depending on when they were originally granted their temporary protection visa, that is either an automatic operation of law or, in relation to the

earlier grants, an automated process based on a deemed application. Do you want me to tell you the ones that have reached the notional 36-month point of the visa?

Senator KIRK—That is right. I was interested in the ones that have notionally expired and whether or not they are still carrying on, either legally or otherwise.

Mr Illingworth—There are 634 that have reached the 36-month point of the visa. That is looking forward a few days to the end of May, as at the end of May. Of those, 444 were Afghans, 140 were Iraqis and 50 were of other nationalities.

Senator KIRK—With those 634, you said that there is an extension of time. Is that correct? Over what period of time do they have some leeway?

Mr Illingworth—We approached this in two ways. Initially the government introduced regulations which changed the end date of the visa so that people granted a temporary protection visa had determination dates set as either 36 months from the date of grant or, if at that time they had an application on foot, when that application for the further visa was resolved. So it was a date or an event, whichever was the latest. Subsequently it appeared that those regulations could not apply retrospectively to TPVs already granted. So regulation changes in 2001 essentially created a deemed application for an interim temporary protection visa, if I could use that term, rather like a bridging visa in concept. It has an event as its terminating date. It will terminate when further application for the protection visa has expired, so there is no set date. It will just continue the person's status as a TPV holder with access to the standard range of benefits they would obtain.

Senator KIRK—What would be an example of such an event that would give rise to an end point?

Mr Illingworth—The event is the finalisation of the further substantive application for protection. So with a temporary protection visa, a holder makes a further application for a protection visa and, if it has not been resolved either at primary or review when their 36-month point is up, then the idea is that this interim temporary protection visa will keep them in the same status, with the same access to benefits, until such time as we do resolve that further application.

Senator KIRK—Of those who were granted TPVs and whose TPVs have expired, how many are in the process of being processed for a further substantive visa?

Mr Illingworth—Processing is under way at various stages for all of that caseload. Some have received letters inviting them to interviews and others are in the process of preparing for those interviews. A large majority of the people, if not all, have received letters which are giving them the opportunity to provide further information that they might want to give to us in preparation for us focusing on their case and making a decision. As a general practice, at the 30-month point of the temporary protection visa, the temporary protection visa holder receives a letter from the department which alerts them to the fact that they have six months left to run, that there are decisions that they have to make, and that if they want to lodge an application and have not done so then they should do that. Where they have lodged an application, if there is further information that they want to provide to us, this is their chance—it is a reminder.

Senator KIRK—There is no group of people whose applications are not being assessed? There is no freeze of any description?

Mr Illingworth—The only issue which intersects with the processing of the further protection visa applications lodged by the temporary protection visa holders is the issue of the reliability of country information on Iraq. As a broader arrangement, we have issued guidelines which suggest to case officers that they defer decision making on Iraqi cases in those cases where they would have to rely on accurate, detailed country information in order to make a decision. The suggestion is that the case officers defer while we centrally seek that updated country information to enable reliable decision-making to proceed. As soon as that process is completed then I would expect that a large range of the Iraqi cases will be active at the case officer level, whereas at the moment they are active in a collective sense at the central office level. Of course, where Iraqi cases at the individual level can be decided without a need to be sure of the detailed country circumstances in Iraq, the case officers are continuing to look at those cases.

Senator KIRK—How many people would be affected by that formal process that you described—awaiting the country information?

Mr Illingworth—Somewhere over 1,800 at various stages. That is not to say that we would have expected that they would otherwise have all been receiving decisions now, but that is looking at the collected pool of all Iraqi temporary protection visa holders who had lodged further protection visa applications and who had reached the 30-month point. So they are all in process and some of them will not have even reached the point where the decision maker would have been turning their mind to the decision yet. They are in the precursor stages of inviting them to provide updated country information and updated claims, and the majority of those 1,800-plus people would be at that very early stage.

Senator KIRK—This updated country information that you refer to, where is that sought from? Is that sought from the individual, and what other sources apart from the individual?

Mr Illingworth—The practice of the department is to use its Country Information Service, which is a specialised service within my branch, to collate and collect information to support the work of the decision makers and to contribute to the work of the Refugee Review Tribunal. They use a wide range of sources: Internet searches, academics, major intergovernmental organisations and non-governmental organisations, human rights bodies, the US State Department reports, Human Rights Watch and Amnesty. We also use information which is gained by equivalent organisations in other countries, for example, Canada. We also use the Australian network, through our diplomatic connections, to obtain information on the ground. So there is a wide range of sources that we use and they are all reflected in the data holdings that are available to case officers.

Senator KIRK—What about information from the UNHCR?

Mr Illingworth—That is included.

Senator KIRK—Is any information being sought by the minister or the department from the UNHCR as to how the application should be processed in accordance with the refugee convention?

Mr Illingworth—As I recall, when the initial arrangements were established in the early 1990s—and a couple of variations were made around those years—I believe there were general consultations with the UNHCR at that stage. But the issue of how one goes about making a decision is not something that is dealt with in the convention. The UNHCR has broad guidelines which they suggest should be adopted by states who are running refugee determination processes, but the handbook they produce essentially establishes very high-level guidance. It simply says that, ideally, there should be a decision point and then at least one point of review. That could be either administrative or judicial. So, on that standard, Australia's processes conform with the UNHCR suggestions as to what a decision making process should look like. I recall that, in a submission to an inquiry conducted in 1999 or 2000 on Australia's refugee and humanitarian program and processes, the UNHCR said some complimentary things about the processes Australia adopts as compared to those of other countries.

Senator KIRK—In relation to the new applications that are being processed, has any decision been made as to whether or not they should be considered or dealt with under articles 1A or 1C of the refugee convention?

Mr Illingworth—Yes. Towards the end of last year suggestions were increasingly coming from some quarters in the community, such as advocacy groups, that there should be a 1C approach to looking at the further protection visa applications. That is the cessation article. We take these sorts of proposals seriously when they are raised, and so we looked at those arguments carefully.

Senator KIRK—What decision was made?

Mr Illingworth—In general the position is that officers of the department make decisions under domestic legislation in relation to the grant of a visa. They do not directly make refugee status determinations under the refugees convention. The criteria for the grant of the visa are set out in legislation, and the obligation of the decision maker is also set out in legislation at section 65. The decision maker must be satisfied that the criteria for grant are met at the time of decision. The other criteria for the visa require that the person be owed protection obligations in terms of the refugees convention and protocol at that time. Other sections of the Migration Act clarify precisely when protection obligations do and do not exist. Perhaps I will cut to the nub of the issue, because it has been an issue of some vigorous debate on the part of some organisations. Because we are making decisions on whether or not a protection visa has been granted, the issue of whether or not Australia owes protection obligations to the individual is the core element of the decision we make. The core question is: do we owe protection obligations now?

That is a different decision from deciding whether or not a person is a refugee. For example, a person can arrive in Australia and be a refugee but be an Iraqi refugee who has refugee protection and permanent residence in Germany. In that circumstance, we would refuse the protection visa on the basis that they had effective protection somewhere else. The protection visa is not granted but the person may be a refugee or may have been found to be a refugee somewhere else. The issue is that they are not our protection obligation; they are somebody else's protection obligation.

Looking at it similarly, when we are making decisions on the further protection visa applications, we are making decisions which might result in us not granting a visa, irrespective of whether the person is or is not still a refugee, irrespective of whether cessation processes have been gone through to strip refugee status from that person.

The critical issue, though, when a visa is not granted is that Australia's obligations under article 33 are not breached. Article 33 is the cornerstone of the convention which establishes the fundamental obligation not to return a refugee to the borders of a country where they would face persecution for a convention ground. In a situation where, for example, country circumstances have changed and a person no longer has a well-founded fear of persecution on return to their homeland, withholding the visa is not going to offend article 33; we would not be returning the person to the borders of a country where they would be facing persecution.

That is where there is a difference of view between the position which is being followed in the department and the position which is being argued by some groups in the community, who are saying that this is all a refugee status issue, not a protection obligations issue.

Senator KIRK—I understand from what you are saying that the department's view is that it does not really see that there is an issue between the article 1A test and the article 1C test, because it is not a matter of the refugee convention; it is a matter of protection obligations under the domestic legislation. Is that correct?

Mr Illingworth—We are obliged to follow domestic legislation. In following that, we are making protection obligation assessments, not refugee status determinations as such. Our decisions to grant and withhold visas are not decisions necessarily to grant and withhold refugee status for individuals. That other loop that I just explained was to put that domestic process in the context of the convention so it is seen how one gives effect to the other. In following the domestic legislation and not granting visas—for example, where protection obligations are not owed—we are being fully consistent with the convention.

Senator KIRK—Finally, what is the purpose of the country information that is attached to the interview letters recently sent by the department to applicants for further protection visas from Afghanistan?

Mr Illingworth—We received some suggestions from practitioners in the community, including some NGO representatives, that it would be a good idea to make sure that the people we were processing were broadly aware of major changes to the country of origin since their departure. The general position is that that is an issue which is the responsibility of the applicant: if somebody is seeking asylum in a country then they are the ones who need to know what it is that forms the basis of their claims, and they are the ones who need to tell us.

Nonetheless, given the suggestions of the practitioners and NGOs, even though there has been extensive media coverage of things like the fall of the Taliban—and, more recently, events in Iraq—we thought that it would be a good idea to send out a brief, very high-level paper to alert people to the fact that in the case of Afghanistan, for example, things have changed quite dramatically since they had applied for protection here in 1999-2000 and they will need to think about whether there are other issues they need to bring forward.

It was never intended to provide a detailed explanation of what those changes are. Ultimately it is the responsibility of the applicant to understand what is happening in their

home country and why it is that they need protection—if they do. The intention was to provide a brief factual paper—to take the Afghanistan example again, a 2½-page paper with a sheet attached naming the members of the current Afghan government—alerting them to the fact that there had been some changes.

Senator KIRK—How was the information contained in that sheet you provided to the applicants compiled? Was it done through your country information service?

Mr Illingworth—I asked the country information service to prepare that paper. It draws on facts and does not involve analysis. It is not part of the process of the decision maker looking at a particular claim and meeting their obligation to disclose adverse information. In the course of the process for a particular applicant, a case officer looking at the claims will look at detailed country information and, if there is some country information which is adverse, may have an obligation to disclose that information and seek comment. That process is separate from sending out this general paper, which was essentially to alert people who might have been out of contact with the media and world events for three years and could conceivably—it was argued to the department—not be aware that the Taliban had fallen, and to provide them with information that would alert them to the fact that if they thought there was anything else they needed to advance as a claim this was the time to add it.

Senator KIRK—So the purpose of the letter was not to try to satisfy any procedural fairness or natural justice obligations on the part of DIMIA?

Mr Illingworth—Those are met by the case manager in the individual case process. This was an additional step to alert people to the fact that they might need to think about whether the set of claims they had provided some three years before was still the set of claims they wanted to present.

Senator KIRK—Going back to the country information you have prepared on Afghanistan, you said before that the country information service collects information through Internet searches, diplomatic connections and the like. In the course of those inquiries, did the country information service come across a couple of articles that I have here—one by Professor William Maley and another prepared by Human Rights Watch?

Mr Illingworth—Yes, I have them.

Senator KIRK—My understanding from looking at these is that the authors of both documents are quite clearly of the view that Afghanistan is not a place to which it is safe to return. Can you tell me what weight, if any, was given to these documents in making the assessment that was made about Afghanistan?

Mr Hughes—Before Mr Illingworth answers that question, I have something to say about it. I have looked at the papers and I thought that Dr Maley's paper, in particular, was unduly negative in its assessment of the situation—and indeed of the paper the department sent out to people. That paper the department sent out was not, as Mr Illingworth said, designed to give the definitive position on returns to Afghanistan.

As you said, Dr Maley and Human Rights Watch have urged caution. But what was missing in their papers was the fact that there have already been a massive number of returns to Afghanistan, in many cases sponsored by UNHCR. In 2002, 1.8 million Afghans outside

Afghanistan returned to their country, in many cases facilitated by the UNHCR. Also 230,000 internally displaced Afghans were able to return to their homes. The figures I have are that in the first five months of this year another 56,000 Afghans returned home. There has been a slowing in the winter period. Many of those are from the region, from Iran and Pakistan. There have also been returns from Europe and in some cases some involuntary returns from Europe.

In a sense the facts speak for themselves. Although it may be arguable that in some parts of Afghanistan there are particular problems that individuals might be able to argue place them under threat—and in some cases under threat of persecution if they return—overwhelmingly there have been a very large number of returns, and these have been facilitated in many cases by UNHCR. That has to be balanced somewhat against the arguments that say it is unsafe and we should totally be at the cautious end of the spectrum.

Senator KIRK—I understand that, but it was said earlier that it was the responsibility of the applicant to provide the department with information as to why they should be given these continuing protection obligations. I want to know whether or not DIMIA is going to be taking into account this sort of information if and when it is presented to it, whether it has already prejudged or predetermined that Afghanistan is a safe place to return to?

Mr Illingworth—The information that is provided by any expert that becomes available to the department that is relevant is included in our country information service and is available to decision makers.

Senator KIRK—Will there be a revision of the country information service information to incorporate these documents?

Mr Illingworth—There is no need. What we provided was a factual document. It is headed 'Events in the Islamic transitional government of Afghanistan. We are not providing analysis of facts. We are providing facts from sources. The sources, I should say, that Dr Maley and others have drawn on are the sources that have been quoted and cited in our paper.

Senator KIRK—So it is fair to say that, if an applicant sought to rely on this sort of information, DIMIA would take that into account on a case-by-case basis.

Mr Illingworth—They will take it into account. The other point I want to make is that there is certainly no prejudging of cases, and there is nothing in this paper which reaches the conclusion that it is perfectly safe to go back. It just cites facts. For example, I might just quote one. Under the heading 'Return of Afghan refugees', it says:

According to the United Nations' High Commissioner for Refugees it is safe to return to 70 to 80 per cent of Afghanistan.

That is not our assessment but I suppose it depends on whether you said that or whether you said, 'According to the UNHCR it may not be safe to go back to 20 or 30 per cent.'

Senator KIRK—That is what I wanted to be reassured about, that on a case-by-case basis there would still be an assessment made.

Mr Illingworth—This is a summary of, as far as we can obtain the information, neutral facts that will alert people to developments in a country situation. The analysis and the weighting of actual individual evidence will take place at the case level, and decisions will be

made on the basis of whether the individual's claims actually establish a concern on our part that they are refugees that need protection.

Senator KIRK—Thank you, that is all on that subject matter. Senator Bartlett, do you have questions on 1.2?

Senator BARTLETT—Not at the moment.

CHAIR—We have finished 1.1.

Senator SHERRY—How many Iranians are currently being held in detention centres around Australia?

Mr Farmer—That is under 1.3. If you are leading on to other issues, it may be easier to answer that under—

Senator SHERRY—We will deal with it under 1.3. I have some questions in respect of Iraqi returns. Can we deal with that under 1.3 as well?

CHAIR—Yes. Offshore humanitarian and onshore visa protection questions are, broadly speaking, in refugee and humanitarian entry and stay.

Senator SHERRY—I have one question under 1.2, but I will put it on notice.

[12.06 p.m.]

CHAIR—We turn to output 1.3, Enforcement of immigration law.

Senator SHERRY—I turn to the issue of sex workers. How many women working illegally in the sex industry have been located by DIMIA since July 2002?

Mr McMahan—To the end of March, 149. Of those, 118 are in New South Wales. I mention that because that is where a lot of our efforts are, obviously, directed.

Senator SHERRY—I was not going to go to that level of detail, but do you have the figures for the other states and territories?

Mr McMahan—We would have them, but we may not have them here.

Senator SHERRY—You led yourself into that.

Mr McMahan—You are quite right. Queensland and Victoria are the two other states which feature prominently in it.

Senator SHERRY—Do you have figures for the previous financial years?

Mr McMahan—I recall that they were around 200.

Ms Haughton—We do have numbers for 1999-2000; then there is a gap of two years, when the department's systems did not specifically identify sex workers' locations.

Senator SHERRY—What was the figure in 1999-2000?

Ms Haughton—In 1999-2000, there were 190 illegal workers in the sex industry. Of those, 154 were in New South Wales and 19 were in Victoria.

Senator SHERRY—You mentioned a gap in the identification. What happened? Why is there a gap?

Mr McMahan—We introduced a new integrated client service system; unfortunately, some of the tags that we had associated with the collection of this data were lost, and it took us a little while to realise it. When we did, we asked for them to be restored, and that, like a lot of system changes, took some time to implement.

Senator SHERRY—How did you lose the data?

Mr McMahan—We did not lose the data. We lost an identifier against the data. We know how many people were located, but the precise break-up of the nature of the location was lost. In other words, we required an additional field to be implemented and it was not there for a period of time.

Senator SHERRY—How many of these women were granted bridging visa E and released from detention?

Mr McMahan—We have general information on bridging visa E. Unfortunately, it is a question of how many cross-identifiers you have on your system. We did look for this information. We have not been able to pull it out. In terms of the general statistic, only around 13 per cent of women who are located in the community end up staying in detention. Sorry; they are all detained, but many of them are immediately released by the issuance of a bridging visa.

Senator SHERRY—Why are some given bridging visa E and others not?

Mr McMahan—It is largely a question of whether or not we are satisfied about two things. One of them is identity. If we have had multiple identities, we are not going to release them until we establish to our satisfaction who they are and, secondly, whether or not we are satisfied that they are actually going to make arrangements for return.

Senator SHERRY—Who makes that decision in this category?

Mr McMahan—For women, it would be made by the head of the compliance team, which, in the states, could be an executive level 1.

Senator SHERRY—Has that changed or has that always been the case?

Mr McMahan—First of all, I would say that often that was done; we formalised it in the last couple of months.

Senator SHERRY—Why did you formalise it in the last couple of months?

Mr McMahan—It was basically part of a review. We just wanted to satisfy ourselves that it was being addressed at a high level, and the high level is the head of a compliance team. We understood that it was, in many cases, happening in any case. Often we look at the practice around the states, and we want to satisfy ourselves that there is a standardised practice.

Senator SHERRY—Would it at least in part have been because of the increasing public and media interest in this issue?

Mr McMahan—If you look at the history of the way we have tried to deal with this, it is quite clear that we have had a history of improvement right throughout this period and well before the media scrutiny. It is very interesting to take the example of the recent publicity around the 13-year-old Thai prostitute. That was back in 1995.

If you look at the way we handled that case, it actually has a lot of best practice in it. For example, as soon as we located her—and we located her in our normal compliance operations—we identified that she was underage; we made contact with the Thai consulate in Sydney to ensure that there would be some follow-up action. We contacted the child protection unit of the department of community affairs so that they could basically deal with her. You may have seen recently in the paper that the people who perpetrated that trafficking got 14 years jail in Thailand, and that was because of our identification with the Thai government.

When you look at the practices that we have had over a period of time, we have continuously improved them. A lot of it has been in association with international efforts to improve the identification of what constitutes trafficking, international conventions and domestic legislation. Some of that domestic legislation has arisen directly out of the compliance actions that we have undertaken and our relationship with the AFP.

Senator SHERRY—I am just jumping ahead here but you have opened up this area. In the case you referred to of the individual from Thailand and the 14 years jail sentence that the Thai national received in Thailand, there would have to have been an Australian link.

Mr McMahan—I do not believe so. It took us a little while to establish conclusively that the person convicted was the same as the person we had deported. But essentially the father admitted to having trafficked the child; what the father did not understand was that he was trafficking her into prostitution. So there was deceptive entry. The follow-through in Thailand was not only one person being jailed for 14 years but, I think, three.

Senator SHERRY—I understand that, but what about the Australian end?

Mr McMahan—We could establish no direct link with an organised movement.

Senator SHERRY—You referred to 149 women found by DIMIA to be working illegally in the sex industry up to the end of March. How many of those 149 have been granted what are known as criminal justice visas?

Mr McMahan—Criminal justice stay visas? One.

Senator SHERRY—Why such a small number?

Mr McMahan—A criminal justice stay visa can only be issued after the criminal justice stay certificate is issued by either a state or a national authority—in other words, by the Attorney-General or whatever. That is based on whether or not there is evidence that may be taken forward within a criminal justice system which requires a high level of evidencing. Since 1999 we have issued 266 criminal justice stay visas, 21 of which related to sexual offences. Of those 21, about seven related to witnesses. Of those seven, three were in respect of charges relating, in effect, to this whole issue of sexual servitude—two of them under state legislation.

Senator Ellison—Madam Chair, I took a question on notice from Senator Greig about this yesterday when I said that one had recently been granted and I understood that there was further information in relation to criminal justice stay visas. I think that Mr McMahan has now covered that point. The other point I took on notice was the question of what legislation people were detained under in these cases, if they were detained. It is the Migration Act.

CHAIR—You were clarifying which piece of legislation applied?

Senator Ellison—Senator Greig asked whether the detention for breach of visa was under the Migration Act, and I undertook to take that on notice. It is relevant at this point because of the questions that are being asked.

CHAIR—I want to clarify something with the senators who are here. I know that there is a significant level of interest in this area. I am confident that Senator Allison is here on this issue; so are Senator Bartlett, Senator Carr and Senator Sherry; and Senator Kirk has a continuing involvement. Senator Ray is here on another issue. If we keep going on this issue it may take some time. Senator Ray, do you wish to raise what I gather will be a relatively brief issue?

Senator ROBERT RAY—I have to go back to another committee, so yes. I have some questions about the Christmas Island reception and processing centre. What was the original cost of that when it was a DIMIA project?

Mr McMahan—I think we made a notional provision of around \$200 million.

Senator ROBERT RAY—No more? Do you know where the figure of \$245 million may have come from? Minister Ellison, we have been through some of these issues with DOFA this morning and we will return to them later.

Mr McMahan—The original budget estimate was \$159 million.

Senator ROBERT RAY—And this project got an exemption from the Public Works Committee in March of last year?

Mr McMahan—It did.

Senator ROBERT RAY—I see. Could I have an explanation as to why this project has been transferred out of DIMIA over to DOFA?

Mr McMahan—In terms of background to this project, clearly there was an imperative on the part of the government to put the project into place. It was a very significant undertaking in which we had to go down an unconventional path in terms of the tendering process. The reason was that the government was concerned that people not be allowed onshore. Therefore, we moved ahead very rapidly. Although we have very significant experience in tendering and reasonable experience in construction, it was something that we did in concert with other agencies, including the department of finance. I chaired a committee which had Finance, DOTARS, et cetera. The reason why we needed that high level of intergovernment cooperation is because it was not just this project but a series of associated infrastructural projects on the island, including the acceleration of the port and changes to other infrastructure.

So it was all based around the urgency. It was quite clear that the government then became in a position of being able to review the urgency in the light of the fact that the boat arrivals essentially ceased. We have not had a boat arrive in Australia since December 2001. We then had a more measured look at how we should proceed. It was not a case of the job being taken from us by anybody. We believe that, given the expertise that existed within Finance and the more measured approach, it was a proposal by our department that the department of finance take it over. We had a very significant interest in dealing with our core business, and our core

business is not building; it is the management of asylum seekers. It was a means of reducing pressure on us as an organisation. It seemed a sensible decision at the time to consolidate that along with a lot of other projects that Finance were undertaking, or have undertaken over time.

Senator ROBERT RAY—I cannot understand. You say that the department of finance probably has more experience than you in construction—and they certainly asserted that very proudly this morning. They could not quite answer, and neither have you yet, why it was not sent to them originally—why you got it originally. You were the less experienced, the people who want to look after their own core business, as you say, so why did you decide to be the construction body?

Mr Farmer—Just to try to give you some background to that, this department, as you know, had been involved in the processes, which were very much compressed processes, for developing detention infrastructure at Curtin, at Woomera, at Darwin and at Singleton, where we prepared contingency facilities. So our experience, in effect, in doing things very quickly and getting them done was, as I recall, part of the background to the reason. When we were looking, at the beginning of 2002, at building this facility, the intention was that a facility should be constructed as quickly as possible. That is as near as I can recall. My colleagues might have other things to say there.

A year later, the world had moved on in a number of ways. Let me explain what they were. First, we had not had boat arrivals. In January 2002 we were really quite a short period into the no arrivals phase. Early in 2003 we were much further into a no arrivals period. Secondly, we had had experience because of fires and other incidents over the 2002-03 new year. We had experience there which suggested that some revisiting of design issues was merited. Thirdly, a real issue, in light of the fact that we did not have the numbers that might have been envisaged a year or two years earlier, was the question of size of a facility.

Senator ROBERT RAY—I would concur with your view that the reduction in size and alteration of architect designs to take into account fire resistant material are sensible. All these things are very nice but you have not actually answered the question as to why—if the expertise lay more in Finance than in your department and you then wanted to concentrate on core business—the construction project was not originally given, like the law courts project, to the department of finance to begin with. I cannot get an answer to that question across two departments.

Mr McMahon—One thing that was quite significant for us in the early stages was that there has never been a purpose-built immigration reception processing centre. We had a very significant interest in the design. The issue of carriage was not debated because we had been doing other projects.

By the time we actually got to the process in which we had an opportunity of taking a breath and pausing, we believed that we had addressed most of the design issues. It was at that point in time that we actually reconsidered whether or not it was sensible. It is not only a question of expertise—because we do have substantial expertise in our department—but also a question of economy within the Commonwealth. It seemed to us that, now that we had addressed most of the major design issues—and a lot of design work was done during that

time—we could confidently hand it across to the department of finance, which would reflect our design priorities and at the same time do it more economically.

Senator ROBERT RAY—More economically, right.

Senator Ellison—I might explain this in the context of government policy because I think that is where Senator Ray is coming from. We have moved away from the old department of public works scenario; a lot of the state governments of all persuasions have also done so. What we have moved towards is a scenario where each department manages its own procurement, and that includes building. There have been instances where the department of finance have taken over a project. I think the building of the law courts in Adelaide was one where Finance took it back off A-G's.

I know that there are two schools of thought—that you should have a department that is experienced in and takes care of ordering widgets and building buildings as opposed to various departments which have got the expertise in delivering social services or foreign policy or whatever. Really, that is where I think we come down to the bottom of it, Senator Ray. The policy of the government has been the devolution of power and autonomy to the departments in all respects; and that is where there has perhaps been this difference—that we now do not have a department of administrative services or public works, as we used to have, which handles these things. Each department handles itself in its own way. I think I am correct in relation to the A-G's situation, which is a similar sort of analogy; it is really a policy decision that each department should do it, and that really is the basis for it.

Senator ROBERT RAY—I accept that it is generally a department's responsibility to do it. I accept the fact that the Department of Administrative Services was butchered and all of its construction expertise basically dissipated. I accept that. We are not having a disagreement about that. I just cannot work out why—you having made that statement—it has moved from one to the other. I have heard why it may have started off in Immigration but I have not heard a good reason for it to go into Finance. Anyway, we can explore that in a moment. The original project was to take 40 weeks, was it not?

Mr McMahan—Yes, it is 40 weeks for the construction phase of it and subject to the industry's capacity to respond.

Senator ROBERT RAY—Did that include outfitting?

Mr McMahan—Yes, it was meant to.

Senator ROBERT RAY—What would have been the nominal—and I am not holding you to this—opening date of the facility had things gone along on that track—which we know they have not?

Mr McMahan—January 2003.

Senator ROBERT RAY—In other words, about three or four months ago.

Mr McMahan—Correct.

Senator ROBERT RAY—As I understand it, the new timetable was up to three years starting from 18 February. Is that right?

Ms Ellis—That is what we have been advised by the department of finance.

Senator ROBERT RAY—It is more than advice; you are pretty much in the process.

Mr McMahon—I think that you can say yes. It will probably take up to that period.

Senator ROBERT RAY—You might be able to give a better explanation. From looking at the talent at the table, I am sure that that is possible. Why shouldn't this go to the Public Works Committee now? You have had an urgency; I accept that. It was one of the three exemptions granted in 20 years for a project over \$6 million. It was a project of 40 weeks. I recognise external pressure in terms of boat arrivals and all those other things, but now that the project has not even been retendered yet, why shouldn't it go to the Public Works Committee?

CHAIR—I am not sure that that is a matter for these officers unless Mr Farmer or Minister Ellison wish to take it up.

Senator ROBERT RAY—Let us go back a step and put it this way. There is a steering committee or a consultative committee on this construction with representatives from DIMIA and the transport department as well as Finance, isn't there? There is a committee that coordinates this, isn't there?

Mr Farmer—We are offering advice on design and operational issues that need to be taken account of in the process, but it is now the department of finance that is in charge of the construction.

Senator ROBERT RAY—We might push it back with them.

Senator Ellison—I will take those questions on notice and relay them to the minister concerned.

Senator ROBERT RAY—We will have another chance later in the day when this program comes up with the department of finance, so do not volunteer at this stage. I know you are trying to be helpful, but you do not have to be that helpful yet. Can you tell us what the amended specifications are now? It was originally a Baxter type facility for 1,200—not that you are necessarily replicating it—but that was the concept. What have you gone to now?

Mr Farmer—Mr McMahon will give the details, but I do not think that it is correct to talk about a Baxter-type concept. Baxter was, in effect, built for a purpose, but it was not built from scratch, in that we purchased demountable buildings.

Senator ROBERT RAY—That is right, because that it is why you sought an exemption from the Public Works Act—because they were demountables. That is right, isn't it?

Mr Farmer—Yes, I believe that is right.

Senator ROBERT RAY—So these are not demountables at Christmas Island?

Mr Farmer—That is right. Not in toto but there are some details there. When we were talking about Christmas Island, we were talking about something that would be purpose designed and purpose built. That was the difference from Baxter. It was not doing a Baxter at Christmas Island.

Mr McMahon—It is now being reduced to an 800-place facility, with 426 places purpose built and the balance overflow capacity.

Senator ROBERT RAY—I do not want to verbal you or take you out of context, but you said, in an answer about the transfer from DIMIA to DOFA, that you thought they might be able to do it more economically.

Mr McMahon—The transfer to Finance?

Senator ROBERT RAY—The transfer to Finance, yes. You said they might be able to do it more economically. Is that right?

Mr McMahon—What I was talking about was the economics around having a group of people in one department who were moving from one project to another rather than continuing with a large team in our agency. What comes out of project management is that, if you have three large projects running, you do not triple the number of people. Since it has been moved to the department of finance, we immediately cut down the resources in those areas.

Senator ROBERT RAY—Oh, gosh! That seems to be an absolutely brilliantly encapsulated argument for having a service department with economies of scale to do these things. I am sure the minister will take that on board.

Mr Farmer—It is certainly a perspective from a line department—not just any line department; this one—that from our point of view we had delivered. I give a great deal of praise to the officers of my department who did deliver, very quickly, under great pressure of time and circumstance, solutions to issues in relation to Woomera and Baxter and detention contingency arrangements in Darwin and elsewhere.

Senator ROBERT RAY—It is just that Mr McMahon's answer seemed to be saying the old department of administrative services had something going for it, that is all.

Mr Farmer—Now you are verballing me

Senator ROBERT RAY—No, I am not verballing you. I may be verballing the other witness.

CHAIR—How very discerning of you, Senator Ray.

Mr Farmer—The point is that it is not our core business.

Senator ROBERT RAY—I accept that.

Mr Farmer—For a project that went over several years, from my perspective—and it is just my perspective—there were attractions to me and to this department in saying that we had things to contribute—namely a need for particular design and operational features to be incorporated in the project. But if another organisation with better long-term expertise was able to take over the generality of the responsibility, that was a good deal. If the government had not bought that line and said, 'Get on with it,' then you know what I would have done: we would have put our hats on and got on with it.

Senator ROBERT RAY—We in Victoria call that the ambulance handpass manoeuvre. I have one final series of small questions. You mentioned before that the estimate was \$159 million. That was always only an estimate—I understand that—because of the fast-track nature of the project. At the time at which the contract with the tenderer was terminated, am I right in saying that estimate had gone out to between \$450 million and \$500 million?

Mr McMahan—No, you would not be right in saying that.

Senator ROBERT RAY—What would be the right figure?

Mr McMahan—That is commercial in confidence.

Senator ROBERT RAY—Really?

Mr McMahan—It is because it actually goes towards the sorts of bids that might need to be made.

Senator ROBERT RAY—Hold on: we now have bids for an \$800 million facility with different architectural specifications, with fire retardants and a whole new concept. It is not a 40-week process but a 36-month process. The whole thing has changed. I find this commercial in confidence argument a very long bow on this occasion, remembering that at these committees I have been far less critical of that as an excuse than a lot of my colleagues because I do understand that some things are. But that one I cannot understand.

Mr McMahan—Going to the point is the fact that we recosted it on the basis of further advice against that size facility.

Senator ROBERT RAY—Without being precise, can you assure me that the cost of \$159 million, as in the original estimate, did not increase by at least two to three times? Can you tell me that without being specific on figures?

Ms Ellis—The cost estimates vary depending on the size of the facility but also the time frame over which it is to be constructed.

Senator ROBERT RAY—Of course it does. In fact, if you do it over 36 months and you do it on a lesser scale, it is going to be far cheaper; I accept that. But one of the things you present to this committee and to the parliament is an estimate of the cost of a project. On this occasion, this estimate was qualified far more than on other occasions, which was prudent—prudent because you were going to do a very rapid construction. I assume that you are doing architectural things as you are starting to do some of the initial building—all this sort of thing. But, really, I am entitled to ask whether that estimate was just a prudent estimate or whether it was just a wild guess. If, in fact, it blew out before you terminated the contract with—

Mr Farmer—Walters Construction.

Senator ROBERT RAY—If the last estimate they have given you is two to 2½ times more than that original one, I need to question the original estimating process. That is why I asked for the figure.

Mr McMahan—Could I just make a couple of comments, which you are probably not going to be satisfied by, but I am trying to be helpful. We put together the \$159 million and then ran it past a quantity surveyor. What was clearly an underestimate was the additional cost, even though we actually provided additional provisions in that estimate for building on Christmas Island. In the end, the concluded view was that the premium for building on Christmas Island of a facility of that size was around \$100 million. That was far in excess of what we had anticipated.

The second thing is—and one of the reasons why it is very hard to answer your question directly—the issue that Mary-Anne Ellis identified. We did not ask for an estimate for the

building; we asked for an estimate within the time frame. The industry came back to us and said, ‘Yes, if you want to build it within 40 weeks, it is possible. What we will have to do, for example, is to fly all the materials in, and flying the materials in could add \$50 million to \$60 million’, from memory. The issue revolved around—and this was one of the reasons why it went back to government, particularly after the unauthorised boat arrivals stopped—how much of a premium we wanted to pay in government for the speed of the thing.

Any sort of oblique figuring in respect of these very high numbers, or suggestions, revolved around this incredible, almost impossible timetable of 40 weeks. When we actually retracted and said, ‘Okay, let’s review this figuring in the light of a more relaxed timetable,’ the numbers dropped quite significantly. We then looked at it again in respect of whether a facility of that size was required. The view taken within government was that no, it was not required. And that dropped the numbers down further. With regard to the estimate that ended up with an 800-place facility, it certainly was not two to three times the size.

Senator ROBERT RAY—No, it was not. What you just told me in that very lucid explanation is that the original proposition for which you cannot release this information because it is commercial in confidence has no relevance at all because of so many changed conditions in the new contract. You do not have to do it in 40 weeks; you do not have to fly the material out; you do not have to have a whole range of architects working simultaneously on things. There is no analogy whatsoever between that initial project and the one you are now involved in. Therefore, I cannot see how the principle of commercial in confidence applies to the final estimate of the cost of building this 40-week facility before you decide to move on and change your plans. How is that commercial in confidence?

Mr McMahon—All I can say is that I would have to take the question on notice. Essentially, after putting those other issues aside, we did get to what we believed was a more advanced, considered and tested estimate in respect of the facility that we are proposing to build.

Senator ROBERT RAY—Which is the figure I am seeking now, and I am putting the proposition to you that you cannot use the old standard excuse at estimates committees that this is commercial in confidence. There are often reasons. I understand that Walters may retender here, and so they are entitled to do. But we are not comparing apples with apples here. It is not going to in any way affect their tender; otherwise I would not be asking the question. Anyway, please take on notice what the last estimated cost was before the government decision to terminate this, move it over to DOFA and restructure the whole project—in other words, the last figure you have when it was a 1,200-person institution with a 40-week construction timetable et cetera. If it is not beyond \$450 million, I will say sorry.

Senator SHERRY—Senator Ray may not be aware of this, but on top of this you had all the problems of deciding to build it on geologically unstable ground. We went over that in some considerable detail at the last estimates.

Senator Ellison—The voids.

Senator SHERRY—The voids, the caves and all the other holes that you discovered.

CHAIR—It is hard to discuss a void in an estimates committee, really.

Senator SHERRY—We talked about all the holes you found in the ground that you subsequently had to fill in; otherwise the buildings would have disappeared from sight. It seems incredible to me that you dash in and pick a site without knowing whether you are building on geologically sound ground.

Mr McMahon—That is not a significant factor in respect of the change in costings.

Senator SHERRY—But it was an issue that we discussed extensively.

Mr Farmer—That is right, but I do not think everyone would have drawn exactly the same conclusion, in your words, about the discussion. I am sure you will recall that we did discuss some of the complexities of identifying land on Christmas Island.

