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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates Supplementary Hearings)

TUESDAY, 25 NOVEMBER 2003

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SENATE**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE****Tuesday, 25 November 2003**

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

Senators in attendance: Senators Barlett, Bolkus, Faulkner, Ludwig, Mason, Payne, Robert Ray and Scullion

Committee met at 6.57 p.m.

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. This is a convening of a further estimates hearing for the Immigration and Multicultural and Indigenous Affairs and the Attorney-General's portfolios. The hearing is convened pursuant to an order today by the Senate in the following terms: (1) that the Legal and Constitutional Legislation Committee reconvene to resume its consideration of the 2003-04 budget estimates on 25 November during a sitting of the Senate from 6.50 p.m. for the purpose of further examination of the Department of Immigration and Multicultural and Indigenous Affairs and the Attorney-General's Department with particular reference to migration zone excision matters and the *Minasa Bone*; (2) that officers and staff representing all of the responsibilities of the People Smuggling Task Force and relevant officers with responsibility for the abovementioned matters and outputs, including officers attending or advising any court proceedings from the above departments and agencies, appear before the committee to answer questions.

As is normal with such hearings, the committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the Order of the Senate dated 31 August 1999. I welcome Senator the Hon. Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, and also Mr Bill Farmer, secretary of the Department of Immigration and Multicultural and Indigenous Affairs, officers of that department, other departments and associated agencies.

[6.58 p.m.]

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO****Attorney-General's Portfolio**

Consideration resumed from 4 November 2003

In Attendance

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs

Department of Immigration, Multicultural and Indigenous Affairs

Mr Bill Farmer, Secretary

Mr Ed Killesteyn, Deputy Secretary

Mr Robert Illingworth, Acting First Assistant Secretary, Refugee, Humanitarian and International Division

Ms Rosemary Greaves, Assistant Secretary, International Cooperation Branch

Mr Vincent McMahon, Executive Coordinator, Border Control and Compliance Division

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

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Attorney-General's Department

Mr Robert Cornall, Secretary

Ms Renee Leon, First Assistant Secretary, Office of International Law

Mr Mark Zanker, Assistant Secretary, International Trade and Environment Law Branch

Mr James Graham, Principal Legislative Counsel, Office of Legislative Drafting

Mr Leigh Schneider, Principal Legal Officer, Drafting Unit 1

Australian Customs Service

Mr John Drury, DCEO

Ms Marion Grant, National Manager, Boarder Compliance and Enforcement

Tom Marshall, Deputy Director-General, Coastwatch

Australian Federal Police

Federal Agent Tony Negus, General Manager, National

Federal Agent John Lawler, General Manager, Executive Services

Federal Agent Shane Connelly, Director, National Investigations

Federal Agent Bruce Hill, Coordinator, People Smuggling Team

CHAIR—When officers are called upon to answer a question for the first time, I would ask that you speak clearly and state your full name and the capacity in which you appear, which will assist the parliamentary reporting staff with the recording of proceedings. I would, as I usually do, also remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its 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 and in particular to resolution 110, 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 116, 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.

Witnesses are reminded that the 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. Minister or Mr Farmer, do you wish at this point to make any opening statement?

Senator Vanstone—No, not for me.

CHAIR—Mr Killesteyn?

Mr Killesteyn—Senator, thank you. I am the Deputy Secretary and Chair of the People Smuggling Task Force so I thought it would be appropriate if I could make some opening statements, perhaps to help the committee in the way in which it may seek to ask questions about the *Minasa Bone* and the circumstances of its arrival, if you will allow me to do that.

CHAIR—Thanks for that suggestion, Mr Killesteyn. I will ask you to do that. In the process of maintaining order in what is a fairly nebulous environment, as Chair of the task force, Mr Killesteyn, you can assist the committee as far as possible, involving other officers where necessary. Senators may have questions directly to other officers, but in most cases we will begin with you and see where we go from there.

Senator FAULKNER—First of all, can I thank the minister, committee members and officers for their cooperation in facilitating this meeting. I am hoping it might obviate further committee inquiries. As you are aware, Madam Chair, and I think Mr Killesteyn is used to this procedure, sometimes witnesses who give opening statements have hard copies for committee members. I am not aware of the detail of it and I do not know if it is a prepared opening statement but, if there are copies, could they be made available? Sometimes it assists if that statement is available. If it is not, we understand.

Mr Killesteyn—I only have one copy at the moment. It is a prepared statement. No doubt it will be in *Hansard*. The *Minasa Bone* arrived at Melville Island around 12.30 p.m., or Canberra time 2 p.m. All of the times that I will be quoting throughout this statement will be in Canberra time, just to make it easier for us. According to a local resident, the vessel beached at Snake Bay and six males came ashore. The local resident ordered the men back onto the vessel and, together with another local resident, towed the vessel back to a point off Snake Bay, about 400 metres, into eight fathoms of water. The local resident informed Customs through their 1800 number.

After hearing of the vessel's arrival, the People Smuggling Task Force met on the afternoon of 4 November. The initial meeting was designed to ascertain as much as possible details about the vessel's arrival and to initiate action to manage the vessel and the people on board. Operational command was assumed by Commander NORCOM under Operation Relex. An air exclusion zone was requested by Customs and granted by air safety authorities to ensure safety of air surveillance assets operating at low level in the vicinity of Snake Bay. The air exclusion zone was applied for no other reason.

The HMAS *Geelong* arrived at Snake Bay at about 8.45 p.m. and took control of the vessel. The vessel was towed that night to a point in international waters pending further instructions from the People Smuggling Task Force on the preferred handling arrangements for the vessel. The Navy assessed the vessel to be seaworthy, although some sabotage had apparently occurred with both engines and the steering damaged. The Navy assessed that repairs to the steering and one engine were possible and completed the repairs in the early afternoon of 5 November. The vessel was assessed to be seaworthy at that point.

Excision regulations were made on 4 November to excise Australian islands to the north of Australia between 23 degrees south in Western Australia and 21 degrees south in Queensland. The regulations were gazetted on 4 November and came into effect immediately on the expiry of 3 November. From that point on, the People Smuggling Task Force was concerned to

develop options for the management of the people on board the vessel consistent with both our domestic and international legal obligations.

During the following day, 5 November, handling options for the people were discussed with ministers. Having regard to the potential for further illegal arrivals should this venture be seen to be successful, the government's preferred option if possible was return towards Indonesia for handling of the people under the regional cooperation arrangements that we have in place.

The second option was processing of the people in either Manus or Nauru, with the latter preferred. Once the preferred options were settled, the People Smuggling Task Force focus was on ensuring that the necessary logistical and diplomatic requirements were put in place. Both options were pursued at the same time to ensure that fall-back plans were in place.

On 5 November our ambassador in Jakarta advised a department of foreign affairs spokesman and the secretary general that Australia intended to take the vessel into international waters in the direction whence it came. We assured them that Australia would provide whatever assistance it could—directly and through the International Organisation for Migration and other international agencies—to Indonesia in handling the 14 passengers on board. The department of foreign affairs representative expressed appreciation for that advice.

On the following day, 6 November, a third person note was delivered to the Indonesian government in Jakarta and in Canberra advising formally Australia's intention to return the vessel in the direction whence it came. An immigration official at the embassy spoke to the head of the IOM in Jakarta on Thursday, 6 November, to advise him that one of the options under consideration was taking the vessel to a point in international waters where the nearest landfall or port in Indonesia would be Saumlaki on the island of Yamdena.

The IOM chief was advised at that point in time so that he could give thought to the staff deployment and resource demands should a return to Indonesia eventuate. The government decided to commence the return of the vessel towards Indonesia on the evening of 6 November. The tow commenced at approximately 1 a.m. on the morning of 7 November. Our ambassador in Indonesia conveyed information to the department of foreign affairs on 7 November about the estimated time of the boat's release in international waters and that the Indonesian port of Saumlaki was the nearest port to that point. He also again noted that, should the boat return to Indonesia, Australia would provide whatever assistance it could directly and through international agencies to assist Indonesia in handling the passengers. Once again the DFA representative expressed appreciation for the information.

An immigration official at the embassy spoke to Indonesian immigration officials on Friday afternoon, 7 November, to advise them of the possibility that the boat would arrive in Saumlaki and to give them assurances that the regional cooperation arrangements funded by Australia would apply, should the arrival occur. We also asked whether they wished to send an Indonesian immigration officer to accompany IOM staff to Saumlaki in anticipation of a possible arrival. They declined this offer, saying that it would be left to POLRI—the Indonesian police—to manage the official response on Yamdena.

An AFP officer at the embassy in Jakarta spoke to a senior POLRI counterpart on Friday evening, 7 November, to advise him of the intended return of the vessel towards Indonesia. At

approximately 7.30 a.m. Canberra time on 8 November the HMAS *Geelong* released the vessel without incident. The required safety gear, food and water were on board. At some time that day the passengers were detained by POLRI in Saumlaki. On the same day a small group from the People Smuggling Task Force met to draft a press release signalling that the vessel had been returned.

On Sunday, 9 November, a joint press release was issued by Ministers Downer and Vanstone to advise that the vessel had been returned and, amongst other things, that passengers had not claimed asylum in Australia. Media reports contradicting the statements made in the press release emerged on the afternoon of Monday, 10 November. Minister Vanstone instructed the People Smuggling Task Force through me to confirm the advice originally provided.

On the afternoon of Tuesday, 11 November, the further advice was received from ADF and AFP. That advice indicated that some people made statements of a kind that potentially raised refugee issues. For example, statements were made: 'We are from Turkey. Don't want to go back. No good.' One unauthorised arrival indicated the word 'refugee' in an English-Turkish dictionary, and there were other claims of being Kurdish refugees. Similar statements were made on 6 November to an AFP-DIMIA interview team during intelligence and evidence-gathering interviews conducted whilst the vessel was in international waters, prior to the return towards Indonesia commencing.

The press release was prepared by a small drafting team to signal that the vessel had returned to Indonesia. The statement in the media release that the people did not make asylum claims was made on the basis of the full information that the People Smuggling Task Force had available at the time. With the benefit of hindsight, the PSTF accepts that the statement should not have been included in the media release.

There are a number of points I would like to make, however, about this. What the people did or did not say was irrelevant to the handling of the people in terms of the legal position for three reasons: firstly, the people could not make a claim for a protection visa under the Migration Act and regulations because Melville Island had been excised. Secondly, the people did not make a claim for a protection visa in the terms required by the Migration Act and regulations. Thirdly, the people were able to have any claims to asylum assessed under the regional cooperation arrangements in place in Indonesia or, in the event that that option was not ultimately possible, through administrative processes in place in Nauru. Both—that is, the regional cooperation arrangements and the administrative processes in Nauru—have been proven to provide a reliable and robust mechanism for having any asylum claims assessed, both with the involvement of IOM and the UNHCR.

I should stress, in relation to this last point, that the refugees convention does not obligate a state to provide a status determination process in country, nor does the convention confer any right to enter or choose a country in which a person might have an asylum claim heard. The core obligation under the convention is not to refole. It could not be suggested that that has occurred here.

The current situation is that the 14 people are no longer in detention in Jakarta. They are under the care of IOM and we are advised that UNHCR processing has commenced. We

understand that six of the passengers have asked to return to Turkey and we are working with the UNHCR and IOM to ensure regional cooperation arrangements operate as they have done in the past.

The final point I would make is that the regional cooperation arrangements that I have referred to have been in place since July 2000. Since that time 3,912 people have been processed under the regional cooperation arrangements; 672 of those have been assessed as not refugees and have returned to their countries of origin or other countries, voluntarily, including two Turks; 1,093 have been found to be refugees by the UNHCR. I simply make that point to illustrate the strength of the regional cooperation arrangements and that they were a fundamental part of the strategy of returning these people to have any asylum claims heard that they may have wished to make. Thank you, Madam Chair.

CHAIR—Thank you very much, Mr Killesteyn. I would like to acknowledge the presence also of Mr Robert Cornall, Secretary of the Attorney-General's Department, and officers from the department, and officers from the Australian Customs Service, the Australian Federal Police and, I believe, the Department of Foreign Affairs and Trade at this stage. I thank all of those officers for attending. Senator Faulkner, is it your wish to begin with questions to Mr Killesteyn, and we will see where that takes us on this examination?

Senator FAULKNER—Yes, Madam Chair. No doubt, Mr Killesteyn can tell the committee if questions are better directed elsewhere.

CHAIR—Certainly.

Senator FAULKNER—Before we leave your opening statement, Mr Killesteyn, you gave us a status report of the passengers on the *Minasa Bone*. Perhaps you could give us a status report of the crew.

Mr Killesteyn—At this point I have no further information on the crew.

Senator FAULKNER—What is the latest information you have? Why do you have up-to-date information for the passengers but not for the crew?

Mr Killesteyn—Because the crew at this stage are not in custody. We have no information on their whereabouts.

Senator FAULKNER—What is the latest information you have in relation to the crew? I appreciate you are saying to us now that you do not have up-to-date information. What is the most recent information that you have?

Mr Killesteyn—The most recent information I have is that we do not know the whereabouts of the crew. That is the most recent information.

Senator FAULKNER—At one point I think we have had on the public record the fact that, when the boat originally returned to Indonesia, both crew and passengers were, at least originally, in the hands of the Indonesian police, weren't they?

Mr Killesteyn—That is correct.

CHAIR—Mr Killesteyn, if I could stop you there. Senator Faulkner, I omitted to say at the beginning of proceedings that this meeting is taking place during the proceedings of the Senate and we are required to attend the Senate when it so decides. This is a division, so we

will have to suspend the operations of the committee. You may be in the fortunate position of being paired, but the rest of us are not.

Senator FAULKNER—I am in the fortunate position of being paired, so I hope you enjoy the division and I will just wait patiently.

CHAIR—Thank you very much.

Proceedings suspended from 7.16 p.m. to 7.29 p.m.

CHAIR—I am sorry to advise that there are no pairs available, so this will continue as the Senate so demands. Senator Faulkner.

Senator FAULKNER—I was just asking Mr Killesteyn if he could give us an update, a status report on the whereabouts of the crew. We have heard about the 14 passengers. It is correct to say, isn't it, Mr Killesteyn, there were four crew on the boat?

Mr Killesteyn—There were four Indonesian crew. The break has given us an opportunity to update on their whereabouts but I might ask the representatives of the Australian Federal Police to handle that matter.

Federal Agent Lawler—I am the General Manager of Executive Services with the Australian Federal Police.

Federal Agent Negus—And I am the General Manager of National, which includes the people-smuggling area, from the Australian Federal Police.

CHAIR—Thank you.

Federal Agent Negus—Senator, during the break we made some inquiries through our liaison officer back to POLRI to confirm those details. Apparently after the boat crew arrived, they left the area. There are very sketchy details from Yamdena; there is one POLRI officer stationed at that location. However, to the best of our knowledge the boat crew has not been seen since. Their names and details are known and have been passed to POLRI, as well as to our liaison officers in Jakarta.