Senator SHERRY—But the fact is that you picked the site without knowing that it was geologically stable ground, and a series of consequences flowed on from the discovery of the holes, voids, caves and all the other things we talked about on the last occasion.

CHAIR—Which were discussed on the last occasion.

Mr Farmer—That is right.

Senator SHERRY—I do not particularly want to go over it again, but Senator Ray may not be aware of that particular problem.

CHAIR—I would like to go to Senator Carr. There is a matter he wishes to deal with.

Senator CARR—I have what I trust is a fairly short matter. It is to do with matters relating to Baxter that have been brought to my attention by a constituent. As I understand it, Philip Flood did a report for the department making recommendations regarding the treatment of assaults of criminal, sexual and other natures and the way in which people are treated within our detention centres. Is that correct?

Mr Davis—Philip Flood delivered a report on some investigations some time ago. I do not have a date for that.

Senator CARR—Was it February 2001?

Ms Godwin—Yes.

Senator CARR—I understand that, following that report, recommendations were made about the policies for dealing with assaults that took place within detention centres. Are those policies now standard?

Ms Godwin—I would need to check what specific recommendations you are referring to. We do have standard policies about the referral of alleged assaults to police, and those policies are standard in all centres.

Senator CARR—There is a standard procedure?

Ms Godwin—Yes.

Senator CARR—Would it be true to say that ACM, as well as the department, has developed policies in regard to the reporting of assaults of either a criminal or sexual nature?

Ms Godwin—It is my understanding that they have that in their operational procedures as well.

Senator CARR—It is a fairly basic proposition. It is either a yes or a no, isn't it?

Ms Godwin—Yes.

Senator CARR—Is the answer yes?

Mr Davis—Yes.

Senator CARR—Does the state government also have a role in the detention centres in regard to criminal and sexual assaults?

Mr Davis—Yes. We work closely with police and state welfare authorities on matters related to sexual and criminal assaults.

Senator CARR—Can you confirm that employees of ACM are required to undertake an eight- or 12-week training program dealing with issues in terms of the treatment of assaults?

Mr Davis—There is a training program prior to a detention officer going into detention facilities which would go through the range of operational matters they would be required to undertake, including matters of meeting the obligations of referral on illegal matters.

Senator CARR—Is that training course mandatory?

Mr Davis—Yes.

Senator CARR—There is standard policy in the reporting of assaults—standard policy both in terms of what the department insists upon and, presumably, in terms of the contract with ACM. Is that the case?

Mr Davis—Yes.

Senator CARR—There is a standard procedure? Employees are trained to undertake that function? So how is it possible that a year after the Flood report was brought down—May 2002—there could be the rape of an 11-year-old boy involving other detainees, the matter could be reported to ACM officials and, it is alleged by my constituent, no action could be taken? Is that possible?

Ms Godwin—If there has been a failure to follow procedure, I presume it could be possible. But if proper procedure has been followed it would not be possible.

Senator CARR—It would not be possible if proper procedure has been followed?

Ms Godwin—That is right. There is a clear expectation—it has been well set out between us and the service provider—that any allegations of sexual assault be properly reported, and in South Australia there are mandatory notification requirements which we require the service provider to follow.

Senator CARR—It is the nature of these types of allegations. I am not here to allege that these are true. I am saying that these are propositions that have been put to me in writing and in various pieces of correspondence. Some are in Farsi; others are in English. I cannot comment on the Farsi correspondence because I cannot read it, but I can comment on the letters written in English and on the communications between the crisis counsellor and a particular family at Baxter which he dealt with extensively. This counsellor was formerly at Woomera. I will not issue his name publicly at this point, but I have been advised that, if need be, that can be done. Essentially, it is alleged that a family—a husband, a wife, a child who at

the time was 11 years of age and a younger child of 16 months—were the subject of repeated harassment, including a sexual assault and forced injections on five occasions. Repeated attempts to have ACM make inquiries about these matters were refused. Would that be standard procedure?

Ms Godwin—It would not be standard procedure. Of course, now that you have raised it we will take all of those matters and examine them carefully. However, I make the point that, beyond the procedures that are required to be applied within the detention centre, individuals in South Australia are also mandated notifying officers. It is not necessary for someone who had those concerns to only raise them within the ambit of the centre. It is open to individuals to make a notification direct to the South Australian child protection services, and we are aware that that has happened on occasions. If somebody was aware of this and did not report it, that would be a matter of concern more generally. But obviously, if there is a concern about centre procedures, that would be a matter we would want to pursue as well.

Senator CARR—That is a fair enough point. People have an obligation to report these matters themselves. But if you are a detainee in a detention centre you may not necessarily see the world as being quite as open a place as perhaps a senior officer of the Commonwealth Public Service.

Ms Godwin—Perhaps I could clarify my remarks. I certainly was not implying that the individuals in that situation would be responsible. But, if other staff—for example, the crisis counsellor you mentioned—had been aware of it, then certainly there would be an expectation that—

Senator CARR—They would go to the police.

Ms Godwin—Yes. If they felt that matter was not being properly pursued, they would have that option.

Senator CARR—I understand the point you make. In this case they have come to me, and I obviously have made contact with the minister's office and the AFP liaison officer this morning. I know they are busy. I hope that they will take the matter up. I will be making sure that they are formally written to with these documents. However, I think it is appropriate—and I was specifically asked to raise this matter here today—that the department also have its processes set in train to establish whether these matters are true.

The complaint that has been put to me goes to the ACM not only allowing these abuses to have occurred in the first place but also—and this is what it says—'going to every means to ensure the family remain terrified into silence, including the use of solitary confinement, the involuntary application of drugs, separation of parents from children, and various other means, including violence'. That is the claim. I do not necessarily wish to table these documents. I suppose I could table them, but there is no way of tabling documents in camera here, is there?

CHAIR—Not in estimates, no.

Senator CARR—If I give you the documents, would you undertake an inquiry as to these matters and give me an indication as to what you find in this particular case?

Mr Farmer—Yes, we will do that.

CHAIR—In the couple of minutes available to us before 1 p.m., we can return to the question we were discussing—before the interventions of Senator Ray and Senator Carr—in relation to sex slavery. I indicate that I have undertaken to Senator Allison that I was fairly confident that we would back on that subject after 2 p.m., and she will be back then as well.

Senator SHERRY—I have a considerable number of questions, which will obviously take us well beyond two o'clock. Was Senator Allison here on the same matter?

CHAIR—Yes.

Mr McMahon—Chair, could I finish answering the question that was asked? I will only take a minute or two.

CHAIR—On this issue?

Mr McMahon—I was in mid-flight in respect of answering a question as to why there were not more criminal justice stay certificates issued.

CHAIR—Certainly, Mr McMahon, that is fine.

Mr McMahon—A very important part of whether or not you are going to have a criminal justice stay certificate issued is whether or not the person actually wants to remain in Australia and wants to cooperate in a prosecution. The overwhelming experience we have in respect of people who are sex workers is that they want to leave the country quickly. Many actually arrange their own tickets et cetera even before they have left Immigration. In other words, it happens extremely rapidly.

The other thing is that we do ask questions—and we have for a long time, but we have refined it further—which go to the issue of whether or not trafficking may be involved. In the overwhelming number of cases, trafficking is not involved—it does not meet the definition of trafficking; it does not meet the constituent elements of trafficking. So, in many cases, although people may have paid to come to the country, they come here, they work off their debt and then they continue and make money themselves. That is quite a common arrangement. Some of them actually come out here and start themselves.

Consequently, a very small number actually show signs that they have been trafficking. Before the APS could do something, the person would have to want to cooperate and to not leave the country. Many people want to leave the country quickly because they do have debts, they do want to make a repayment and their income has been affected. So we simply do not get the cooperation. What we need is a person who has shown signs of trafficking and is actually identifying that—and for which the evidence is sufficient to allow a prosecution to proceed. They are hard elements to get together.

The other thing is that Immigration comes at the end of a process, not at the beginning. The way a lot of crime is identified is that there is undercover surveillance for long periods of time et cetera. In many cases, what we are talking about are small businesses which are operating legitimately under the state legislation. We have probably more powers than the police in the sense that, as long as we have formed a reasonable view that there is a person illegally employed, we can go in. But when we do that, it is at the end of a process rather than at the beginning of a process. It is a very complex area and it is very hard to progress. In respect of

Immigration's role, we issue the visa after a certificate has been issued, and the certificate obviously requires enough evidence to convince a DPP that a case could proceed.

Proceedings suspended from 1.00 p.m. to 2.05 p.m.

CHAIR—Welcome back to our consideration of budget estimates for the Immigration, Indigenous and Multicultural Affairs portfolio. We were continuing with questions on output 1.3, Enforcement of immigration law, on matters concerning sex slavery. Mr Farmer has indicated to me that he has some information for Senator Carr. We are just checking whether Senator Carr is able to attend the committee and, if not, if we can put the information on the record for him to come back to as necessary.

Senator SHERRY—We were talking about the issue of the sex workers prior to the luncheon break and I think we were concluding on the point of criminal justice being granted to one person. Have arrangements ever been made for women to return to Australia to give evidence in any court proceedings in this area?

Mr McMahan—Not to my knowledge. I do not believe it has happened, but I would say that there has been continuing liaison offshore between the AFP and people who have been removed or who have returned voluntarily.

Senator SHERRY—Are the women identified after the visits to these places made aware of their legal situation and given legal advice?

Mr McMahan—No, it is not incumbent upon us to provide them with legal advice. When we locate them, we identify whether or not they are legal or not. You are talking about sex workers, I presume?

Senator SHERRY—Yes.

Mr McMahan—We go through a structured interview which does not ask directly the question about trafficking but does ask a lot of questions which would lead us to a conclusion about whether or not trafficking might be involved. If they have no legal basis for remaining in Australia and they want to return, then, as I said, they normally make their own arrangements and want to return quite quickly.

Senator SHERRY—Are they given an opportunity to have legal advice?

Mr McMahan—We do not provide legal advice.

Senator SHERRY—I did not ask that. Do they have the opportunity to have a lawyer present if they want?

Mr McMahan—I believe so.

Ms Godwin—To clarify, there are well-established procedures in all centres. Section 256 of the act obliges officers of the department to provide all facilities to people who seek legal assistance. So, if someone asks for legal assistance, we would facilitate that.

Senator SHERRY—Let us take the cases of the last year. Have any of the women in those circumstances had legal advice?

Ms Godwin—I am not aware of the details of the individual cases. Mr McMahan may have that. I just wanted to clarify the broad provision.

Mr McMahan—We would have to take that on notice. We do not have that information here.

Senator SHERRY—Just so I understand it correctly, as a matter of course in these circumstances, the department does not provide independent legal advice?

Mr McMahan—We do not.

Senator SHERRY—I assume investigations take place into the circumstances of the women in Australia?

Mr McMahan—They do.

Senator SHERRY—How are these women getting into Australia in the first place?

Mr McMahan—About three-quarters arrive on tourist visas, a further 10 per cent would be business short stay visas and the balance is quite evenly divided between a number of factors. They come, overwhelmingly, either on ETAs or on tourist short stay visas.

Senator SHERRY—In these cases do you go back and check the original applications as part of the investigation?

Mr McMahan—There is no original application in respect of an ETA because it is done electronically. In general, we would not. There may be circumstances in which we would, where we actually try to identify a pattern, but in most cases we would not.

Senator SHERRY—I express my surprise that, given this particularly undesirable form of illegal activity, you would not go back and look at the original applications to see how they could get into the country either by themselves or through some sort of organisation.

Mr McMahan—We actually do a lot of screening from the countries at the front end. We are looking for patterns and we do have quite a bit of questioning that is country specific. About 40 per cent of women found in the sex industry are from Thailand and then China, Malaysia and Korea. In respect of all those posts, profiles are identified and action is taken to try to screen people out but it is extremely difficult. Some of them enter under fraudulent documentation. Certainly as we change the threshold in respect of a number of those countries, then so does the skill in respect of the application. But in respect of a couple of those countries—Malaysia in particular; it is an ETA country—we are not actually judgmental about the nature of the activity because people can, in the end, come into the country and work legally in the sex industry. It is an issue about work rights not the morality of the activity itself.

Senator SHERRY—In your investigations have there been any Australian citizens or permanent residents questioned as to their involvement?

Mr McMahan—Our capability of conducting investigations in respect of Australian citizens is much more limited than the AFP. The way that we would work it is that we would identify issues around it. If we believed that there was sex trafficking involved, we would formally refer the matter to the AFP.

Senator SHERRY—Have any matters been referred to the AFP that involve Australian citizens or permanent residents?

Mr McMahan—I believe that there would have been permanent residents involved. I would need to review the cases. We have had 14 formal referrals since the legislation came into place. We would have to look through each one of those.

Senator SHERRY—You have had 14 referrals since when?

Mr McMahan—Since September 1999, which is when the Criminal Code Amendment (Slavery and Sexual Servitude) Bill amended the Criminal Code Act.

Senator SHERRY—So 14 cases have been referred to the AFP, some of which—you will let us know how many—have involved Australian citizens or permanent residents.

Mr McMahan—Yes, I believe that in all probability some would have.

Senator SHERRY—Are you aware if there are any situations where one individual has been identified as having been involved with more than one woman found?

Mr McMahan—In respect of sex workers, yes; in respect of sex trafficking, I cannot answer that question.

Senator SHERRY—You cannot answer because you do not know or you cannot answer because you do not want to answer?

Mr McMahan—Because I do not know; I would need to review the information.

Ms Haughton—Perhaps I could add a point of information in relation to the ongoing investigation that occurs with the overseas posts as well. We have a regular flow of information and communication between our onshore officers who deal with investigations of illegal activities in the sex industry with their overseas colleagues, particularly in the posts that Mr McMahan has nominated. That information is fed back through to our PMOC compliance network and that is used to inform the decision-making process that they have in place for the visitor visas and other visas that these groups target. So there is a regular flow of information. On top of that, we are specifically looking at, as a separate exercise now, what we can do in terms of identifying patterns within the sex industry worker groups and making sure that we address those issues offshore as well.

Senator SHERRY—Mr McMahan, I want to come back to an earlier response. You were making the point about not making moral judgments about working in the sex industry because it is legal in some states at least.

Mr McMahan—Yes.

Senator SHERRY—You mentioned that it is tourist visas and business short stay visas. Do they actually indicate on their business visa or short stay tourist visa that they intend to work in the sex industry?

Mr McMahan—No.

Senator SHERRY—Is not indicating that or indicating something different, in itself, a breach?

Mr McMahan—Yes, and that is why in these cases the visas have been cancelled. It would be possible, for example, for a person to enter under a student visa with an entitlement to work and for them to be found in the sex industry and, provided they were meeting the

conditions of their student visa—that is, attendance and not exceeding the 20 hours that they are allowed to work—we would not cancel the visa.

Senator SHERRY—Would that be true of any of the business short stay visas?

Mr McMahan—I would need advice on that, but I do not believe so.

Mr Rizvi—The activities that a business visitor can undertake in Australia are fairly narrowly defined. They relate to things like business negotiations, attending conferences, undertaking specialist high-skilled business related activities; they would not extend to sex work.

Senator SHERRY—Are there any premises that have been raided more than once with illegal sex workers having been found there two, three or more times?

Mr McMahan—Yes.

Senator SHERRY—Where the premises have been raided more than once, what has occurred at these premises?

Mr McMahan—The main impact where we find illegal workers is that the illegal workers will leave the country or be removed. We issue warning notices against the proprietors. One of the problems with the sex industry, which goes to any legislation on employer sanctions, is that often the people would describe themselves as managers and they would indicate that they have no direct employment relationship with the sex worker and that the sex worker is actually renting rooms from them for the purposes of prostitution. So there is an issue there that sits in the background about the way they have structured themselves, but nonetheless we do issue the employer notices.

Senator SHERRY—What you are saying really is that you have no effective way of dealing with the operator of premises in these circumstances.

Mr McMahan—There is a range of criminal provisions within the Criminal Code which go to sex slavery, sexual servitude and deceptive recruiting. These are the issues that, in general, the AFP would look at.

Senator SHERRY—How many Australian citizens or permanent residents have been charged with offences under the people-smuggling act?

Mr McMahan—That is a matter for the AFP. I believe none at this point in time, although there are continuing investigations. The issue there goes to the quality of the evidence.

Senator SHERRY—That is the issue we talked about earlier on?

Mr McMahan—Yes.

Senator Ellison—What is being overlooked in this whole debate is that the state and territory law enforcement authorities have a role to play here and their laws are applicable. That is, the deprivation of liberty is a provision under the Criminal Code and the code, if I recall correctly, carries a maximum of 14 years jail. You cannot deprive anyone of their liberty. That is a state and territory offence. So as well as these offences that Senator Sherry and Mr McMahan are talking about, there are state offences which could well be applicable, especially in those states where prostitution has been legalised and is supposedly regulated. The government is not saying that this is a state matter and not a Commonwealth matter; by

no means. This will be dealt with and discussed at the Australian Police Ministers Council in the first week of July this year. But it is the Commonwealth's firm view that, in relation to law enforcement and regulation, it is squarely a matter for the Commonwealth, states and territories.

CHAIR—If it is on the agenda for the Australian Police Ministers Council, what will be the context of the discussion?

Senator Ellison—It will be to deal with the question of sex trafficking in Australia, albeit from bringing people into Australia and how it operates domestically. As we heard yesterday, the Australian Crime Commission has commenced an intelligence scoping report for this to form the basis of any future investigation. Of course, the Australian Crime Commission has on its board the police commissioners from every jurisdiction. So that is very important. I requested that an interdepartmental committee be set up at the Commonwealth level to look at how the Commonwealth can deal with it. We will also be talking to NGOs, and I have had discussions with Pru Goward in relation to this matter as well.

Senator SHERRY—Following on from the minister's comments, Mr McMahon, when you are interviewing women who are apprehended in these circumstances, do you as a matter of course inform the state police forces that you are holding and interviewing someone and that they may wish to interview them in respect of a possible breach of state laws?

Mr McMahon—As a matter of course, no, but there may be issues raised that would result in consultation. I know that in some cases the state police do accompany us on our compliance action.

Ms Haughton—Sometimes these operations are joint ones with state police and sometimes with the Federal Police, depending upon the issue.

Senator SHERRY—How many DIMIA staff are allocated to investigating and enforcing this particular area?

Ms Haughton—We have 69 investigation staff around Australia, but at any given time they are working on a number of different operations. We also have a large number of compliance staff. We have arrangements where they do not just work on the sex industry but will work on other types of investigations at the same time. However, in Sydney we do have dedicated staff who deal with the sex industry because, as Mr McMahon noted earlier, the majority of the sex industry locations are in Sydney, so they obviously need a larger task force to deal with those issues.

Senator SHERRY—What is the number in Sydney?

Ms Haughton—At the moment, there are around 16 people dealing with the sex industry and other associated operations, but that can fluctuate depending upon the other work that is on their priority list.

Senator SHERRY—But their core work is the sex industry?

Ms Haughton—Yes. One of the teams within the Sydney compliance operations deals with the sex industry.

Senator SHERRY—So that I am clear on that, that team has approximately 16 people?

Ms Haughton—Yes, at the moment. We also have contact officers around the states. In each state there is a sex industry contact officer who is the person who becomes involved in, and keeps up to date with, operations in the sex industry. If there are any trafficking issues, they are the person who would then liaise with the Federal Police.

Senator SHERRY—Do you have some sort of coordinating group or task force in this area?

Mr McMahon—We insert policy control on this from central office. We have also put some of our own investigators in central office to deal with some of the issues like links to migration agents or whatever.

Ms Haughton—The arrangements are effectively that the sex industry contact officers in each state have a contact officer at the director level in the investigations area in central office whom they report to, and keep informed about, anything in relation to trafficking.

Senator SHERRY—How are those contact officers in each state and the unit you referred to earlier selected?

Ms Haughton—Essentially, they are people who are working in the compliance area and who have experience with this type of location activity. They are selected by their compliance managers in the states.

Senator SHERRY—Do they receive any additional training once they have been selected?

Ms Haughton—They receive general training, as do all compliance officers, but at the moment we are looking at specific training that would engage them in the issues of trafficking and give them additional training on top of that for their specific role.

Senator SHERRY—Why are you looking at additional training?

Ms Haughton—We already have a range of training available. This is just to ensure that they have the best training available. Given that we are looking at a range of initiatives with the AFP and others, we want them to be aware of those and engaged in those activities.

Senator SHERRY—Effectively, you are upgrading and improving the training.

Ms Haughton—We are giving them additional training.

Mr McMahon—We are also structuring the training. We know that training takes place across a range of areas in the states, and this is basically to provide the assurance that we in central office know the standard and structure of the training.

Senator SHERRY—What is the gender balance of the people working in this area?

Mr McMahon—It is predominantly male, but we have in place processes which require that, where we have, for example, compliance action in the sex industry, women attend. Women need to be the primary points of contact in some of the questioning. When we move into, for example, a brothel, we would certainly expect a woman to go forward and ask the prostitute to put clothing, or more clothing, on et cetera. When we bring them back we always expect a woman to be present. No male could singly be with a woman. If a woman compliance officer is not available—and, as I said, we expect them to be—there must be two males in place at all times. But it is certainly a requirement on our part that there be a woman

present. Having said that, I cannot guarantee that that would have happened in every single case, given the availability of staff, but it is our strong expectation that it does.

Senator ALLISON—Who are these women? Are they AFP officers?

Mr McMahan—The women are departmental compliance officers or, for the purposes of the operation, they may well be drawn from another part of the department.

Senator ALLISON—Of the AFP?

Mr McMahan—No, the department of immigration.

Senator ALLISON—Could you answer Senator Sherry's question about the number of women who are AFP officers?

Mr McMahan—I do not know the answer to that question. That is a matter for the AFP. We just make sure that when we go out we have a woman in each of the teams.

Senator Ellison—I know that yesterday evidence was given that, when interviews are conducted with women in this situation, the practice of the AFP is to have a female officer do the interviewing.

Senator ALLISON—As I understood Mr McMahan, it was just two officers and not necessarily a female.

Senator Ellison—But the AFP said yesterday that, when they do these interviews, a female AFP officer does the interviewing. That goes part of the way to answering your question. I will take on notice the composition of the AFP parties that go on these.

CHAIR—That was my recollection of the evidence last night also.

Senator Ellison—I think that, most of the time, it is state police that participate in these visits.

Senator ALLISON—They are not AFP officers?

Senator Ellison—No, state police are—definitely not. But there are some visits where the AFP are present. But you must remember that, primarily, it is state jurisdiction. That is the difficulty we have. The warrants that are obtained are obtained by state police officers. Something we are looking at is whether the AFP need any more powers.

Senator ALLISON—Or any more women.

Senator Ellison—I think the ratio of women in the AFP and their intake have been good. There is certainly a question that we need to look at with the AFP going into these places. I do not think the AFP enjoy quite the powers that the state police have, and that is something we are looking at.

CHAIR—Minister, in taking that question on notice in relation to female AFP officers participating in the interview process, is the AFP also able to provide the committee with information of the approach that the state police forces take? Can they seek that information for the committee?

Senator Ellison—Yes, we will obtain that as well.

CHAIR—Thank you.

Senator Ellison—While we are on this issue, I might just add that one thing that interests me greatly is looking at a new offence which would put the liability on the owner of the brothel so that anyone running a brothel with someone who was trafficked there would be penalised and you could have a strict liability in that instance, casting upon them a responsibility to ensure that there was no-one being trafficked on their premises. After all, they make a lucrative trade out of these services. Maybe states and territories could look at something like that to cast the onus on the people who run these institutions or businesses—putting some onus back on them to ensure that they are doing their bit as well.

CHAIR—Minister, are you suggesting that that would be cast as a state offence and not a federal offence?

Senator Ellison—I think it would have to be a state offence, but it is one of the things that I am keen to do. Of course, where prostitution is legalised, you have to do it within the ambit of that being legalised, and transgressing that could attract some sanction. But I am not so sure that this issue has been squarely dealt with.

Senator ALLISON—On that point, I find it surprising that a brothel owner who might accept trafficked women could not be charged under the current federal laws. Surely that is aiding and abetting or receiving stolen goods or slavery or whatever?

Senator Ellison—When it is done knowingly, that is right. But I am thinking of expanding it even further.

Senator ALLISON—To talk about a strict liability offence?

Senator Ellison—Exactly—whether they know about it or not.

Senator SHERRY—Minister, how would you overcome the problem Mr McMahon referred to earlier—that is, they are not an employee; they have rented out a room on the premises; they are effectively a subcontractor? How would you get around that with respect to what you are suggesting?

Senator Ellison—That is a very good point and it relates to what I am talking about: that, if you are going to embark upon this business, you have a very strict duty to ensure that there is nothing of this sort going on and you cannot say, ‘I’ve rented out a room and I can now wash my hands of any obligation or responsibility, yet I will still enjoy part of the income that comes from it.’ What I am saying is that you would impose a duty on them to be proactive to ensure that the person was not being trafficked. What is more, you could even go so far as to say that they have to ensure, for instance, that they are there legally. There are a number of issues you could look at. The question is whether we have cast sufficient onus on the person who is running the premises? I think that is an issue that needs to be looked at, because they are the people who are reaping the monetary benefits of this. To hide behind some aspect of, ‘Well, it’s a subcontractor,’ or, ‘I’ve let the room, and that’s it,’ is not sufficient in my book.

I am just throwing this open for discussion because it is an industry which is different to others. You are dealing with human beings, and that is why we are all concerned about this issue. If we have to prove intent and knowledge—which are all elements which have to be proved beyond reasonable doubt to prosecute someone who is running such a business—it

makes it much more difficult. That is why I am looking beyond that to see whether we can make it on a strict liability basis.

Senator ALLISON—But surely most of these cases are not just trafficking; they are also servitude—they are most often women held captive. A brothel owner would not be absolved from involvement in the business of keeping people captive.

Senator Ellison—No, but you could possibly take away some of the defences that could be raised in an artificial manner. If you are dealing with servitude, for instance, that could happen with the reckless indifference or the negligent ignorance of the brothel owner. I want to look at making sure that they cannot raise lack of knowledge as a defence to this. When I say ‘strict liability’, as the chair said a moment ago, I mean that you impose upon them a very strict regime so that they know that, if anything is wrong, they themselves will be in the gun sight as well. As I said earlier, you could get the person who is running the business saying, ‘I sublet the room; I did not know what was going on.’ This way, you could say, ‘Didn’t you take steps to check? Didn’t you make inquiries? You didn’t mind getting the money.’ You cast upon them a positive duty to find out. That is something I am keen to look at. I think it should be considered as part of this whole approach.

Senator ALLISON—Yesterday Senator Greig raised some issues with the AFP about the process. I wonder whether it is possible to cover some of that now as well. At the last Senate estimates hearings I raised the matter of tip-offs being provided to DIMIA by brothel owners, traffickers and a range of people. Can you describe the process once a tip-off is received within DIMIA?

Mr McMahon—We went through this earlier, so it may be a bit repetitive for other committee members. We find roughly 50 per cent of all tip-offs to be relatively accurate information, so they are a highly valued source of compliance information. We are aware of the accusations—and we know it happens in some other areas of employment—that the tip-off person is often someone who could be a beneficiary, and in some cases the beneficiary may well be the brothel owner or the manager of the person. That issue exists, but when we get the information it is normally anonymous.

We tend not to go in immediately. It may well be that a pattern builds up from serial accusations about illegal sex workers. Accusations do not only come from brothel owners; they come from other brothels because of the question of undercutting price. If you have illegal people working more cheaply than Australian residents or citizens, that obviously gives you a competitive edge; so we do find that a reasonable number of tip-offs are from competing brothels.

Once we see a pattern, particularly if there are a number of related brothels, we would want to coordinate our efforts. If we were to go into one and then to the next there would be no-one there, so we might plan operations involving simultaneous entry to a number of related brothels. It is a question of evaluating the information, because we have to be satisfied before we go in with our search warrants that we are likely to find illegal workers. Once the search warrant is issued, we execute it. We then look at people’s employment status and the validity of their visas. As I indicated earlier, generally if we find a person working illegally they will fairly quickly make their own arrangements for departure.

Senator ALLISON—How many tip-offs are there annually, and how many result in finding those without visa validity?

Mr McMahan—I do not know whether we hold information in exactly that form. There have been 149 sex workers found working illegally in the year so far.

Senator ALLISON—This is the calendar year so far?

Mr McMahan—No, for this financial year. There were 190 last financial year.

Senator ALLISON—Is the process laid down in terms of at what point information received by DIMIA is referred to the AFP? Is there a standard schedule of process?

Ms Haughton—We have a service agreement with the Australian Federal Police. If we get information on a range of issues that involve the AFP's responsibilities then we have a formal agreement with them that sets out the procedures through which we will refer it to them.

Senator ALLISON—Is it possible for that document to be provided to the committee?

CHAIR—We can seek the provision of the document.

Mr McMahan—Can we take that on notice?

Ms Haughton—We can check with the AFP.

Mr McMahan—There may be operational issues.

CHAIR—Given it involves another agency, yes, of course. That would be the normal course.

Senator Ellison—We can provide that, subject to the caveat as to whether there is any operational aspect to it. I will take that up with the AFP. DIMIA have indicated their position.

Senator ALLISON—The reason this is of interest is that a case was raised with this committee yesterday which indicated that the AFP had received allegations that two women had been trafficked to this country and that nothing appears to have happened with that process.

Mr McMahan—So this is information that was received by AFP that has not been passed on to us?

Senator ALLISON—That is correct.

Mr McMahan—It really depends on whether or not there is a breach of visa conditions. A person could in theory be trafficked, and have residence and thus it may not be a visa matter. I am saying—

Senator ALLISON—I understand. I will perhaps spell out that case a bit more. This was two women who believed they were here for training in the airline industry. They found themselves with a contract and were forced into prostitution. They made contact with a migration agent who brought them to the department for application for a bridging visa. In this circumstance, they had identified that they had been trafficked, they had made allegations in writing and they were subsequently interviewed.

Mr McMahan—Were they interviewed by the department of immigration?

Senator ALLISON—No, they were interviewed by the police—the AFP. What in your view is the appropriate process, having outlined that case study?

Mr McMahan—Bearing in mind that we have worked extremely closely with the AFP and we involve the transnational crimes unit with our activities, in the normal course of events they would raise it with us.

Senator ALLISON—In the normal course of events they would raise it with you. At what point would this be raised with the department?

Mr McMahan—I would expect that we would receive information at a very early stage. It is a rather unusual case—

Senator ALLISON—Sorry, you said ‘at a very early stage’. At what stage would you expect this to be raised?

Mr McMahan—As soon as they had information relating to possible breach of visa conditions.

Senator ALLISON—So perhaps when the letter arrived. I am trying to understand how this worked. It is clear that some approach was made to the department of immigration by the Cabramatta—as it turned out—migration agent. There does not seem to be a lot of coordination. There does not seem to be a hook up either with that agent or the department or the AFP.

Mr Farmer—You have the advantage over us because you know the case you are talking about; we do not.

CHAIR—I was just about to say that.

Mr Farmer—We are talking in a hypothetical way; you are talking in a concrete way. It is a bit hard to say to you what did happen. You are asking questions about what might have happened or what should have happened.

CHAIR—Mr Farmer, I suggest that, as with the Australian Federal Police last night, the commissioner indicated that the details that they had taken down and would be further provided by Senator Greig are now also provided to the department here today for some analysis of this specific instance and for the matters of process that Senator Allison seeks advice on—what should happen, in what time frame and so on—to assist. There are some other factors concerning this particular case, which the committee will have to consider in due course. There was some identification made that was unhelpful, so we will have to come back to that, too.

Senator Ellison—I do not think you could say that nothing was done on it; it is just that it was taken on notice by the Australian Federal Police in relation to the specific matter that Senator Greig raised last night.

CHAIR—That was in relation to videotapes, in fact.

Senator Ellison—That is right.

CHAIR—But they were going to come back with further information, I understand.

Senator Ellison—I have just made some inquiry about that, and we will endeavour to get back to the committee as soon as we can. The fact that it was taken on notice was not due to any inaction or lack of regard.

CHAIR—I was indicating, Minister, that it was a desire to check the details of the matter—

Senator Ellison—Thank you.

CHAIR—rather than try to do it across the room.

Senator ALLISON—Whilst I appreciate that this is a particular case, I am interested in the process. There may be hundreds more like this or there may be none; it is not especially relevant. The committee is interested in being satisfied about whether the processes are in place for identifying women who might be trafficked and identifying them in good time for traffickers to be held to account. You say that there is a close working relationship between your department and the AFP. I guess the question really is whether it is clear to the AFP and your department at what point the information should flow between the two departments.

Ms Haughton—Perhaps I could add some information. When someone is first located working in the sex industry and is initially interviewed by our compliance staff, the staff ask them questions at that point in time which are specifically designed to elicit whether there are any indications that the person has been trafficked. If the staff get any indications from that initial interview that trafficking might be an issue, they can informally advise the Australian Federal Police of it at that point in time. In some offices in Sydney, for instance, we have an outposted AFP officer who works within the immigration compliance section there. So they have this informal contact with them. The Australian Federal Police can decide to conduct their own interviews to determine what needs to happen after that point. As I mentioned before, we can also then institute the arrangements under our service agreement, where we collect the information that we have and do a formal referral to the Australian Federal Police at that point. We have been working recently with the Australian Federal Police on how we can tighten up the informal communication arrangements we have with them and have a set of agreed protocols that will be invoked by both departments so that we get to hear about these issues both ways as quickly as possible.

Mr McMahan—In addition to that there are various other internal communications that take place in the department. For example, if we came across information that involved a migration agent, we would immediately refer it to the policy area in the department so that they could take it up with the migration agents registration group. Similarly, if they come across information, we will get it. So we share the information around with respect to the activities of migration agents, which you mentioned.

Senator ALLISON—It is just that in relation to this case the suggestion was made that, despite an interview with the AFP and various of the processes I have just described, nothing further happened. Given the current processes in place, would you be surprised to hear that, or are you saying that you are now improving those informal processes so that such an event might not now take place?

Mr McMahan—I think we need to look at that at two levels. The work that we do in referring it to the AFP is to make sure that it can be considered with respect to a possible

breach of the Criminal Code. If the AFP has already examined it and cannot establish a breach of the Criminal Code, one side of it has been dealt with. I would be surprised if the AFP came across a person who was potentially illegal and did not alert us to that. But, certainly, our processes are trying to direct it to the AFP so that they can examine it with respect to the criminality involved.

CHAIR—And the desired outcome of this discussion is to check the facts both from DIMIA's perspective and the AFP's?

Mr McMahon—Yes.

Senator SHERRY—Is there a standard form that interviewing DIMIA officers use?

Mr McMahon—We use a structured interview process, which people may or may not adapt to the circumstances. We certainly have sent around what we regard as some of the minimum issues that need to be addressed in respect of an interview. It is true that some of the states also have additional questions which they believe might be successful in eliciting information, but we have certainly specified pretty clearly what we expect to be asked. Contrary to some commentary in the media, we do not simply hand over a questionnaire and come back when it is completed. It is an interview—not a questionnaire—process.

Senator SHERRY—Can we have a copy of the form.

Mr McMahon—It is an operational document. Initially, we would not ask questions about trafficking. We have a series of questions which try to elicit the information without alerting potential traffickers or whatever. It may be possible for us to offer a briefing to you on how we go about it.

Senator SHERRY—Okay.

Senator Ellison—I think the forms may be okay and maybe there is a briefing that can be given in relation to the modus operandi of the interview. But you can appreciate that, if we make that too public or reveal too much in a public way, we would be playing into the hands of those people who we are all aimed against—the sex traffickers. If they know what our pitch is, they will use that to school people in anticipation of that sort of inquiry. It is a tricky situation. We will take it on notice, but it should be okay, I think, to provide you with a copy of the form, but further detail on how the interviews are carried out is much like asking a CIB detective how he gets an admission from a suspect—well, we won't go there.

CHAIR—Depends which state, I think, Minister!

Senator Ellison—Seriously, it is a question of how you play it on the day. If someone gives you an evasive answer, you might want to ask other questions from a different angle. If we go too far down that track, we will be revealing our hand.

CHAIR—I understand the point that you make. The committee would appreciate whatever information could be provided and we will seek your advice on those limitations.

Senator Ellison—The forms should be okay.

CHAIR—If we need to come back and seek, perhaps, a private briefing later in the piece, we can do that.

Senator SHERRY—Is the information gathered together? Do you use it in a compiled form?

Mr McMahon—Essentially, we would look at developing a briefing in respect of individual cases. We build information around the case and then we refer it to the AFP. In some cases, there may be some common links that we have identified and we would build on those. For example, on at least one or two occasions, there has been the one group which has been involved with the individuals we have found. We would certainly try to make and develop those links to pass that information on to the AFP.

Ms Haughton—When we institute the mechanism to make a formal referral to them, we provide a brief of evidence and give them the collated information.

Senator SHERRY—We mentioned tip-offs earlier. Do you attempt to verify the identity of an informant?

Mr McMahon—They are under no obligation to provide it. We would ask them, as a matter of course, for the information. Sometimes they refuse to give it. Sometimes the tip-off is actually face to face, so we would know the identity of the person. We have an Internet based tip-off system, we have a phone based tip-off system and, in the compliance field, information is given directly. So the tip-offs come from a number of sources.