Senator FAULKNER—Are you able to say when the whereabouts of the Indonesian crew was last known?

Federal Agent Negus—We have asked that question and have been unable to confirm any details, other than at the time it was heading to Indonesia.

Senator FAULKNER—You see, Minister Vanstone indicated in the parliament yesterday, during question time, that we should not assume that because the crew have gone back that no further inquiries are being made about that boat or that we are not keen to pursue anybody who is involved in people-smuggling. Can you confirm that further inquiries are being made about that boat?

Federal Agent Negus—Yes, they are being made.

Senator FAULKNER—But at this stage you cannot even give me a time as to when the whereabouts of the crew was last known.

Federal Agent Negus—That is correct.

Senator FAULKNER—Not even approximately?

Federal Agent Negus—That is correct.

Senator FAULKNER—Mr Killesteyn, there is another issue that arose out of your opening statement. You indicated that the core obligation under the convention is not to refole. That is a pretty fair summation of what you said, isn't it?

Mr Killesteyn—That is correct.

Senator FAULKNER—What is the status of returning these asylum seekers—or passengers, if you would prefer that terminology—to Indonesia? That is not refolement, I assume.

Mr Killesteyn—That is correct.

Senator FAULKNER—Why is that?

Mr Killesteyn—I will ask someone from the Attorney-General's Department to answer that question.

Ms Leon—I am from the Office of International Law in the Attorney-General's Department. Senator, the obligation not to refole a person under the refugees convention requires states parties to that convention not to return a person to a country where their life or freedom would be threatened on account of one of the convention reasons, such as race, religion and so on. That has not occurred.

Senator FAULKNER—Sure, but is Indonesia a signatory to that convention?

Ms Leon—Indonesia is not a signatory.

Senator FAULKNER—We are.

Ms Leon—We are.

Senator FAULKNER—Indonesia is not. Therefore, would I be correct in assuming that Indonesia does not have the same obligation that signatory countries would have to not refole.

Ms Leon—The requirement under the convention is that we not refole a person to that country where they will face persecution. The UNHCR executive committee has indicated that by extension you therefore cannot return people to somewhere from whence they will in turn be refoled. However, there is no obligation to ensure that a third country to which a person is returned is also a party to the convention; only to ensure that in practice the person will not be returned to a country where they will face persecution. That can be achieved by a number of measures. It can be achieved by virtue of assuring ourselves that the country in question is a signatory to the convention. It can equally be achieved by arrangements such as the regional cooperation arrangements that we have, which ensure that people are processed by UNHCR in third countries such as Indonesia.

Senator FAULKNER—Hasn't the executive committee of UNHCR said that non-refolement includes the obligation to not reject at the frontier?

Ms Leon—It does if rejection at the frontier would involve sending the person back to the country where they are going to face persecution. It is not refolement if the person is taken to or assisted in a safe third country.

Senator FAULKNER—What we have done—is the technical term ‘expelled’? Is that a reasonable term to use, Mr Killesteyn? I do not want to use the wrong term. Returned? Expelled?

Mr Killesteyn—I have described what has happened.

Senator FAULKNER—We have expelled these people to a third country which is then able to return them to Turkey. That is it in a nutshell, isn’t it?

Mr Killesteyn—Senator, the outcome that the government was seeking was to ensure that we met our convention obligations in a way which did not further encourage people-smuggling. What has happened is that the people are now in Indonesia. They are being processed under regional cooperation arrangements, which have been in place for three years and have proven to provide a reliable outcome for those people who were seeking asylum. It has not been in a way which gives some sort of incentive to smugglers to say, ‘You can send more boats.’

Senator FAULKNER—We know that six of the passengers have decided to go back to Turkey. We know that because you have told us in your opening statement. That is correct, is it not?

Mr Killesteyn—That is correct.

Senator FAULKNER—I think the committee members would want to assume that was a voluntary decision. Are you able to assure us of that?

Mr Killesteyn—That is correct, because it is handled by the International Organisation for Migration and there is generally a form that is signed by the individual, signifying that the return is voluntary.

Senator FAULKNER—But you are not able to tell us anything about the crew.

Mr Killesteyn—I think the AFP have already answered that question.

Senator FAULKNER—People smuggling is not illegal in Indonesia anyway, is it?

Mr Killesteyn—They still have legislation on the books.

Senator FAULKNER—What do you mean by that?

Mr Killesteyn—There are in the process of introducing legislation.

Senator FAULKNER—Yes, they are in the process of introducing it. In relation to the opening statement you have made, Mr Killesteyn, the minister was helpfully able to inform us in question time today. This might be better directed to you, Minister. You were able to inform us in question time today that a briefing given to the Leader of the Opposition, Mr Crean, last week was not a private briefing or a briefing in confidence. I think you indicated that in question time.

Senator Vanstone—It is not my recollection that I indicated that. I think there has been a misunderstanding.

Senator FAULKNER—What was the status of that briefing?

Senator Vanstone—I took it that you thought it was a private briefing—that is what he sought; that is what he was given.

Senator FAULKNER—I thought you made a pretty clear statement in question time today, in answer to a question I think from Senator Kirk, that the briefing Mr Crean received was not a private briefing; not in confidence.

Senator Vanstone—I have answered that. I have a different recollection but I will check the *Hansard*. That was not my view. My view was he wanted a private briefing and he got it. Only the *Hansard* record tomorrow will tell you whether I have used words that have confused someone, or whether someone of their own volition has become confused.

Senator FAULKNER—The reason I am trying to check the status of this is that I was surprised to hear what you said. I do not want to get bogged down in it. I think you made that pretty clear, but we can check that. Someone might be able to send the pinks up to me and do that pretty quickly.

Senator Vanstone—Do you want us to seek those for your officers?

Senator FAULKNER—No.

Senator Vanstone—I am sure they are paying rapt attention.

Senator FAULKNER—You said it was not confidential; the briefing was not confidential.

Senator Vanstone—I will let the *Hansard* record speak for itself. You can ask Mr Killesteyn anything you want. I have told you my understanding was that it was a private briefing. We can go back over what words were used today, but when I have them in front of me I will happily answer questions on them. But you have the opportunity now to speak to Mr Killesteyn about any matters in association with this, rather than what I said today in the Senate.

Senator FAULKNER—What I am trying to establish is if there was any substantive difference in the information provided to Mr Crean, than the information that was provided in Mr Killesteyn's opening statement. Before I checked that with Mr Killesteyn—and I am sure he will be able to respond on that—I was trying to establish whether Mr Crean's briefing was confidential or not. You said in question time today that it was not confidential. They are your precise words; I am quoting you precisely.

Senator Vanstone—If that is the case I will correct the record. I have told you now what my understanding was—that is, it was a private briefing. What he thought, I cannot speak for.

Senator FAULKNER—These are your precise words. Let me quote you directly from the pinks as I have them now:

I thank the Senator for the question. Senator, it is clear to me from your question that I wasted my time last week in giving your leader a briefing in relation to this matter. Your leader has this information. I do not know whether he regards it as information that he should keep to himself and not share, but it is not confidential.

Senator Vanstone—Yes, right, now I understand the aspect you are referring to. The question, as I understand it—and I will wait until I have the whole record in front of me and, yet again, I remind you that you have every opportunity to question me at other times. You have asked for a lot of people, at significant expense, to be brought here to ask questions of, which you do not normally have the opportunity to do. Therefore I would have thought you would want to ask them.

The question I was answering at that time was in relation to the regional cooperation arrangements which were covered in the briefing. They have been covered in Mr Killesteyn's statement. They are not confidential. If I go to a briefing and say, for example, 'The name of the secretary of this department is Bill Farmer,' I hardly expect Mr Crean to treat that as confidential because it is public knowledge. These regional cooperation arrangements have been public knowledge for some time. That was my surprise: that Mr Crean seemed unaware of that. He seemed unaware of arrangements that have been in place since June 2000. That, frankly, surprised me.

Senator FAULKNER—Yes, but I am trying to establish—and I have now three different answers already so far in this hearing—whether Mr Crean's briefing was confidential. I want to go on and ask Mr Killesteyn in a moment, having established that, whether there is any substantive difference between what Mr Killesteyn said—

Senator Vanstone—You can go on and ask that. There is no point in repeating what you are going to ask someone later every time you ask me a question. It is just wasting time.

Senator FAULKNER—The threshold issue is—and we have a number of different answers—

Senator Vanstone—It is just wasting time. We do not have a number of different answers. I have told you I understood the briefing to be confidential. The regional cooperation arrangements, however, as in the name of the secretary of the department, are not confidential. They have been in place since June 2000. There are numerous references to them. I feel confident of that.

Senator FAULKNER—You had better correct the *Hansard* record.

Senator Vanstone—We can take this to be a hearing where you do not take up the time of people who could otherwise be with their families, who you have asked to come here at significant expense—I do not say to indulge yourselves, but to ask questions—and you can instead go through piece by piece some question that I gave an answer to today and dispute the answer. But you have asked me was this briefing confidential and I am saying yes. I am responding to you that my answer in the Senate was with respect to the regional cooperation arrangements, which are public knowledge.

Senator FAULKNER—'It wasn't; it is; it wasn't; it is now confidential.' If it is confidential, why mention it? The thing is, Minister, all I am trying to do is establish some consistency. Given that you have now indicated you misled the Senate in question time today I suggest you correct the record. Mr Killesteyn, can you indicate to the committee whether there is any substantive difference—substantive in terms of factual information—provided in your opening statement today and the information you provided at the now defined confidential briefing that Mr Crean received, I think late last week?

Mr Killesteyn—Yes, it was on Wednesday.

Senator Vanstone—Just before Mr Killesteyn answers, Senator, since you choose to repeat yourself, we can both do that and I will take the opportunity to do so. The briefing, as I understood, was a private briefing. That has always been my understanding and that is the answer I have consistently given to you this evening. You then seek to refer to an answer I

gave in question time today which referred to that briefing, but was specifically in relation to the regional cooperation arrangements which are not confidential and have been public knowledge for some considerable time. Mr Killesteyn may wish to add to what he started to say.

Senator FAULKNER—Yes. I suggest you correct the record. But, Mr Killesteyn, if you could answer—

Senator Vanstone—You can suggest what you like.

Mr Killesteyn—As I did with Mr Crean and as I have done with the committee this evening, I worked through the chronology of the events. There is no substantive change in relation to that chronology or the material matters that I explained. There were other matters that were dealt with during the briefing with Mr Crean which were in the nature of specific questions; some in relation to intelligence matters which I would regard as private matters—that is, matters which I would not want to disclose in a public hearing such as this.

Senator FAULKNER—Thank you. You indicated in your opening statement, Mr Killesteyn, that there was a small group, I assume from the People Smuggling Task Force—I think that was understood in what you said—that were responsible for drafting Minister Downer's and Minister Vanstone's press release of 9 November. Can you confirm that that is the case, please?

Mr Killesteyn—That is correct.

Senator FAULKNER—Can you indicate who was on that small drafting group?

Mr Killesteyn—Yes, I can.

Senator Vanstone—Just before Mr Killesteyn answers that—Senator, it is one thing to ask me a question three times for amusement, but I think if you ask an official something, or an official makes a statement, it is simply unnecessary for you to ask them to confirm what they have just told you.

Senator FAULKNER—Just so you are aware—

Senator Vanstone—If you do it all night it comes close to badgering of civil servants which is unacceptable. You can do it to ministers, that is fine, but you cannot do it to civil servants.

Senator FAULKNER—I can assure you, Minister, that what Mr Killesteyn—

Senator ROBERT RAY—It is hardly badgering.

Senator Vanstone—If it goes on all night, it will be.

Senator FAULKNER—What Mr Killesteyn said in a long, opening statement, copies of which were not given to the committee, was that there was a small group drafting this. I made the assumption that it was a small group from the People Smuggling Task Force. It is reasonable to check if that is the case and that is what I am trying to do. I think we can happily get on with it.

Senator Vanstone—Do you not have the statement which has been distributed?

Senator FAULKNER—I do not have a copy of the statement being distributed.

Senator Vanstone—My advice is it has been distributed.

CHAIR—It has been distributed now.

Senator FAULKNER—It has just been handed to me.

Senator Vanstone—You can confirm anything you like from that.

Senator FAULKNER—But at the time, as you would be aware, Mr Killesteyn made the statement it is now nearly an hour later and we did not have it available. We now have it and I appreciate it being handed to us. That is helpful.

CHAIR—Thank you, Senator Faulkner.

Senator FAULKNER—So who was in the small group?

CHAIR—I will invite Mr Killesteyn to answer the question.

Mr Killesteyn—There were representatives from DIMIA, Department of Defence, Department of Foreign Affairs and Trade and Department of the Prime Minister and Cabinet.

Senator FAULKNER—So it was a small group of five.

Mr Killesteyn—There were, I think, two or three people from DIMIA, two from DFAT, two from PM&C and one from Defence.

Senator FAULKNER—These were task force members, were they?

Mr Killesteyn—Yes, they are.

Senator FAULKNER—Where did the initiative come for the joint media release? Whose idea was it?

Mr Killesteyn—You would be aware that the presence of the *Minasa Bone* was well reported in the media. There was a good deal of speculation about what would happen to the *Minasa Bone*. We felt it important that we continue to provide information about its whereabouts and what was happening to it. Once we had confirmation on the Saturday morning that the vessel had been released by the HMAS *Geelong*, we understood that the whereabouts of the vessel would become a matter for more speculation by the media, so we thought it necessary to provide information about what had happened to it.

Senator FAULKNER—That means the initiative came from the People Smuggling Task Force.

Mr Killesteyn—Yes. There was already a lot of speculation about it. There were statements being made in the press and in the parliament. It was important for us to continue to provide information.

Senator FAULKNER—Was there any ministerial office or ministerial involvement in terms of that initiative, or just bureaucratic—

Mr Killesteyn—No, the first draft of the statement was made by the small drafting team. That very first draft included the statement that, as I said in my opening statement, with hindsight should not have been there.

Senator FAULKNER—I appreciate that, but I am asking where the initiative to produce a press release came from and you are saying the People Smuggling Task Force.

Mr Killesteyn—That is correct.

Senator FAULKNER—And the first draft came from the People Smuggling Task Force.

Mr Killesteyn—That is correct.

Senator FAULKNER—Can you say when that was completed?

Mr Killesteyn—It was during the evening of Saturday, I believe, 8 November.

Senator FAULKNER—You were not on that small group.

Mr Killesteyn—I did not do the initial drafting, but it was being passed to me by way of email for checking.

Senator FAULKNER—What else was drafted up at the same time? Were talking points for ministers drafted up?

Mr Killesteyn—That is correct.

Senator FAULKNER—Anything else?

Mr Killesteyn—No.

Senator FAULKNER—Same group responsible for drafting up the talking points for ministers?

Mr Killesteyn—Yes.

Senator FAULKNER—Whose initiative was that?