Senator SHERRY—There are reports that some women are arrested by DIMIA and detained and then their passports, and sometimes their plane tickets, are handed in to DIMIA officers. Is that the correct process?

Mr McMahon—In some cases, it is. One of the issues that we go to and that would be a matter of interest to us in respect of questioning is who is actually holding critical documentation. Sometimes, particularly in the circumstances they work in, it is quite legitimate for documentation to be held by other people for safekeeping. Nonetheless, it is a matter of interest to us that documentation may be held by somebody else.

Senator SHERRY—When you say that it is ‘a matter of interest’, perhaps this could be an indication of coercion—

Mr McMahon—It is a possible indication that they may not be completely free.

Senator SHERRY—Is it correct that sometimes some women will apply for a protection visa to prolong their stay in Australia?

Mr McMahon—Yes, clearly.

Senator SHERRY—How many occasions has that occurred?

Mr McMahon—I do not know but it is not uncommon to actually uncover a bridging visa A—the bridging visa applied when there is a standard application. By way of illustration, in the last compliance operation in the ACT a week or so ago two women had bridging visas A, which almost certainly meant that they had applied for a protection visa.

Senator SHERRY—Have any of these women been assisted by migration agents?

Mr McMahon—Yes, and if they have been we would pass that information on to the policy area to have a look at it.

Senator SHERRY—By the policy area, do you mean MARA?

Mr McMahon—We would pass the information to the policy area which deals with MARA, and it would need to evaluate the information that we are providing to it.

Senator SHERRY—So in some of those cases their behaviour could be a breach of the agents code of conduct, couldn't it?

Mr McMahon—That is why it is referred across.

Senator SHERRY—Do you know if MARA has taken any action following referrals?

Mr Rizvi—I will answer that question, Senator, but before I do I want to go back to an earlier question that you asked which actually leads into this one. You asked in particular about what we are doing to identify how some of the people who may be working illegally in the sex industry entered Australia, and how we are going about that. Mr McMahon mentioned a number of the analyses that we conduct to try to reduce the extent of the problem and we have, we believe, at an aggregate level, met with some success in that regard.

There are two pieces of information that I would point to in particular that indicate that. Firstly, the non-return rate of visitors from countries where the bulk of illegal sex workers tend to come from has declined very considerably over the last four to five years—that is, a far greater percentage of visitors coming from the relevant countries are departing Australia within the period of their visitor visa. The second piece of relevant information to this is the point that you made about protection visa applications. Again, I highlight that over the last two to three years the number of people who enter Australia on visitor visas or student visas and then seek to apply for protection has declined quite markedly. This is separate from the unauthorised arrivals decline; this is a separate group of people. Those numbers have declined quite markedly.

Those two factors lead us to the view that the extent of non-compliance associated with visitors working illegally through these arrangements, and the extent to which the protection visa system is being used to manipulate or to enable people to bring in sex workers illegally, is declining. That is not to say that we are completely on top of the problem, but I think that it is indicative of the decline that has taken place.

You made the point about migration agents and there are links—at least statistically, and we have done a great deal of analysis on this—between certain migration agents, lodgement of PV applications and females who have entered Australia from these countries. So there are some statistical links between those three factors. We are digging more deeply into those statistical links to be able to pinpoint where the migration agent problem may be in this regard. We have already had some discussions with the Commonwealth DPP and the AFP about what we will do, once we have done that investigation,. Firstly, where there is sufficient evidence indicating that migration agents may have taken actions which contravene the Criminal Code or other laws, we would seek to refer that material to the AFP. Secondly, where that sort of evidence is not available, but there appears to have been a contravention of the migration agent code of conduct, we refer that to the Migration Agents Registration Authority to deal with.

Senator SHERRY—You say that, statistically, there is a linkage. At this point in time, have there been any referrals of migration agents to the AFP?

Mr Rizvi—There are migration agents about whom we have had discussions, both with the DPP and with the AFP. At this stage, both of those organisations have indicated substantial interest in the matter. However the examinations that I am referring to, which are separate to the examinations that Mr McMahon was referring to, are such that we do not have enough evidence at this stage to make a formal reference. But the AFP is very keen to work with us to dig more deeply into the migration agents who may be involved in the industry. As I said, our analysis at this stage is largely statistical.

Senator SHERRY—We have two areas of investigation. We have the department, then the investigation goes to the police and also to MARA. Has anyone been referred to MARA yet?

Mr Rizvi—Yes, we make referrals to MARA fairly regularly but those referrals relate more to the migration agent code of conduct than to issues of sex trafficking.

Senator SHERRY—My question went to the issue of sex trafficking and I am sure it would be a breach of the code of conduct. Have any of those cases been referred to MARA?

Mr Rizvi—We have referred cases where we believe that there has been a breach of the code of conduct.

Senator SHERRY—Are you aware—and MARA will be here later, I think—of any action that has been taken against any individual migration agents?

Mr Rizvi—I do have aggregate statistics here regarding the actions that MARA have taken and I can provide those statistics.

Senator SHERRY—My question really went to the sex-slave issue.

Mr Rizvi—As I said, we refer matters to MARA that relate to the code of conduct. Where you are talking about a breach of the Criminal Code, that is not a matter for MARA.

Senator SHERRY—If someone were found not guilty of a breach of the Criminal Code they could still have breached the code of conduct couldn't they?

Mr Rizvi—That is true, and we tend to prioritise these things. Where the evidence suggests a breach of the Criminal Code, that is far more important, and we would seek to pursue that before we engaged the MARA processes.

Senator SHERRY—I can understand that, but if the prosecution failed, you could still refer it to MARA for breach of the code of conduct. The level of sanctions are not as significant, but it could involve taking away or suspending their licence to advise in this area.

Mr Rizvi—Yes.

Senator SHERRY—This issue crosses over into Villawood Detention Centre issues: the death of Ms Puangthong Simaplee who was detained in Villawood on 23 September following a raid on a brothel in Sydney and died on 26 September at Villawood Detention Centre. What training do ACM staff receive in respect of people in detention who are withdrawing from drug use, which I understand was an issue in this case? These are all the questions I will have on the Villawood Detention Centre.

Ms Godwin—I will make a general comment as Mr Davis comes to the table. I think we already mentioned in response to an earlier question that all detention officers are required to go through a period of training before they can be employed as detention officers. We have in the past provided to this committee the outline of the curriculum for that training. I do not have it and I do not know if Mr Davis has it to the extent to which it goes to this question. As a general observation, though, officers in centres in this particular sort of situation would be guided fairly heavily by advice from medical staff and that was the case in relation to this detainee. That treatment, as you know, is the subject of a coroner's report. The issues that the coroner has pointed to in that regard are matters that we are pursuing with the service provider. I do not know if Mr Davis wants to say anything.

Mr Davis—I apologise. I did not hear the question.

Senator SHERRY—I asked about the training that the ACM staff receive to deal with people in detention who are withdrawing from drug use. It went specifically to the death in detention of a woman, Ms Simaplee, who had been detained on 23 September 2001 as a result of a brothel raid in Sydney and died on the 26 September 2001.

Mr Davis—The coroner made a range of findings which went to some of the procedures associated with monitoring of detainees in such a situation, particularly health professionals taking a greater role and general detention officers not having those sorts of duties. That was one area of the findings. I can advise that our service provider reviewed their procedures in the middle of 2002—well before the findings of the coroner's inquiry—and implemented new procedures which fully meet the coroner's requirements.

Senator SHERRY—Perhaps in anticipation of the criticisms they might receive from the coroner's inquiry.

Mr Davis—I cannot speak on exactly what initiated the review of their process. I would have to take that on notice and seek advice from the service provider. They certainly have reviewed and put in place monitoring and management procedures for individual detainees, as well as the other matters that the coroner has raised. These procedures are now in place across all centres. We are advised that from the middle of last year essentially all the requirements recommended by the coroner as a result of this particular unfortunate death have been addressed through the changes that occurred in the middle of last year.

Senator SHERRY—I have seven or eight questions. I specifically asked a question in relation to training. Has that been changed?

Mr Davis—The procedures for detainees in this situation have been reviewed. I do not have details of the training program with me, so I will have to take it on notice to provide the detail of the elements of the training program.

Senator SHERRY—The coroner found that some of the records concerning this detainee were not provided or that they had been lost. Have you sought an explanation from ACM about that?

Mr Davis—We are seeking an explanation on that matter. The words, as I understand it, were that there was an inadequacy of medical records. Again, as part of the review process, ACM now undertake monthly audits of their own medical records across all centres. This was

one of the changes they made in the middle of last year to ensure that those processes are meeting the requirements of documentation. We have documentation requirements of ACM under the contract and we monitor those. The issue that has been revealed here about the documentation in this particular case is now being raised with ACM to clarify the situation in this particular case.

Senator SHERRY—In this particular case, did their record keeping meet the terms of the contract that you referred to?

Mr Davis—Until we have further information from our service provider I cannot give you a categorical answer. We are certainly raising it with them and we are certainly looking at the terms of the contract requirements to assess, in light of any further information they wish to provide to us, whether or not it indeed does meet our standards.

Senator ALLISON—The contract, as I understand it, has been re-tendered. Surely there has been plenty of time for you to have examined whether or not this is part of a service provider's contract?

Mr Davis—The documentation around these matters is certainly part of our monitoring process. What I am saying is that, in this particular case, the findings of the coroner some weeks ago are now being raised to allow the service provider to put to us any further information on this matter for us to consider against the standards required of the contract. Until we receive any further information they may provide to us—and there may be no further information—we will not be able to make a determination under the sanctions regime of the contract.

Senator ALLISON—Surely the service provider would have provided all of the information required to the coronial inquiry?

Mr Davis—Indeed. But in a contract management sense—the coroner, having made its findings—we feel that it is fair and reasonable to ask the service provider whether they have anything else to say before we make a determination. That is the process we are going through.

Senator ALLISON—Should you decide to make a determination that there is a breach of the contract, what is the next step?

Mr Davis—We have the discretion to impose a financial sanction on the company for not meeting the service standards required under the contract.

Senator ALLISON—Would the moneys raised that way be provided to the victim's family, for instance?

Mr Farmer—No. There is a standard procedure for assessing these contractual matters and instances where the contractor has fallen short of the obligations under the contract. That process happens quite regularly.

Senator ALLISON—Has the department seen fit to look at the conditions in the current contract, in the light of this situation, to make it clear what ought to have been provided—if there is any doubt, as there seems to be?

Mr Davis—I would say that there is no doubt as to the expectations of documentation between us and the contractor. The coroner's inquiry revealed that the coroner had formed a view that the documentation in this particular case was inadequate in the medical area and, as I said, our service provider has taken a number of steps to seek to improve that area. We have raised the matter with them. I do not think it is a matter of lack of clarity between us and them of what is expected. We are simply giving them an opportunity to put any further information that may be relevant to us before we make a determination. It is certainly also true that, in the context of the new contract, newly tendered, in a whole range of ways, the immigration detention standards have been enhanced. I may actually need to seek advice from—

Senator SHERRY—Before we get to these enhancements—that is a buzz word and jargon word that we hear a lot today—let us just deal with this case. Putting aside the coroner's inquiry and the results for the moment, I assume ACM are required to provide regular reports to the department on their performance. Does it ultimately come to you for assessment? If not, why not?

Mr Davis—The process by which we monitor ACM's performance is a combination of on-site DIMIA staff who have responsibility for day-to-day oversight of the operations of each centre. Part of the role of our DIMIA centre staff is the monitoring of the service standards against the contract. We also have a team of people in central office in my division who go to centres on a regular basis with a focus on undertaking monitoring processes, testing that the service standards are being met et cetera. Where we feel the need to engage experts, we also have an expert panel of investigators who may investigate a particular incident—for example, an escape or something of that nature. If there is an area where there is some external expertise, including in the health area, we draw from the experts on that panel to have a look at issues for us and provide advice.

We do it through a range of those processes. We have monthly contract operations group meetings, which are discussions between our operations people chaired by Mr Williams, my branch head in this area. There are discussions with our service provider on issues that arise. That is not necessarily issues that go to the issue of sanction, but they just may be general issues in the running of our detention facilities. And we have quarterly contract management group meetings that I chair with the general manager of ACM detention, which discuss any issues that need to be lifted up either from the contract operations group process or from any other issues that are current that we need to discuss.

The monitoring process and the input from our centre staff on a quarterly basis with our monitoring visits and any other investigations or any other issues that we look at are all brought together in a quarterly performance assessment process. That quarterly performance assessment process looks at the range of incidents that have occurred across the quarter. I am sorry, I forgot to mention the incident reporting process which is an ongoing process of the service provider, providing us with reports on individual incidents. All of that information is pulled together in a quarterly performance monitoring process and that is compiled and put to me as the contract administrator for determination of any sanctions or penalties that may be applied during the relevant period.

Senator SHERRY—You have just spent quite a considerable time outlining all these incredible procedures. Why didn't they pick up the problems that the coroner found?

Mr Davis—All deaths that occur of detainees are investigated automatically by both the service provider and us as needed. In this particular case, that material was provided to the coroner and—

Senator SHERRY—We know that, tragically, a person died. You have not answered my question. You have gone through all of these processes, procedures, checks, discussions, meetings and evaluations—why did they not identify the lapses and problems that the coroner identified?

Ms Godwin—Perhaps I could just make a comment.

Senator SHERRY—My question went to Mr Davis. He is oversighting the contract, apparently. Can he explain?

Ms Godwin—I was just going to try to assist—

Senator SHERRY—Can Mr Davis explain? My question went to him first.

Mr Davis—This having occurred some time ago, I am not in a position to definitively answer your question. I would have to take it on notice and find out further information. I do not quite know the protocols around an ongoing coroner's inquiry as to whether we can actually come to a resolution on some of these matters. So I do not think I can answer your question, because I would need to find out exactly what we may have raised and discussed and, indeed, have a look at the issues under the performance regime I have outlined to you. That may indeed have been done at the time. I would need to check that.

Senator SHERRY—I would have thought you would have. Surely you did not naively expect that this issue was not going to be raised at this hearing today.

Mr Davis—I have some material on the matter. Certainly, now that the coroner has made his findings, we are raising the matters he has put on the table. We are retesting those against what we may have raised with the service provider previously. Indeed, in relation to any further matters where the coroner has made findings, we are seeking to clarify those with the service provider before we make our formal performance assessment in this situation.

Senator SHERRY—That still does not answer my question. Despite all of these things that you or your officers have been doing—checks, evaluations, on-site investigations, meetings et cetera—you did not pick up the issues identified by the coroner—

Mr Davis—I would need to check as to whether or not the matter was raised at the time or soon after.

Senator SHERRY—and, if you did, you did not do anything about them, apparently.

Mr Davis—I guess I am at a disadvantage, not having been in the position at the time. But I will take that on notice to find out what was done at the time.

Senator SHERRY—I was not aware of that. How long have you been in this position?

Mr Davis—Since September last year.

CHAIR—Mr Davis, I was going to thank you for agreeing to do that and for agreeing to come back to the committee with any further information that might assist us on this particular matter. Mr Farmer, did you wish to add something there?

Mr Farmer—It was just that Ms Godwin was trying to be helpful to the committee and, I think, still could be helpful to the committee.

CHAIR—Ms Godwin is always helpful to the committee, Mr Farmer, and we would be happy to have her contribution at this point and then come back to questions.

Ms Godwin—Thank you, Madam Chair. I hope I keep my strike rate up with what I am about to say. I was simply going to make the point that, when this incident occurred—as you say, it was very tragic—we immediately raised it with the service provider. As Mr Davis has said, we would need to check the documentation, but standard practice in those circumstances is to do two things. One is to note that there is this issue and that it is being investigated by the coroner, and the second is to reserve the right to go back to the service provider with any further issues that may be raised by the coroner. That is the process that is already in train as a result of the coroner's report. At the time we would have looked at whether there were any immediate and obvious breaches of the detention standards and so forth, so that would have been a contemporaneous issue back at the time that Ms Simaplee died.

I turn to a more general observation. Senator Sherry, you raised the question of why the monitoring procedures did not pick up the things that the coroner has now pointed to. I guess in a way that is one of the reasons for always seriously investigating these sorts of things. The monitoring procedure—the process we have with the service provider of establishing procedures, checking procedures and so forth—is intended to try to ensure that those procedures are as robust as they possibly can be. There have been a number of other people in detention centres who have experienced drug withdrawal and, in those instances, the procedures were, presumably, sufficiently robust to assist those individuals.

But once there has been an incident of this sort the objective in our mind is not simply to rely on the procedures already in place but to look at whether or not there ought to be enhancements to reflect the incident that has happened. There are two stages or levels to the process. The monitoring would have been to look at the overall procedures which at the time appeared to be adequate. The coroner has pointed to areas that he regarded as not adequate. Those matters are being pursued specifically in relation to this case. Prior to that, as Mr Davis has pointed out, the ongoing review processes for procedures had already identified a range of areas where enhancements were needed and those were implemented last year.

Senator SHERRY—Has any penalty been applied to ACM in respect of its administration of Villawood detention centre?

Mr Davis—Any penalties for Villawood?

Senator SHERRY—Any penalties since this incident?

Ms Godwin—Do you mean in relation to this particular incident or more generally?

Senator SHERRY—Non-performance of contract—both.

Ms Godwin—There is an ongoing process of performance monitoring.

Senator SHERRY—I understand that.

Ms Godwin—Because that is a quarterly process, issues arise each quarter. There would have been negative performance points presumably progressively through that period. Whether they related specifically to this incident or not we would need to check.

Mr Williams—At this point, we have not applied any sanctions against the contractor for this incident but there would have been sanctions in relation to others.

Senator SHERRY—This points system: we do not have a copy of the contract, do we?

Ms Godwin—There is a version of the contract publicly available.

Senator SHERRY—A version?

Ms Godwin—It is the contract in its entirety with the absence of the specific payment schedules and a couple of other matters that were agreed when we entered into the contract would be retained as commercial-in-confidence.

Senator SHERRY—I thought we would get to the commercial-in-confidence.

Ms Godwin—The structure of the contract—the fact that this capacity exists in the contract—is on the public record and has been for some years.

Senator SHERRY—Could you perhaps explain the way the payments operate? Is there a base rate of pay plus some sort of bonus payment on the basis of the points evaluation that you have been referring to?

Mr Davis—The contract is structured such that for each centre there is a standard suite of services delivered to us, for which there is a rate per diem per detainee. Those are different at different centres and they operate across bands—that is, at different capacity levels—whereby generally speaking the lower the occupancy level of the centre the higher the per diem rate because of diseconomies and economies of scale. That range of standard services are things like health, food, recreation, education and standard security—the standard suite of services we provide.

The contract also provides for what we call out of scope services to be provided by the service provider. Those are generally in areas like escorts and static guards that may be required. For example, if a plumber is in the centre fitting a new tap, you may need a static guard to stand there and be with them for security reasons depending on where in the centre they are and what is going on. There is a range of out of scope services. Those out of scope services apply for the temporary centre on Christmas Island, given the uncertainty of numbers of detainees held on the island. Also, the residential housing project at Woomera is considered to be an out of scope service because it is a service that is based on capacity rather than occupancy and has been negotiated as a separate arrangement.

In terms of the performance matrix that we have as part of the contract, there are a couple of areas in the performance matrix where there are positive points applied. I do not have the detail.

Senator SHERRY—So that I am clear on this, are those per capita payments you refer to that understandably vary from centre to centre commercial-in-confidence?

Mr Davis—Yes, they are. We do have information available at an aggregate level for the full cost of the running of the facilities—

Senator SHERRY—I was going to get to that later.

Mr Davis—but the daily rate per diem figures are commercial-in-confidence under the contract.

Senator SHERRY—Is there another level of payment?

Mr Davis—There is another type of payment which goes to issues of non-standard service delivery. There is a whole range of what we call out-of-scope services which we acquire from the service provider from time to time. Another aspect of the payment process, which perhaps goes to the heart of the performance assessment process, is that part of the standard service fee payments is retained by the department subject to the performance assessment processes. Following the determination that I make each quarter, those moneys are debited for negative points and, in a limited number of areas, positive points are allocated. Once the positives and negatives are taken into account, that amount is balanced off against what we call the retention amount. The residual of that retention amount is then paid to the service provider.

Senator ALLISON—What justification has been provided for commercial-in-confidence, given that the contract has just been relet?

Mr Davis—The commercial provisions of the existing contract were negotiated at the time the contract was put in place—1997-98. As part of the current tender process, we have looked at the question of commercial-in-confidence for the new contract. That matter is subject to discussion between us and Group 4 at the moment, but we are very cognisant of the ANAO and department of finance guidelines and findings in this area and of the Murray motion type requirements. We have gone into those discussions with Group 4 with a starting expectation that the whole contract will be available in full, but that matter is subject to discussion between us and Group 4, depending on their position on the commercial issues which are yet to be finalised.

Senator ALLISON—Why was this not finalised prior to the contract being let?

Mr Davis—The tender documentation made it clear to all tenderers that our expectation was that the contract would be available in full. But, like any negotiation process, any matters that are raised by the other party need to be worked through in terms of their requests and requirements. We are very cognisant of the ANAO and department of finance guidelines as to what can and cannot be dealt with in that context, and we are yet to finalise that.

Senator ALLISON—So they understood this contract would be released in full, but in their tender process they wrote something which said, ‘But it does not apply to us’?

Ms Godwin—We have not let the new contract yet. The current contract that we are operating under is the one that was negotiated in 1997. What Mr Davis is pointing to is that for the new contract—for which the preferred provider was announced last December—that process of negotiation, which is a standard part of the contract negotiation process, is currently under way. We have not yet concluded those discussions with Group 4. The current contract arrangements were entered into back in 1997.

Senator ALLISON—But my question remains: if there is a requirement that the contract be made publicly available in full, why is there now discussion about doing otherwise?

Mr Davis—To be clear, the tender process said that it was the expectation of the Commonwealth that it would be made available in full. The matter of any confidentiality of any parts of it was always going to be a matter for discussion in the negotiation process.

Senator ALLISON—My original question to you was: what case has been made for commercial-in-confidence?

Mr Davis—Because we are still in discussions with Group 4, I do not feel I am in a position to discuss that for the new contract.

Senator ALLISON—When will you be?

Mr Davis—We are seeking to resolve matters with Group 4 and, subject to some technical matters which are yet to be finalised, we are very close to doing that.

Senator ALLISON—So tomorrow, next week?

Mr Farmer—As soon as possible.

Senator SHERRY—That could mean next year.

Mr Farmer—I hope not.

Senator SHERRY—I want to go into these issues in greater depth, but first I will complete the questions in respect of the detainee's death at Villawood. At this point in time, are you still awaiting a response from ACM in respect of the critique raised by the coroner?

Mr Davis—Yes, we are waiting for a final response.

Senator SHERRY—So you have had some response from them?

Mr Williams—Yes. We had a response prior to the coronial findings being handed down in relation to their own investigation of the incident.

Senator SHERRY—And they put in place some changes that I think Mr Davis referred to.

Mr Davis—Yes.

Senator SHERRY—Are you able to provide us with a copy of the changes they have made?

Mr Davis—We can provide that information on notice.

Senator SHERRY—In those changes, have steps been taken to ensure that files do not go missing?

Mr Davis—Yes. They have taken steps to enhance the level of internal auditing of their files. They have increased the percentage of files examined by their auditors and have a more regular monitoring process of their files. The service provider have taken their own steps to enhance their own assurance processes over their medical files.

Senator SHERRY—What about the issue of medical staff, such as the nurse on duty who telephoned the doctor to get an order for medication? Has that changed in any way?

Mr Williams—One thing that has changed is that detainees who are suspected of being in drug withdrawal are first taken to hospital. That is a change that has come in since the death of Ms Simaplee.

Senator SHERRY—Is this just at Villawood or elsewhere?

Mr Williams—I think it is an ACM policy across the board now. They get advice from the hospital as to whether the person needs to be kept at hospital or can be discharged. At that point, they get any advice about treatment that they might need to follow.

Senator SHERRY—Presumably the prescription of medication would result after that medical examination if required?

Mr Williams—It would, and under the supervision of a doctor.

Senator SHERRY—Or a nurse in certain circumstances, I presume.

Mr Williams—A doctor would need to authorise a prescription of medication. Whether they do that over the phone would be a matter of health procedures between the professionals concerned.

Senator SHERRY—Is ACM making any changes to staff training in respect of medical monitoring more generally?

Mr Williams—They have acknowledged that detention officers per se are not trained to deal with these difficult medical observation processes and that a medically trained person would do that. As I said, in the first instance, that would occur in hospital.

Senator SHERRY—Have there been any changes either by departmental officers who are located at Villawood or who visit from time to time or by ACM in respect of medical supervision?

Mr Davis—We certainly emphasise to our monitoring teams the importance of reviewing things like the procedures in these areas. As to whether that has been enhanced in any way, I would need to take that on notice. I can provide details on any changes we have made. However, other than continuing to emphasise the importance of this area, I am not aware of any specific changes we have made in our procedures.

Senator SHERRY—I assume the payments to ACM in respect of Villawood are also commercial-in-confidence? We have the global figure, but I have not seen an individual figure.

Mr Davis—I would need to take advice on the commercial nature of the individual payment processes. It is certainly available internally through audit and other processes.

Senator SHERRY—But is it available to us?

Ms Godwin—In the past we have provided some overview material per centre for this committee, which does go to the centre level. We could look at that.

CHAIR—Are there any further questions on this issue?

Senator SHERRY—Nothing more on sex and slavery allegations.

Senator ALLISON—I still have some questions on the issue. Of those sex workers who are apprehended—many of whom are removed—is there an assessment made, and at what point, of whether or not they have a drug addiction problem? Given the preponderance of drug addiction in the industry generally, what is the process, firstly, and, secondly, how many are found to have drug addictions?

Ms Haughton—Are you asking what assessment is made of them if they are taken into a detention centre?

Senator ALLISON—I am asking what assessment is made at the point of apprehension, whether it is in a detention centre or otherwise.

Ms Haughton—So when they are actually located?

Senator ALLISON—Yes.

Ms Haughton—I will have to take that on notice. I do not know for sure if there is any particular assessment, but it is certainly not in the information that we have received on the way the operations are conducted.

Mr Davis—Certainly in all cases, once they enter the detention centre, those issues are examined on induction. But I defer to my colleagues on whether we have to take on notice the question of what happens prior to that.

Senator ALLISON—Please take that on notice. But you are fairly certain, Mr Davis, that in detention centres there is a process? What is it?

Mr Davis—Absolutely. Part of the induction process is an initial health screening by qualified nursing staff who then act on any evidence or actions by the detainee which suggest that any type of medical treatment or referral to a hospital is immediately required. That happens upon entry to the centre.

Senator ALLISON—So Ms Simaplee's drug addiction would have been identified on arrival?

Mr Davis—I can get confirmation of that, but that is my understanding.

Mr Williams—That is correct; it was identified on arrival.

Senator ALLISON—How many such cases were identified as being drug addicted in the last financial year?

Mr Williams—We would have to take that on notice.

Mr Davis—I would not have that detail here.

Senator ALLISON—Is it common?

Mr Williams—I would not say it was common, no, but I do not speak with a great deal of confidence there. I would need to check the figures.

Mr Davis—We would need to take some advice on that.

Mr McMahon—I would add that, although we formally detain them under the act, most of the sex workers are released shortly afterwards. Although we do not have specific data in respect of the sex workers, about 87 per cent of women who are detained in the community would be released on a bridging visa E.

Senator ALLISON—The figures from July 2002 to February 2003 show that 124 sex workers were detained, 109 were removed, 16 were released on temporary visas and two were placed in detention. It is likely that all of those 124 sex workers would have been examined for possible addiction?

Ms Haughton—Earlier today we updated those figures—to the end of March, 149 sex workers were located working illegally or in breach of their visa conditions. They are not all taken into detention in the sense that they are removed to a detention centre. While they are technically in detention, they are in questioning detention and we then make a decision as to whether or not to grant them a bridging visa. If they are granted a bridging visa they are not taken to a detention centre.

Mr Davis was talking about the ones who actually go to a detention centre and are inducted into the centre or use the reception arrangements at the centre. To our knowledge, for the ones who are questioned and then granted a bridging visa there is not a process whereby they would be assessed for drug addiction; but we will take it on notice and double-check that.

Mr McMahan—I think I can say that we do not make an assessment as to whether or not they are a drug addict. If there were some evidence that one was because they had needles with them or something it might be an issue that we would take further, but the compliance officers are not equipped to do that. In essence the people are questioned and they are often released quite soon after the questioning begins, so it would not be evident. Where we have concerns that the person may not leave voluntarily or whatever, they would be taken to a detention centre and the assessment would be made there. But, as I have indicated, I believe that the number of those cases would be relatively small.

Senator ALLISON—Within what period of time did the 109 who were removed leave the country?

Mr McMahan—It depends, but in general it is quite a short time. It may well be within days. A case was recently given some publicity in the newspapers of a woman who it was claimed we took into custody because we did not believe her story on trafficking and then removed. In fact she did not raise any issues about trafficking and she already had her ticket, so when we released her she was gone within three days. Often they quite quickly get their tickets and go, because for many of them their income source has been removed and there is simply no point remaining in the country.

Senator ALLISON—What you are suggesting is a bit at odds with what the AFP said. Senator Ludwig's question on 10 February this year was answered with the statement that, 'Before investigations are completed witnesses are deported.'

Mr McMahan—There is a difference between voluntary removal and deportation. We do not have a lawful basis on which to detain a person who wants to leave the country; it would simply be unlawful for us to do so. The overwhelming majority of people want to leave the country once they are found. We would have to unlawfully detain them to keep them here.

Senator ALLISON—This may be a question for you, Minister Ellison. How do you reconcile that with the statement that the AFP considers deportation of witnesses before investigations are completed to be one of the general difficulties associated with investigating cases?

Senator Ellison—I answered that question yesterday with Senator Greig. I stated then, as I do now—and I think Mr McMahan has touched on it too—that there is nothing to stop a person from returning to their country of origin. If they wish to do that, there is just no way you can keep them.

Senator ALLISON—So you are assuring the committee that in all of the cases that the AFP complains about it was the choice of the potential witness to return to their country of origin? Can you give the committee an assurance that that is the case?

Senator Ellison—I will have to take that on notice, because each case has different circumstances. Certainly the two statements—one by Commissioner Keelty and the other by Minister Ruddock—are not at odds, because if someone gives evidence as to trafficking and then decides that they want to return home there is nothing we can do about it. But I will take on board your question; I will take it on notice and see what we can get back to the committee with in relation to the circumstances you have outlined.

Mr McMahon—I think you completely understand this, but I note for the record that there may have been 149 people found in the sex industry who were working illegally but very few of those cases generated issues associated with sex trafficking. We have had 14 referrals to the AFP since the introduction of the legislation.

Senator ALLISON—I am sorry, what was the follow-up answer?

Mr McMahon—I was just making the point that the 149 that we mentioned were people found in the sex industry. Very few of them were actually involved, in terms of our ability to analyse them, in sex trafficking. That number is extremely small.

Senator ALLISON—That was not the minister's estimation at the time of the second reading speech on the bill. It has just been brought to my attention that section 80E of the New South Wales Crimes Act makes it an offence to conduct a business in sexual servitude. This would appear to be complementary to the federal laws. Have you had an opportunity to examine the crimes acts of other states? Doesn't that suggest that there would be no impediment, at least in New South Wales, for brothel owners to be prosecuted under both laws?

Senator Ellison—I agree with you in relation to New South Wales. We are examining the legislation in all states and territories. As I said earlier, I think there is a shared responsibility in this matter between the Commonwealth, states and territories. I just highlight that because I think the states and territories have been remarkably quiet on this whole issue, and any comment about their role has been, I think, remarkably absent.

What I mentioned earlier about expanding the onus of a brothel keeper or a person who runs those sorts of premises really was going beyond that. In relation to a conviction in relation to that offence, you would have to prove knowledge and intent and all the usual elements. I mentioned something else today, and that is perhaps going beyond that. This is something that we need to discuss at the Police Ministers Council—and, as I have said, it is on the agenda. It could end up as a matter for the Australian Crime Commission.

Senator ALLISON—Chair, I am not sure whether this has been asked under this section, but is it possible to get details of the number of people who claim that they were trafficked—whether or not this was found to be the case? Can we have some details of how many and when and what the result of those allegations were in terms of how the matter was investigated?

Mr McMahon—We would have to take that on notice.

Senator ALLISON—Is it also possible to have an outline of the treatment of such people—for example, the counselling which might be offered to them? I understand that there has been some discussions with the AFP, and we are hoping that there is a different attitude to the people who make these claims. I think it is fair to say that there has probably been some bias in the past on the basis of the credibility of sex workers. Can you indicate to the committee what steps have been taken to provide an environment in which support and encouragement might be offered to elicit evidence that might be useful to the department and the AFP?

Mr McMahan—Certainly we are always reviewing our procedures. I did mention earlier that it is now a standard requirement that, when we, for example, go on a compliance operation involving the sex industry, there is at least one woman per team. We do do general training in respect of cultural diversity and those sorts of things. We have actually let the contract out for a formal training course for compliance officers, in which we will incorporate elements of that. That is being developed.

Clearly we always want to improve, but I do not know whether I would conclude that there has been bias in the past. There is a problem in dealing with many of these women that they produce multiple stories and multiple identities. After they have produced several identities, including supporting documentation like drivers licences et cetera, it does in the end raise some doubts about what parts of their stories can be believed.

We take it extremely seriously if there are issues of sex trafficking involved. The sort of structured questioning we do should reveal whether or not sex trafficking is involved because we ask questions which, to our mind, go to whether or not there is an issue. They might seem quite peripheral in respect of the questioning but they are quite important to us in identifying whether they are possible starters.

Senator ALLISON—How often would such interviews take place with an interpreter—that is, where the complainant speaks inadequate English?

Mr McMahan—We would normally have an interpreter present.

Senator ALLISON—Normally?

Mr McMahan—Yes, that would be the normal case. For example, the interview in the well-publicised Wing case in Brisbane was conducted by two female departmental officers. One was a fluent Thai speaker and the other was a compliance officer.

Senator ALLISON—Are there any cases in which sufficient English is spoken by the person detained not to have a translator in place?

Mr McMahan—It is possible. A judgment would be made at the time about the level of functional English. For example, I understand that Wing—as she has been nicknamed—did have English but not in our view enough for her to clearly understand what was happening, so we provided a woman officer who fluently spoke the language. But in the case of, for example, a Malaysian woman who had high levels of English then we would not provide a translator.

Senator ALLISON—So you would be surprised if a case had come forward with the complaint that there was not an adequate opportunity to speak in the preferred language?

Mr McMahon—It would be disappointing if that proved to be fact. We are very aware of our responsibilities to have effective communication taking place.

Senator Ellison—Madam Chair, before we move on to another question I would like to deal with an issue that was previously raised by, I think, Senator Allison. During the appearance of the Australian Federal Police before the Senate Legal and Constitutional Affairs Legislation Committee yesterday, 27 May 2003, Commissioner Keelty undertook to provide information in relation to a question from Senator Greig regarding an allegation by Ms—

CHAIR—Could we not repeat the names, please.

Senator Ellison—Point taken. It is in the letter.

CHAIR—In fact the letter cannot then be presented to the committee.

Senator Ellison—But it was raised yesterday, wasn't it?

CHAIR—Yes, but certain concerns have been raised about that identification and the committee is in a position where we need to take steps to deal with that. I flagged that briefly before. It is a matter of concern and I would not like to see it repeated.

Senator Ellison—Their names are in the *Hansard*.

CHAIR—The committee is taking steps to deal with that.

Senator Ellison—In that case, I will hold this letter back.

CHAIR—Thank you.

Senator Ellison—We will resubmit it.

CHAIR—Thank you, Minister. I will have the secretariat staff clarify with your office the status of the identification matter.

Senator Ellison—Yes, and whether the committee has been successful in the other endeavour.

CHAIR—Now that we have paused, for the purposes of managing the process I want to conclude questions on sex trafficking with these questions from Senator Allison and some from Senator Scullion and then continue with output 1.3 after a short break.

Mr McMahon—Senator Allison, I will make a couple of other points. In New South Wales—where the major problem with sex trafficking has been—and in other states, we have had quite extensive contact with various groups that we believe may be able to provide support to sex workers; for example, with sex worker support groups and cooperatives. We have also made contact with a sex worker outreach program. We have made contact with Project Respect in Victoria.

Senator ALLISON—I am sorry; what is the context of this contact? Do you ring them up and say hello?

Mr McMahon—You asked what we were doing to make women comfortable.

Senator ALLISON—You say to the women, 'These organisations are available for you to talk with.'

Mr McMahon—Yes, and we may make direct contact with them. For example, we have had contact with the Filipino Association; we have had contact with the Thai consulate in a number of cases.

Senator ALLISON—Do you say to the women, ‘If you would like to talk with someone from this organisation now, that is a possibility’?

Ms Haughton—We are also trying to improve our working relationship with these groups to see how they can become involved in the process in terms of making the interview more productive and making the person feel comfortable enough to be able to provide or volunteer information in the event they have been trafficked. We have already done quite a lot in establishing working relationships with these groups in order to talk to them about the best way to pursue the interview process so that we can support the victim and also get a better outcome in terms of prosecutions.

Senator ALLISON—When did those discussions take place?