Mr Killesteyn—Again, it was the People Smuggling Task Force. We are responsible for providing advice to the minister about what is happening; along with a press release would be normally prepared talking points. As I recall—I have not seen it for some time—the talking points are very similar to the press release.

Senator FAULKNER—Could we have the talking points tabled, please.

Senator Vanstone—That is fine. You can have them.

Senator FAULKNER—Thank you. You mentioned the composition of the small group. Does the People Smuggling Task Force—

Senator Vanstone—That is my view. To be fair, they are prepared for a number of ministers and I will take that on notice and check with the other ministers. They are prepared for a number of ministers. That was a slip on my part. I will come back to you on that.

Senator FAULKNER—You represent the government at the table here, Senator Vanstone.

Senator Vanstone—I do, but I have not had an opportunity to ask the relevant ministers.

Senator FAULKNER—I appreciate your cooperation on that. Does the People Smuggling Task Force still include representatives of the Attorney-General's Department?

Mr Killesteyn—Yes, it does.

Senator FAULKNER—But the small group did not include anyone from the Attorney-General's Department.

Mr Killesteyn—Not to my recollection. It essentially was, as I said, a press release to notify that the vessel had been returned. There weren't really an issues that we needed to resolve at that point. It was simply a matter of providing information.

Senator FAULKNER—Is that a weakness?

Senator ROBERT RAY—Are there minutes of the meeting?

Mr Killesteyn—Yes, there would be minutes.

Senator ROBERT RAY—Did you bring those minutes with you?

Mr Killesteyn—No, I did not.

Senator ROBERT RAY—You did not think it might be relevant, the minutes of one of the more crucial meetings in which a press release was drawn up and factual errors were made, to bring the minutes? It did not occur to you?

Mr Killesteyn—I am sorry, Senator, I missed the question.

Senator ROBERT RAY—I am just a bit surprised. Perhaps Mr Farmer can answer it. I would have thought, to assist officers at the table, you might have brought the minutes from one of the more crucial meetings, because then Mr Killesteyn would not have to say from his recollection; he could actually say.

Mr Killesteyn—Senator, I am quite confident that the only representatives were DIMIA, Defence, DFAT and PM&C.

Senator ROBERT RAY—Sure. That is a little better. In terms of definitive—

Mr Killesteyn—It is just a matter of getting the brain working.

Senator ROBERT RAY—That is fair enough. We will get back to Senator Faulkner. I just thought you might have had the minutes, though, to refresh your memory.

Senator FAULKNER—We will come back to the minutes of the task force. You would be aware, I think, Mr Killesteyn, that during the Certain Maritime Incident Select Committee, minutes of the People Smuggling Task Force were tabled up to a certain date—I think, in late 2001, but I might stand corrected on that. We might come back at a stage a little later to whether minutes of the People Smuggling Task Force for the month of November might be able to be tabled.

Mr Farmer—Madam Chair, might I just make a point. I am not sure that that is entirely factual, to say that the minutes of the People Smuggling Task Force in late 2001 were tabled. It might be, but I have a recollection of tabled documents with excisions and things like that. Whether that was—

Senator FAULKNER—Yes, some did. There were very few in relation to those documents. There was an argument about whether they were minutes or not. You might recall, too, at one point, Mr Farmer, some people preferred other terminology. I think, as a result of the good work of that committee, now the minuting and recording of these sorts of decisions is vastly improved. I am sure you can confirm that for the committee, can't you? You have certainly lifted the game in terms of how decisions of the People Smuggling Task Force have been recorded, given the weaknesses that were exposed by the CMI select committee.

Mr Farmer—As you will recall at the time, Senator—you probably do not—you asked me for my opinion on that matter, about officials taking notes. I expressed a view then that I still hold that on occasions what officials are asked to do is to produce results and, at times, when issues are moving very quickly it is not always the case that officials will take notes. You are talking about minutes, but the discussion in the committee on the certain maritime incident went a bit more broadly than that and there were some differences of opinion.

Senator FAULKNER—The point I am making is that the record of meetings was tabled at the committee. It would be useful for this committee if you could take on notice—I do not expect you to have it now—the dates on which the task force met in the 2002-03. I am not requesting that the minutes be tabled. Secondly, in relation to November 2003, it would be helpful if, on notice, we could have the record of meetings tabled for this calendar month. I refer you to the *Hansard* record of 22 February 2002 where the proposed terms of reference, membership and meetings of the People Smuggling Task Force were tabled by the Department of the Prime Minister and Cabinet before the previous select committee. I do not want to get too bogged down on this thing; it is better if you could take that on notice.

Can you indicate to the committee, in relation to the press release of 9 November 2003—‘*Minasa Bone* returns to Indonesia’—whether the statement that you have yourself quoted earlier in your opening statement, Mr Killesteyn—‘The passengers on the *Minasa Bone* did not claim asylum in Australia’—was in the original draft?

Mr Killesteyn—Yes.

Senator FAULKNER—That was drafted by the subgroup itself.

Mr Killesteyn—That is correct.

Senator FAULKNER—Once a first draft or preliminary draft of this particular press statement was created, what happened then? Did it go to ministers’ offices or did it go to the People Smuggling Task Force?

Mr Killesteyn—It went through a number of iterations with the small drafting team throughout the evening of Saturday, the 8th. Once the small drafting team was satisfied with it, then it was communicated to ministers’ offices for release on the Sunday.

Senator FAULKNER—That is a final copy of the press release.

Mr Killesteyn—Yes.

Senator FAULKNER—You are saying there are iterations, I understand that. You have a draft that you work through to a final document. Was there consultation with ministers’ offices during the iterative process?

Mr Killesteyn—Yes, there was.

Senator FAULKNER—Could you explain that to us.

Mr Killesteyn—Drafts of the press release were also included in copies circulated to ministers’ staff. There was very little change, and certainly no change to that particular statement, once it had been drafted.

Senator FAULKNER—Was a preliminary draft provided to ministers’ offices in the iterative process? I am trying to understand the role. You have talked about the iterative

process; I understand that. Those who have followed these issues closely through the CMI committee understand how these processes work. I would like to think I do. I am trying to understand here to what extent there was an involvement of ministers' offices or if ministers' offices were provided with information as this developed—in other words, from the time a preliminary draft was finalised until the press release was issued in Minister Downer and Minister Vanstone's names.

Mr McMahan—There were two drafts of the press release. The second of those drafts was copied into ministers' offices. We then continued to progress the drafts of the media release throughout that night.

Senator FAULKNER—Did you get feedback on the second draft from the ministers' offices?

Mr McMahan—I do not believe we did.

Senator FAULKNER—That is a no?

Mr McMahan—From my recollection it is no.

Senator FAULKNER—Was there any input at all from Minister Downer's office or Minister Vanstone's office on the press release?

Mr McMahan—There may have been some fine adjustment, but it was essentially after we handed the drafts across. We went through a number of iterations. In the early stages, as I said, the first two drafts were done and then copied into a wider group. After there was feedback from a number of other people on the smaller group, it was decided that we had taken it as far as we could and it was passed across to the ministers' offices.

Senator FAULKNER—Who made the decision then that this would be a press release issued in two ministers' names—in this case Minister Vanstone and Minister Downer? Where was that decision made? Was that a decision of government or the task force?

Mr Killesteyn—I think it was a decision of ministers. It was a matter dealing with an immigration issue from the point of view of illegal entrance into Australia, as well as issues that went to the return of the vessel towards Indonesia. It was thought suitable that both matters be covered.

Senator FAULKNER—It is not uncommon, I know, for joint press releases between ministers, but on this occasion, Minister, are you able to shed some light on whether that was a government decision and, if so, how it was made?

Senator Vanstone—Yes. I believe it was a government decision. I do not think the task force makes decisions on which minister or ministers will issue press releases. There was consultation between a number of offices; certainly mine was included in that. Minister Downer's office would have been included, as would the Prime Minister's office. I cannot say whether, in addition to that, Minister Ellison and Senator Hill were included, but I would not expect that they would have been because it particularly relates to Mr Downer and myself. Through offices, it was agreed that Mr Downer would take the lead on this issue, since the regional cooperation arrangements were being used. He was also, I think, travelling on the Sunday afternoon, so that if he was to be available it was best that he took the lead and did that first and, if there were subsequent questions, that I would answer them.

Senator FAULKNER—Do you try to satisfy yourself as to the accuracy of what is contained in a draft that comes forward from the department?

Senator Vanstone—I work on the assumption that statements in a draft press release that has been prepared and cleared by the task force and cleared by other officers are correct.

Senator FAULKNER—Mr Killesteyn, can you tell the committee who clears these drafts? Is that your responsibility?

Mr Killesteyn—Yes, certainly. It was a draft from the People Smuggling Task Force. I am chair of that task force, so the final clearance was with me.

Senator FAULKNER—In this case you did clear that draft?

Mr Killesteyn—Yes, I did, on the evening of Saturday, the 8th.

Senator FAULKNER—Are you able to say to the committee on what basis the task force made the statement that the passengers on the *Minasa Bone* did not claim asylum in Australia? Can you give us the background as to why that statement was included, please?

Mr Killesteyn—That was the information that was available to the People Smuggling Task Force at the time. We met, as you would appreciate, quite extensively throughout that week beginning 4 November. During that time we were receiving reports about what was happening in relation to the people on board the *Minasa Bone* while it was being held in international waters. None of the information that we received indicated that any claims to asylum in those terms were being made. It was a statement that we included at the time on the information that we had available to us; nothing more than that.

Senator FAULKNER—Thanks for that. I want to just understand here whether the agencies that you are referring to—and for the record and to be clear, which agencies are you referring to that were providing this advice?

Mr Killesteyn—That primarily is in relation to ADF initially. The responsibility for intercepting the vessel and holding it, pending decisions on its future, comes from them. Subsequently, as I mentioned in my opening statement, we received information from the intelligence and evidence gathering interviews that were conducted by the joint AFP-DIMIA team that went out to the vessel.

Senator FAULKNER—Thank you for that. I want to be clear here as to whether those agencies were silent on this issue or in fact gave a positive indication. I hope you understand the distinction I am drawing here. In other words, you received no information about whether passengers on the *Minasa Bone* were claiming asylum in Australia, on the one hand; alternatively, whether you actually received information that they were not claiming asylum in Australia.

Mr Killesteyn—Senator, throughout the week during the meetings of the People Smuggling Task Force we were asking what was happening and what was being said. Information was given to us that no asylum claims had been made.

Senator FAULKNER—You can say that you got a clear indication in the negative from the agencies that were providing the information. In other words, it was not a matter of getting no information; you got clear indication from those agencies that claims were not being made.

Mr Killesteyn—I believe we had a clear indication that no asylum claims were being made—in those terms. This is where there are some lessons for the People Smuggling Task Force and me in particular, with the great benefit of hindsight. The statement should not have been made but the comments that we were getting were about asylum claims. When we were asked on Tuesday, 11 November, to confirm the information, we sought precise details about what was actually said, without any further interpretation or analysis. That is when the information about what was actually said was first collated by those particular agencies, Defence and AFP. That is when it transpired that those statements emerged.

Senator FAULKNER—You make a distinction about the fact that no asylum claims were made. I just want to be clear on this before we move on. Were other claims made?

Mr Killesteyn—No. What I am suggesting is that from the point at which the options were settled about the disposition of the vessel and from the point that excision had been made, the focus of the task force was primarily on achieving those options: either return towards Indonesia or processing in Manus or Nauru. That was our primary focus; it was not to delve into the range of statements that people may or may not have made. During the meetings of the People Smuggling Task Force, while it was not a primary issue, information was provided that people had not made asylum claims.

Had we been concerned about that issue, and with the great benefit of hindsight, we would not have asked whether asylum claims had been made but rather, ‘What did the people actually say?’ But this was not a material issue. The material issue for us was to ensure that people were being provided with an opportunity to have any asylum claims heard and in a way which did not provide any further incentives for further boats. That was being put in place. That was the focus, to return people towards Indonesia so that the regional cooperation arrangements could be put in place and effected, and that is what has happened.

Senator FAULKNER—But did your task force, Mr Killesteyn, proactively seek information from agencies as to whether claims for asylum were made? That is not clear from what you are saying. I am not suggesting you are not telling us. I just want to nail this down.

Mr Killesteyn—I think I have answered that question. Our primary focus was on return of the people either towards Indonesia or to a processing centre in Manus or Nauru. It was not a primary focus to delve into whether the people were formally or informally making asylum claims. That was not a focus of the task force activities.

Senator FAULKNER—I appreciate—

Senator Vanstone—With respect, he has not finished. I think he was going to conclude what he was saying.

Senator FAULKNER—I am sorry. I did not realise that.

Mr Killesteyn—I believe the answer to your question is that the information that we were receiving was sufficient for us to indicate that people were not making asylum claims, but it was not a primary focus of our actions during that week. The primary focus was either Indonesia or Manus-Nauru.

Senator FAULKNER—I do hear what you are saying about your primary focus, Mr Killesteyn. You have told us that; I accept it. I am just wanting to understand—and it may

have been a secondary, tertiary or minor priority, for all I know—whether or not the task force proactively sought this information from agencies, accepting it was not your primary focus. You have told us that; I accept it.

Mr Killesteyn—Nor was it relevant. What I am trying to say is that it was not a relevant issue as far as the task force was concerned. It was not relevant for the three reasons that I mentioned: (1) excision of Melville Island had meant that no protection visa claim could be made; (2) they did not make a claim in the way in which the migration regulations set out the need for a claim; (3) any asylum claims that may have been presented by the individual were going to be dealt with through the regional cooperation arrangements. That was our focus.

Senator FAULKNER—If it was not relevant and you did not have definitive advice, how could you make that statement in the press release? If you did not ask the question, if it was not relevant, how could these particular claims be made in the joint media release? That is what I am trying to understand.

Mr Killesteyn—That information had been provided to the committee during its discussions in the week. It was incidental but it was provided to the committee during that week.

Senator FAULKNER—Incidental? You say to us that certain agencies, or an agency, provided information that there were no asylum claims. You can say that to the committee.

Mr Killesteyn—Yes.

Senator FAULKNER—We now know that that advice was incorrect.

Mr Killesteyn—With hindsight, had we probed, we would have heard statements of a kind which normally would raise questions about whether asylum issues were being raised.

Senator FAULKNER—Which agency provided that incorrect advice?

Mr Killesteyn—Essentially that comes through the Australian Defence Force.

Senator FAULKNER—Minister Vanstone, at a doorstopper on Thursday, 6 November, indicated to the public that there was an interpreter on board the *Minasa Bone*. You can confirm that an interpreter and DIMIA officials were on board?

Mr Killesteyn—Yes, I think that particular reference is in relation to the interview team that was dispatched, a joint interview team from the Australian Federal Police and immigration. The purpose of that interview team was to collect intelligence and evidence in relation to any possible future prosecution. Included in that team was an interpreter.

Senator FAULKNER—That was an interpreter, but what language did that interpreter speak?

Mr Killesteyn—Turkish.