Ms Haughton—New South Wales has been conducting them for quite a number of months now because its sex industry task force has been set up since 2001. From that time on it has been talking to them. Project Respect met with our office in Victoria a few months ago and talked about arrangements that they could set up with them. More recently our Sydney office also met with Project Respect. So we have had ongoing talks and discussions with them but, more recently, we have looked at how we can formalise those arrangements.

Senator ALLISON—Are those organisations now happy with the approach that the department is taking?

Mr McMahon—Not necessarily. Some of these organisations would not have an explicit view. But with an organisation like Project Respect, for example, we have simply tried to open up communication lines—and particularly for them to identify to us very early any cases they believe might involve sex trafficking. Certainly that is one of the areas we have asked these organisations to alert us to where they believe there might be a case around. With some of them, it is just a question of us perhaps referring a person on to that group and alerting them to the fact that they could provide some support.

Senator ALLISON—Why do you think this has not been persuasive?

Mr McMahon—Some of these groups have very strong views about what we should do, which may or may not be consistent with government policy.

Senator ALLISON—In what sense?

Mr McMahon—For example, they may have a view that the person should remain in Australia or whatever. We operate within a legislative framework, not all elements of which they may agree with. Certainly I would be extremely disappointed if Project Respect did not feel comfortable with coming to us and telling us about a case that we could investigate. We would certainly be very interested in any information along the lines of some organised level of trafficking taking place that we could pursue.

Senator ALLISON—Can you offer them anything in return? Do you keep them informed about the progress of particular cases, or is this just a one-way street?

Mr McMahan—We have had quite a few meetings with them at which I believe that information has been passed across. The state director of Victoria has met with them, central office staff have met with them and New South Wales staff have met with them.

Senator Ellison—Madam Chair, just for the record and without going into the details you mentioned, the interview that took place, which was the subject of questioning by Senator Greig, involved two officers—one male and one female.

CHAIR—Thank you. That is a matter we have pursued today; that is helpful.

Senator ALLISON—In the interviews with these women, what attempt is made to explain what trafficking is? I imagine that some of them would not have the terminology to properly discuss the matter. How is the law explained to them?

Mr McMahan—I do not think we explain the law to them. We try to elicit information that would suggest to us that trafficking is involved. If we explain the law to them and ask them, ‘Have you been trafficked?’ they would probably say no, even if they had been trafficked. Therefore, we need to come at it from quite a lateral point of view, and that is what we do; we look for indications of trafficking.

Senator ALLISON—Madam Chair, that is all from me.

Senator SCULLION—Mr McMahan, earlier today some information was given by one of my colleagues—I cannot recall by whom—regarding a 14-year-old sex worker who allegedly had been trafficked. I understand that you responded by saying that at least three people in Thailand are serving a number of years as a consequence of that. Were DIMIA responsible for the raid, the apprehension or the circumstances surrounding that particular young girl?

Mr McMahan—It was a DIMIA operation. When we discovered that an underage person was involved, we immediately contacted the New South Wales Department of Community Services, the Child Protection Unit and, I think, the Thai consulate in Sydney. It was a Sydney operation.

Senator SCULLION—Before going there, were you aware or did you suspect that someone would be underage?

Mr McMahan—I think it is one of the very few occasions when a compliance operation has revealed an underage person.

Senator SCULLION—So you did not have prior knowledge of it?

Mr McMahan—I do not believe we did. If we had had prior knowledge, we would have involved the NSW Department of Community Services in the raid itself.

Senator SCULLION—What jurisdiction were the actual premises in?

Mr McMahan—Sydney.

Senator SCULLION—Were the premises a licensed brothel or a private residence? What was it?

Mr McMahan—It may or may not have been. It was in 1995—I am not sure when the licensing arrangements took place in New South Wales—which predated all the sexual

servitude legislation et cetera. It was a time when a very limited number of charges could be brought against a person operating a brothel.

Senator SCULLION—I would have thought of serial paedophilia; that is one that springs to mind immediately. With a girl of 14 years of age, I am quite sure that a number of charges could be made. I recognise the very clear jurisdictional relationship between the Australian Federal Police and DIMIA in these matters, but I am continually concerned that most of the legislative framework dealing with prostitution and the regulation of prostitution lies with the states, as does the age of consent.

Mr McMahan—Yes.

Senator SCULLION—Even in the absence of comprehensive prostitution legislation, I would have thought that simply the age of consent would have applied to that particular woman. Was that issue pursued in terms of the premises?

Mr McMahan—I believe that at the time it was raised with the state police. The only point I was making was that there was no federal jurisdiction in respect of it at the time.

Senator SCULLION—Perhaps I could put just a small hypothetical—and I know how you dislike hypotheticals. Under similar circumstances, if you had foreknowledge of these things—apart from the obvious comment you have made in terms of youth and community services being involved—do you think you would also contact and involve the New South Wales Police in that sort of an undertaking principally because of the whole raft of jurisdictional issues, in that people may be in noncompliance but not necessarily in noncompliance with Commonwealth legislation?

Mr McMahan—Absolutely, and we would have the AFP and the Transnational Crime Unit involved. We would move very rapidly if we heard that an underage person was involved because, by definition, an underage person is a person who has been trafficked.

Senator SCULLION—So you could say that you have a growing relationship with the Australian Federal Police and you are making efforts to make it stronger. Would that reflect the relationships you have with enforcement responsibilities in other jurisdictions?

Mr McMahan—We have a very strong relationship with the New South Wales Police and the Queensland police. We have a very strong relationship with the AFP, because that is where most of it occurs, but we certainly have quite direct links with other police forces.

Senator SHERRY—You say that by definition an underage person must have been trafficked. What about those on student visas? They would not necessarily be trafficked in those circumstances, would they?

Mr McMahan—Most student visas are for people over 18 anyway.

Senator SHERRY—There are a fair few under 18.

Mr McMahan—For trafficking, you need the element of someone having moved you first. If you moved, the issue of coercion or deceptive recruitment does not apply. That is the point I was making in respect of an underage person.

Senator ALLISON—I have one question about the coroner's recommendations. One was that in circumstances similar to Miss Simaplee's detainees should be hospitalised. Has the

department accepted that recommendation? Will that be the process in the future? That is specific. Also, can the committee be provided with an official response to all of the recommendations and, if so, when?

Mr Davis—We certainly can provide information on our response to the recommendations and what we have done and the issues we have raised with the service provider and their responses to them. In answer to a previous question, Mr Williams mentioned that people in such circumstances are now automatically taken to hospital for assessment as the first step in the process of the new procedures.

Senator ALLISON—It seems to me the coroner is suggesting something other than assessment. I may be wrong.

Mr Williams—I am just checking. I am not sure the coroner actually recommended specifically or explicitly that hospitalisation was necessary, but that is certainly what is occurring as a sort of screening process for any new cases in which drug addiction is in evidence.

Mr Davis—The coroner's recommendation is that essentially professionally qualified medical staff should be the ones who supervise detainees in such situations in the centres. So, if the person is in the centre and the facilities are not available for that monitoring process to occur in the centre then the person should be hospitalised. Indeed, that is in line with the procedures that are now in place. As part of the process of reviewing the procedures, our service provider has taken the additional step of seeking advice through the hospitalisation process in the initial assessment process as to whether or not the person should indeed be in the hospital or be in the centre.

Senator ALLISON—Somebody in that situation would be effectively withdrawing from that problem, wouldn't they?

Mr Davis—Yes.

Senator ALLISON—They would be in a fairly medically difficult situation.

Mr Davis—I presume so. I am not experienced in that area.

Senator ALLISON—I am sorry. I am expressing it badly. In a hospital, one would expect a high level of supervision, surveillance and attention.

Mr Davis—Yes.

Senator ALLISON—This would be regarded as something of an acute situation, which I would suggest is a reason why the coroner has recommended hospitalisation as opposed to them being in a centre which has medical staff and a nurse somewhere around. Can you draw that distinction?

Mr Davis—The coroner, as Mr Williams said, did not actually recommend that people in such a situation be automatically held in hospitals if we have the facilities in our centres to manage with medically qualified staff supervising them. Some of our centres, such as Baxter, do have in-patient wards in medical centres in those locations which may allow the detainee to be still held within the centre.

Senator ALLISON—But Villawood does not.

Mr Davis—Villawood does not have such facilities available. The coroner is saying that, where we do not have such facilities available, we should seek hospitalisation—and that is part of what we now do.

Senator KIRK—I just have one final question for the minister. I understand that on 13 May you stated that an interdepartmental committee would be established, or has been established, in relation to illegal sex workers.

Senator Ellison—That is right—and it has.

Senator KIRK—Could you tell us which departments are involved in this interdepartmental committee?

Senator Ellison—The Attorney-General's Department, which of course includes the Australian Federal Police; the Department of Immigration and Multicultural and Indigenous Affairs; the Office of the Status of Women; the Department of Foreign Affairs and Trade; the Department of the Prime Minister and Cabinet; the Australian Crime Commission; AusAID; and the Commonwealth DPP.

Senator KIRK—Have any terms of reference been drafted for the committee as yet?

Senator Ellison—I suppose the terms of reference are basically that it is to look at the whole of this issue. It is not a formal review, as such; it is examining all aspects of this problem and how it affects the Commonwealth. It is looking at prevention, detection, investigation, prosecution and victim support. It does not have strict terms of reference, but that is its ambit of purview, if you like. It is preparing a series of recommendations for the Minister for Justice and Customs, the Minister for Foreign Affairs, the Minister for Immigration and Multicultural and Indigenous Affairs and the Minister Assisting the Prime Minister on the Status of Women. Once that is concluded, which we hope will be very soon, it will be considered by government. That is envisaged to go to government in the next couple of months—in a month or so.

Senator KIRK—Will the report or the recommendations that will be prepared be tabled in the Senate?

Senator Ellison—It will be a cabinet submission and therefore it will be cabinet-in-confidence. That is what I was getting at when I said that it will be considered by the government—that is, it will be a formal cabinet submission.

Senator BARTLETT—I would like some clarification on something. I do not think this has been raised. I was listening to your answer to Senator Allison's question about the problem of people returning before being able to be properly investigated. You were talking about not being able to keep people here if they wanted to go and that that would be illegal detention—which I fully understand. In terms of the whole issue we have been looking at for some time now this afternoon, doesn't that situation mean that it is operating at odds with the intent of the Commonwealth Criminal Code? Is there some investigation into the prospects of introducing a mechanism that would enable you to legally keep someone in the country if they are still needed for questioning about the issue?

Senator Ellison—If someone is visiting Australia and wants to leave Australia, unless they have been charged and placed on bail, it is very difficult to detain them, to make them stay in

Australia. That is the basic problem that we have. You have a right to go to a country—that is what your passport is for; it guarantees you free passage—and you go there and you leave. You are saying: why don't we amend the Criminal Code to deal with this? I think it is more a question of having a class of visa, which Minister Ruddock has announced, which could accommodate what you are saying. As I understand your question, Senator Bartlett, if it is about amending the Criminal Code or other provisions, I do not think that is the way to go. It would be better to look at the visa situation, which Minister Ruddock has done. Are you suggesting that we should have some ability to detain someone against their will?

Senator BARTLETT—I am just raising the question that, if somebody has information about a potentially very serious crime, isn't there some mechanism, inducement or whatever to get the information out of them before they go? I am sure that happens with other serious crimes if you think somebody has information about drug smuggling or something and they say, 'I want to leave.'

Senator Ellison—Dealing with the issue of whether someone has information about a serious crime, just looking at the everyday enforcement of criminal law, if you or I had information about a serious crime there would be no way the police could detain us in any way to ensure that we stuck around or gave that information. We could be subpoenaed to go to court, that can be done, but without that we cannot be restricted in our movements. But anyway I think the announcement that has been made in relation to this new class of visa is an appropriate way to go and we have still got the criminal justice visa, which can provide for a person staying in Australia. But at the end of the day, you can lead the horse to water but you cannot make it drink. If you have got a witness who is not willing to testify, that makes it difficult and police encounter this frequently in other areas as well. But it is something which is being considered.

Senator ALLISON—What about financial reasons for why someone in this situation might wish to return to their country? In those circumstance, if someone says, 'I can't afford to stay here. I've got no means of support,' would you offer to provide accommodation?

Senator Ellison—I have said before that it is open and with the appropriate visa, assuming that has been taken care of, witness protection could be used and part of that does involve financial support.

Senator ALLISON—How often has that been offered?

Senator Ellison—It has not been offered to my knowledge, and I will check on that to make sure. I will take that on notice.

Mr McMahan—Can I supplement the minister's answer by saying that where a criminal justice stay certificate is issued, before it is issued there must be guaranteed support for the person.

Senator ALLISON—And that includes financial support?

Mr McMahan—It is support. Obviously it is not going to be a financial reward, but basically there will be sufficient support for accommodation, food and those sorts of things. I suppose it would be equivalent to a special benefit. It is really up to individual agencies how they structure that, but it should give them life support.

Senator Ellison—There has been a criminal justice stay visa issued just recently as I understand it. I am not sure what the financial aspects are there. We do not want to go into that for privacy reasons, but I will take that on notice and see in general terms—

Senator ALLISON—In general terms, Minister, it would be good to know what is involved in that visa.

Senator Ellison—Witness protection does provide that though if someone is put on the program.

Mr Killesteyn—Senator, just to clarify things: that particular visa is issued under section 159 of the Migration Act and there are certain cost undertakings which are provided by the particular organisation that is requesting the person to stay. The cost undertakings provide for meeting the cost of keeping the person in Australia at any time when a criminal justice stay certificate is in force and he or she does not have means of support. The provisions also provide that the person, whilst in Australia, may lawfully undertake paid employment. So there is a mechanism for doing exactly what you are suggesting in terms of the support for the person.

Senator ALLISON—I wonder what sorts of jobs they would get.

Mr Killesteyn—Well that is often the difficulty, isn't it?

Senator Ellison—Madam Chair, I mentioned a letter earlier. The AFP want something that they took on notice to be put on the record. Senator Greig asked whether a videotape had been provided to the people concerned, and my advice from the AFP is that it was.

CHAIR—It was at the time?

Senator Ellison—Yes. It was provided at the time to the solicitors.

CHAIR—As there are no further questions in the sex trafficking area of this discussion in 1.3, we will adjourn for a short break.

Proceedings suspended from 4.26 p.m. to 4.41 p.m.

CHAIR—We will resume. We are still on output 1.3, with questions continuing.

Senator BARTLETT—I want to ask a range of questions about the MOU with Iran and related matters. Firstly, I want to clear up exactly what has been signed, when it was signed and what matters were covered. In some media reports and some answers to questions I have asked in the past it has not been made precisely clear whether there is a final formalised agreement or whether there is a draft agreement that has to be formalised and so on. So if we could get an outline of where things are up to, as a starter, that would be handy.

Mr Farmer—There is a finalised formal agreement. We are all incredibly bemused by where the press speculation about this comes from; it is from a fevered imagination. But, yes, there is a formal, concluded, signed agreement between Australia and Iran on returns.

Senator BARTLETT—And that is the one that was announced on 12 March?

Mr Farmer—That is indeed the one.

Senator BARTLETT—When I was at Baxter a few weeks ago—having a look around with, as always, very helpful staff and departmental people—I asked about that and it was

mentioned, I think by the manager there, or someone like that, that there would be a further visit to Tehran to formalise the agreement after the war ended. Has there been a visit to Tehran to further lock in procedures and so on?

Mr Farmer—There are to be further discussions with the Iranians about a number of matters, including the implementation of the work and holiday scheme, but that will not be to discuss further an agreement. We have a signed, formal agreement. We are now talking about the implementation.

Senator BARTLETT—Are both you and the Iranians of one mind about the interpretation of the agreement?

Mr Farmer—I would say that the Iranians have learned something about the methods of interrogation used by the Australian media in the last couple of months and the way in which it is possible for people to be verballied by them.

Senator BARTLETT—Is there a direct link between the working holiday visa expansion and the return of failed asylum seekers?

Mr Farmer—They are both covered in the one document with a number of other matters. That is because we have been discussing a range of issues with the Iranians now over the last year or so.

Senator BARTLETT—I guess the other thing that a lot of people are interested in is how tightly locked in the agreement is, in terms of involuntary return. The media release that the department put out said:

The agreement provides the capacity to enforce the removal of those who do not volunteer to return.

That seems pretty unequivocal.

Mr Farmer—Yes.

Senator BARTLETT—So, at the moment, there are people who have the package for voluntary repatriation and that has been put to them in the letter, and that 28-day period for people starts expiring this week or in the next couple of weeks. How many so far have accepted the package?

Mr Williams—So far four people have accepted and one person has returned, I think.

Senator BARTLETT—What is the total number we are dealing with? Is it 265, or 277?

Mr Williams—No. Those that were given the formal offer were a somewhat smaller number than that, because it is those who have exhausted their applications through courts. So 85 were given the formal offer.

Senator BARTLETT—How many Iranians have we got overall?

Mr Williams—There are 264.

Senator BARTLETT—Are you going to wait until the other 179 have been through courts and all of that?

Mr Davis—They will progressively be made the offer, once they are free of any of those review or other processes that we are waiting for, yes.

Mr Williams—But if they choose to come forward before they have finished those processes, and withdraw from them, they are able to take the offer up at any time.

Senator BARTLETT—I presume you saw the piece in the *Australian Financial Review* about this, headed ‘Return to sender’. I think it was published today.

Mr Williams—I have heard about but I have not seen it.

CHAIR—Everybody has been here, Senator Bartlett. We have not all had the luxury of reading the *Financial Review*. But do tell.

Senator BARTLETT—I would not call reading the *Financial Review* a luxury.

Senator SHERRY—They have got a not unreasonable excuse for not having read the *Financial Review*.

Senator BARTLETT—The report, in a quote from an unnamed spokesman for the minister, says that the MOU does not have any provision looking at the safety of returnees or deportees. So there is nothing in there guaranteeing, from the Iranian government side of things, that people will not be imprisoned or in any way discriminated against?

Mr Okely—There is nothing in the MOU that specifically relates to that. There is an expectation that these people, because they are unlawfully in Australia and have no reason to remain in Australia, should be removed to Iran. There was never any attempt to get a provision in the MOU which provided any kind of guarantee. Indeed, it would be unusual for any return agreement to have such a provision.

Senator BARTLETT—We are dealing with Iran, a nation that, even acknowledging requirements for diplomatic statements from the minister, is pretty widely acknowledged as having some significant human rights problems. I presume, Minister, you would agree with that.

Senator Ellison—Yes.

Senator BARTLETT—If we are making an agreement to return people to a country with a far from ideal record, wouldn't it make sense not to just leave people to fend for themselves?

Mr Farmer—If I could say something, Senator: the people that we are talking about are people who have no right to stay in Australia. That includes, obviously, a number of people who have made claims for asylum and whose claims have been found not to have a basis. In the majority of cases, those claims have been pursued through not only the department and the tribunal but a court or courts as well. Our system has found that they do not have any reason to fear returning.

Senator BARTLETT—The quote from the minister's spokesman says:

If we had any concerns about their safety, we would not be sending them back. All of those concerns are dealt with in the refugee determination process.

That sort of reflects what you have been saying.

Mr Farmer—Yes.

Senator BARTLETT—Surely issues of safety are much broader than the narrower issue of whether or not people meet the refugee criteria. We do have wider obligations to ensure that people are not, for example, sent back to be imprisoned, don't we?

Mr Farmer—Under the refugees convention, we are looking at the potential claims by people that they have a well-founded fear of persecution if they are returned. If people adduce fears about a possible abuse or other measure that might be meted out on them on their return, they will be looked at during the examination of their case. So I think the answer to your question is that, if they do have fears of this sort, they will be examined. In the cases that we are talking about—that is, people liable for removal—those fears have been found not to have substance.

Senator BARTLETT—Certainly there have been allegations of people in the past who have returned, including in the newspaper article. I will get a few copies so you can all have the luxury of reading it. Did you investigate complaints or allegations or concerns that people would be or could be arrested and imprisoned, for example, when they returned?

Mr Farmer—I have not seen the article, so I am sorry, I do not have access to that.

Senator BARTLETT—Certainly I have seen many concerns and allegations raised, and I am sure the concerns are raised by some of the detainees that this would happen to them if they were returned, and not for refugee reasons, even, but just for having left the country illegally—that that is against the law and they could be imprisoned when they return. Have you investigated that to make sure that there is no likelihood of that?

Mr Farmer—That claim used to be made by some Iraqis. In the case of the Iranians, the Iranian government has been quite clear: it would prefer people to return voluntarily. It does not have a particular interest, as I understand it, in keeping tabs on people. It would much rather people go back of their own volition, and they could do that via any means they wanted—and quite a few have returned voluntarily.

Senator BARTLETT—And you are not aware of any that have been arrested or imprisoned or encountered other sorts of difficulties when they returned?

Mr Farmer—I am not, but I would ask my colleagues to add anything if they are.

Mr Williams—I am aware of the cases that have been referred to here and that there were unsubstantiated allegations that something had happened to them on their return, but no details were provided to us. Our embassy was not able to make any sort of formal inquiry, given the sovereignty issues, and was not able to substantiate those reports.

Senator BARTLETT—On the related issue with the MOU and the working holiday visa scheme, how is that going to work? Will people who apply to come here from Iran have to pass through any approval process in Iran, such as support from the government to apply?

Mr Okely—The arrangements still have to be worked through later in June with the Iranian authorities, but the intention is that people who would be eligible to come under a work and holiday visa arrangement would essentially be sponsored by the government. The department of labour in Iran would, in fact, make the choices of the people that they would like to sponsor. The process of then preparing them for a work and holiday visa stay in

Australia would occur, and we have agreed that that would be a cooperative arrangement between Australia and Iran.

Senator BARTLETT—Are there any restrictions on the number available per year?

Mr Okely—The numbers that have been nominated in the agreement between the two countries are 500 places in the first year, with 2,000 places over four years.

Senator BARTLETT—Is there any penalty for Iran built into the new visa for people who come here on a work and holiday visa and then make protection claims?

Mr Okely—That particular issue has not been addressed in the discussions. We would assume that the people who would be sponsored by the government would be people who would probably not be in that category.

Senator BARTLETT—Will every person who overstays or claims a protection visa reduce the numbers in the overall program?

Mr Rizvi—There are mechanisms that we have agreed with the Iranian government whereby this visa class will be subject to close scrutiny and ongoing review. If it appears that the people entering Australia on the work and holiday visa are not abiding by the conditions of the visa, then that would be a matter we would take up with the Iranian government, and that would affect the ongoing future of the visa class. But that is something that we would do in partnership with the Iranian government.

Mr Farmer—Equally, it is a review that can cut both ways. We want to see how this works, and if the arrangements do work well then a review could lead to expansion of the scheme. So nothing is excluded.

Senator BARTLETT—Are you confident that if the work and holiday visa fell over, for whatever reason, the arrangements to accept deportations would still hold up?

Mr Farmer—We will be making every effort. We have given an undertaking to the Iranians to work with them to ensure that the work and holiday visa arrangements are implemented to the satisfaction of both governments and the individuals who are pursuing them.

Senator BARTLETT—How does a visa get introduced? Is it just gazetted? Does it require a new regulation?

Mr Rizvi—It requires regulation. The regulations for this visa are currently in place.

Senator BARTLETT—But Iran has not specifically been named in those regulations.

Mr Rizvi—The regulations provide for the minister to be able to gazette any country that fits an agreement arrangement that we might enter into. At this stage, Iran is the only country for which the minister is looking at gazettal. There are other countries that may emerge within that purview.

Senator BARTLETT—That gazettal is not disallowable, is it?

Mr Rizvi—The regulations are disallowable but the gazettal is not.

Senator BARTLETT—Does any other country have an agreement with Iran to involuntarily deport failed asylum seekers?

Mr Okely—My understanding is that we are the only country that has an agreement in place.

Senator BARTLETT—How come we are so lucky?

Mr Farmer—Senator, you might ask the same question in relation to Vietnam, where Australia was the first country to be able to negotiate a return on criminal deportees. We were also, if not first—we may have been first—certainly among the very first to negotiate an agreement with Afghanistan on returns. So I think the answer to your question is that in this area the government and the department have been extremely proactive and, on the basis of your question, I guess you would allow me to say pretty successful.

Senator BARTLETT—What agencies did you consult as part of this within DIMIA when this agreement was formulated?

Mr Farmer—Do you mean within the government?

Senator BARTLETT—Yes, within your department. Was it just simply one section, or was there a lot of cross-consultation in developing it?

Mr Okely—The process of negotiation and consultation involved certainly the department and the Department of Foreign Affairs and Trade and, within the department, several areas.

Senator BARTLETT—Was the UN—the UNHCR or any of their bodies—consulted at all?

Mr Okely—The UNHCR was not consulted, no.

Senator BARTLETT—Coming back to the issue of our obligations of returning people to a country, and without going through in fine detail a lot of the facts on the record about the situation in Iran with the regime there now, you were able to satisfy yourself that there is an independent rule of law in Iran and that people would not be subject to persecution upon their return?

Mr Farmer—Numbers of people have returned voluntarily already. We are not aware of difficulties there. I am obviously aware of the dialogue that we have with Iran on human rights issues. We have that sort of dialogue with a number of countries where we routinely return people.

Senator BARTLETT—The *Financial Review* article I mentioned before contains a number of allegations—and I think a couple of them are just too vague to really pin down. But one mentions a detainee citing the Iranian department of security in the Iranian parliament saying that they will imprison returnees from Australia as examples to deter European Union countries from sending back dissidents. I presume that would be somewhat more verifiable, given that it is saying that it was stated in the parliament. Are you aware of any such statement or have you investigated or heard of that claim before today?

Mr Farmer—I am not, and I do not see anyone else nodding.

Senator BARTLETT—I do not know if it would be you or someone in Foreign Affairs, and without suggesting that you have to chase up every allegation that is made in the media, I would appreciate it if somebody could have a bit of a check-up on that one, given the seriousness of the statement that has been made.

Mr Farmer—We will take that on notice.

Senator BARTLETT—I presume that, if the department believed that returnees would be imprisoned by the Iranian government on their return, you would cancel this agreement?

Mr Farmer—The question you are asking gets back to the point that we discussed earlier. If we believed that people were going to be persecuted on their return, we would be making a different determination in the refugee determination process.

Senator BARTLETT—But it is still possible, obviously, for you to believe it is not going to happen and then to find out that it is happening and change behaviour accordingly.

Mr Farmer—In theory that is true, yes.

Senator BARTLETT—In theory—I would hope it would happen in reality. If people were being imprisoned upon return, wouldn't you change your thinking about the matter?

Ms Godwin—If the imprisonment went to the question of persecution, yes, that would be relevant. It would depend a bit. There are numbers of countries that have provisions to detain and question people on return, if they left illegally, to establish the basis of their illegal departure—presumably for law enforcement and other purposes. In some instances that is a matter of a day or two or a short period. If the person was being imprisoned as a result of an offence under the laws of the land and it was for that purpose, that would not necessarily go to the question of persecution. Imprisonment per se would need to be examined to see whether it goes to this question of persecution or to some other matter. For example, if someone had committed a criminal offence prior to leaving, was detected on return and that criminal offence was then prosecuted, that would obviously be a matter for the law enforcement agencies of that country and would not necessarily go to this question of persecution. It would depend very much on the circumstances.

Senator BARTLETT—Are you able to assure the committee that this MOU has the support or the full authority of the Iranian government, as opposed to just the foreign ministry?

Mr Farmer—Yes.

Senator BARTLETT—Does the MOU emphasise the need to minimise the involuntary caseload?

Mr Okely—I think it is important to look at the approach to return. Obviously, voluntary return is to be preferred and encouraged, and involuntary return is to be seen very much as a last resort. Certainly the Iranian government and the Australian government have agreed to cooperate closely in maximising the number of voluntary returns, the objective being to have as small a number as possible for both sides to need to deal with from an involuntary perspective.

Senator BARTLETT—Why is it so important from the Iranians' point of view?

Mr Okely—I will leave it to my colleagues down the other end of the table, but it is essentially a hell of a lot cheaper and a lot easier to have someone return voluntarily than to have to move to deport them.

Senator BARTLETT—Why is it cheaper? You are actually paying money to the people returning voluntarily, so why would it be cheaper to have involuntary returns?

Mr Farmer—They do not have escorts.

Senator BARTLETT—In terms of the question of other countries that have done this, I thought I read somewhere that there was an agreement between Iran and Switzerland for a certain number of people to return. Is that the case?

Mr Williams—I am aware that Switzerland has returned some Iranian nationals involuntarily, but not as the subject of an agreement, as I understand it.

Senator BARTLETT—Was it a one-off?

Mr Williams—As I understand it, that is the way they have worked.

Senator BARTLETT—You say ‘some’. Do you know how many?

Mr Williams—No, I do not, sorry.

Senator BARTLETT—How much are you expecting the package for voluntary repatriation to cost, and what is the funding coming out of?

Mr Williams—The numbers are fairly small. Of the 260 people in detention, the offer is \$2,000 per person up to a limit of \$10,000 per family. It is not a particularly large caseload, so I guess you could multiply \$2,000 by roughly 200.

Mr Davis—In terms of where it is coming from, on page 68 of the portfolio budget statements there is an item called ‘Reintegration allowances’, which covers not only these allowances for this caseload but also the reintegration allowances for Afghan TPVs et cetera. That is the item under which the money is appropriated from parliament to pay for these packages.

Senator BARTLETT—Thank you. I have received some concerns or complaints from detainees or representatives of detainees regarding a recent visit of the Iranian charge d’affaires to Baxter. They claimed that they were tricked into seeing him. As I understand it, it was voluntary that people could see him, but some people have claimed that they were told they had an doctor’s appointment or something like that, yet when they walked in that guy was there. Are you aware of claims like that?

Mr Williams—This is the first time I have seen that claim, in this article, and I am sure that it is not correct.

Mr Davis—It is not our understanding of how it worked. We understand that the detainees who saw him did so voluntarily and also, in one case, asked a representative who was not Iranian to attend on their behalf to discuss issues with the gentleman who went there. We will, obviously, follow this up and ask more questions, but it is not our understanding of how it did actually occur.

Senator BARTLETT—How did it actually work? Was there just a general notice put around saying, ‘Anybody who wants to meet this person, here is the time and place, and roll up,’ and that anybody could go with them as a witness or an assistant?

Mr Williams—You are right. People were simply informed that the visit was occurring and if they wished to see the charge d'affaires they could do so. He was accompanied by a couple of senior departmental officers as well from Canberra. But his conversations, as I understand it, were private conversations between him and those who chose to see him. There were no witnesses, as I understand it.

Senator BARTLETT—There are claims also, which again I think are in that article, and there is a rebuttal from the department, but it would be helpful if you could formally assure the committee that no personal files or details of protection claims from detainees are now in the possession of the Iranian authorities.

Mr Williams—That is correct. Those files would not be passed to the Iranian authorities under any circumstances.

Senator BARTLETT—Is there any sort of information you would give the Iranian authorities in terms of just broader details?

Mr Williams—Yes. In order to obtain a travel document and to identify the person to the satisfaction of the Iranian authorities—and that is common practice for returns to any country—we would need to provide identity information.

Senator BARTLETT—Are there any arrangements, as part of the development of this MOU and the carrying out of it, to do with what you would call emergency cases, or hard cases—people who are violent towards themselves or those sorts of situations? Or are you leaving that one until the end of the process?

Mr Okely—My understanding is that the process of removal will simply be one of offering voluntary packages at this particular point. There is no intention to focus on a particular group of people.

Senator BARTLETT—It is obviously a little early to tell, but within the next few weeks we would realise, with this initial group of 85—I think you said four have accepted and one—

Mr Williams—I want to correct that. The actual number is that three have accepted the offer and one of those three has departed. I accidentally added the one to the three.

Senator BARTLETT—If you get to the end of a few weeks and there are still 82 saying no, what do you do then?

Mr Williams—Then we provide identity details of those people to the Iranian authorities in order to obtain a travel document and we enforce their return.

Senator BARTLETT—If it is 82 out of 85, that is hardly minimising the number of involuntary returns. The Iranians would not be happy with that, would they?

Mr Farmer—We would not be happy with it either. We would rather see people return voluntarily than involuntarily. The article in the *Financial Review* is a bit symptomatic of something we see, which is that there are people both in the case load and also in the Australian community who really persist in the view that this should not happen and therefore will not happen, and they are talking to people in detention and giving them to understand, incorrectly, that it will not happen. This is a personal observation, but I believe that some

people in the community are doing a disservice to Iranians in detention who will be removed one way or another, as we do remove people one way or another to a variety of countries.

Senator BARTLETT—Can I clarify again that the MOU specifically states the Iranian government's willingness, if necessary, to accept people who are not returning voluntarily.

Mr Farmer—That is correct.

Senator BARTLETT—Thank you. There was some mention again in the media about a departmental minute regarding encouraging voluntary departures, and it was suggested that it contained a phrase that there was a need to create a 'credible threat of involuntary removal'. Was that a correct report, or are you not aware of that report?

Mr Farmer—This is a report of some months ago, if I recall.

Senator BARTLETT—It was three or four weeks ago.

Mr Farmer—It was quoting from a draft document from the department. Let me try to say it as clearly as I can. We have an interest in seeing voluntary returns, as does the Iranian government, and in my view the same is true of the detainees. My hope would be that the reality of involuntary removal, if voluntary removal does not happen, will stimulate voluntary removals. That is just a statement of fact. If voluntary removals do not occur then involuntary removals will.

Senator BARTLETT—I guess you are assuming that once a few involuntary removals happen people might start volunteering.

Mr Farmer—That I think would be in everyone's interest. We do not have an animus against these people, but they do not have a right to stay in Australia and we are looking to remove them in accordance with the law.

Senator BARTLETT—Is there anything different in the removal of people—particularly, say, disruptive, uncooperative people—and the deportation of people to anywhere else?

Mr Farmer—No. Unfortunately we do have some experience with difficult removals. We have a lot of experience with effecting those sorts of removals successfully.

Senator BARTLETT—The arrangements with Iran for involuntary removal would be no different from how you would conduct a removal to anywhere else?

Mr Farmer—We would hope they would be voluntary, but if needs be we would do it involuntarily in cooperation with the government of Iran.

Senator BARTLETT—How closely do you monitor the ongoing human rights situation in Iran, or is that more a matter for Foreign Affairs?

Mr Farmer—The Australian embassy and Foreign Affairs really do that on behalf of the government.

Senator BARTLETT—So, if they had reason to be concerned about treatment of people who were being returned, they would notify your department?

Mr Farmer—That is correct. This was a government agreement, so they would have been consulted as part of that.

Senator SHERRY—How long does the financial assistance continue for? How long are the offers open for?

Mr Williams—The offer is open for 28 days following the formal notification to the person that they have been made an offer. Do you mean in relation to the Iranian case load?

Senator SHERRY—Yes.

Mr Davis—It depends on when people are through their court or other review processes they may still be in before the 28 days commence—that is, when the offer would be made.

Senator SHERRY—I understand that. Some of the people who may return have converted to Christianity since their arrival in Australia. Does DIMIA consider this an issue for those people returning to Iran—whether voluntary or forced?

Mr Williams—Again, that is an issue that would be considered in the refugee case determination.

Senator SHERRY—Was it considered?

Mr Williams—I would expect so, yes.

Senator SHERRY—You expect so, but you cannot give me any more detail than that?

Mr Farmer—There are hundreds of cases of people. If the individual believes that that is a factor which in their view would render them liable to persecution on return then they are able to make that known when they pursue their asylum claim.

Senator SHERRY—When you responded to Senator Bartlett's question about the government signing off on the MOU, were you talking about the elected representatives or the ayatollah and the various collection of mullahs that have significant political power in Iran?

Mr Farmer—That is a factual question. I think Mr Okely can give us the name of the person who signed it.

Mr Okely—The person who signed it was Dr Ansari, who is an official of the Iranian ministry of foreign affairs. There was to be a vice-minister come out, but unfortunately circumstances made it impossible for him to travel and Dr Ansari was asked to sign on his behalf. But we are in no doubt that the authority to sign on behalf of the Iranian government was rock solid.

Senator SHERRY—I have a very basic understanding about the Iranian government, but I understand that the mullahs have some sort of religious council where they scrutinise legislation. Does that definition of 'government' include that group of people?

Mr Farmer—I think you could take it as read that the agreement would not have been signed had not the Iranian processes, which are obviously different from our processes, been gone through. We have an agreement with the government of Iran.

Mr Okely—Certainly our ambassador in Tehran was confident that the signature by Dr Ansari actually constituted commitment by the government or Iran.

Mr Farmer—And the Iranian embassy is giving a reasonable imitation of believing that we have an agreement. Under international law the basic concept is *pacta sunt servanda*—in other words, agreements must be honoured. We have an agreement, and the embassy and the

Iranian authorities are living up to it. I just do not understand how much more simply I can say that we have an agreement with the government of Iran.

Senator SHERRY—I am not sure that an Islamic state would be impressed by your quoting in Latin.

Mr Farmer—I have heard Islamic lawyers, international lawyers, quoting this basic dictum in international law.

Senator SHERRY—Before you started getting a touch agitated, I was concluding my questions in this area.

CHAIR—I think, Senator Sherry, Mr Farmer is just trying to provide the answer to your questions.

Senator Ellison—It has been somewhat laboured.