Senator FAULKNER—Are you able to say what they reported?

Mr Killesteyn—Sorry, I have just been corrected. There were two interpreters, both Turkish.

Federal Agent Lawler—Senator, if I might be able to assist there, amongst the team were five AFP federal agents, a representative from DIMIA as you have already heard, and two interpreters: one Indonesian interpreter and one Turkish interpreter.

Senator FAULKNER—Thank you for that. We are talking about the same time period that Mr Killesteyn has been speaking of?

Federal Agent Lawler—That is correct. The crew were not on the vessel at all occasions. They were moving backwards and forwards as and when required.

Senator FAULKNER—For this information to be included in the press release—that the passengers on the *Minasa Bone* did not claim asylum in Australia—are you now able to say to the committee what information you, as the person who signed off this preliminary draft and then final draft, relied on?

Mr Killesteyn—That was on the basis of the information that had been provided throughout the week, coming from Defence. The information that subsequently showed that statements had been made by the individuals was not collated until after my request, following on the request from Minister Vanstone to confirm the advice that was given.

Senator FAULKNER—So you have half a dozen people of the People Smuggling Task Force poring over all this stuff and no-one picked it up?

Mr Killesteyn—As I said, the information was first collated after my request. Prior to that, the information was provided orally.

Senator FAULKNER—Who provided the oral information?

Mr Killesteyn—Defence.

Senator FAULKNER—Did you request it?

Mr Killesteyn—I also have confirmation from AFP.

Senator FAULKNER—That it was orally provided by Defence?

Mr Killesteyn—No, both Defence and AFP.

Senator FAULKNER—I am sorry, I misunderstood what you were saying. Defence and AFP, oral advice in both cases. Is that what we are saying?

Mr Killesteyn—That is my understanding.

Senator FAULKNER—You can confirm that, Mr Lawler?

Federal Agent Lawler—Yes, I can. Communications were had with both the crew and the passengers on the vessel. Information was obtained through interpreters and the very clear advice that I received was that there were no statements made or words spoken that mentioned either asylum or refugee; and a written statement was taken from the interpreter to confirm that fact.

Senator FAULKNER—Can you tell us what agencies the interpreters were attached to?

Federal Agent Lawler—I will need to take that question on notice. My understanding is that they were interpreters from the private sector. Where they are normally employed I am not able to answer with clarity.

Senator FAULKNER—That is common practice is it, Mr Killesteyn? I would not know. I am not pretending that I would know this. DIMIA would have some in-house interpreters. You do have some resources, don't you, you can draw on?

Mr Killesteyn—Yes. Senator, the team as Mr Lawler has explained was primarily an AFP team. I believe it is correct that they were from a private capacity, but we will need to check that. Bear in mind that what we are talking about is a fast-moving situation where you need to bring together people very quickly and it is a matter of sourcing them as best you can. We need to take that on notice and confirm that.

Senator FAULKNER—You indicated in your opening statement that the inaccuracy of the sentence that we have focused on recently here in the joint media release of Ministers Downer and Vanstone, you only became aware of because of media reports?

Mr Killesteyn—Yes, on the Monday afternoon. I believe that one of the media outlets—I cannot confirm, it may have been the ABC or one of the newspapers—made contact with the 14 passengers in Saumlaki. It was during those conversations between journalists and the 14 passengers that they indicated they had made those statements.

Senator FAULKNER—How does this all fit with—and it might not be an accurate media report—the media report in the *Daily Telegraph* newspaper of 14 November? I always stress when I ask questions about media reports; of course they might not be accurate, but you can tell me. The report that one man pointed to the word 'refugee' in an English-Turkish dictionary, how does that fit with the evidence that you have given?

Mr Killesteyn—That is entirely consistent. I have already indicated that in my opening statement, that one man did so.

Senator FAULKNER—But how does that fit with what you and Mr Lawler have told us in relation to asylum? You tell me again about the words 'asylum seekers' and 'refugees' not coming up in this process.

Mr Killesteyn—Senator, in terms of the particular press statement, it was on the basis of the information that we had been communicated at the time. There is nothing simpler than that. It was subsequently found, when we asked the questions, 'Precisely what happened? What was said? Who did what?' that the information about the events during the period from 4 November to 7 November were first collated and put down on paper. It was at that time that those statements and the indication by a particular person on board the *Minasa Bone* became evident.

Senator FAULKNER—I want to be clear here. Did the interpreters get this wrong or were they not asked? Or was it just a communication breakdown. There is an apparent inconsistency here. It may not be a real one. We are entitled to have an explanation. Given what we have been told about what the interpreters have reported and then the media reports—and I understand that they are media reports—are you able to clear up what is an apparent inconsistency for us?

Mr Farmer—Senator, I wonder if I might be able to help?

Senator FAULKNER—That would be very helpful, Mr Farmer.

Mr Farmer—As always, Senator. I think that various people will adopt differing views to the question, ‘Did someone ask for asylum?’ It is generally true to say that our immigration officers have broad experience in this area and they will look for a variety of indicators of a request. In other words, we would not be looking for people to make a request in a particular form of words. If someone is saying, ‘I am fleeing persecution,’ or ‘I am running away from certain death. I am a refugee,’ those would be potential triggers for us.

Others—and we are dealing with a number of people working for other agencies, the Defence Force and so on—are not necessarily as attuned to those needs. Therefore, when you ask the question, ‘Did someone request asylum?’ it is certainly possible, and it seems to me to have been the case here, that an individual said the magic word ‘asylum’ was not mentioned. I know that sounds a quite feeble attempt at reconstruction, but it sounds to me as if—

Senator FAULKNER—With respect, Mr Farmer, it does. I could not have said it better myself.

Senator Vanstone—We are all pleased to know that.

Mr Farmer—However, if I was trying to bring artistry to the matter rather than trying to be helpful and explain how these things happen, I would probably do a more convincing job. I am trying to be, as I always try to be, responsible in trying to help you. That is why, when you ask the question, ‘What is said?’ you get a whole range of statements of the sort that Mr Killesteyn referred to. Point to the word ‘refugee’ and so on. That information was not available to the People Smuggling Task Force some days earlier and the answer to the question, ‘Did they ask for asylum?’ was ‘No.’ That is my reconstruction.

Senator FAULKNER—What you are saying in part is that people responsible for this and experienced about this, know what questions to ask. That is in part what you are saying to us, is it not?

Mr Farmer—In part, know what questions to ask, but also have experience in dealing with responses.

Senator FAULKNER—Do they know what questions not to ask? That is what a cynic would say, you see. I am not a cynic, as you know, but a cynic might say that in response.

Mr Farmer—When we have—

Senator FAULKNER—I beg your pardon.

Senator BARTLETT—Sorry, I was just muttering about the same thing that Senator Mason asked a second before you asked it, so I am obviously a cynic.

Senator FAULKNER—That means I am not the only cynic apparently on this side of the table. I am pleased to see that Senator Bartlett and Senator Mason are also cynics.

Mr Farmer—We do not bring cynicism to the discharge of our responsibilities under Australian law. Immigration officials, as you know, have processed quite a few thousand people who have arrived in Australia, for example, in the last five years and quite a few of those have been found to have a prima facie claim and have been accepted by the department as having claims. So, no, we do not train people in what not to say.

Senator FAULKNER—Sure.

Mr Farmer—We train people in ways that are designed to enable them to administer the law.