CHAIR—Have you finished in that area, Senator Sherry?

Senator SHERRY—Yes.

CHAIR—Shall we move on to a further aspect of output 1.3?

Senator Ellison—Before you do, earlier I had questions from Senator Allison about the state legislation in relation to sexual servitude. I mentioned that we were looking at states and territories and what provisions they had. I have here a summary of the provisions across the country: four of the eight states and territories already have offences criminalising sexual servitude; there are other provisions. It may be of assistance to the committee if I table that.

CHAIR—Thank you, Minister; that information is appreciated. Can I seek some guidance as to which area in output 1.3 members of the committee would like to go to next?

Senator KIRK—I would like to go to the area of Woomera detention centre. I have questions in relation to the allegations raised in the recent *Four Corners* report. In relation to incident reports generally, could someone let me know what types of events warrant the filing of an incident report?

Ms Godwin—I will lead off; colleagues may want to add more detail. There are a variety of circumstances which would warrant an incident report. In the broadest sense, they go to those things which would be regarded as a variation to what would be regarded as the normal routine of the centre. Quite obviously, incidents, disturbances, altercations between detainees, altercations between detainees and staff—all of those sorts of things—would be the subject of incident reports, as would medical type emergencies. On the good news front, things like births of children, marriages, baptisms, christenings and those sorts of things would also be the subject of incident reports. There is a variety of circumstances. As you can imagine, the bulk of incident reports relate to what you might regard as negative matters but, very broadly, it is anything that is a significant variation from the normal operation of the centre. There are guidelines about the types of things that ought to be reported and the time frames within which they ought to be reported, and all of those are monitored on a daily basis.

Senator KIRK—Who prepares the guidelines for these incident reports?

Mr Davis—We provide the requirements of incident reporting to the service provider. I was just asking my colleagues but unfortunately we do not seem to have a list here of exactly

what are the areas of mandatory incident reporting as well as the range of matters which Ms Godwin outlined. I do not have that list with me but we can provide that. We provide the instructions to our service provider on what matters we want reported.

Senator KIRK—If you can provide that to us that would be helpful. When there is an ‘incident’, who decides whether or not an incident report is required?

Mr Davis—That would go to the issue of the guidelines. In some cases they are mandatory for any incidents of the nature Ms Godwin outlined where there is an altercation of some form, or the move of a person to outside the centre, or those sorts of events. The expectation is that they are provided automatically by the service provider. Indeed, the incident reporting that we receive is quite voluminous in terms of the range of matters that we require of the service provider.

Senator KIRK—So the obligation falls on the service provider. Who then determines who it is within the organisation that actually makes the decision to file the incident report?

Mr Davis—The service providers certainly have their own arrangements as to the authoring and provision of the incident reports. It is usually the officers involved in an incident who write the reports. As Ms Godwin said, there are also time frames around some different types of reports of incidents. For major events, there may well even be verbal notification ahead of a written incident report. It is an area of our monitoring processes to assure ourselves that the procedures and guidelines and the reporting we receive is consistent with our requirements. It is also an area where the Ombudsman has had a look at and indicated some suggestions or issues that we are discussing with him about ways to improve the incident reporting process, the content of reports and so forth.

Senator KIRK—This document that you are going to provide to us, does that also set out the time frames in which the incident reports have to be lodged?

Ms Godwin—Some of you would be aware I was Mr Davis’s predecessor in the detention job so I have got some personal knowledge as well as broader departmental knowledge. From memory, some of it is set out in schedules to the contract. As well as that I think from time to time we have provided supplementary advice to the service provider about requirements in relation to time frames and so forth. What we would probably need to do, as part of the question that has already been taken on notice, is provide you with a list and the time frames that relate regardless of whether they are in the core of the contract or in supplementary material. Because this has been a matter of interest over some time and was certainly one of the issues that, for example, Mr Flood looked at in his inquiry in late 2000 and early 2001, when we developed the new detention services standards in the context of the contract which we are currently negotiating, we went to a fair degree of effort to try to clarify areas that have perhaps been lacking in clarity under the current contract around all of these reporting requirements: the nature of the reports, the time frames and so forth. So it may be helpful to provide you not just with the current arrangements but with what is in the new detention standards.

Senator KIRK—I was going to ask for that; that would be helpful, thank you. You mentioned that occasionally the Ombudsman contributes to or looks at these matters, is that right? Sorry, I am trying to take notes here.

Mr Davis—The Ombudsman gets the incident reports relevant to the complaint which they are investigating. Because they have obviously investigated a range of matters, they offer comments to improve the incident reporting process. That goes to the content of the reports—their adequacy and so forth—as well as issues around timeframes and procedures. That is an active discussion that we have with the Ombudsman, and we seek their feedback to try and improve the way we go about our business.

Senator KIRK—Is that an ongoing thing?

Mr Davis—Yes.

Senator KIRK—On how many occasions has the Ombudsman been invited to make or made comments in relation to the content, timeframes and the like?

Mr Davis—We would have to take that on notice, because it could arise in individual instances, but we have also had separate correspondence from them on it. We would have to check our records as to how many times, but it is many times that, if they have seen a particular issue arise, they have raised it with us. We seek to respond to those.

Senator KIRK—That information would be helpful. How many incident reports were filed in the last calendar year?

Mr Davis—We do not have the figures with us. We can provide those, but we probably averaged about 20 a day.

Senator KIRK—Is that in each of the centres?

Mr Davis—That would be across all centres. They are sent to a central office area. The average would be about 20 a day across all centres.

Senator KIRK—Whereabouts in the central office area are they sent?

Mr Davis—Within my division in the departmental office.

Senator KIRK—So they are forwarded to DIMIA?

Mr Davis—Yes.

Senator KIRK—When you compile the figures from last year, could you also compile the figures from the last four years if they are available?

Mr Davis—We will see what we have, but we will try to be as helpful as we can.

Senator KIRK—Could you say generally whether the numbers over the last four or five years have remained at around 20 a day or whether they have been increasing or decreasing?

Ms Godwin—The numbers have likely fluctuated in relation to a couple of things, such as the numbers in detention, which have fluctuated pretty widely. The sorts of things that we have spoken to the service provider about from time to time as being areas of interest, in terms of instant reporting, have also varied. One of the areas where we are looking for an enhancement under the new contract is that the current system is purely paper based so, to the extent that there is a statistical issue in all of this, there is a fair bit of manual handling. We will advise the committee if there is a major manual issue in terms of compiling some of the information you are asking about. In the new contract, we have specifically referred to the requirement to have a systems based arrangement so that these things can happen more easily

for both us and the service provider. But, as you could appreciate, when we first entered into the contract in 1997, we had four centres and relatively small numbers in detention. It was not envisaged in that context that the volume would be as it has turned out to be. That is why we have looked at modifying it in the new contract.

Senator KIRK—You said that the incident reports were forwarded to DIMIA. I suppose they are compiled there—and I will ask you questions about that in a moment. Were copies of the incident reports kept at the centre, and were they attached to the file of the individual who may have been involved in the incident?

Ms Godwin—Our understanding is that copies of the incident reports would have been kept at the centre as well as sent to us. We would probably need to check whether all of the reports are attached to the files of the individuals involved, because some of the incident reports, as you can imagine, deal with a general incident in the centre covering a number of detainees. That sort of general incident report probably did not find its way onto the individual files of each of the detainees involved. If an incident report related to an individual, then there would be a greater expectation it would be on the individual's file. My understanding is that there are copies kept by the service provider and copies are forwarded to us. DIMIA does not keep a separate set in the centres.

Senator KIRK—Are you saying that, if there is an individual involved or a specific incident, in most cases or in all cases it is filed?

Ms Godwin—I would want to clarify this. When we get an individual's file—for example, if we need to request it because there has been a complaint or something of that sort—typically you find copies of incident reports. Incident reports which go to broader incidents dealing with numbers of detainees would not necessarily be in individual dossiers, individual files.

Senator KIRK—Are these incident reports collated on a weekly basis or a monthly basis?

Ms Godwin—They are kept serially. There is a numbering system.

Mr Davis—When they are received they are logged. We have developed an internal database to hold the material, because of the paper based nature of it. We have done that over the last year or two to better handle the information coming in. We have a process in place in which we provide a monthly analysis report on the incidents that have occurred during the month across all centres. An officer or officers within my monitoring team look at any issues arising.

Our database also provides us with a mechanism to generate some statistics on the incident reports et cetera. We have a process which seeks to compile the information immediately and then we progressively analyse the material. It not only feeds into the performance monitoring process I was talking about earlier and the quarterly assessment processes but also alerts us to issues that may need further investigation or questions raised in the contract operations group or with the service provider. In a broader sense, it helps us to analyse any thematic or other issues that may arise because of the nature of the reports coming in.

We use the information from the incident reports in multiple ways to deal with immediate performance issues, any emerging issues or whatever. We try to watch the information coming

in from multiple angles. That is one of the priority activities associated with monitoring the contract for my team.

Senator KIRK—So you are ultimately responsible for overseeing this process?

Mr Davis—Yes.

Senator KIRK—From what you have told me, the data that is collected is essentially being used for quality assessment for monitoring the performance of the contract and not for monitoring individuals as such within the centre.

Mr Davis—Sorry, I missed the start of your question.

Senator KIRK—It was a statement. As I understand it, the information that is collected is just used for monitoring purposes and for producing these quarterly assessment reports and the like, rather than for monitoring individuals within the centres.

Ms Godwin—We are doing a bit of a double act here. The important point to make is that the incident reports, first and foremost, are received in the detention operations section and are reviewed in terms of the actual incident, the nature of the event, on a daily basis. If there is something in an incident report about an individual, the way in which an issue is handled or there are concerns that it raises and there is a need for a follow-up report, that would be generated out of the daily examination of the incident reports. There is that individual management purpose, if I can put it that way. Over and above that, information is then drawn from the incident reports and goes into the database Mr Davis was referring to so that we can keep track of the numbers and types of incidents and do an analysis.

Just to make a reference to you, early in probably 2000 one of the issues that the Ombudsman raised with us was whether we were doing another layer of analysis over and above the individual examination of the incident reports, which had been the substance of the process right from the beginning of the contract. It was in response to those sorts of questions and concerns or issues raised by the Ombudsman that we instituted this next layer. There are two layers of work that happen with the incident reports. One is the individual management of things happening in the centres on a day-by-day basis and the other is the statistical analysis over time of the numbers of incidents, the trends and the types of incidents and so forth.

Senator KIRK—Are all of these stats kept? Are they available to us?

Ms Godwin—Going back to March 2001, they are.

Senator KIRK—When it was introduced.

Ms Godwin—Yes. Before that, we only had the daily process that I referred to.

Senator KIRK—When an incident is serious—and by ‘serious’ I mean some criminal offence may be considered to have occurred—who makes a decision about whether or not to bring in the police? Is that decision made by DIMIA or by the service provider when the incident occurs?

Mr Davis—In the first instance, it is the service provider. If we see an incident report which raises concerns for us, we would certainly raise that immediately with the service provider if they had not undertaken to refer something to the police or if we just wanted to question them on it. Indeed, in some instances, we may seek to also speak with police

colleagues about particular incidents to assure ourselves that there is some priority, I guess, on some matters. In the first instance the service provider is obligated to report matters to the police. In that sense, the incident reports give us a mechanism to also intervene. It is very occasional, but there may be cases where we would need to follow that up to assure ourselves that that has occurred and that it is getting appropriate priority.

Senator KIRK—How occasionally do you have to have the follow-up?

Mr Davis—For me personally—I have been in this job eight months or so now—I have probably done it twice in that period where I have sought to assure myself that the matter has been followed up. I wanted, firstly, to assure myself that the service provider had referred the matter on—and indeed they had in those situations—and, secondly, to assure myself through my conversations with the police authorities that it was receiving appropriate authority. That is just my personal experience.

Senator KIRK—Are statistics kept within the department about when that occurs?

Mr Davis—Referral statistics to police authorities are maintained by the service provider and are provided to us upon our request.

Senator KIRK—Are they available for the last 12-month period?

Mr Davis—I would have to take that on notice as to what material we currently have.

Mr Farmer—We will check.

Senator LUDWIG—That would include the incidents where the service provider has not referred them on and subsequently you have decided to refer them on for further investigation?

Mr Davis—If we have requested subsequently or followed up a matter to assure ourselves that it has been referred on, it would be in those statistics, yes. It would go on those lists. Can I just say in relation to the two instances that I referred to that, after having checked with the service provider, they were referred on. Those instances were of such significance that I personally wanted to assure myself that that had occurred. In those particular instances I am not suggesting that proper process had not occurred.

Senator KIRK—On a slightly different topic, I wondered whether or not there has been any administrative or structural changes to the operational aspects since the opening of the Baxter centre?

Mr Davis—Operational aspects of what?

Senator KIRK—Of the centre.

Mr Davis—I am still not 100 per cent clear as to what you are asking me.

Senator KIRK—It is a bit vague, I know. I suppose my question really went to when Baxter first opened, which was nearly 12 months ago now.

Mr Davis—September last year.

Senator KIRK—No doubt there would have been certain guidelines and the like in relation to such things as the incident reports and other matters. I am sure there is a great deal

of that. I am wondering whether or not there has been any significant amendments to the way that the centre operates.

Mr Davis—In the broad, the requirements we put on the service provider apply across all centres but, because of the nature of the infrastructure, the detainees or the processes, there are specific arrangements with individual centres. When Baxter was established we certainly would have discussed with the service provider the application of our general procedures which applied elsewhere and how they would operate at Baxter logistically. I would not portray that as a change but rather that, because it is a different centre, it operates slightly differently from other centres. In that sense, I would not necessarily say that they have changed.

However, in establishing Baxter there was an agreement between us and the service provider that we would review matters after a period of operation of the centre. Those reviews are ongoing but in the initial review processes we have suggested enhancements to things like complaints handling procedures, visitor procedures and some other things in areas where, as the centre was going through its teething and settling stages, we found some chinks that required modification. For example, at the Baxter centre our service provider centralised their complaints handling processes—initially it was not quite as centrally organised as they have it now. So there have been some procedural changes in their handling of matters inside the centre which have helped us, and on areas where we have issues we have been discussing with them the best way to operate. Every centre is different.

Senator KIRK—So you are saying that there is an ongoing review process and communications are going on between your division and the service provider at all times?

Mr Davis—Yes, we find that communication operates at three levels. Our centre managers are talking every day with the service provider managers about issues that arise and how best to deal with some of the reporting and other processes that are going on. Then we have monthly contract operations group meetings which we use on a regular basis as a forum for dealing with issues that we seek to resolve, discuss or improve. Then there is the in-between sort of ad hoc interaction between us and the service provider, particularly between central office and their head office, on all sorts of issues as and when matters arise. If something comes out of that or from our performance monitoring processes—issues around procedures, whether we are doing things the best way or anything that is emerging as an issue—those things are highlighted. That interaction and communication with the service provider is vital to the way we seek at many levels to make sure that we are in sync and that services are delivered, as far as possible, in accordance with the requirements.

Senator KIRK—Are there any plans for a formal review at any time—after 12 months of operation of the Baxter centre, say?

Mr Davis—The process that was agreed on was a formal review process after, as I understand it, three to four months of operation. We did have meetings with them in January or February at the centre—I cannot remember exactly when, but I was at the meeting—where we identified a range of action plans for us, them and the infrastructure people who now work for me about modifications to the way Baxter is operating. We will seek to follow up those actions and any issues arising in our monthly COG discussion processes.

CHAIR—I am sorry about this interruption, Mr Davis. We are trying to identify an opportune moment for Senator Carr to receive some material that the department has offered to provide. Senator Kirk, have you discussed that with Senator Carr?

Senator KIRK—Yes. I am happy for Senator Carr to receive the response, and then we will continue.

Ms Godwin—This will be very brief. Senator Carr raised just before the lunch break what was clearly a serious matter. We have been able to quickly check on the case referred to in the material you provided to us, although we do not have all of the documentation yet. Those allegations were known, had been referred to the appropriate authorities at the time—about a year ago—and were investigated. That goes to the core allegation in relation to the, I think, 11-year old boy you mentioned.

There are other aspects in the documentation that you provided that have subsequently been brought to our attention, prior to your raising them today, and they are the subject of ongoing investigation. We will check the documentation that you provided to us today to check whether there are any other allegations that we were not previously aware of that now need to be specifically followed up.

Senator CARR—Thank you. I understand that HREOC has an interest in this matter as well.

Ms Godwin—They are interested in the matter relating to the mother.

Senator CARR—Just to be clear about this—and I do not want to name the family, as I indicated this morning—we are talking about the rape of an 11-year-old boy that occurred in May 2002 that was allegedly perpetrated by a group of detainees. The parents of the boy approached ACM officers. It is reported to me that ACM officers laughed at the circumstances that surrounded this and refused to act in providing a proper investigation of these matters. The mother and eldest son made further complaints and were, in fact, bashed in response to these matters. When approaches were made to medical staff, medical assistance was refused. There were further incidents arising from this involving both verbal and physical assault. The allegation is that there had been a failure of the department to investigate these matters and to act on these matters. Are you now saying to me that these matters have been known to the department for a year?

Ms Godwin—No, the point I made was that the core allegation in relation to the alleged rape of the 11-year-old boy was made known at the time and was referred and was investigated. I also made the point that we are checking all of the documentation you have provided to see whether there are other matters which had not previously been drawn to our attention that we now need to check. On at least two of the issues that were raised in the documents you provided to us, my point was they were issues that were known to us prior to your raising them and that had been either the subject of investigation or were currently the subject of investigation. We will check all the documentation and all of the issues in the documents.

Senator CARR—I want to be clear about this because it is further alleged that a 16-month-old baby was refused food.

CHAIR—Senator Carr, this is a series of allegations. Could you clarify?

Senator CARR—I have indicated on numerous occasions—

CHAIR—It does make it difficult for the department.

Senator CARR—that this is the nature of the allegations.

CHAIR—Yes, I understand that.

Senator CARR—And further that there were—

CHAIR—Is this in the material that you gave the department this morning, Senator Carr?

Senator CARR—I just want to be clear about what we are looking at. The point I am going to come to will be very clear in a moment. We have a situation here in which it is claimed that the mother of the particular family was injected on five occasions with substances unknown and with an unknown amount of those substances. She was stripped—her clothing was removed—and she was beaten. She was separated from her family, separated from her children, and both parents were separated from one another and the children.

Senator Ellison—This was already covered this morning, I think, Madam Chair.

CHAIR—Yes, I believe that to be the case. So what is the point that you are coming to, Senator Carr?

Senator CARR—The alleged bashings occurred on eight or 10 occasions. My point is this: this has been known to the department for a year. I would have thought you would have been able to come back to me, on the basis of the main allegations, and tell what the finding is.

Ms Godwin—As I understand what I have been told—and we have not been able to receive all of the documents, because this was done very quickly by phone over the lunch hour—the allegation that the 11-year-old boy was raped was made known and reported to the appropriate authorities, who investigated. My understanding is that those investigations have now closed. In relation to the issue that you raise about the mother, it has been drawn to our attention and is the subject of ongoing examination of the allegations. We are checking the documents that you have provided. The allegation is that they have been made known to the department. I do not have information that all of the other aspects that you refer to were known to the department. My point was that we are going through the documents now to check whether there are other things in those documents that we had not previously been aware of and whether they now require investigation.

Senator CARR—Can I be clear about this? You are saying that there has been an investigation. Were the police involved in that investigation?

Ms Godwin—It is my understanding that they were. But once we have all of the documents together, we will be able to clarify that in more detail.

CHAIR—Was that the state police or the Federal Police?

Mr Davis—The state police.

Ms Godwin—Given that we are talking in generalities here and do not want to put the names of the individual family members on the record, we are prepared to do what we have

done numerous times in this committee. That is, once we do have all of the documentation, make it available to you in a separate, private briefing.

Senator Ellison—I make it clear for the record that, as I understand it, the investigation was concluded by state police, not the Australian Federal Police.

CHAIR—Mr Davis clarified that point, and that was my understanding.

Senator CARR—I referred those matters through your office today, Minister, to the Federal Police as well.

CHAIR—Thank you, Senator Carr. Thank you for your assistance with that, Senator Kirk. Are we still discussing the area of 1.3.5 which pertains to detention?

Senator KIRK—We are. Could you outline where you are up to? As I understand it, you were talking about the formal review into the Baxter centre, which I think you said was after six months?

Mr Davis—I cannot recall the exact date, but we had meetings in January or February which I attended. There were certainly some meetings held by my officers and the service provider prior to me also attending meetings with more senior staff from the service provider in a more formal meeting sense. We discussed a whole range of issues associated with the operation of the centre. I have mentioned a couple of those already. Visitor processes and complaints handling were two that, in the initial stages of the centre, we discussed with another service provider about how they were being handled, and there have been some modifications. We agreed on some, for want of a better word, actions plans. Each of us took away issues that we felt we needed to follow up. They are followed up through the monthly contract operations group process to ensure that we are making progress. Some of the matters raised go to the basic infrastructure of the centre. An example of that is the size of the entry building to the centre. That sometimes gets crowded, and it means that some visitors are out the front of the centre in the hot sun, the wet or whatever for a period. While some of the things are not quickly resolved in an infrastructure sense, we have still taken on board looking at aspects of how those sorts of things help the operations of the centre.

Senator KIRK—Are all of the modifications, action plans and the like that you refer to available? Were they formally determined and settled upon?

Mr Davis—I do not know whether I have a single document or a range of documents that I can necessarily put in front of you, but I can certainly on notice provide some information about the issues that we are seeking to take forward.

Senator KIRK—Please do, because I want to be assured that all the matters that have been identified have been followed up. Is that the case?

Mr Davis—Some of those will take some time—like the infrastructure of things, we actually need to get some advice about some of those issues—but some were procedurally or operationally based and we can provide that. I could take that on notice and provide you with a response which goes through that.

Senator KIRK—I would be interested to know what the issues were that were identified, when these matters were resolved—some sort of table—and also those matters which remain outstanding that still need to be addressed.

Mr Davis—I will do what I can.

Senator KIRK—I will now go to the *Four Corners* program, the Woomera program, screened on 19 May. Some of the disturbing footage of the centre shown on *Four Corners* had a man hanging from razor wire while children looked on and a woman's voice could be heard saying:

Go away, children, go away. It's not for you. Go and play. It's not for children.

Arising out of this, I wondered—this is perhaps for the minister—whether there has been any failure of the minister's duty of care in having children exposed to such disturbing scenes.

Senator Ellison—What you have to remember is that we have adults—you presume that they will conduct themselves in an appropriate fashion. We have seen some riots in detention centres where they have not. They have done that where children have been present. We have had allegations that adults have, in fact, acted in an inappropriate way to children. But you have to ask yourself about the adults concerned, what they—

Senator KIRK—I was not actually asking that question, Minister.

Senator Ellison—That is who you should ask about because the person who does those sorts of things when there are children around does have a responsibility—any adult does. So I just put it in that context, that people do have a responsibility for looking after themselves and behaving appropriately.

Senator KIRK—That may well be the case, Minister, but in this case we have children who are detained under the authority of the government and the minister and they are exposed to these disturbing scenes. That is my question and that is my concern, as to whether or not the children ought to be witnessing these kinds of self-harm attempts by other detainees.

Senator Ellison—Clearly that is not desirable, but the fact is that we would assume that the adults concerned would no doubt keep in mind that there are children present when they conduct themselves that way. I think it is a reasonable assumption that these people are going to behave in an appropriate manner.

Senator KIRK—That may well be the case, but when you have children to whom the minister owes a duty of care exposed to such self-harm attempts by detainees in centres which are under the control of the government, is it not the case that there is some obligation to ensure that this duty of care is met and that the children are not exposed to such incidents when they do occur, unfortunate as they are?

Senator Ellison—And attempts are made and all precautions taken to ensure that children are not exposed to this sort of behaviour.

Senator KIRK—What are those precautions?

Mr Farmer—We are really dealing with matters that have been dealt with very extensively in this committee before. The *Four Corners* program really did reheat a lot of issues from the past—as I say, issues that have been very extensively dealt with in this committee.

Senator KIRK—I guess I am not satisfied that the duty of care issue has been dealt with sufficiently in the committee and that is why I want some kind of answer in relation to this as

to what the position is, what the minister's view is about the duty of care issue owed to the children.

Mr Farmer—I will try to put this into some historical perspective. The government has taken a range of measures to deal with the question of children in detention. A number of measures have been taken, including infrastructural measures at the most basic level but also measures designed to provide alternative detention arrangements for women and children. Those developments are in effect very substantial. They include some quite recent developments that reflect the minister's very clear determination to see that appropriate arrangements are made for women and children. There is no doubt that historically, following the large numbers of unauthorised arrivals from the middle of 1999, immigration detention facilities were put under very great pressure and there were infrastructural and other areas that certainly were not optimal. We have never been backward in saying that. But we have worked over the last few years both to improve those infrastructural details and to look at the sorts of measures that will make for more appropriate detention arrangements for children in particular, including the use of alternative detention arrangements for children, especially unaccompanied ones.

Senator KIRK—I am planning to come back to the children in detention a bit later on this evening. Returning to these examples of children being forced to witness self-harm attempts by other detainees, could you provide the committee with the number of incident reports that have been received by DIMIA in the period from 1999 to 2003 which detail instances of children witnessing such self-harm attempts?

Mr Farmer—We will take that on notice and do our best to comply. As you have already heard, we are talking about potentially thousands of incident reports.

Senator KIRK—I want to be assured, firstly, that the witnessing of a self-harm attempt by a child would in fact count as an incident. Then I want to be given some idea, at least, of how regularly this occurs. From what you have said about your data entry system and the like I would have thought that, if there are such incident reports, it would be quite easy to compile the numbers.

Ms Godwin—I think we do need to take it on notice. We did an extensive amount of work on this material in the context of the HREOC children in detention inquiry. It is not an insubstantial amount of work. The most appropriate thing would be for us to look at what we have already compiled in that context and see whether it goes to the issues you have asked about.

I think you said at one point 'children forced to see self-harm attempts'. Every effort is made to try to, firstly, prevent those sorts of incidents and, secondly, prevent them occurring when children are around. The evidence of the videotape in fact points to that. It shows that people were aware of, anxious about and concerned about the proximity of children and were encouraging the children to go away. Other things that have been done to try to ensure that children are not in the vicinity of such things include ensuring that they are attending school programs and so forth. There have been periods of time when they have not been. That is a matter of concern to us. But clearly, if there are children around in the compounds, then it is

sometimes very difficult to prevent them seeing things which would be very undesirable for them to see.

That is one of the reasons why the available infrastructure at the Baxter development, which has permitted family compounds to be developed, is a very positive thing. It enables a much greater degree of separation between families with children and other detainees, and that is one of the protective measures as well. Those are just general comments. We will take on notice the question about the incident reports and see what we can provide you with.

Senator Ellison—Might I just say that with this there is the potential for a great deal of work. I place on the record that the 4 July deadline might not be complied with in view of the extensive work that may have to be done. I alert the committee to that. We have a lot of questions on notice; some require extensive work and some do not. There are the odd ones that stick out, such as this one with its analysis of four years worth of information and potentially going through thousands of reports. I put that on the record.

Senator KIRK—I would have thought that there would have been some identification of the nature of the incident when the data is entered, so it is not as though thousands and thousands have to be gone through; it is just a matter of searching.

CHAIR—Without trying to second-guess the systems that the department uses from the position that we find ourselves in currently, the department has agreed to take the question on notice and the minister has indicated that it may present a significance volume of work, and I guess we will wait to see what the department sends back.

Senator KIRK—I have one follow-up question. At the beginning of my questioning I asked about the nature of the incidents that are reported. I was given a list of a number of both good and bad matters. I want to be assured that the witnessing by a child of a self-harm attempt is listed in the guidelines as a matter which is a reportable incident.

Ms Godwin—I think we would have to take it on notice. I am not sure that it is specifically referred to in quite that way.

Senator KIRK—If it is, then it is not going to be hard to get the figures that I have asked for on notice.

Senator Ellison—I do not think that when an incident occurs the department of immigration sits down and thinks, ‘When we categorise this and report it, how will the Senate estimates committee want this to be categorised in our computer system?’ If you are dealing with self-harm or damage or whatever, the question of whether or not children are present and saw it is a moot point. You could have children in the vicinity who might not have seen it. You might have children in the detention centre who were there on the day, but the question is not as simple as that.

CHAIR—And that is why I made the point that I did not think there was a great deal of utility in us trying to second-guess the department’s systems. I was in discussion with the secretary and did not hear the further question that Senator Kirk asked on this issue. As I understand it, we have an undertaking to have the question examined by its being taken on notice, and we should move on from there.

Senator KIRK—I will be happy when I see the guidelines and see whether or not the matter is reported there.

Senator SCULLION—Obviously, like my colleague Senator Kirk, most Australians were quite shocked and horrified by some of the vision of the riots that we have seen. It appeared to me that the riots were fairly well orchestrated. They seemed to happen simultaneously around the countryside. It appears to have been fairly well organised. Was there any attempt by the perpetrators of those riots to separate women and children from their activities?

Ms Godwin—I will let Mr Davis talk about the more recent incidents. I was, either fortuitously or unfortuitously, on sick leave at the time. Numbers of detainees have clearly chosen not to participate in incidents. In that context, families with children have often worked with their own family and with the detention officers to ensure that they remain out of the incident. Clearly, for those families the children would not have been either parties to or witnesses of the incidents. However, there have been other incidents in which, at the other end of the spectrum, there have been concerns that children have been deliberately brought into the incident in order to make it more difficult for the detention officers to manage the situation.

Certainly, that has been the case in a couple of incidents in Western Australia that I am aware of, where there were anxieties that children had been brought almost to the front of the incident, if you like. So those are the two ends of the spectrum. There are a number of incidents in the middle where, because of the nature of the incident and the infrastructure, it has been difficult to completely separate families with children from the ongoing incident. In those cases efforts have been made to try to provide people with an opportunity to move to another part of the centre. That has happened at Woomera on one occasion that I am aware of. So, in response to your question, there are two ends to the spectrum: people who have deliberately stayed out of things, and incidents where there have been concerns that women and children have been brought into them deliberately. Then, in the middle, there have been incidents where it has been difficult for people to stay out of it. In those incidents our instructions to the service provider have been to try to offer people an opportunity to move to another part of the centre, if that is possible, in order to give them the opportunity to keep out of harm's way.

Senator SCULLION—Do you think that the design innovations of Baxter have facilitated the capacity to be able to maintain those controls? It is easier there than at the other two centres?

Ms Godwin—I certainly think so, as a general point, but I will let Mr Davis comment on that.

Mr Davis—I was going to make that point in referring to the recent Christmas-New Year incidents that occurred. Indeed, at the Baxter centre, for example, the incidents all occurred in single male compounds. Both the family compounds did not see what was going on, because of the nature of the design layout. One point that arose from that—and I guess we are learning the lessons of this—was that we sought to assure the people in the family compounds of what was happening in the centre. Nevertheless, the issue that arose was that, because they could not actually see it, they did not know what was happening, and so had some uncertainty in

their minds about what was occurring. So we have deliberately recognised that we have to keep them informed in this new design layout, where they are not exposed to what is happening, to make sure that we have very clear communication mechanisms back to the detainees in the family compounds, so that they know what is happening in the rest of the centre.

I go further than that. In both the Villawood incident and the Baxter incident at New Year, the people in the family compounds were expressing dismay about and deliberately distancing themselves from the incidents that were occurring—to the point where, as I understand it, they were making public statements and even contacting the minister's office to distance themselves from what was happening. It is true to say that, to a large degree, the women and children—particularly in Baxter and Villawood, where there is physical separation—were largely out of that situation. Port Hedland was probably the centre where the capacity for women and children to be in the vicinity of incidents occurred. But, in that case, the incident was a fire in a building that was being used for storage, which was on the fringes of the compound area. So it was not a riot situation; rather, it was a fire situation. So, again, to my understanding, the issue has not arisen about children being exposed to that. But, in Port Hedland, the infrastructure was such that there was a capacity for them at least to be able to see what was happening.

Senator SHERRY—An allegation was made by welfare officer Alley Crace that needs assessments were not conducted for new arrivals in late 1999-2000. If true, this would be a breach of the immigration detention standards or the performance criteria in ACM's contract generally.

Ms Godwin—As I recall, the specific point she was making was that there was an expectation that the induction process be concluded within 48 hours and that was not happening. We are following it up. It is now, obviously, a number of years ago and goes right to the very first month or so of operation of the centre. It is certainly not our understanding that there was a requirement under the contract for the initial induction to be conducted within the 48-hour time frame. As I say, we are checking back through available documentation to see whether there is anything else we can say on that. But there was no contractual obligation around 48 hours and, as a consequence, no sanctions could apply.

Senator SHERRY—Was there any contractual obligation?

Ms Godwin—There is clearly an operational requirement for people to be properly inducted into the centre. Given that the centre had grown from the pre-existing defence infrastructure to an operational centre in something like four weeks and that numbers of detainees were arriving literally while work was going on, it may well have been a real challenge for the service provider to conduct those induction processes.

The induction processes, if I can just provide some explanation, would include things like ensuring that you had accurate biodata, checking people's possessions, storing them, assigning them to accommodation blocks and doing an initial assessment of whether there were any immediate health issues. There were a range of things that would need to be done in an induction process. This period at Woomera predates my involvement in the program; I can well imagine that it was a challenging time. There was a requirement that the people be

properly inducted into the centre but not within a 48-hour period. Obviously, procedures needed to be bedded down at that very early stage of operation of the centre.

Senator SHERRY—You are saying that it is not a breach of ACM's contract; therefore I assume that there were no penalties, demerit points, in respect of ACM as the contractor?

Ms Godwin—Not around the induction process that I am aware of. I have already made the point that we are checking back through available documentation, but certainly that would not be my expectation.

Senator SHERRY—An allegation was made that there were not enough staff to serve the high-risk assessment teams. Is there any indicated desirable or stipulated ratio of staff to determine the high-risk assessment?

Ms Godwin—No. The contract in the broad does not have staff ratios in it. It has a set of requirements of services to be provided according to the immigration detention standards. Just by way of explanation, the high-risk assessment team process is a process that the service provider has as part of its standard procedures for ensuring that people, where there are concerns about them—health or other concerns—are monitored on more than just the normal operational basis.

The time periods that are set for that observation process are those that are agreed within the centre by the staff who form the high-risk assessment team. With some people, you make sure that you see them every hour. When I say 'see them', I mean that they are observed somewhere in the centre every hour—sometimes it might be more regularly; sometimes it might be less regularly. The exact number of staff that you would need to do that would depend from time to time on the numbers of people who have been identified by the high-risk assessment team and the sorts of time periods for the observation. That would vary very considerably probably from week to week.

Senator SHERRY—Is there any evidence from the incident reports and other reporting that is required to be given to the department under ACM's contracting that staffing could not be adequately provided for the high-risk assessment teams?

Ms Godwin—There is no staffing requirement for the high risk assessment teams as such. The fundamental requirement—

Senator SHERRY—I did not phrase it in that way. I asked whether there is adequate staffing of the high risk assessment team and if there are any incident reports that would illustrate this.

Ms Godwin—I would have to take on notice whether there is anything else that we can provide to you on this point, beyond what I am about to say. The high risk assessment team is made up of a member of professionals in the centre who identify individuals with particular needs. It is the expectation of that team that there would be a process of ensuring that the people who have been identified for the required periods. It may simply be a question of ensuring that officers within a compound have observed the individuals—on an hourly or two hourly basis—to be safe and well and going about their business. So the observations are carried out by all of the staff according to a protocol that the service provider operates. The high risk assessment team, as I say, is normally made up of—and I can give you more

information on this—a health coordinator, a welfare officer and an operational person. Between them they would identify if particular individual detainees need to be monitored on a regular basis to ensure their safety and well-being.

Senator SHERRY—But my question was whether there are any incident reports or other reports that indicate to the department that staffing of the high risk assessment team could not be adequately provided?

Ms Godwin—I have said that I will take on notice whether there is anything that I could add to what I have already said. The point that I was trying to make is that the staffing for the high risk assessment process is not a separate staffing requirement. It is a requirement that all staff in the centre contribute to the observation and monitoring of detainees who have been identified by the individuals on the high risk assessment team. The question that arises is whether the observations are being carried out according to that time schedule, and we would need to check whether there are incident reports that indicate that was not happening.

Senator SHERRY—An allegation was made that ACM management at Woomera would fabricate staffing levels and the department paid for staff that did not exist. Was the department aware of this problem at any time during the contract with ACM? Has it taken any action to remedy this—and, if so, what actions were taken and when did they occur?

Ms Godwin—This goes to a point that Mr Davis was making earlier today about the different arrangements under the contract. I will start with the core requirement and that is the provision of a comprehensive range of services within centres for which we pay—not for staffing—a per diem per detainee. The per diem per detainee is intended to cover the provision of all of the services. The issue of staffing arises, not as a staffing ratio issue, but in the context of examination of whether or not services have been delivered according to the standards.

CHAIR—Senator Sherry, as it is 6:30 p.m., can I suggest that we adjourn until 7:30 p.m. when we will then resumed on 1.3?

Senator Ellison—Before we break I would like to table a letter dated 28 May 2003 from the commissioner of the Australian Federal Police, Mr Keelty, which takes up the matters that we discussed earlier and fulfils the obligations he undertook.

Proceedings suspended from 6.30 p.m. to 7.32 p.m.

CHAIR—We will reconvene our consideration of these budget estimates. I advise in relation to the programming that the committee estimates that no matters in outcome 2 will be reached this evening. We will start at 9 a.m. tomorrow with Indigenous matters. We are still in output 1.3. We were discussing aspects relating to output 1.3.5, detention. I will go back to Senator Sherry on those matters.

Senator SHERRY—Coming back to the core issue of my question, were there any incident reports or other reports in respect of there not being the necessary staff to meet the criteria set out in the contractual obligations?

Ms Godwin—Centre managers will from time to time raise with us concerns about whether particular services are being delivered and whether standards are being met, and in

that context refer to the fact that they think there might be an issue with staff. But the context is in service delivery. Yes, there would be those sorts of issues raised from time to time.

Senator SHERRY—Can you recall any specific circumstances or dates of reports, whether verbal or in writing?

Mr Farmer—Senator, could I ask a question? It is really just to clarify things. As I understand it, you started off talking about *Four Corners*, which was talking about Woomera. Are we focusing on Woomera?

Senator SHERRY—I am focusing on Woomera.

Mr Farmer—Thank you. That is the context in which to answer.

Ms Godwin—Senator, I do not recall dates or specific reports. We would need to go back through the documentation. I certainly recall in general terms that those sorts of things arose from time to time.

Senator SHERRY—Can you give me some examples of what was raised from time to time?

Ms Godwin—I can give you some examples. I recall that at one point there were two doctors on contract. One of them left. There was the question about whether that was going to provide enough coverage. Those sorts of things would have been discussed with the service provider. In the context of incidents, from time to time we would ask whether they thought they had enough staff, particularly if tensions were heightened over a period of time and numbers of staff had been called back on duty and therefore were working long hours over periods of days. You would ask the question in that context. Those are a couple of the sorts of examples I can think of.

Senator SHERRY—Did ACM ever provide to the department—in writing particularly, or verbally—notification of the number of staff and the areas in which they were employed?

Ms Godwin—They are not required under the contract—

Senator SHERRY—I didn't ask that.

Ms Godwin—I know. I was just prefacing my remarks. They are not required under the contract to provide that. From time to time, particularly in the area of services and amenities, we have asked them to report on staff numbers. You may be aware that we have, at regular intervals, had on our web site an amenities table that lists various services and in that context often refers to the particular staff who are engaged in those services. There would have been those sorts of reports from time to time that we would have sought from them, but in the context of service delivery.

Senator SHERRY—They came to you in writing presumably?

Ms Godwin—Not necessarily. When we were compiling the amenities tables we would go to them and ask them to give us the numbers of staff. They may well have sent written reports or we may have asked our centre manager in the individual centre to check with the service provider the number of particular staff in those areas.

Senator SHERRY—Who did these reports—written or verbal—come to within the department? Did they ultimately come to you or delegated officers?

Ms Godwin—They could arise in a number of ways, but the most usual would be either to the centre manager on the spot, who would then report to central office, or through contact arrangements between one of the service provider's central office staff and one of the section heads in central office. We could have used either of those routes.

Senator SHERRY—Would staffing levels be taken into account when assessing whether or not service requirements were being met?

Ms Godwin—No, the focus would have been on whether the service was being delivered. If we had concerns about the quality of the service, we may well then go on to talk about what that was about.

Senator SHERRY—It could be about staff? It could be about a whole range of issues, but it could be about staff as one of the matters?

Ms Godwin—It could well have been about staff in that context, but what would have triggered the conversation would be concern about service delivery.

Senator SHERRY—You cannot have service delivery without staff, can you?

Ms Godwin—But there are different ways that—

Senator SHERRY—I understand that but there is a relationship between staff and service delivery.

Ms Godwin—Absolutely, and I have made that point. As an example, if they did not have a contracted officer at that point but had arranged locum services or fly-in services for another centre, then that would address the point even if there was not a full-time officer for that particular service in that particular centre, providing they had made other arrangements to make sure the service was delivered. That would be our concern.

Senator SHERRY—Was there any occasion when there were discussions about staffing, or reports about staffing, for the department to query the accuracy of the information provided?

Ms Godwin—When invoices are submitted—if you can bear with me, Senator, I need to go back to something we started to talk about before the break—the core of the contract is this all inclusive per diem rate that we pay. In addition to that, the contract provides for—and Mr Davis made mention of this this morning—out-of-scope services. When the invoices are submitted, there is a checking process. We go back to the centre manager to confirm that the service as invoiced has been delivered and those sorts of things.

The nature of the checking would vary according to whether the focus was on the core service, the per diem rate for the number of detainee days, or whether it was an out-of-scope service. If it was an out-of-scope service, you would be focusing on what was the nature of the out-of-scope service and whether that had been delivered. If it was a core service, the focus would be on the number of detainee days and whether that had been accurately calculated and so forth. Mr Davis may want to say something else.

Mr Davis—Only that since the *Four Corners* program last week I have asked my financial team questions around this issue. Certainly from their observations in processing invoices—for a considerable period of time for some of them—the invoices have come through in the

way Ms Godwin has described from our service provider. Indeed, we do go through an internal procedure to ensure that the goods receiving side—that is, the confirmation process—is actually gone through, whether that happens in the centre where the information is held or, in some cases, if the information is held in central office, that goods receiving or confirmation process happens in central office.

Given the volume of receipts for Woomera and the minister's request to us to examine all those invoices to assure ourselves that, indeed, we have the appropriate invoicing arrangements, goods receipting and so forth, we have sought the assistance of our internal auditors, Ernst and Young, to also go through all the invoices associated with Woomera to give us the additional level of assurance that the invoicing is in line with contractual requirements and our internal control processes.

Initial observations of my team indicate that we do not see any areas of concern in the invoicing. The standard service is done on detainee days per diem rates, but we are seeking that additional level of assurance from our internal auditors by having them examine all the invoices relating to Woomera. That is where we are at.

Senator SHERRY—Over what period are the checks being carried out by Ernst and Young?

Mr Davis—We have asked Ernst and Young to look at invoices from the commencement of Woomera through to its closure.

Senator SHERRY—Have they done checks in the past?

Mr Davis—The internal audit program has from time to time included detention matters, and there has been some work done in the area. As to whether it was specifically the type of process that I am describing to you or assisting us with other aspects of managing the payment process or other matters in relation to detention, I would need to check that detail. Perhaps I could take that on notice and give you an outline of some of the activity of Ernst and Young in the area. Certainly the detention program, like all others in the department, is part of the internal audit process and is scrutinised by the department's audit committee.

Senator SHERRY—Who within the department would check these documents from ACM? I would not have thought you would do it. I do not think you were there anyway.

Mr Davis—No, I was not there way back. We have a team established to deal with the financial side of detention and the invoices that come in. That team would receive the invoices. If it was an invoice relating to a centre or the detainee days, or an escort that occurred at Villawood or Woomera or wherever, it would be sent to the centre to which it related for goods receipting, which is the verification process of services being delivered. The centre manager or deputy manager or one of the administration staff there would have a look at the invoice and sign it off. If there was a matter which needed to be discussed with the service provider, they would raise that and we would discuss it.

Invoices are required to have supporting documentation from the service provider, which is gone through as part of that process. That goods receipting process happens in central office in some cases. It may be an out-of-scope service like the housing project at Woomera, where the occupancy of the housing project is not an issue. The issue is whether the project is

actually operating. We would have that information in central office, so some invoices would be confirmed at central office level rather than sent to a centre. In those instances, we would sign them off and then pass them to our financial area for normal payment processing.

Senator SHERRY—Does the finance unit have responsibility for checking invoices from all of the centres or do you have a separate unit for different centres?

Mr Davis—No. I have one unit which covers all the centres.

Senator SHERRY—When will the Ernst and Young report be available?

Mr Davis—They have commenced work. I have requested that, if at all possible, they progress that over the next week or so, but I do not have an exact time line. The volume of material is not insignificant, so I do not have a definitive end date, but I have asked them to do it expeditiously.

Senator SHERRY—It could be a couple of weeks, but we are not looking at a couple of months?

Mr Davis—I am talking weeks, not months.

Senator SHERRY—Will the Ernst and Young report be made public?

Mr Farmer—That will be a report to me, Senator, and I will make that known to the minister, of course.

Senator SHERRY—It will not be made public?

Mr Farmer—I did not say that. I said I will make it known to the minister. I have not spoken with the minister yet about what might happen with the report.

Senator SHERRY—That would be the minister's call?

Mr Farmer—I believe so, yes.

Senator SHERRY—Has the National Audit Office looked at this issue in respect of Woomera at all?

Mr Davis—The only specific context in which the ANAO has looked at the detention area is in relation to the audit of annual financial statements, where all parts of the department are examined. Being a high value area of the department, it has had some attention from the ANAO during those processes, but not specifically a targeted audit on the detention area.

Senator SHERRY—Approximately how many staff are in the finance unit?

Mr Davis—I have amalgamated several other areas into that unit recently. It was previously three staff, headed by an assistant director. One staff member is at the level below that assistant director—an APS6—and the other is at the APS3 level and is basically the processing person. I have also recently brought in a couple of other financial areas, including the infrastructure branch from another division. I have put that financial team, which is another one or two people, into that unit as well. At the moment the financial unit's team comprises about six staff, but it is covering a broader range of financial duties than it has over the last few years. The standard size of that unit has been three.

Senator SHERRY—You mentioned earlier some documentation being referred to the centre manager and other documentation not. Who ultimately would authorise payment?

Mr Davis—The appropriate delegates. I would need to confirm whether that was a director or assistant director. Generally speaking, it would be at director level or above.

Senator SHERRY—When a recommendation to make payment was transmitted from either the finance unit team and/or the centre manager to whoever would ultimately authorise payment—the individual or individuals at that level for authorisation of payment—did they on any occasion ever query anything from the finance unit team or the centre manager?

Mr Davis—That is a difficult question to answer. There are invoices about which we have had disputes with the service provider. I can think of some examples. Generally speaking, they are areas where the obligations on the contractor have perhaps not been as clear as they could be and we have had to have a discussion. There are some situations where we have shared payment on matters that have gone into the area of beyond standard services and become a discussion of out-of-scope services and what they are. For example, whilst we were undertaking a project to improve the lighting systems at Villawood, temporary lighting towers were established and there was a sharing of the cost between us and the service provider. Sometimes those matters are what we technically call ‘in dispute’, but usually it is a matter of discussing obligations and coming to resolutions on those. Certainly invoices are not taken at face value; and the goods receiving process is a very deliberative process to ensure that we are paying appropriately and meeting our value for money and other FMA obligation tests.

Senator SHERRY—What was the period for payment? Were the invoices left and paid monthly or paid as authorised by the officer in the department?

Mr Davis—The terms of trade for the department are to pay within 30 days of a currently rendered invoice. If there was any adjustment required on an invoice after discussion, once the resubmitted invoice was presented to us the terms of trade are that we pay within 30 days. We would have to do the goods receiving process within that time frame.

Senator SHERRY—An allegation was made that detainees were locked up in 2000-01 during lock downs and that some detainees had their doors drilled closed. Is the department able to confirm or deny that this occurred? If it did occur, what are the details—the dates and the number of detainees and the periods of detaining?

Ms Godwin—We do not have any further information. There are a number of issues that have arisen in that program which we are continuing to follow up. That is one of them.

Senator SHERRY—That is under investigation?

Ms Godwin—It is. I am not sure if you are aware of the nature of the facilities there, but it would not be our expectation that that happened, and we are following that one up.

Senator SHERRY—What were the number of nurses for the quarterly periods 1999 to 2003?

Ms Godwin—We do not have that information. We will have to take that on notice.

Senator SHERRY—You might also give me the number of detainees over the same period. We probably already have that, I suspect.

Mr Davis—I have that information here, Senator.

Senator SHERRY—If it is readily available.

Mr Davis—I have the end of month number of detainees. From what period would you like me to read that?

Senator SHERRY—Rather than read it, because it would be a reasonably long list, perhaps you could provide a copy of it to us.

Mr Davis—Yes, Senator. I have the information for the entire operational period of Woomera.

Senator SHERRY—Thank you. An allegation was made that detainees were taken to Woomera police station. Did this occur at any time during the period 1999-2003 and, if so, when? How many people were placed in police custody?

Ms Godwin—The answer to the first part of the question is yes. The police station at Woomera was used as an adjunct to the facilities at the centre. It would not have been used routinely, but there certainly would have been a number of occasions when it was used. We would have to take on notice the details that you are asking about—the number of times and so forth. I would add, Senator, that a lot of that information would only be held on individual detainee documents, and, given that Woomera has closed and their files are being archived, there may be a considerable amount of effort involved in pulling that out.

Senator SHERRY—But I would anticipate that, because this was an allegation made, this would be one of the matters you would be investigating, wouldn't it?

Ms Godwin—We will certainly be seeking to investigate it. I am simply pointing to the fact that it may not be possible to establish all of the circumstances.

Mr Farmer—I would like to add a footnote to that. When you say 'an allegation made', we are saying that people would have been taken to the police station. There is no denial of that allegation.

Senator SHERRY—When that occurred, would that have been reported to the department?

Ms Godwin—It should have been reported as part of the incident reporting process, and I am aware of a number of times when it was. But the detail of your question—the number of times, the circumstances of each—will take a fair bit of work.

Senator SHERRY—An allegation was made that education and recreation activities were being run for detainees when they were not and that the department was aware that these services were not being delivered. Does the department have any reports that raised concerns about the delivery of these services during the period 1999-2003?

Ms Godwin—I would have to check on whether there were any reports. I am certainly aware that those issues were matters of ongoing discussion with the service provider. The reality is that in the early part of the operation of the centre—late 1999 into the first half of 2000, when the centre was, in effect, being built at the same time as we were running it as an operational centre, when numbers of detainees were increasing at a rapid rate and when the focus was on getting people processed as quickly as we could because that was the obvious priority—there were issues about the degree of amenity, the capacity to run recreational programs. There were not properly established sports fields—that is, areas with proper playing surfaces and those sorts of things. There were incidents where facilities that were

provided were in fact damaged or destroyed during the course of the incident, and that reduced the amenity when we had just made efforts to try and increase it. So, yes, the issues about availability of recreation and other amenities for the detainees was an ongoing issue during that period and was a matter of discussion.

One of the issues, of course, was just the sheer numbers and the ability to provide, for example, in the type of facility we had, enough televisions for people and those sorts of things. There were issues in that area, but the basic point about things not happening at all when we were told they were happening I think is probably a fairly simplistic way of looking at it. There were certainly issues about numbers and the capacity to provide a range of things in the context of the developing centre as it was.

Senator SHERRY—What were the concerns raised about education? You have mentioned some of the recreational activity issues.

Ms Godwin—The education issue was initially an infrastructure problem as much as anything else. We did not, for example, have a dedicated schoolroom initially. We made available a number of demountable buildings which were not required for accommodation and could be used for recreational and educational purposes. They were stocked progressively with computers, books and other equipment. We were then in a position to provide a building for education. It had only just been installed in the middle of 2000 when it was completely destroyed in an incident, so we had to go back to square one and get further buildings to provide that.

There was an issue during that period about the available infrastructure, and the service provider was having to make use of, in a sense, spare buildings to try and provide those sorts of services while we made efforts to get additional infrastructure. The other thing was, of course, that the numbers were large and people were moving through the centre at a reasonably rapid rate by the middle of 2000, so the turnover and so forth was also a challenge in terms of keeping up with the pressures at that point.

Senator SHERRY—You mentioned the buildings, the infrastructure, amongst other issues. What were the other issues?

Ms Godwin—If you go to Woomera now, even though it is closed down, we have an area of the centre that is separately fenced and separately arranged to provide facilities and amenities for education programs for children and for older detainees. We did not have any of that at that point; we just had a big, open area with a lot of demountable buildings. Trying to identify an area that would be able to be separately operated for education purposes and so forth—the provision of play equipment for the children—were all issues being addressed in that early period.

Senator SHERRY—So the department did raise issues with ACM about the sort of matters you have referred to here?

Ms Godwin—Yes, that was part of our ongoing discussion about the operation of the centre and the need to improve overall amenity.

Senator SHERRY—Were there any demerit points in respect of payment?

Ms Godwin—I have not personally checked the individual quarterly performance assessments, and I would need to do that, so can I take that on notice. But to make a general point, one of our objectives—in the way in which we have managed the contract—is to try and get things resolved on the ground as soon as possible, without necessarily having to wait or escalate it into a quarterly performance assessment sanction sort of process. There would have been an ongoing process of discussion and rectification. As I say, the objective is to try and get things fixed.

Senator SHERRY—I understand that. It is commonsense that you would not wait around until the quarterly report to deal with issues.

Ms Godwin—Yes, and if it was addressed, if efforts were made to improve and so forth, then it would not necessarily show up in the quarterly performance assessment. But, as I say, to the extent that it did show up in the quarterly performance assessment I would need to take that on notice.

Senator SHERRY—There was an allegation raised in the *Four Corners* program that the DIMIA centre manager at Woomera was informed by ACM staff of the pending riots and break-outs, but the information was not passed to the DIMIA centre manager supervisor. Do you have any comment to make about that allegation?

Ms Godwin—Without knowing precisely what was said it is hard to comment, but could I perhaps provide a bit of context around it. In the period leading up to the major incident that occurred, the walkout from the centre down to the town on about 8 June, there had been a series of lesser incidents, if you like, in the centre—increasingly vocal demonstrations and those sorts of things. There certainly had been a degree of concern that detainees were becoming more vocal, that the incidents had a potential to escalate. That was something we were focused on.

A lot of the issues being raised at the time had to do not so much with conditions of detention, but with the fact that in the view of the detainees processing was taking a long time—longer than they had been led to expect by people smugglers and others. A lot of our efforts in that time were in getting case officers down there, getting the cases processed, working through all of the checking and clearing processes as quickly as possible so that we could get the visa process going.

We have talked a number of times in this committee over the years about the efforts that were made to streamline those processes. We brought the processing times down very considerably during that period. The focus of those increasing and escalating incidents, if you like, was about the visa process. We were certainly aware that there were tensions in the centre. We were certainly aware there was an escalating level of concern by the detainees and so forth. I personally do not recall—nor have we been able to locate—anything that specifically says, ‘We think there is going to be an incident involving a break-out.’ We had the incident examined after the event and the investigators similarly did not point to intelligence of that sort.

Whether there was local discussion about the sort of things that might happen or not is very hard to comment on now. What I can comment on, from a central office perspective, is that

we were aware of increasing levels of tension and we were attempting to address them by focusing on the visa processing issues. That, as I say, was the context around that period.

Senator SHERRY—Is this allegation raised on *Four Corners* being checked as well?

Ms Godwin—To the extent that we can. But, as I say, local discussions at the centre at the time are hard to re-create now.

Senator SHERRY—You could ask the then centre manager and then centre manager supervisor.

Ms Godwin—We have asked a number of people who were around at the time. The then centre manager is not currently working in the department.

Senator SHERRY—You can still ask them.

Ms Godwin—That is true; we could pursue that. To my knowledge I do not think we have yet.

Mr Farmer—Senator, there is a limit, frankly, as to how far we should go in expending public money on allegations that are put into a program of this sort. Many of them are clearly rehashing allegations that have already been extensively examined. Some of them reveal an ignorance of the contractual arrangements.

There are some limits. I make that point in the context that I was in Adelaide on the Thursday when the incidents first started. I had gone to Adelaide to look at our office there and then to go to Woomera on the Friday. I was going to Woomera to basically have a look at our operations there. I would certainly not have gone to Woomera in the face of a potential break-out. I can say that, from my knowledge, there was no currency made available to me—including from anyone at Woomera—suggesting that I should not go. On the Thursday, when I was in Adelaide, the situation erupted. I was involved in consultations with the South Australian authorities on that Thursday and went to Woomera to join other DIMIA colleagues there dealing with the situation on the Friday. If I am asked what degree of force or what degree of weight I give that particular allegation, personally I do not; I do not give it weight.

Senator SHERRY—The matters nevertheless were raised on a respected public affairs program.

Mr Farmer—Well, okay.

Senator SHERRY—They were raised and raised publicly.

Mr Farmer—Yes.

Senator SHERRY—I would have thought, in terms of a response, it is necessary for the department to take reasonable steps to check the allegations.

Mr Farmer—I think a reasonable use of resources is fine, but I would think also, if we are going to talk about respected public affairs programs, that you might take some account of the view of the secretary of the department. I have just given you a personal insight into that particular angle. I do not do that lightly. I am giving you some idea of what weight I put there.

The program also interviewed someone saying that the detainees on that Friday had to be got back into the centre by force. That did not happen. The detainees returned to the centre

after a protracted period of consultation and discussion with them in which I was intimately involved. I do not believe that it would have been possible—

Senator SHERRY—I was not going to raise that allegation, Mr Farmer.

Mr Farmer—But why not? They are all allegations by a respected program. I do not necessarily—

Senator SHERRY—Strike out those you do not think are correct or accurate after investigation.

Mr Farmer—Yes.

Senator SHERRY—And you obviously had some first-hand knowledge of that one.

Mr Farmer—Yes.

Senator SHERRY—And investigate the others.

Mr Farmer—That is exactly what we are doing.

Senator SHERRY—Good. I think it is important, and whether or not it is *Four Corners* the fact is that the committee is now raising some of these issues at least.

Senator Ellison—Madam Chair, I wonder if it is possible, if there is a list of allegations that Senator Sherry wants to raise on this program, and quite properly so, that the department can have a copy of them and then say, ‘We can take that on notice; we can answer these now and those other ones will have to be taken on notice.’ We have been going at this for some time now and I am wondering if there is any way we can still cover the ground just as effectively but in a more efficient manner?

CHAIR—Minister, I will seek some guidance from Senator Sherry on that. It may or may not be possible depending on what format he has the material in.

Senator SHERRY—It is not, but I have one other matter of substantial allegation to get to and I do want to return to some issues surrounding the contractual payments. We will have to see how we go, Minister.

Senator Ellison—If we can do so with some expedition and bear in mind the secretary’s comments, which I think are well founded.

Senator SHERRY—I do. I do not think I am asking lengthy questions. I am not prefacing them with lengthy—

Senator Ellison—No. Unlike your colleague last night, you are not, and I give you that.

Senator SHERRY—I try to be reasonably succinct in the questions. Could you provide us with a list of the DIMIA centre managers at Woomera and the periods of time they were the managers?

Mr Farmer—We can provide that.

Senator SHERRY—I understand the immigration detention standard developed and implemented by the department is that DIMIA retains full responsibility for detainees at all times. Is that correct?

Ms Godwin—Yes.

Senator SHERRY—Has a duty of care.

Ms Godwin—Yes.

Senator SHERRY—Is it correct to say that DIMIA gave instructions to ACM on management issues and that on occasions ACM was compelled, as a result of those instructions, to carry them out even if ACM disagreed? At the end of the day you called the shots.

Ms Godwin—At the end of the day it is a matter for the immigration department, operating under the Migration Act, to determine who is in detention and whether they can be released. In that context, yes, we call the shots about who is in detention, how long they stay there, those sorts of things. In terms of operational matters, I could stand to be corrected, and I would need to reflect in a bit more detail on that, but just to give you a response at this moment, my experience of the contract is that we would discuss in some detail with the service provider if there were operational issues we wanted to talk about. If we had a view, we would put that to the service provider but we would also take their advice. This was not a ‘we insist; you must’ sort of process.

Senator SHERRY—I understand that would not have been a daily, or perhaps even a weekly, occurrence, but were there occasions when you just simply had to say to ACM, ‘Look, we want it done this way’?

Ms Godwin—I can think of a small number of examples where they put to us that they would like to do something and we would in the end say no, but that would be a very small number of things.

Senator SHERRY—On those occasions, did ACM put their position in writing to the department?

Ms Godwin—I would have to check. Generally speaking, these things were a matter for discussion.

Senator SHERRY—I understand that, but you have said there were occasions where you had to say, ‘Well, at the end of the day that’s it. This is what we at the department want to happen.’ Can you check where that occurred, if it is in writing, and provide a copy of the correspondence to the committee.

Ms Godwin—I will certainly check to see if we can find examples. You can imagine that the amount of correspondence between us is very extensive.

Senator SHERRY—But you have said there are some occasions.

Ms Godwin—I can remember occasions. Whether they are the subject of correspondence or not I would have to check.

Senator SHERRY—I put it to you that it would be unlikely that, where you have had to give a formal instruction to ACM, there is not something in writing.

Mr Farmer—Let me give you an example of the context in which we were operating at times. On the two days in question, the Thursday and Friday, 9 and 10 June 2000, over that night I was driving to Woomera. One of my colleagues rang me from Woomera to say that ACM’s people on the spot there believed that, in order to contain unrest of a particular sort,

they believed they would have to use tear gas. They were really looking for an indication of approval from the department for that. I do not think that had been used before.

Senator SHERRY—They wanted to pass the buck to you in this case, by the sound of it.

Mr Farmer—They were, I think quite rightly, understanding the environment in which they were operating, which was clearly an environment of great public scrutiny on the one hand but also an immediate and present environment of great concern. My response to that was that the security of the centre was a matter for ACM, and if their professional judgment was that they should use that method then I believed they should exercise that judgment. That was not the subject of correspondence, obviously. It was a thing that was done—

Senator SHERRY—It also was not an example of where the department has said, ‘Look, we want it done this way.’

Mr Farmer—That is right, but I think this is more typical of the environment in which we are operating.

Senator SHERRY—I understand in this sort of relationship there would be continuous toing and froing.

Mr Farmer—That is right.

Senator SHERRY—Usually of a verbal nature, but there would be occasions in a subcontractual situation where some things are done in writing.

Mr Farmer—That might well be the case.

Senator SHERRY—Let us see what you can provide for us. I turn to the sexual abuse allegation and the Flood report that it was the nurse’s recommendation that the boy be taken to a doctor for examination. DIMIA sent a manager who conducted an interview with the boy using a detainee as an interpreter. What is the practice with using detainees as interpreters? Is it usual? Would an accredited interpreter normally be used? If not, why not, and what were the circumstances?

Ms Godwin—Senator, it is probably my turn to get a bit emotional at this point. Those allegations were extremely thoroughly tested at the time. They were the subject of very extensive media comment. The Flood report and FAYS assessed that whole process—the individual boy involved as well as the processes around reporting child abuse and those sorts of things—extremely thoroughly. The allegation on the program was not that the DIMIA manager had interviewed the boy. It was that the centre manager had interviewed the boy. That is the first point that I think is extremely important. I think it was extremely disappointing that the ABC chose to air those allegations again as though they were a fresh set of allegations, with no reference whatsoever to the damage that was done to that family by those unfounded allegations or to the fact that it might raise those same concerns again for that family, with no mention whatsoever that through an extremely thorough investigation by FAYS they were tested and found to be unsubstantiated.

As I say, I went through that process. It was extremely difficult for everybody, but most importantly for the family involved; for the boy and his dad it was a very tough time. I think it was really quite irresponsible not to mention in that program the fact it had been thoroughly tested. Sorry, I will try to get back to the point of your question about the interpreter.

Senator SHERRY—I appreciate that you can get caught up in these circumstances in an emotional way, but I am trying to—

Ms Godwin—No, your question about the interpreter I understand. It is not standard procedure. It is unfortunately the case—and certainly it was during that period in detention centres, and particularly at Woomera, I think—because of the numbers of detainees, the variety of language groups and so forth, that there were not always properly accredited interpreters there all of the time. In that context, while we would not promote it as best practice, it certainly was the practice that from time to time other detainees who could speak English would be used in that capacity.

The conduct around that particular case, as I say, was thoroughly investigated by the Flood inquiry. It would not be unfair to say that the view taken was that the case should not have been handled in the way it was. It should have been referred immediately to the appropriate authorities. The use of a detainee as an interpreter in those circumstances would certainly not be regarded as best practice by us—or in other similar circumstances, I should add.

Senator Ellison—Madam Chair, the minister has made a statement in relation to this and has said that, in response to allegations about the sexual assault on a 12-year-old boy, he initiated an inquiry undertaken by Mr Philip Flood to determine, among other things, if there were any instances of failure to follow appropriate procedures. What should be remembered is that, at the same time, Family and Youth Services in South Australia and the South Australian police undertook a thorough investigation of the specific allegations regarding the boy. Neither Mr Flood's inquiry, nor those of the Family and Youth Services or the South Australian police found any evidence to substantiate the highly publicised allegations. The boy in question and his father were left without any recourse to defend themselves against a vicious campaign of vilification by refugee advocates, aided and abetted by the media. That is the statement by the minister.

It would seem that in that case *Four Corners* has successfully impugned the department, Family and Youth Services in South Australia, the South Australian police and Mr Flood. Obviously *Four Corners* was of a view that the inquiry and the investigations were insufficient. It seems that they did not provide any evidence to back that up. It would be—when you consider the seriousness of the allegation and the institutions that they are bringing into question, both state and federal—somewhat surprising that fresh evidence was not adduced on that program—and it was not. Therefore I think Ms Godwin's comments are somewhat restrained, in my opinion, and right on point.

Senator SHERRY—In measuring detention standards—to use a couple of examples—how are dignity and privacy measured?

Ms Godwin—Of their nature, of course, these are subjective judgments. We have a process of looking at incident reports and other information that comes to us, in a sense, trying to make a judgment of whether something would have been an affront to a detainee's dignity. There have been examples I am personally aware of where we have certainly tackled those issues with the service provider, where we thought detainees had been not treated with due courtesy or dignity. Privacy issues obviously are constrained in some respects by the nature of the infrastructure, which is mostly communal accommodation. But we expect the service

provider to make every effort to ensure the protection of people's privacy—for example, that people are not disturbed while they are using the ablutions and so forth. Those sort of instances have arisen from time to time, and they have been matters taken up with the service provider.

Senator SHERRY—What is the purpose of measuring these standards?

Ms Godwin—The purpose?

Senator SHERRY—Yes.

Ms Godwin—To ensure that we are getting the service we have contracted for and that it is being, in our view, properly provided to the detainees. The context, as you are aware, is administrative detention. We expect the detainees to be treated appropriately, courteously, with respect. Obviously, we cannot be there to watch every single interaction between the service provider and individual detainees, but if instances come to our attention where we think there have been issues in those areas, we certainly do pursue them with the service provider.

Senator SHERRY—Regarding a couple of issues we have touched on, are these measurements relevant in any way to the payment system under the contract between ACM and DIMIA?

Ms Godwin—They are relevant. Mr Davis mentioned earlier the point system and the retention amount, if you like. In that context, if we make an assessment that there has been a failure to provide a service to the standard required and negative points are applied, then yes, that does have an impact on the payment. We do not pay that component of the retention fee to the service provider.

Senator, could I also make a general point. Because we have been talking a bit about the issues like privacy, dignity, the behaviour of the service provider and the fact that we pursue those matters with the service provider, I think I should also point to a view that was put to us last year by the human rights commissioner after a visit to Woomera after talking extensively to detainees. I do not have the exact quote with me, but essentially the point they were making was that, despite the difficult physical conditions, the terrain and isolation, these issues no longer formed the basis of complaint by asylum seekers. Most adults seemed to recognise the hardships and generally expressed only minor complaints about security staff and conditions in general.

At that point the commissioner was making a point about people's concerns about their status. In many respects, it was disappointment that they had not been successful in their claims to get a visa which were much more compelling in the minds of the detainees. I am not quoting that last point. Last year when the human rights commissioner was at Woomera talking to detainees about conditions and relationships with detention staff and so forth, that was not the focus of the comments made to him at that time.

Senator SHERRY—We had a bit of a discussion earlier, particularly with Mr Davis, about the contractual per diem rate and then the out-of-scope rate. I could use the terms 'base fee' and 'bonus payments', but, whatever terminology you use, that second level of payment—was there a maximum applicable, possible, at that second level?

Mr Davis—Senator, there is no bonus payment arrangement in the contract. The arrangement is that a certain proportion or percentage of the service fees for each month is held as a retention amount. The assessment of positive and negative points is then applied to that amount. There is a process in the contract whereby there is a carryover arrangement from quarter to quarter, but every four quarters, at the end of that period, there is a zeroing out process. If that retention amount is fully utilised and there are more points to be applied than that amount, that may be carried forward into a subsequent quarter. In an annual process there is a zeroing out and a starting again of that points process.

Senator SHERRY—Are you able to provide us with information about the break-up of the moneys that were allocated out of scope, as you would call it?

Mr Davis—I would have to take that on notice. I do not have those figures as yet, but one of the things I have actually asked my people to do is to see if they can generate that sort of information. I do not know how long that will take, but I will see what I can do to provide that.

Senator SHERRY—You have done it already. That is presumably part of the response to the—

Mr Davis—I have asked them to do it so that I can see for myself the balance for Woomera between the standard fees and those out-of-scope services. I did not put an exact time line on my people to do that. I would have to take it on notice as to that process and what I can provide to you.

Senator SHERRY—Is that something Ernst and Young will be looking at as well?

Mr Davis—I have not specifically asked them to do that. No, not at this point.

Senator SHERRY—But surely the out-of-scope payment, as you refer to it, involves some human judgment?

Ms Godwin—Can I just clarify. Maybe we have not been clear about what the out-of-scope services are. They are not additional payments for the core services. They are for services not covered in the core services. For instance, if someone needs to be escorted from a centre to a court hearing in Adelaide, and we have no way of predicting how many of those could happen, it is hard to arrive at a general rate. Those sorts of escorts would simply be paid on the occasion of the escort for the time that it took. The out-of-scope services are actually not additional to the core services. They are a separate type of service. All of the services covered in the core contract are covered by the per diem rate.

Senator SHERRY—Core, non-core, predicable, unpredictable.

Ms Godwin—That is right. The core services are the large bulk of services we expect to be provided regularly all the time in the detention centres. Then there are these other things which happen occasionally. For example, if a boat turned up at Darwin and we needed to escort the people from Darwin to Woomera, we would have to fly a whole bunch of escorts up to Darwin and then they would accompany the detainees from Darwin to Woomera. Because the number of boats, the size of the boat, the number of planes we would require and the proportion of escorts would be completely unpredictable, that sort of service is an out-of-scope service.

Senator SHERRY—I note in respect of the Senator Murray motion, report 4, the figure of payment by DIMIA for the management of detention centres to ACM was \$411 million from February 2002 to February 2003. Is there an update on that figure?

Mr Davis—I would have to take on notice exact figures, but certainly that is more than one year's worth of payments. It may be a longer period than that.

Senator SHERRY—It might be the entire period.

Mr Davis—It may be the entire period of the contract. I would have to take on notice to see if we have updated figures on that. Certainly the figures related to the contract have been presented each time we were required to do those Murray motion reports. You may well have the latest figure available but I will check that.

Senator SHERRY—Are the payments made to ACM generally monthly? Earlier you mentioned the 30 days.

Mr Davis—The standard service delivery payments for the core services are monthly. We normally get an invoice early in the month. We review and lodge that for payment early the following month. Yes, they are monthly. The other services, given the nature of what they are, are paid as and when those services are provided—escorts and so forth. If an escort occurs we get an invoice for it. We verify that the services were delivered and pay within 30 days of invoice.

Senator SHERRY—Is it correct, Minister, that the minister has requested the Auditor-General to examine the payments to ACM.

Senator Ellison—I do not believe that is the case.

Mr Farmer—Senator, the minister has made a number of statements where he has talked about the general accountability of our operations. He has said our operations are accountable to the parliament, the Ombudsman, the human rights commission, the Auditor-General. He has mentioned a number of bodies to whom we are, in principle or in practice, accountable. He has not made any approach to the Auditor-General.

Senator SHERRY—The process that Mr Davis outlined earlier, particularly the checking by Ernst and Young—was that a request from the minister?

Mr Farmer—No, that was a direction by me partly, I would say, for workload reasons. As with a lot of line departments, we face a considerable resources burden in facing up to the very understandable accountability requirements we have. There is a dilemma for departments like ours. While we are accounting, we are not actually out there improving. It was against the background of that sort of pressure that I thought we needed some external help. It also gives us what Mr Davis correctly called that extra degree of surety about things.

Senator SHERRY—With the contract arrangement with Ernst and Young, because of this special request which was over and above what they would normally be doing, would there be additional payments to them for that or is it just part of their general contractual price?

Mr Davis—Senator, we would pay them for the additional time required to undertake this work, yes.

Senator SHERRY—Is the basis of their work for the department, aside from this request you made to go back and check various matters, hourly rate work or is there a standard contract price?

Mr Davis—There is a standard fee model around it, but I do not know whether that is hourly or daily rates or exactly how it is structured. I do not have that detail in my head. I think the fee structure is based on daily rates—depending on the number of people they deploy to the job as well.

Senator Ellison—The more they do the more they are paid.

Senator SHERRY—Per diem out of scope.

Mr Davis—Yes.

Senator SHERRY—Has ACM ever written to DIMIA about assaults on staff and what it sees as a lack of police action in relation to assaults on staff? If they have not written, has it been raised in meetings?

Ms Godwin—Yes, it has certainly been an area of discussion, as has the more general issue of policing response. That is something, again, which we have talked about in this committee and have been actively pursuing with state police in developing MOUs.

Senator SHERRY—Presumably assaults on staff would have been raised in incident reports, on some occasions at least.

Ms Godwin—On some occasions, yes, that would certainly have been covered.

Senator SHERRY—Was there a report commissioned into soil pollution in the Woomera township in 1996? At least the results were available in 1996.

Ms Godwin—That is well before our time. The detention centre did not start operating until November 1999.

Senator SHERRY—Are you aware of any research in this area?

Ms Godwin—Not personally.

Senator SHERRY—The soil pollution report, I am told, showed amounts of strontium-90, cobalt-60—both nuclear poisons—and large amounts of DDT which were sprayed regularly to kill mosquitoes. Are you aware of any research?

Ms Godwin—I am personally not aware of that research.

Senator SHERRY—The relevance is that the research may relate to the soil in or around the detention centre.

Mr Farmer—We are not aware of it. As you know, the Woomera township and so on is Defence land. I do not know which part of the Defence holdings might have been the subject of that report.

Senator SHERRY—Could you check on that matter for me, to see if there has been a report in relation to the land the detention centre is on? The detention centre is still there, but not operational.

Mr Farmer—We can undertake to refer that to the defence department, Senator. What they might be able to do I do not know.

CHAIR—Do you have questions in relation to Woomera, Senator Kirk?

Senator KIRK—Not in relation to Woomera.

CHAIR—Senator Bartlett, do you have questions in relation to Woomera?

Senator BARTLETT—No. I imagine they have all been asked.

CHAIR—I'm hoping! We have had a comprehensive examination, Senator Bartlett, so I am confident that has happened.

Senator BARTLETT—I have a couple in relation to Baxter.

CHAIR—Senator Kirk, where were you proposing to—

Senator KIRK—I was proposing to go on to children in detention.

CHAIR—Senator Bartlett, are you suggesting you have a short number of questions on Baxter which will take a brief amount of time?

Senator BARTLETT—I am suggesting that, yes.

CHAIR—Senator Bartlett, in relation to Baxter—

Senator BARTLETT—Part of this is to try and clarify or get on the record matters that have been raised with me—allegations et cetera—that I would prefer to try and get direct answers on rather than have them spiralling around the Internet. I have received a number of reports that new disciplinary measures have been introduced in the management rooms in Baxter, including hooks or rings that have been attached to walls so that detainees can be shackled. Do those exist?

Mr Davis—No, Senator, they do not exist.

Senator BARTLETT—When I visited Baxter a month or so back—and I thank the relevant people for the very generous amount of time they gave us—I asked about some of the children there that were now going to the local school. I know there is some contention in relation to that with the local community. Is that still progressing reasonably well?

Mr Davis—My view is that that has gone very well. We have had no issues of concern raised with us from the school authorities or beyond that from other parts of the community. All the feedback I am getting is that it is very positive. The children are certainly enjoying the opportunity to go to school every day, and it is all very positive.

Senator BARTLETT—I wanted to check specifically about the Bakhtiyari boys, who obviously have had some public attention drawn to their situation. I gained the understanding while I was there that they were attending the local school with other children, but I have since been told they are not—that they are getting an education inside the centre.

Mr Davis—I do not have the exact number of children who are not attending the local schools, for a range of reasons, some behaviour related. For those children, the school inside the centre is being utilised. They are being taught by our service provider in a range of areas. I think there is a standard curriculum they use. Those children who are not going outside are

getting schooling inside the centre. It appears there are four school-aged children who are not attending the local schools and are being educated inside the centre.

Senator BARTLETT—That would include the boys I mentioned?

Mr Davis—Senator, I would be concerned for privacy reasons to indicate whether or not the Bakhtiyari boys are amongst those children.

Senator BARTLETT—What is the situation in relation to access to schooling with children who turn 18?

Mr Davis—That is an issue that has arisen for us to deal with in recent times. The situation as it stands at the moment is that the department has no obligation under international conventions or any of our legal processes to provide schooling for children who turn 18 and become adults. Inside the centres, the provision of adult education is one of the activities the service provider undertakes, and we would expect young adults to participate in that, as other adults do. However, we have had a couple of situations, particularly for those in alternative detention arrangements, whereby some detainees over 18 are attending school—that is, secondary school.

It has occurred in Adelaide in the context of the unaccompanied minors who were placed in foster care and then turned 18. There were several of them—I do not know the exact numbers—who were attending Catholic high schools because the Catholic high school system offered positions to them. Given the limited range of activities available to them in that sort of situation, we consented to them attending secondary school, with the Catholic system bearing the costs of that, because that offer was made to us. For detention management reasons, and given the situation they were in—outside a centre without those adult education and recreational activities—we felt that was a reasonable thing to agree to in that circumstance.

I have also received a request from the South Australian department of education, offering a place to a couple of young adults in the Woomera housing project. I am considering that. I have not yet responded to that approach. One of the issues for us there—and we may need to seek some guidance from the minister—is that the centre at Woomera is now shut; therefore, there is no adult education program outside the housing project. Whilst there is some activity of that nature going on inside the project, it may be somewhat limited because of the size or the number of people who are in that facility. So, although not having finally determined the position on that, it is a matter under consideration.

I am also aware that we have had offers for over-18s from the Baxter centre to attend the Catholic high school in Port Augusta, but we have not accepted or agreed to those offers because we see the facilities at the Baxter centre being available to those people and feel that they meet our expectations in that area. That is the sort of situation we are in. At the moment, we are treating this on a case-by-case basis, but certainly in a general sense we are not seeking education for 18-year-olds or above, and we are not agreeing to that other than in the secondary education area.

We have an additional issue confronting us, when we look at these situations, because of our visa requirements. People come to Australia under visa arrangements to study, and we have to balance the situation we are in here against the other policies and the visa framework that we have in the area of studies and visa conditions. It is not an easy issue for us to deal

with. We are treating the offers very seriously when they have been received, but it is very much on a case-by-case basis.

Senator BARTLETT—This question probably leads to where Senator Kirk wants to go to some extent. In relation to the alternative detention facilities or residential housing projects—whatever you want to call them—in Port Augusta, I know a release was done towards the end of last month saying that there had been three possible sites identified.

Mr Davis—Yes.

Senator BARTLETT—The release said that consultations would be held. What is the progress with that? Do you have a time line? What is the situation in regard to the broader question of children in detention, which is obviously a key thing? Some time back, the minister himself identified and announced that he was looking to move more children out of detention centres, yet since that time there does not seem to have been any significant change.

Mr Farmer—Earlier on I indicated to the chair of the committee that, in relation to the question of women and children in detention, we thought it might be helpful if we made a short intervention to set out some facts—including, I believe, some of the things that you have asked. That was in an attempt to be helpful to the committee.

Senator BARTLETT—I will go back and absorb that.

Mr Farmer—We thought we might do it now.

Ms Godwin—I will do it now, so you will hear it on the spot.

Senator BARTLETT—You have not done it yet? I thought I might have missed it.

Ms Godwin—No. You are about to get it in all its glory.

Senator BARTLETT—Shall we do just the Port Augusta progress first and then go into the broader picture?

Ms Godwin—I have Port Augusta as part of it. I think it is probably useful if we can set it in context, because you have made mention of the fact that the minister has clearly indicated his views on this, and we are actively pursuing that. I think we will take all of it; then we can pursue individual questions, if you like. As you are aware, we have already developed alternative detention models for women and unaccompanied minors. Since August 2001 we have had the trial of the residential housing project for women and children at Woomera and we have had alternative detention arrangements for unaccompanied minors in foster care, which have also been used reasonably extensively over the last 12 or 18 months.

The continued focus on women and children has led to revised instructions for alternative detention of unaccompanied minors for whom the minister is the guardian and new instructions for women and children. They were tabled in parliament on 3 December 2002. The minister has made it very clear that every effort must be made to get all women and children who come within the ambit of these instructions out into alternative detention. I will take you through what that means in practice.

The instructions for unaccompanied minors require that, unless there are exceptional circumstances, unaccompanied minors for whom the minister is the guardian will be moved quickly to alternative detention or released on a bridging visa, if eligible. By way of

explanation, there is limited eligibility, so we have had to balance the bridging visa arrangements with the alternative detention arrangements.

Since 3 December 2002, 25 unaccompanied minors have been held in detention. Of these, the minister has been recognised as the guardian under the IGOC Act—Immigration (Guardianship of Children) Act—for nine of them. However, we have statistics for all the 25, because, even if the minister is not formally the guardian, from a duty of care perspective we manage all of them in the same way. Eight of the 25 have been in alternative detention arrangements in the community for the entire period. Another eight have turned 18 or have had their age reassessed to be over 18. That relates to one person. One has been granted a bridging visa, three have been removed from Australia, and five remain in detention facilities, although a further one of these has turned 18 since 7 May. That is the date the stats relate to.

For only one of the remaining four in detention facilities is the minister the guardian under the IGOC Act and, therefore, only one of them falls directly within the ambit of the instructions that were released last December. However, all of them have been assessed and have been found to not meet the instructions, due to either the high risk of absconding or their imminent removal. All but one of these detainees are 17 and have been in detention for less than six months.

The new instruction introduced in early December also provided for alternative detention arrangements for women and children who are likely to spend not short periods of time in detention. To explain that—although I have some statistics—the focus was that, if people were going to be in detention for only a matter of days or a couple of weeks, moving them out to an alternative place of detention could present difficulties, so the focus was on those who were to be there for not short periods of time.

I note that at the present time new arrivals at detention centres are overwhelmingly unlawful non-citizens located in the community—that is, they are overstayers or those who have breached their visa conditions. Before any women or children located in the community enter a place of detention, their eligibility for a bridging visa is assessed. Detention—that is, keeping them in detention in a detention centre—is only used as a last resort in these circumstances.

In particular, special authorisation procedures are in place where it is proposed to continue to detain a family, such that a senior compliance manager must agree that detention cannot be avoided. To illustrate this point, between 1 January and 30 April 2003 a total of 3,075 unlawful women and children were located in the community. The proportion of located unlawful non-citizen women taken into detention is 13.2 per cent. Of that 3,000-plus women and children, 13 per cent of the women and 6.6 per cent of the unlawful non-citizen children are located in the community.

Of the women and children detained, 80 per cent were detained for one month or less, the average being 19.8 days. Under the instructions which the minister announced in December, for those women and children who are already in or are taken into detention, an assessment is made of whether they are eligible to move to a residential housing project on a voluntary basis. In addition to the core requirement that participation is voluntary, the instructions set out a number of other factors which underpin the eligibility of people to participate in

alternative detention arrangements—in particular, that residential housing places are available, that health and character checks have been completed and are clear, that there is no high risk of the detainee absconding, and any other operational issues particular to the detainee and/or the smooth operation of the residential housing project. An example of the sorts of operational issues that would be taken into consideration would be this: if someone needed to stay in a metropolitan area to access health services, it obviously would not be appropriate in those circumstances to move them to Woomera.

All family groups and single females who have been in detention for a not short period have been assessed against the instructions for eligibility to move to a residential housing project. In Baxter, of the 31 family groups who have been there since 3 December, 26 have been assessed as eligible and offered placement in the Woomera residential housing project. Three families have accepted the offer. One family has moved, one is being prepared for movement next week, and the third is awaiting a court decision before the move is undertaken. The other 23 families have declined the offer at this point.

The eight families in Port Hedland IRPC have all been assessed as eligible for placement in a residential housing project. All have declined to move to Woomera. Families and single women at Maribyrnong IDC have been assessed and an offer was made to the one eligible family. They declined the offer. Single women in Perth IDC have been assessed; an offer was made to one single female adult and she declined the offer. Families and single women at Villawood have also been assessed and none were found to be eligible. This includes three families located at Villawood to access metropolitan medical services which could not be supported at Woomera.

Factors which appear to be constraining the participation in the residential housing project at Woomera by women and children include access to external education and the location of the project. The department has been seeking access from the South Australian government to external education at Woomera for some time. Following the recent success in external education being made available to children at the Baxter immigration detention facility, access to external education for children in the Woomera residential housing project has also been made available in the local South Australian government school. The availability of residential housing places has also been very actively progressed and expansion of the Woomera project has doubled the number of available places to around 40 on a medium-term basis. This is an interim step while consultations proceed on the establishment of a new residential housing project in Port Augusta.

You mentioned, Senator, that you noticed the release that identified three possible sites. At present we are awaiting responses from a survey of residents in the vicinity of the three sites, and those sites were identified by the Commonwealth and state governments and the local council. Following that feedback, which is due to be received on 6 June, next week, meetings will be arranged as soon as possible with the residents if that is necessary. The minister will then be in a position to decide the preferred site to progress the housing project in light of the comments received. However, pending the decision on the preferred site, the department is already developing the layout options on each site, identifying transportable houses from Woomera that can be acquired and moved once the site has been identified, and engaging contractors who can move quickly to establish the residential housing project once the final

site is selected. Specifically on the Baxter project, the key issue right at the moment is the final determination of the site. That is dependent on the conclusion of the consultations with the community, but that should be finalised next week, we hope.

The minister has also requested the department to undertake consultations on a possible residential housing project in the Commonwealth owned lodge which is about 700 metres from the Port Hedland IRPC. I mentioned that there were a number of families at Port Hedland that we regard as eligible but who did not want to move to Woomera. In that context, we are looking at whether there is something we can do locally in Port Hedland that would address their particular needs. In the meantime, the additional places at Woomera are now available, and interest in those places will continue to be canvassed.

Let me repeat the point that Mr Farmer made earlier. The minister has made it clear that every effort must be made to get all women and children who come within the ambit of the instructions out into alternative detention, and that is what we are focused on. For women and children who have decided not to move to the residential housing project at Woomera at this point, access to external schools, recreation and general amenity within the detention centres will continue to be a priority. We are in the process of updating the amenities table that has previously been published on activities undertaken in detention—to update the amenities table on the web site so that people have an up-to-date view of the services available within the centres as well as at the residential housing project. I am sorry if that is a bit lengthy, but I thought it was helpful to try and set the overall context.

CHAIR—I appreciate that, Ms Godwin. Could you provide the committee with a copy of the notes from which you have read. Is that possible?

Ms Godwin—Yes.

CHAIR—I might ask someone to collect that from you so that I can make copies and distribute that to committee members.

Mr Davis—To assist the committee whilst we are tabling things, I have here a copy of the material provided to the residents in the vicinity of the three sites in Port Augusta, if it would be of interest to the committee to see what material we provided to the residents and the survey form that we have asked them to complete and send back.

CHAIR—My colleagues are nodding, so that would be helpful.

Mr Davis—I am happy to table that.

CHAIR—Thank you. We will add that to the tabled document. And, Ms Godwin, thank you for providing us with a copy of your remarks. I suspect that, as questions proceed, it is going to be helpful for senators to have the material in front of them. We were with Senator Bartlett. Senator Bartlett, are there questions that come out of that that you wish to pursue now? Then I will go to Senator Kirk.

Senator BARTLETT—There are probably some I wish to pursue, but I am sure Senator Kirk would pursue them more insightfully than I would, so I will let her do that.

CHAIR—That is a competition you two can have! Senator Kirk.

Senator KIRK—Thank you very much for your statement. I found it very helpful, and a number of the questions that I have no doubt have been answered. I was trying to take notes as you were talking. If any of these questions have been covered, please draw my attention to that and I can find it in the written statement. The first one, though, I do not think was 100 per cent covered. Could you inform the committee how many children are currently held in detention centres on the mainland here in Australia and also in Naru and Manus?

Ms Godwin—By way of preface, I think Mr Davis will have the onshore detention centre numbers, but Naru and Manus are actually covered under output 1.5, so he probably does not have those.

Mr Davis—No, I do not. Senator, at the moment in our detention facilities there are 64 male minors and 46 female minors in a total population in all of our mainland detention centres of 1,206. Sorry, did you ask for particular centres? The date of these statistics is as at 16 May.

Senator KIRK—Are they children actually held in detention centres rather than in alternative detention?

Mr Davis—As held in centres, as opposed to alternative detention, 54 out of 64 males—

Ms Godwin—Senator, this is not to cut across the answers being provided now, but we have been in the practice over the last several estimates hearings of providing a reasonably comprehensive set of statistical tables on detention, which goes through centre by centre. We would certainly be more than happy to do that again this time. If you have detailed occupancy questions, we can provide you with a comprehensive set of tables. As I say, that is not to cut across answering this particular question now.

Mr Davis—Senator, I need to clarify something in my statistics, but I can give you a feel for it. There are 64 male minors in detention. I do not know whether it is 10 or 12 of those who are in alternative detention. I would need to check that. There are 46 female minors and I am not sure if it is one or three—I need to check the labelling on my table; it is not clear to me where a couple of those are.

Senator KIRK—So for one or three you are not sure if they are in alternative detention.

Mr Davis—One or three females out of the 46 are in alternative detention.

Senator KIRK—So it is going to be about—

Mr Davis—It is 43.

Senator KIRK—Or thereabouts in detention.

Mr Davis—Yes, and about 52 or so male minors.

Senator KIRK—So we are still talking almost 100 children still remaining in detention.

Mr Davis—In detention centres, yes.

Senator KIRK—In detention centres in Australia.

Mr Killesteyn—Senator, just for the sake of completeness, the overseas offshore processing centre figures—

Senator KIRK—You have that, do you?

Mr Killesteyn—I know it is 1.5, but it might help you. It is 62 minor males and 50 minor females, all in Naru.

Senator KIRK—All in Naru. So there are none in Manus, I take it?

Mr Killesteyn—No.

Senator KIRK—The breakdown in between each centre would be helpful, too, if you could provide that to us now or in the next day or so.

Mr Davis—Sorry, for children?

Senator KIRK—Yes, for children.

Mr Davis—I can give you the figures I have here. If they are not 100 per cent accurate, it is probably the one or two that I was talking about. They may not be right. I will give you the figures I have here: male minors, 26 in Baxter and 18 females; in Port Hedland, 15 males and six females; in Villawood, 11 males and 19 females; and the rest—12 males and three females, I think—are in alternative detention arrangements. Someone has confirmed that that is right.

Senator KIRK—That was the breakdown amongst the three centres.

Mr Davis—There are no minors in either Maribyrnong or Perth centres; none at all.

Senator KIRK—They are the up-to-date figures, you said, as of 16 May.

Mr Davis—16 May, yes.

Senator KIRK—How do the numbers compare with those in December before the minister made his statement? What were the figures as at 3 December or thereabouts?

Mr Davis—I will see if I can find them.

Mr Farmer—While they are checking, I think one important thing to say when we are comparing 3 December and now is that every child in detention now has been assessed to see whether they can be placed in an alternative place of detention. That is the nub issue. We have explained in our statement that there remain some issues with getting people out because of the criteria—for example, families where there is an adult male. In other words, if people would only move with the male, that does not come within the criteria. Some of the issues that were around in December we have overcome—the education issues, for example. With the capacity issues we are gradually making some difference. But that important difference, leaving aside the numbers, is that everyone has been assessed, and those eligible and willing have been moved.

Senator KIRK—Thank you. Yes, I was going to go on to that in due course.

Mr Davis—I do not have the numbers across centres since December. I do not have the actual snapshot of 3 December here. Unfortunately, what I have is what has happened between December and now, but I have had ins and outs and therefore I cannot work out exactly what the numbers were on 3 December.

Ms Godwin—We can get that to you.

Senator KIRK—I was trying to make some sort of comparison about the total change since December. I have figures as of February. My figures are that there were 336 children in detention. I think that is correct, but that is taking in Australia as well as Naru and Manus.

Mr Davis—I do not have any figures at all for Naru and Manus. I could say that in absolute terms I do not think the figures have moved significantly since 3 December onshore. But I have had some flow out and some new arrivals in that period.

Senator KIRK—Perhaps you could take that on notice and see what you can provide.

Mr Davis—Yes.

Senator KIRK—That would be helpful, thank you. In relation to the children who remain in detention, do you have any figures on the average length of stay in detention for them?

Ms Godwin—Senator, again by way of explanation, generally speaking we do not do the statistics on averages because they can be skewed by the large numbers of short stay and small numbers of long stay, if you like. What we have done in the past—and I think we will probably do again if it would be helpful to you—is give you the cohorts: the proportion up to three months, three to six months, three to 12 months or something like that.

Senator KIRK—Yes.

Ms Godwin—Just to give you a sense of the proportions of the various stages.

Senator KIRK—That would be helpful.

Ms Godwin—As I say, it skews it a bit if you do a straight average.

Senator KIRK—I understand. Do you have that here?

Mr Davis—I do have some information here. I will have to do some arithmetic in my head as I read out some numbers. Essentially, out of the 46 female minors in detention, 23 have been in detention for 24 months or more, 24 to 36 months; the other 23, as it turns out, are spread from the shortest in detention at two to three weeks, through to 18 to 24 months. It is a reasonably even spread across that spectrum—which is two years. But half of the female minors have been in for 24 to 36 months. Those are the figures for females.

For the male minors, there are 64; 44 of those have been 24 months or more and again there is a spread across the other time frames from a minimum of two to three weeks up to 24 months.

Senator KIRK—So about half of the males and half of the females—

Mr Davis—Half of the females and probably closer to two-thirds of the males.

Senator KIRK—Spent more than two years—

Mr Davis—Have been 24 months.

Senator KIRK—Between two years and three years in detention.

Mr Davis—That is in detention. I have not got the split up between alternative detention arrangements and detention facilities. I only have that in total in terms of people in detention, I am sorry.

Senator KIRK—I had a figure from last year as to the longest period that a child has ever been detained.

Mr Davis—Senator, I have no children above 36 months in my table.

Senator KIRK—That is in your table with the current figures?

Mr Davis—Yes. The longest ever, I think—have we answered that previously?

Ms Godwin—Yes, we have provided that to the committee previously. From memory, it was—

Senator KIRK—It was a question on notice.

Ms Godwin—Yes, it was a question on notice. It was something over five years, but it was some years ago.

Senator KIRK—That has not changed?

Ms Godwin—Not that I am aware of, no.

Senator KIRK—You mentioned unaccompanied minors in your statement to us. Are there any unaccompanied minors currently held in detention?

Ms Godwin—There are.

Senator KIRK—I think there are eight? Is that right?

Mr Davis—In terms of total unaccompanied minors in detention, at the moment there are four in detention facilities and there are eight in alternative detention arrangements.

Senator KIRK—In relation to the four who are still in a detention facility, I do not think you explained to us why it is that they remain there. Why is it that they have not moved into alternative detention and/or moved into foster care in the community?

Mr Davis—All four children have been assessed against the guidelines, and the reasons for them not being placed in alternative detention arrangements relate to either their imminent removal or their high risk of absconding. Those four children are in Villawood.

Senator KIRK—It has been judged that it is not appropriate for them to be put into foster care?

Mr Davis—We have assessed that it is not appropriate under the instruction.

Senator KIRK—Of those four unaccompanied minors who remain in detention, how long have they been in detention?

Mr Davis—Three of them have been in detention for less than six months. I do not have a time frame on the fourth, but it is longer than that. In all centres, we regularly reassess people who are still in detention. We have a process in Villawood of reassessing people on a weekly basis to see whether the guidelines are applicable to those people. If circumstances change for those unaccompanied minors or any of the women and children in the Villawood centre—the families—the guidelines are being retested against individual families, women and unaccompanied minors on a weekly basis. We also have a monthly reporting process back to us on those assessments.

Senator KIRK—In relation to the four unaccompanied minors who remain in detention, you said that they do not meet the guidelines for being placed into foster care. Is that correct?

Mr Davis—Yes.

Senator KIRK—Did you say it was because there was a possibility of them—

Mr Davis—Either their imminent removal or a high risk of them absconding.

Senator KIRK—Which one is it in the case of those four children?

Mr Davis—It is a mixture. I would need to check the details, but three of those four unaccompanied minors are 17 years of age and are compliance cases. Either they have breached their visa conditions or they have overstayed their visas. In relation to whether a bridging visa is appropriate for those people, that test has already been gone through and these three were placed in detention either because of their risk of absconding or because we cannot be confident that they would make their own arrangements to depart Australia. Therefore, those arrangements are being made while they are in detention. The fourth unaccompanied minor is in a different situation. I do not know whether privacy applies. He is an unauthorised boat arrival who is with relatives in the centre, but not parents. The issue of imminent removal is also the assessment against him.

Senator KIRK—In answer to Senator Bartlett's questions, there was quite a lot of information provided in relation to the Baxter detention centre and attendance at schools. In relation to attendance at schools for those children who were in Port Hedland detention centre and other schools, was that covered in the statement?

Mr Davis—It was not. The arrangements at Port Hedland have been going for some period. My understanding is that all school-aged children at Port Hedland are attending external schools.

CHAIR—Does that include the children with special needs?

Mr Davis—Yes. The children with special needs have access to, I believe, the government school system and they are attending external schools as well.

Senator KIRK—Does the same apply to children over the age of 18 in Port Hedland as applies at Baxter?

Mr Davis—No, it is the same principle as Baxter. Internal education and recreation arrangements are being provided for those people.

Senator KIRK—What is the nature of the recreational opportunities available to these children?

Mr Davis—We are updating the amenities table, as we mentioned earlier, which would provide more detail if we could take it on notice and provide that to you. We were seeking to update that anyway, as we said, and put it on the Web. We have some information here, but we are still compiling that information. Does your question focus on Port Hedland activities?

Senator KIRK—Yes. My interest, in particular, was on excursions that children participate in.

Mr Davis—I do not have numbers of excursions here with me. That is the sort of information that, I think, is provided in the amenities table, but the sorts of activities that are undertaken at Port Hedland include camping, school excursions, sports, arts and crafts, children's videos, walking the dog—an IRPC dog—and homework assistance. That is the range of extracurricular activities, and some of those would be outside the centre.

Senator KIRK—Are records kept of the times, dates and places of these excursions?

Ms Godwin—We would have to look at the exact range. We certainly try to keep a record of the range of activities, the participation numbers and so forth. As to whether there is a date and time noted of every excursion and every child that participated, I do not think we would have it down to that level of detail. We certainly try to keep an eye on how many children are able to participate in excursions and those sorts of things.

Senator KIRK—My question went to the regularity of these activities and whether they occur once a week or twice a week and that sort of thing.

Ms Godwin—We try to cover that information in the amenities table—the regularity and the sorts of numbers that participate—and that is the updating process that is going on at the moment.

Senator KIRK—That would be helpful. You gave me the figures in relation to Naru and Manus—the number of children—but I do not think I was given the number of unaccompanied minors.

Mr Killesteyn—That is 11, all male and all in Naru.

Senator KIRK—How are those unaccompanied minors in Naru being cared for?

Mr Killesteyn—Everyone in Naru is under the care of the International Organization for Migration. As we have explained in previous estimates hearings, we have made arrangements with the IOM for the management of the centres, and they provide full board and quarters for the residents. They provide all other services, including medical services. In relation to children, those of school age are attending local schools in Naru. As I understand the figures, 47 of those minors are attending school. The balance, of course, will be a range of ages. Those that are very young—I think there have been quite a few births on Naru—and others that would not be attending school would be those in the senior years.

Mr McMahon—A number of those unaccompanied minors are with family groups. They are classified as unaccompanied minors because they are not with their parents. IOM has developed a special program to deal with them, where they try to engage them on issues that might arise because they are not with their parents.

Senator KIRK—Some of the questions I have relate to the reunion of these unaccompanied minors with their fathers who are in Australia, but I am aware that would probably come under 1.5, so I may leave them until later.

CHAIR—Thank you. That would be good.

Senator KIRK—I have some further questions in relation to the arrangements for alternative detention. Again, as you spoke I was trying to take notes in relation to the families who have been assessed as being eligible to go into alternative detention, and I was trying to

write down the numbers who have declined and the numbers who have accepted. Starting with Baxter, I think you said there were 31 Baxter families, and 23 had declined to take up an opportunity to move to Woomera.

Mr Davis—Yes. Since 3 December we have had 31 family units in Baxter. Twenty-six out of the 31 we have assessed as eligible. Three of the 26 have accepted a move to Woomera. At the moment we have moved one, another one is in the process of moving, and we are awaiting a court decision before we move the third family. In relation to single females at Baxter, there are three. They have all been assessed as eligible and they have all declined the move to Woomera.

Senator KIRK—Why is there such a low take-up rate? Why is it that only three of the Baxter families have taken up the opportunity to move to Woomera?

Mr Davis—Ms Godwin alluded to that in a statement we provided. There have been a couple of significant issues around the voluntary acceptance or otherwise by people. The main reasons given to us are the external education issue and the special needs cases: that in places like Port Hedland they are going to get better education, in their assessment, than perhaps in the Woomera school. The other key issue that has been raised is the one of separation from partners and the distance of Woomera from any centre, now that we have closed the Woomera IRPC. That is why we are moving as quickly as we can on those other residential housing projects that we mentioned. The minister has requested us to move swiftly, and we are moving as swiftly as we can to progress those, because the distance to Woomera is one factor that has been pointed out to us by detainees who have declined to move to Woomera.

Senator KIRK—Just remind me; I should know this as a South Australian senator. The distance between Woomera and Port Augusta is about 150 kilometres?

Mr Davis—I think it is a bit more than that. It is about two hours from our centre to the housing project. In a minibus, which tends to be the vehicle we use to do our runs every few days, it is probably around the two-hour mark, or maybe even a fraction more, to get from our centre to the Woomera housing project.

Senator KIRK—And the distance in kilometres between Port Hedland and Woomera?

Mr Davis—I do not know, I am sorry.

Senator KIRK—I know it is a very long way. When you were making the offer to the families about their possible relocation to Woomera—you mention that it is a two-hour trip—were any options given to them about regular visits between the males and the families?

Mr Davis—That was clearly an issue for us. When we closed the Woomera IRPC, one of the first things that we sought to establish was a regular bus running backwards and forwards between the RHP and the Baxter centre. The arrangements we have in place are that a bus run comes from the housing project to Baxter on Fridays after school. Any children, with their parent, who wishes to visit the Baxter centre can come on that bus run. That bus goes back on Sunday morning, so if they wish to stay in the Baxter centre with their parents on Friday and Saturday nights, they can do that, and then they go back to the housing project on Sunday morning. On Sunday, the partners are allowed to go back to the housing project, subject to risk assessments et cetera that we do on the individual adult males. The partner goes back to

the housing project with the woman and child, where that is appropriate, and comes back on Sunday night. They can go up on Sunday morning, when the women and children go back, and come back on Sunday night.

During the week we have a shuttle from the housing project down to Baxter. It may be on Wednesdays—I do not remember exactly which day—and then if any women wish to go to the church services, which are regularly held on Thursdays in the Baxter centre, we make arrangements for those individuals to come down to the Baxter centre. We have sought to maximise the capacity for that interaction, given the distance; it can be up to four times a week, but one way or the other partners and the children can see each other.

Senator KIRK—Is that service popular?

Mr Davis—I have not seen any figures on the use of the service. I would need to take that on notice and let you know.

Senator KIRK—That would be helpful, thank you.

Mr Davis—We do what we can to address the issue of distance.

Senator KIRK—You mentioned that the Woomera alternative housing project will now take 40 people. The last figure we were given was 25. You mentioned that it has expanded. How did it expand? Is there an additional property there?

Mr Davis—It is more than one property. We originally had a configuration of three accommodation houses and an administration house. In the three accommodation houses, the figure of 25 is the figure at capacity, if you were trying to put the maximum number of people in. On a medium-term basis, 20 or thereabouts was probably a medium-term population, giving a bit of space and comfort to people in the three accommodation houses. We have added four accommodation houses. We now have seven. That gives us 21 bedrooms, and the figure of 40 is a broad assessment on a ratio of two people per room; that is an adult and a child, normally, or two siblings. Forty therefore is a number that we feel provides a reasonable comfort level if people are there for a reasonable period of time.

We have supplemented the administrative house, which is within the boundaries of the centre still, with an additional residence on the outside of the centre for additional administration purposes and for external visit purposes—for example, a legal representative coming to the housing project to interview their client. We have established a residence on the outside of the facility to allow that to occur so that that person does not come across the boundaries of the housing project itself.

In light of the changed configuration, one of the reasons why the family we are trying to move at the moment have not moved this week is that we are finalising with the service provider exactly how the administration process and that part of the housing project works. We expect a handover process to the service provider very early next week and for that family to move early next week.

Senator KIRK—You said there are 40 places. I am not sure whether you told us exactly how many people are living there at the moment.

Mr Davis—I believe it is 16 but I will need to confirm that.

Senator KIRK—It is about half full?

Mr Davis—I think all of the rooms bar one room of the previous four-house configuration had occupants. We were close to a medium-term capacity with the 16 people there, because of the configuration of the family, the number of children, et cetera. The 16, I believe, were in all but one of the previous bedrooms available to us. There was only one vacant bedroom. The new family going in will not fit into that single room. That is why we need to use the expanded capacity of the housing project to move them in.

Senator KIRK—The new family will take the numbers up to what?

Mr Davis—I believe there are four people.

Senator KIRK—So 20.

Mr Davis—We will start to use the expanded housing with those people moving in.

Senator KIRK—In relation to the ACM staff, when I visited the centre there was, I think, one staff member in every house, or thereabouts. Has there been an increase in staff with this expansion of the facility?

Mr Davis—Yes. We have discussed the staffing needs with the service provider. In my understanding it has increased, but I do not have the precise staffing arrangements in my head. We have renegotiated because there is capacity for more residents. There has been a further discussion about the level of staffing and also the staffing associated with the external administration visits area, because that function and some of the other things to be done in that area—the administration staff—were previously done in the IRPC. Because of the closure of the IRPC, we needed to have the additional house for administration purposes, as well as the external visitors, to supplement the existing smaller administration area. My understanding is that there will be an increase in staff but I do not have the figures.

Senator KIRK—Thank you. You have covered in a fair amount of detail the proposed residential housing project at Baxter. I think I have all the information that I need on that. I am uncertain of the timetable for an equivalent centre in Port Hedland, or did you cover that in your statement?

Ms Godwin—No, I did not set a time frame on it. We have already commenced the consultation process. There has been a public announcement. That centre has a sort of advisory committee and we are talking to them and others, but we also need to consult within government about a couple of issues, and that is being progressed as well.

Senator KIRK—The meetings have not started in Port Hedland?

Ms Godwin—No, we have started—

Senator KIRK—Community meetings.

Ms Godwin—I am not sure if we are having formal public meetings there or whether we are consulting with the residents in the district—around the proposal. I think it is the latter.

Senator KIRK—You do not have a time frame of when it is likely that this will—

Ms Godwin—We have to bring all the threads together.

Senator KIRK—From what you are saying, it is a fair way out.

Ms Godwin—Not necessarily. There is a facility there. We are in a slightly different position there than we are in Port Augusta, where we have a property that we can use. It is a question of, on the one hand, doing the consultations—both in the community and within government—and whatever refurbishment work needs to be done, and also negotiating with the service provider about operational issues. There are a number of administrative things, but we do not have the physical property issue that we have in Baxter.

Senator KIRK—I understand. You said that there were eight families in Port Hedland who were found to be eligible to move to such a facility.

Mr Davis—Yes.

Senator KIRK—In relation to the proposed facility at Port Hedland, is there a budget for the project? Is it in the budget papers, or isn't it that far down the track?

Mr Farmer—Not that far down the track. That is one of the things we are consulting about.

Senator KIRK—Are there any residential housing projects planned for Villawood or Maribyrnong detention centres?

Mr Farmer—Not actively, Senator. In theory, it is a thing we might look at, but the longer-term detainees tend to be at the boat processing centres.

CHAIR—Could I clarify that. Didn't you say, Ms Godwin, in your remarks that there had been an assessment done at Villawood and there were no eligible families or single women?

Mr Farmer—That is right. That would be to move to an existing facility.

CHAIR—Yes. But, nevertheless, it would make producing a facility at Villawood at this stage rather unproductive, if there is nobody eligible to place in it.

Mr Farmer—That is right, yes.

Senator KIRK—Is there a maximum age for children who are permitted to live in the residential housing project at Woomera?

Ms Godwin—No. Well, there are two elements to that. When we first started, we did have an age restriction on male children for cultural and other sorts of reasons. We no longer have a formal age restriction but, in terms of managing the centre and assessing eligibility and looking at configuration issues, it does become more problematic with women and children if there are older, non-relative males in a centre. The appropriateness of it for the older age group of male children is an issue that needs to be considered on a case-by-case basis.

Mr Davis—To add to that, we do have a couple of adult children with their parents in the housing project, but they are female.

Senator KIRK—Thank you. That is all I have on children in detention and alternative detention, Madam Chair.

CHAIR—That completes that area for you, Senator?

Senator KIRK—Yes, thank you.

CHAIR—What about you, Senator Sherry.

Senator SHERRY—We still have a bit to go.

CHAIR—On women in detention and children?

Senator KIRK—Not on that particular issue.

CHAIR—I am just clarifying that. Senator Bartlett, is there anything for you on women and children in detention?

Senator BARTLETT—No. I have one specific case in detention and one other thing about detention more broadly.

CHAIR—Let us deal with your specific case then.

Senator BARTLETT—Thank you. I know that often there are difficulties with specific cases concerning privacy, et cetera, but one that has been in the public arena is Mr Ebrahim in Baxter—the guy that has the two children in Bali. There has been coverage about this. An Australian in Bali is trying to bring them back with him to enable a visit to their father, who I am pretty sure is in Baxter. Is there any progress with that? I understand one of the difficulties had been that this man's children were born in Indonesia and his wife was one of the victims of the Bali bombings. Therefore, they were not able to go back to Iran, which is where the father is from.

I understand that there has now been some offer made for Sammaki—I think that is his name—to apply to the Iranian consulate to get birth certificates from Iran for the children. It seemed an unusual arrangement. I know we have talked a bit about Iran earlier tonight. There are privacy concerns but, given that a lot of this is a public case anyway, is there anything that you can inform me of in this case?

Mr Williams—We sought legal advice through our embassy in Tehran about the sorts of documents that might be needed to establish that the children could obtain travel documents on the basis of their father's Iranian citizenship. The advice was that a certain document, which was loosely described as a birth certificate with an Iranian name of the document—which I do not have with me—is what we passed on to him and his legal adviser as the document that he needed to obtain in order to establish that.

Senator BARTLETT—That is to establish children—

Mr Williams—That is in order to obtain travel documents for the children, Iranian travel documents for the children.

Senator BARTLETT—Would those children then have permanent residence in Iran?

Mr Williams—Yes, that would be evidence of citizenship, I would imagine.

Senator BARTLETT—So that is your understanding; they would then be able to stay there permanently with him in Iran?

Mr Williams—Yes, that is our legal advice.

Senator BARTLETT—Thank you. The sponsoring of his children into the country—I suppose sponsoring is not in this section. It is probably back in 1.1, now that I think of it. Obviously any applications made you will consider as per normal. I might put on notice some of the broader things with sponsoring rather than trouble you with that.

My other matter was more a management issue again relating to a number—not a huge number, but more than one, and more than two, and possibly more than three, but less than 20—cases that have been raised with me of various people at various times who were in detention who have severe mental illness, severe depression and become suicidal, either from prolonged detention or from separation from family. There is another case, which I will not go into, because it is not a public case, of someone who is separated from family who I think are on Naru—a wife and a child.

In considering people's circumstances, whether continuing them in standard detention or requests to have reunification with family, if there are severe instances of major psychological illnesses that seem directly linked to their circumstances, is there any particular procedure that you follow? Do those sorts of things influence at all decisions that might be made about either their situation or the family situation overseas?

Ms Godwin—Senator, we are in some difficulty. Are you focusing most on the cases that are in Naru or on people here in Australia?

Senator BARTLETT—People in Australia, so in detention here.

Ms Godwin—I will let Mr Davis talk in more detail, but clearly individuals with particular health issues, whether they are mental or physical health issues, are a significant focus. We try to continually review the management of those cases to look at appropriate options. I guess one of the difficulties is that a number of the people—in the Australian detention centres anyway—who are long-term detainees have been found not to be eligible for visas. They are available for removal. If their family is back where they came from, an obvious way to resolve that issue for them is to assist them to return home. Clearly, a focus of a lot of the efforts is to try to work with them in that direction. But while that is going on, clearly, attention to their particular needs, their medical treatment and their management options—whether it is in a detention centre or in an alternative place of detention—are continually examined. We question on a regular basis what is the appropriate way to assist a person in the sort of situation you are talking about. But the assumption that the only way to resolve their problem is to enable their family to come here, in our view, is not the only option.

Senator BARTLETT—But it is an option that you—

Ms Godwin—In many instances the family do not have the right of entry to Australia. A person does have the opportunity to return to where they came from. As I say, while we recognise the difficulties that presents for the individual in coming to an acceptance of it, that is something we work with them on. If being reunited with their family is what they are aiming for, then that is obviously one way to achieve it.

Senator BARTLETT—What about people who are actually in the Australian community legitimately with temporary protection visas, who obviously do not have family reunion entitlements, where that separation appears to be a major contributing factor to ill health? Can that be a factor in considering whether or not you might waive the bar on family entering the country?

Ms Godwin—I am not sure if there are other officers here who can deal with that. As you are aware, a TPV does not permit the holder of that visa to sponsor family. The issue of whether or not they are able to do that would be something that could be looked at in terms of

the timing of the consideration of their application. If there is a special need in relation to an individual case, it would need to be looked at on a case-by-case basis. I am not aware of a particular case where this has specifically arisen, but there is the opportunity to look at things on a case-by-case basis for people in the community.

Senator BARTLETT—I could make you aware of one, but outside this forum.

Ms Godwin—Sure.

CHAIR—Thank you very much, Senator Bartlett. Senator Scullion has a question in the general area of detention and then we will move on.

Senator SCULLION—Ms Godwin may be able to help, or perhaps Mr Farmer. The issue relates in a similar sense to the *Four Corners* program. We see it on television, we see it written down and we try to validate some of the things that are going on. This is what drives some of the debate. I understand that a study of asylum seekers in remote detention centres was conducted by the University of New South Wales—a very august body. One would assume that would be a pretty serious study. Are you familiar with that, Mr Farmer?

Mr Farmer—Yes, Senator.

Senator SCULLION—I understand that the study effectively looks in a general sense at the appropriateness of detention in those facilities and was based on a number of interviews of detainees. Is that right?

Mr Davis—The study was conducted, as we understand it, through telephone discussions with detainees. As Ms Godwin said, we take the issues that arise in these areas very seriously, but, notwithstanding that, we believe there are aspects of the way the study was done which bias the results, if you want to put it that way. We are not trying to downplay the importance of us providing support in the detention environment to children, women and men—mental health support, counselling or those sorts of important functions we call on our service provider to do. We do not see in the study itself that the methodology and perhaps some of the conclusions and the severity or the extreme nature of some of the conclusions are valid, given the way it was—

Senator SCULLION—Would you be able to lead me through some of the methodology, Mr Davis? On the other question, do I understand that these people they had telephone conversations with were all in detention or were they other people who had been at one time in the detention facilities and were now in the wider community?

Mr Davis—My understanding is that they sought to interview children only in detention now, from one ethnic group only, so there is a methodological issue about the number of ethnic groups interviewed. They did it by phone. From what we can observe of their questioning process, they were leading questions rather than open questions, in the sense of a neutral type questioning process. The other concern that we would have about such a study is that it was undertaken in a way that meant that there was no recognition or understanding—or even advice sought from us—on pre-existing health conditions or other things that may have contributed to the matters discussed between the interviewers and the children.

Senator SCULLION—There is no attempt to validate some of the assertions that they had made?

Mr Davis—Indeed, and that is one of our major concerns. Also, we would point out that it is not just detention, but where people have come from, their experience, their family situation and a whole range of factors that may contribute to the health and wellbeing of individual detainees. We have concerns about the methodology, but I would repeat what Ms Godwin and I said earlier: that we certainly consider the issue of health of detainees—and mental health is one aspect of that—to be extremely important, and that is why we demand a fair bit of our service provider in the area of counselling and professional support in those sorts of areas.

Senator SCULLION—You said all the detainees were detainees currently.

Mr Davis—Yes.

Senator SCULLION—As I understand it, they have gone through almost every type of appeal, so that effectively they are now awaiting return. Is that so?

Mr Davis—Some are still in appeal processes, but around three-quarters of our people in detention are available for removal, which means they have gone through all their processes.

Senator SCULLION—Do you know if the particular demographic that they interviewed was actually available for removal?

Mr Farmer—I understand that all of them have had their applications for visas refused, and most had exhausted appeals.

Senator SCULLION—They spoke about children. Did the report go to some of the issues that you have alluded to and explained tonight, particularly in Ms Godwin's extensive statement in regard to the housing projects and those sorts of incentives?

Mr Davis—No, Senator. Those are the sorts of areas where the people undertaking the study did not seek information from us as to some of those initiatives that we are trying to put in place to deal with some of these issues. None of that was reflected in the material either.

Senator SCULLION—Have you attempted to get in touch with the authors of this to try to put the record straight?

Mr Davis—I do not believe we sought to approach them directly, no.

Mr Farmer—I think we may have repaid their compliment of dealing with them through the airwaves. Senator Ellison answered a question in the Senate on the 13th which contributed forcefully, I would say, to that process.

Senator SCULLION—Thank you very much, Mr Farmer.

CHAIR—We shall try and make some progress. I understand from Senator Kirk and Senator Sherry that there is some more material in 1.3. We will try to deal with that and make an effort to get into 1.5 before we adjourn for the evening, but, if we do not, I will just indicate the program as we have discussed it.

As the printed program says, we will commence at nine o'clock tomorrow morning with the Indigenous areas of the portfolio. If the tribunals are present at the conclusion of that period, we will examine them directly thereafter and then return to the remaining aspects of the outputs for DIMIA generally. I suspect that will be output 1.5 and outputs 2.1, 2.1, 2.3 and 2.4. MARA is programmed to appear at 2 p.m. and we will examine them at or about that time

and then spend the rest of the time completing whatever is left of 1.5 and outcome 2, as I indicated. As I understand it, we have finished, at least in the area of detention, in 1.3. Is that right, Senator Kirk and Senator Sherry?

Senator KIRK—Yes.

CHAIR—Let us move on to another area. Where are we moving to?

Senator SHERRY—Senator Kirk is going to ask some questions. Before I go, could I put on notice two questions?

CHAIR—Certainly.

Senator SHERRY—I think we have passed the output, and it may be possible to have a response by tomorrow. How many times has the minister, Mr Ruddock, exercised his section 417 discretion where he has rejected an application once, then subsequently approved it? How many times has the minister, Mr Ruddock, exercised his section 417 discretion where he has rejected an application twice, then subsequently approved it?

CHAIR—They are the questions, Senator Sherry?

Senator SHERRY—That is it.

Mr Farmer—Thank you. We will take that on notice. I am not sure about the amount of work that is necessary to isolate those factors, but we will do the best we can.

Senator SHERRY—Thank you.

CHAIR—Thank you, Mr Farmer. I appreciate that undertaking. I believe Senator Kirk was going to go to people smuggling.

Senator KIRK—Ambassador for People Smuggling Issues.

CHAIR—That is correctly placed in 1.3, is it?

Mr Farmer—I believe we can handle it there, because it is all about deterring people smuggling, yes.

CHAIR—Thank you. Senator Kirk.

Senator KIRK—Thank you, Madam Chair. I have some questions in relation to the Ambassador for People Smuggling Issues. I believe the ambassador is a male. What is his main role?

Mr Farmer—He is an officer of the Department of Foreign Affairs and Trade. We can obviously give you some details of his appointment, but I do not want to trespass into their responsibilities, so let us see how we go.

Senator KIRK—Perhaps we will start with his areas of responsibility in relation to people smuggling, both in Australia and overseas.

Mr Farmer—We would be making it up, because we have not been involved in drawing up a program for him; he is a DFAT officer. From our perspective, he has a broad-ranging role, involving his working very closely with us and with other agencies on a range of issues related to countering people smuggling. We have, for example, worked extremely closely with him in the work leading up to the Bali ministerial conferences. Also, we have worked with

him in relation to some of the related work in the region, in consulting with regional governments about capacity building, about enhancing their border control arrangements, enhancing their legislative arrangements. He has worked with us in a range of areas of that sort.

Senator KIRK—It might be better for me to pursue these with DFAT next week, but perhaps I will just finish on this: when did he commence his role?

Mr Farmer—I believe it was shortly before the Bali 1 conference.

Senator KIRK—Which was?

Mr Farmer—April last year.

Senator KIRK—Madam Chair, I may pursue those further with DFAT because of the level of detail.

Mr Farmer—I would be hurt if that was a comment on the quality of my replies!

Senator KIRK—Not at all, no.

CHAIR—There is no room for ‘sensitive’ in an estimates committee, Mr Farmer, I am sorry!

Senator KIRK—Perhaps I will move on to East Timorese TPV holders.

Mr Farmer—That is really 1.2, Senator.

CHAIR—Because they are holders of protection visas onshore.

Senator KIRK—Actually, I think the East Timorese I am looking at are living in Australia on bridging visas.

CHAIR—We may even have whipped back to 1.1 there, but let us just plough on.

Senator KIRK—You are being very accommodating, Madam Chair, for this time of the evening. Thank you. Of the 1,650 East Timorese living in Australia on bridging visas, how many are still waiting for a primary decision on their applications for TPVs?

Mr Hughes—Eighty are still awaiting a primary decision. Out of about 1,900 that started in the process, 80 are awaiting a primary decision.

Senator KIRK—How many applicants are still waiting for Refugee Review Tribunal hearing dates?

Mr Hughes—I do not know how many are waiting for Refugee Review Tribunal hearing dates. That would be a matter to ask the tribunal perhaps, when you speak to them, but 587 have had a tribunal decision.

Senator KIRK—How many applications are before the minister under section 417 of the Migration Act?

Mr Hughes—I do not have that exact figure, but the tribunal in almost all cases has suggested, in the situation of the East Timorese—and they have again affirmed the refusal decisions in all cases so far that they have made a decision on; they have affirmed the primary refusal decision—that there may be a case for the minister to look, on humanitarian grounds,

at the East Timorese under his section 417 intervention power. That process is now well under way.

Senator KIRK—How many have been refused by the RRT? Did you give me a figure for that?

Mr Hughes—Yes, 587 people.

Senator KIRK—That was the 587. I beg your pardon. You say that the process of consideration by the minister under section 417 is under way, and I accept that. What is the average waiting time for the minister to make a decision under section 417 when such a request is made?

Mr Hughes—I do not have the average waiting time. I would have to take that on notice. It could be variable, depending on the circumstances of the case. Bear in mind that the minister, should he decide to intervene in a case, may do it in two stages, because he may ask for health and character checks to take place. The process, if those things have to be done and if there is a decision to intervene, might take, in all, two or three months. I do not have an average figure that I can give you.

Senator KIRK—When individuals make applications to the minister under section 417, are they given any sort of guide as to the length of time they can be expecting to wait for a decision?

Mr Illingworth—The section 417 power is a non-compellable personal power of the minister; there is not an application process in that sense that enlivens it, as, for example, an application being made for a visa. People may request the minister to consider intervening in their case or in the case of someone they know. As a matter of course, all the decisions affirmed by the tribunal—and it is not just the East Timorese, but all RRT affirmed decisions—are assessed by the department automatically on their return from the tribunal against detailed guidelines which the minister has issued to us, which outline the sorts of cases and circumstances in which he would like to have cases drawn to his attention for possible consideration.

One of the difficulties with the average time issue is that it is non-compellable. It is not as if, for example, like a visa decision maker. Once a decision maker in that context decides a case and, say, refuses a visa, then that power is dead and they cannot revisit the case. Quite differently, the minister's power is that, if he declines to consider, then at some further time it is open to him to consider. That has been the case followed by numerous ministers for immigration. It is very hard to say how long that process takes for the East Timorese.

Mr Hughes—Having said that, the minister has indicated to us that, given the position the RRT members have taken on individual cases, he would like us to expedite putting any issues to him, and we are doing so.

Senator KIRK—That is good to hear, thank you. What is the situation for children born in Australia of the East Timorese? What rights will they have?

Mr Hughes—Under the Citizenship Act, if you are born in Australia you do not normally become a citizen unless one parent is either an Australian citizen or a permanent resident. However, if you are born in Australia and remain usually resident in Australia, you

automatically become a citizen at the age of 10. I do not believe any people in the East Timorese case load have actually reached that point.

Senator KIRK—How many children are involved?

Mr Hughes—We will have to take that on notice, Senator.

Senator KIRK—Perhaps also you could advise us as to the age of the children involved. I suppose this question is more for the minister. Is the government considering creating a special visa class for these East Timorese people?

Senator Ellison—I will answer in two parts. The minister has ruled out creating a special visa or class of visa for the East Timorese people who Senator Kirk has referred to, but has indicated that he will use his ministerial discretion where appropriate. I think in the House today he referred to the circumstances where he had done that—not individually but in a generic sense. That is the approach the minister has adopted.

CHAIR—Thank you for that response.

Senator KIRK—Finally, I wondered whether the department has ever made any recommendations to the minister about solutions to this situation.

Senator Ellison—That is advice to the minister; I do not think it is appropriate that that be revealed.

Senator KIRK—Thank you, Madam Chair, that is all on East Timorese.

Senator BARTLETT—Just under that output to do with clarifying, defending and promoting migration law and legal policy in the courts, on the PBS at page 88 you have got a quantity of 1,800 matters resolved. Is that in this financial year? Is that a target or an actual outcome?

Mr Farmer—That is a target. All of the performance figures in the budget statements are targets. The ones in the annual report are reporting on the targets.

Senator BARTLETT—Are you looking at coming in above or below the 1,800? Do you know?

Mr Eyers—We are above that at the moment.

Senator BARTLETT—That is not a good thing, I presume, except for those that have fun in the courts and enjoy such things.

Mr Walker—Of course, while there are those targets, the actual resolutions are really dependent on the number of applications actually made to the courts. Quite clearly, we seek to resolve those matters as quickly as possible. In that sense, while the target is there, the actual outcome is very much something that is influenced by the application rates, which are certainly beyond our control.

Senator BARTLETT—I think there was evidence to this committee earlier in the week with A-G's or the High Court. I was not here, but I read about it somewhere via the extensive media coverage.

CHAIR—Do not believe everything you read, Senator Bartlett.

Senator BARTLETT—The percentage of matters relating to migration before the High Court has increased enormously in terms of their overall workload. Is that a matter of concern in terms of the litigation section? Are you looking at something to try and address that, because I presume it has cost implications as well as time—

Mr Walker—There are a couple of facts behind the high application rate that do assist in addressing it. With the September 2001 changes that aligned the jurisdictions of the High Court, the Federal Court and the Federal Magistrates Court, there is now the ability for the High Court in all but a very small number of cases to remit those to the lower courts for them to deal with. The number of original jurisdiction applications that the High Court would be required to hear is significantly less. As I think the registrar of the High Court said earlier in the week, the High Court has remitted significant numbers of those applications. They certainly still have a significant number on hand, but the overwhelming majority of those can be remitted by the High Court.

Senator BARTLETT—Pardon me if this has been covered previously, but the decision that came down relating to the privative clause—I think it is section 75. Is that right?

Mr Walker—S157/2002.

Senator BARTLETT—There you go, you try and sound clever and get shown up as not having a clue what you are talking about! Anyway, there was a decision on the privative clause and I know there were comments from the minister afterwards that we would be looking at it and we may need to look at potential legislative changes to further enhance the effectiveness of the law in light of the court's latest helpful decision or something like that. Is there any movement on that in terms of your assessment of that High Court ruling?

Mr Walker—We are certainly examining it and will provide advice to the minister in due course.

Senator BARTLETT—There was also a case recently of al-Masri, a Full Federal Court case under habeas corpus that allowed somebody out of detention. Do you know if the time for lodging an appeal to the High Court has expired and whether or not there is any intention to appeal?

Mr Storer—The appeal has been lodged.

Senator BARTLETT—That doesn't really surprise me! Is there a time line for when that might heard?

Mr Storer—It is up to the High Court when they decide they want to hear the appeal.

Senator BARTLETT—In amongst all their other migration matters! Are there any other proceedings at the moment following on from that decision with the habeas corpus component?

Mr Eyers—There have been a number of applications made to the Federal Court by people in detention seeking to rely on the decision in al-Masri. Certain matters have been determined and matters are still proceeding.

Senator BARTLETT—Would you be defending all of those now that that precedent has been set? At least until the High Court appeal is heard, would you continue to defend against those?

Mr Eyers—Certainly the position of the department at the moment is to defend those matters where appropriate, although there have been at least two occasions I can think of where we conceded and an order was made by consent for the release of two detainees.

Senator BARTLETT—Is there any consideration of legislative changes flowing out of those cases?

Mr Walker—Once again, that is something that we will provide advice to the minister on at the appropriate time.

Senator BARTLETT—Back to these Iranian people again that keep popping up, are there any proceedings under way in courts at the moment where people are taking action to try and prevent deportation to Iran?

Mr Eyers—Yes, there have been a number of applications of recent time. Approximately 20 applications would have been lodged in the courts.

Senator BARTLETT—Dealing with 20 people?

Mr Eyers—Twenty applications.

Senator BARTLETT—They could be multiples?

Mr Eyers—They could be multiples. I do not have the details as to how many individuals are involved in those applications.

Senator BARTLETT—Do they all involve people from Iran who are in detention at the moment?

Mr Eyers—Yes, Senator.

Senator BARTLETT—Is that going to impact on the issues we were talking about earlier in relation to attempts to deport these people? Will you be prevented from deporting people while there is action before the courts?

Mr Eyers—The action before the court is to seek to restrain us from removing these people. Depending on the individual circumstances of each case, if there is no reason for the people not to be removed, then we would be defending the action and seeking to oppose any application for an injunction.

Senator BARTLETT—But you would not be able to actually deport them whilst the—

Mr Eyers—Not whilst the court has made an order preventing us from removal.

Senator BARTLETT—But before an order has been made, whilst there is an application before the court, can you deport them at that stage before there is a decision made?

Mr Eyers—Under the act we can, yes.

Senator BARTLETT—Are you going to? That is not your area, I guess, is it?

Mr Eyers—No.

Senator BARTLETT—Are you going to?

Ms Godwin—As we discussed at length earlier, our focus at the moment is trying to encourage voluntary removal to the maximum extent. If that does not result in returns then we will move to the involuntary removal and we will need to consider that issue at that time.

Senator BARTLETT—I understand when people agree to go voluntarily they sign a document and that document includes a section that says they withdraw or do not wish to proceed with any further action.

Ms Godwin—It is usual practice to withdraw any outstanding actions, yes.

Senator BARTLETT—And signing that is sufficient on a legal basis to withdraw from an action.

Mr Walker—They would have to actually discontinue the action in the court.

Senator BARTLETT—Right.

Mr Walker—It is fair to say, in the circumstances that Ms Godwin mentioned, certainly from our perspective we would seek to have the matter resolved by the court as quickly as possible so that there was no outstanding court action; be it the applicant withdrawing, or the court actually determining the issue and deciding whether or not an injunction should be granted. In many of these actions, we believe there is no basis for the court to grant that injunction because there is no basis for them to remain in the country having been unsuccessful with their visa application. In that sense we will be seeking to have the matters resolved as quickly as possible by the courts.

Senator BARTLETT—That is just before the Federal Court at the moment, isn't it?

Mr Eyers—Yes.

Senator BARTLETT—I do not suppose you can give any guesstimate as to when that might be determined by the court?

Mr Eyers—I do not have with me the details of the return dates of those applications. I think the return dates are fairly short but whether they will be determined on that first date or then listed for a further hearing will be a matter for the court.

Senator BARTLETT—In relation to migration agents and a few of the questions that have been asked about potential involvement of one or two bad apples, if you like, and some of the issues that have been raised earlier on, does part of your role in the litigation section include—say if there were significant breaches by agents in terms of misuse of the law—follow-up in terms of prosecution as well?

Mr Eyers—No, we are not responsible for prosecuting offences.

Senator BARTLETT—That would be under A-G or something.

Mr Eyers—It is a matter for the Commonwealth Director of Public Prosecutions.

Senator BARTLETT—So breaches of immigration law, in a sense, for prosecution or whatever would be referred across to that.

Mr Eyers—To the CDPP.

Senator BARTLETT—So you do the defending all the time.

Mr Eyers—Yes, Senator.

Senator BARTLETT—Where is the fun in that?

CHAIR—Thank you, Senator Bartlett. I understand that is the completion of your questions in 1.3.

Senator BARTLETT—Yes.

CHAIR—Senator Kirk, do you have any further questions which you think pertain to 1.3?

Senator KIRK—Yes, turnarounds. I think we were told earlier that turnarounds would come under 1.3.

Ms Godwin—Do you mean turnarounds of unauthorised arrivals at airports and that sort of thing?

Senator KIRK—I am talking about turnarounds occurring overseas. Airports overseas where DIMIA staff are based.

Ms Godwin—ALO interceptions, okay.

Senator KIRK—Yes. My understanding of the term—perhaps you can correct me if I am wrong—is that a turnaround is where a person has a valid passport and an entry visa to Australia but is yet stopped from boarding the flight up to or after arriving in Australia. That is the area I wish to ask about. Perhaps we can first start with how many airports overseas have DIMIA based staff in them.

Mr McMahon—We have 15 staff at airports overseas. Up to the last budget we had three in Bangkok, one in Denpasar, one in Dubai, one in Hong Kong, three in KL, two in Singapore, one in Manila, one in Seoul, one in Suva and one in Taipei.

Senator KIRK—Thank you. At those overseas airports is every flight departing to Australia covered by the DIMIA staff who are on location there?

Ms Siegmund—Physically it is just impossible to cover all of the flights. We try to cover as many as possible. In some airports we work together with airline liaison officers from other countries and it is done in a buddy or roster system, where flights are perhaps covered by an ALO from the Canadians or the British or New Zealanders. Given, for example, some of our airports such as Kuala Lumpur and Hong Kong, where there are very large numbers of flights we do try and cover as many as possible, but sometimes that is just physically impossible to do.

Mr McMahon—One of the roles of the ALOs is also to train the airlines themselves. They have the training role and we would expect the airlines to gain expertise in picking up on some of the documentation and other issues.

Senator KIRK—When people who are approached—those who are departing for Australia—and their passports are checked, as I understand it they are still returned on the next flight. I am trying to understand this. How is it that the DIMIA staff are alerted to the passengers that they ought to be checking? I am just trying to understand the process here.

Ms Siegmund—Can I clarify that there might be some crossover there in some of your terminology between the work of airline liaison officers that are based in offshore airports and

the procedures that might occur onshore at an Australian airport—for example, if someone comes to our attention. That is where I think your discussion about turnaround on the next flight is appropriate.

Senator KIRK—Yes.

Ms Siegmund—Perhaps if I could cover the ALO side.

Mr Farmer—Senator, just before Ms Siegmund does that, I wonder if I could make a general point. We are obviously trying to be helpful but I personally have some reservations about going too far into operational methods because they really are useable by others, other than the committee, in ways that might not be helpful to our efforts.

Senator KIRK—Perhaps we will go as far as we can and then, if you think we are touching on those operational matters, we can stop at that point.

CHAIR—That is the approach the committee has always taken and I think it is important to be cognisant of that.

Senator Ellison—But it is good to have that caveat from the secretary.

Ms Siegmund—Thank you, Senator. As Mr McMahon mentioned to you, our ALOs that are based offshore work very closely both with the host government airport authorities and also airlines and they are there very much in a consultative and advice-giving capacity for those airlines and the host government. They have specialist skills in document examination and a very big part of their role is to do training of both airline staff and airport authorities in that. What would normally happen is that if an airline has a concern about a passenger, about their legal right to travel to Australia, they would call on the ALO to give them advice on that issue. The ultimate decision of whether or not the passenger is uplifted remains with the airline. The role of the airline liaison officer is to provide advice to that airline or, in some circumstances, to host government airport officials.

Senator KIRK—Is that decision made at the check-in counter? The airline staff make an assessment and then call upon the advice of the ALO?

Ms Siegmund—Yes.

Mr McMahon—With advance passenger processing that takes place—and will shortly take place on all flights to Australia—there is automatic checking to ensure that the people have visas before they get onto the flight. The ALOs are not our only external resource in respect of screening passengers who are coming to Australia.

Ms Siegmund—To clarify a bit more, Senator, I guess there are two opportunities: one would be that airline staff could call for assistance at the point of check-in but also, as you would be aware, on boarding as well there is an additional check carried out by airline staff when you go through to board a flight. You have your travel documents and your tickets checked again.

Mr McMahon—On the issue of turnarounds at the airport—and without going into details—broadly speaking, we would expect that people's documentation, demeanour, luggage, arrangements, et cetera, would be consistent with their stay. We have various

methods and various expectations and profiling. It is fair to say that in some cases that does not happen and the people are returned.

Senator KIRK—Do you keep figures on the number of people who are turned around—turned back; however you want to put it—at both points every year? I imagine you would.

Ms Siegmund—Yes, I have some statistics for this financial year, or previous.

Senator KIRK—The past financial year will give me enough of an idea.

Ms Siegmund—In 2001-02, refused clearance at Australian airports was 1,193; 2002-03, as at 30 April it was 717.

Senator KIRK—Are they total figures for those who were refused at the overseas airports and upon entry into Australia?

Ms Siegmund—No. Those figures were for Australian airports. I can give you our interdictions as well, if you would like those.

Senator KIRK—Thank you

Ms Siegmund—For 2002-03—this is to 31 March; I apologise because they are two different date settings, but I can probably get you to the end of April as well—on direct Australian bound flights, the total for all of our airports offshore was 246, but a further 986 were also intercepted who were travelling to other destinations. The reason for that is that our experience, and airline experience, has shown that, for example, in Bangkok if an airline asks for our advice, it is very often because they believe the passenger is intending to go to Australia but may not be going direct from Bangkok to Sydney. They might be going Bangkok, Hong Kong, Sydney, so they still require our advice. We still keep those statistics as well on interdictions where we have intervened with the airlines and given them that advice.

Senator KIRK—I would not have any idea of the number of passengers who are travelling, so just giving me those raw figures does not really assist me very much in understanding the percentage who are turned back. Could you perhaps give me some kind of guide.

Ms Siegmund—Of overall passengers?

Senator KIRK—A percentage of that, compared to the overall number who arrive in Australia.

Mr McMahan—We have 18 million people move through our airports a year.

Mr Killesteyn—Senator, can I clarify that. That is 18 million total passengers. That probably includes about half Australian citizens, so you are then looking at about nine million passengers, but that is inwards and outwards, so you have to halve that figure again. We can get you more accurate figures, but you are probably looking at a figure in the order of three million to four million foreign citizens coming to Australia.

Senator KIRK—That is a pretty small percentage overall.

Mr Killesteyn—It is a small percentage but one has to accept that just one interception is a big avoided cost for the Australian government. When you multiply that avoided cost by the figures that Ms Siegmund has provided you, it is a substantial cost saving to the government.

Mr Farmer—We are also showing, as demonstrated in the declining non-return rates, that our systems overall, including the ALO and turnaround operations, are working very effectively to protect the border.

Senator KIRK—In most cases, is it a case of people not holding valid visas or irregular visas? What is the nature of the visa problem?

Ms Siegmund—In the offshore context, it can be a combination of any of those. The airlines, either at check-in or at boarding, may have a concern that the document itself is fraudulent or has some error with it, or that the visa may have a problem, or that they may be genuine but the person who is in front of them may not be the person who is in the page of the passport.

Mr McMahon—When you look at it from an onshore basis, one of the reasons why it is dropping away is because advance passenger process is removing one of the issues that would have confronted people at the border where a person does not have a visa or whatever. We would expect, as we reach the 100 per cent mark by the end of the year and the 99 per cent mark by June, that the number of refused immigration clearances will fall even further. It focuses on people who, having reached Australia with a visa, we do not accept the bona fides of when they come.

Mr Killesteyn—To clarify this issue of advance passenger processing, the key that Mr McMahon is referring to is that, for every person who checks in for a flight bound for Australia, there is a systems check at the time they are checking in as to whether they hold an appropriate visa. That information is relayed across telecommunications systems, we confirm the document has a proper visa and that message is relayed back to the airline check-in operator to confirm that they are allowed to board. Subsequent to that are the physical checks which are associated with the documents. It is another layer in a fairly complex stream of checks that we do at the border.

Senator KIRK—You mentioned that in some cases fake passports are found.

Ms Siegmund—Yes, Senator.

Senator KIRK—What happens when a fake passport is found? Is there an investigation immediately? What happens?

Ms Siegmund—The usual procedure is that the nationality of the passport is advised. Very often these countries will produce also lists of passports that have either been stolen or they have concerns about. The nationality of the passport, if you like the country of that passport, is advised that a passport has been found that has either been tampered with or has been thought to have been changed or altered in some way.

Senator KIRK—Is that the extent of the investigation? It doesn't go any further than that? It is just a matter of notification to the country concerned?

Ms Siegmund—We do not hold these passports but we certainly take the details of them and of the incident as it has occurred, and that forms part of our information gathering. A big part of the role of ALOs offshore, too, is to provide that kind of information and detail about what is happening in offshore airports—what are the flows looking like? Is there a trend? Does it appear that people are being escorted or being organised in any way? In terms of

passports, as well, it is very important for us to gather that information and to be able to provide it to other countries that are working in similar areas to us.

Senator KIRK—Is the individual concerned taken into custody by the local people?

Ms Siegmund—It varies from place to place, and that is really not our role there. Our role is to provide direct advice to the airlines or airport authorities about that passenger's ability to legally travel or enter Australia.

Senator KIRK—Are there many cases of people have been turned around more than once in these circumstances?

Ms Siegmund—At an Australian airport?

Senator KIRK—Both.

Ms Siegmund—Certainly there have been instances in the offshore context where people have tried on several occasions—and very often using several different passports—to travel unlawfully and to board a flight. In the onshore context, I would probably have to take that on notice. I do not have any figures in front of me.

Senator KIRK—That is fine, take it on notice. In circumstances where persons who are undocumented arrive in Australia, are there any consequences for the airline who permitted them to fly?

Mr McMahan—We have a system of infringement notices. There is a \$5,000 fine where we have an undocumented arrival.

Senator KIRK—Do you keep records of those airlines who have been fined in this way?

Mr McMahan—Yes.

Senator KIRK—Are they available?

Mr McMahan—We would have to take that on notice.

Senator KIRK—That would be fine, thank you. In relation to shipping companies, does the same sort of procedure apply?

Mr McMahan—The same process broadly applies, yes. There is a \$5,000 infringement notice. Obviously the volumes are very different and sometimes the people do not actually leave the ships. A fine would not be imposed in those cases where, for example, a stowaway was taken on in the voyage or the return.

Senator KIRK—In those circumstances, are the shipping companies responsible for returning those undocumented arrivals back to their country? Who is responsible for that?

Mr McMahan—Yes, they are.

Senator KIRK—Does the same apply with airlines?

Mr McMahan—Yes, the responsibility rests with the airlines for return.

Senator KIRK—Are all applicants for transit visas checked against DIMIA's movement alert list?

Mr Killesteyn—Any visa will be checked against the movement alert list. There are some citizens who can transit without a visa, and we are currently working on systems to ensure

that those people are checked through the advanced passenger processing system that I referred to earlier. From a systems point of view, that is a bit more difficult. Since the government legislated from 1 January this year to require 100 per cent of passengers to be provided with advanced passenger processing information, that is what we are pursuing now.

Senator KIRK—Are there any nationals from selected countries who are checked further for security purposes beyond the movement alert list?

Mr McMahan—Yes. There is a national security classified handbook which we work to, which provides additional screening. In addition to that, depending upon the nature of the country, there are local processes in place which might involve a whole series of additional local steps. Some of that is based clearly on the profile information that we get and the level of overstayer rates et cetera.

Senator KIRK—Is it broken down into particular countries? Are particular nationals subjected to further checks?

Mr McMahan—Yes. At the visa issue level, there are different layers of checks that need to be undertaken, based on the overstayer rate in Australia.

Mr Killesteyn—Also citizens from particular countries are directed as a consequence of advice from ASIO. We have no choice in certain matters, and they are mandated by ASIO to require subsequent and further checks.

Senator KIRK—Those ASIO checks are, as you say, in addition to the movement alert list.

Mr Killesteyn—They are subject to further detailed checking by ASIO.

Senator KIRK—Madam Chair, I think that is all I have on point 3, you will be pleased to know.

CHAIR—I am pleased, you are right. Are there questions that you also wish to place on notice in relation to 1.3?

Senator KIRK—I think Senator Bartlett covered Iranian officials.

CHAIR—We certainly did cover matters Iranian, yes.

Senator KIRK—We had some questions on Iraqi citizens, and I might have to place those on notice. I think they are 1.3.

CHAIR—I should indicate to the committee that Senator Crossin advised me earlier today that she has questions to place on notice in relation to the Christmas Island facility. We examined that with Senator Ray earlier, but Senator Crossin was not able to be here. Senator Bartlett has indicated he has one question in 1.4. We might use the next five minutes to address Senator Bartlett's one question in 1.4. Then the committee will adjourn and resume with the program that I announced earlier. Senator Bartlett?

Senator BARTLETT—It is basically the question I ask each time in terms of how many people we now have in the country on safe haven visas—I think a number were from Ambon—whether they are still here and whether there are others from anywhere else.

Mr Hughes—Senator, there are 18 persons who hold a class 449 safe haven visa. Fourteen of them are Ambonese. Their stay has been extended until the end of March 2004. I think you asked about them at the February estimates. There are four other people; three Iraqis who benefited from ministerial intervention and one other Iraqi who has been given a visa at the request of UNHRC temporarily.

Senator BARTLETT—Can you tell me how long the visas are for and when they expire?

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

Senator BARTLETT—It is probably outside the area—and if it is I will probably put it in notice—but there were a number of Kosovars that were here initially on safe haven visas. I think some of them have now been transferred across onto other bridging visas or something.

Mr Hughes—There are 160 Kosovars on temporary humanitarian concern visas.

Senator BARTLETT—Do they all expire at the one time or a whole range of times?

Mr Hughes—I think they expire on 3 August. The minister has invited any Kosovars who wish to remain in Australia after the expiry of their temporary humanitarian concern visas to make submissions to him by 13 June as to any reasons why they may not wish to return when their visas expire. This would enable him to consider lifting the bar on PV applications.

CHAIR—On that note, we will adjourn proceedings for this evening. I thank all of the officers and my colleagues for assisting to get so far through the program today.

Committee adjourned at 10.58 p.m.