Senator FAULKNER—Tell me this, just in the broad—

Senator Vanstone—Perhaps, Senator, if you would not mind before we go on: following on from what Mr Farmer said, in these matters and in frankly all other matters, we will all have our different perspective and disposition and will probably try to not describe them as being bigotry, but sometimes they are and sometimes they are not. I do not, however, think it is helpful to make an assumption about public servants who have done their job for years under various governments of different persuasions and to attribute to them motives that you might, in a political forum, want to attribute to your political opponents.

Senator FAULKNER—No, I do not. I agree with that.

Senator Vanstone—Which is, with respect, what I think you came very close to doing a minute ago.

Senator FAULKNER—They are not even public servants.

Senator Vanstone—There are immigration officials here who have worked for a long time in the department. I am not speaking about the specific ones on the *Minasa Bone* but generally speaking. They did a good job for your government, Senator Faulkner, when they were in government and have continued to do a good job for the government that happens now to be of a different persuasion. I do not think it adds any gravitas or credit to committees if they try to attribute political motives to public servants. Largely, in the seven or so years we have been in government, it has not been my experience.

Senator FAULKNER—In fact, I agree with that. The people we are, at the moment, asking questions of appear not to have even been public servants. But in relation to the interpreters, do they provide written reports? Mr Lawler, I think you are in the best position to answer this, if you can. But if someone else can, please do. Do they provide written reports for Defence and AFP, or is it, in a sense, that Defence and AFP and DIMIA actually write reports coming out of the interpreter's translations? I think that is the distinction, if you understand it.

Federal Agent Lawler—I think I do. As far as the group of federal agents and the representative from DIMIA and the two interpreters—separate from Defence—the purpose of the AFP being out and speaking to both the passengers and crew, was to elicit information and evidence. That information, in the normal course of events, will be written or recorded, depending on the circumstances. In relation to the interpreter, my understanding—and I have been advised—that a written, signed statement has been obtained from the interpreter indicating the communications that took place. Subsequently—

Senator FAULKNER—Is that ex post facto? It is not clear whether you are saying that was a contemporary document or subsequently to this issue—

Federal Agent Lawler—That was subsequent to the events.

Senator FAULKNER—After the issue got some public notoriety.

Federal Agent Lawler—I think that is right.

Senator FAULKNER—Yes. What happens in the course of events before it becomes an issue? On most of these occasions they do not become issues of public notoriety, as you appreciate. What happened in this case with the interpreters? Do they do a translation? Do they say to DIMIA officials, ADF and Defence officials, ‘This is what we’ve heard’? Is it as formal as writing something down as a report, either from the interpreters or the other agency representatives there?

Federal Agent Lawler—Certainly in the AFP case it would be normal, depending on the circumstances of the particular matter, for a translation to occur and for a written statement to be provided.

Senator FAULKNER—Thank you. Mr Killesteyn, is the Defence member of the People Smuggling Task Force here?

Mr Killesteyn—No, I believe he is not.

Senator FAULKNER—Did the communication from the ADF that you have been speaking about in relation to these events come through to the Defence member of the People Smuggling Task Force?

Senator Vanstone—Senator, I did not hear all of that question, but in relation to the defence personnel not being here—and it will be the same for DFAT—my understanding is that there is a process which has apparently been followed for some years. I have not been involved in a committee like this before where people from other departments have been requested to attend. I am told what normally happens is that the committee writes to the minister from which department you are seeking officers to attend who are not normally part of that committee and then that department responds.

Senator FAULKNER—Yes.

Senator Vanstone—It is not for me to paraphrase the defence minister’s view, but I think it is roughly that they have not yet been requested by the committee to attend.

Senator FAULKNER—I accept that. That is fine. What I am asking about is information, if Mr Killesteyn is happy and able to assist—and I am sure he would, as the chair of the task force—coming from Defence sources in relation to these matters we are hearing about. It is the key agency. We have heard about the AFP and the ADF being the two agencies that are directly passing this information on. What I am asking Mr Killesteyn is: did the defence personnel at Melville Island, or around there, pass that information on? Did that information come through the chain of command to the Defence representative on the task force? I assume it did. That has been the way it normally works, but I just wanted you to confirm that.

Mr Killesteyn—Yes. That is the way it normally works. There is no direct communication between any of the people in the field, so to speak, and the People Smuggling Task Force.’

Senator FAULKNER—We spoke briefly a little earlier about some of the regional cooperation arrangements and the minister canvassed this in question time today. I think we are now clear that those commenced in June 2000. That is correct, isn’t it? Are these governed by an MOU? I think we are now clear that those commenced in June 2000. That is correct, isn’t it? Are these governed by an MOU?

I think we are now clear that those commenced in June 2000. That is correct, isn't it? Are these governed by an MOU?

Mr Killesteyn—It is called an arrangement precisely for that reason: there is no formal document, such as an MOU or any other document, which defines the arrangements or the obligations or expectations on any of the parties. It is an informal arrangement and has been since June or July 2000.

Senator FAULKNER—It is an informal arrangement?

Mr Killesteyn—That is correct.

Senator FAULKNER—Who are the parties to the informal arrangement? Are there parties to informal arrangements?

Mr Killesteyn—We are dealing with substance over form: I cannot stress that more. We have arrangements in place which involve the IOM—the International Organisation for Migration—that provides the board and quarters for individuals during a time when claims are assessed by the UNHCR. Immigrasi—the Indonesian immigration department—facilitates that by ensuring that people who are illegally in Indonesia and who may be seeking to make asylum claims have an opportunity to stay in Indonesia whilst those claims are heard. The Australian government provides the financial support for all of those arrangements to happen, which is primarily payments to IOM for the board and quarters. There were initial payments made to the UNHCR when the arrangements were first set up. That has worked since the middle of 2000.

Senator FAULKNER—Do I understand then that there are four parties to the arrangements? That is what I read into what you say.

Mr Killesteyn—Yes.

Senator FAULKNER—They are the Indonesian government, the Australian government, the IOM and the UNHCR.

Mr Killesteyn—That is correct.

Senator FAULKNER—Do we have such informal arrangements with any other country?

Mr Killesteyn—We do, on a much smaller scale, with Cambodia.

Senator FAULKNER—That is the only other example of this?

Mr Killesteyn—There are—and I know you might think I am splitting hairs—arrangements which are even more informal than that. For instance, we have had a number of cases where people seeking to enter Australia illegally through East Timor have been managed in exactly the same way. We work with the East Timorese authorities, UNHCR and IOM to ensure that they have an opportunity for processing.

Senator FAULKNER—When a situation like the *Minasa Bone* occurs, is it clear what the arrangements mean in that sort of circumstance?

Mr Killesteyn—That would be my view. As I said, it is substance over form. They have been in place now for quite some time, they have worked very well, and nearly 4,000 people

have been processed. I do not think there would be any misunderstanding in relation to what would be happening.

Senator FAULKNER—I heard what you said in your opening statement about the numbers, and I think Mr Ruddock may have used similar or identical figures in the parliament. Can you very briefly explain how the arrangements apply in this circumstance? What do the arrangements mean? What happens in this circumstance?

Mr Farmer—We told this committee in February 2001 when we were talking to it. We went very briefly through the arrangements and we said at that time that we had established a good working relationship with Indonesia, in close concert with IOM and UNHCR; Indonesia continues to intercept and detain people who are en route to Australia by boat; IOM then interviews those detained and refers those claiming a protection need to UNHCR; attempts are made to find a durable solution for those mandated as refugees by the UNHCR. The point that was not mentioned there was that return arrangements are then facilitated by IOM.

Senator FAULKNER—Was there an agreement between the Indonesian government and the Australian government over the *Minasa Bone*?

Mr Killesteyn—The process was as I outlined in my opening statement: that we provided advice to the Indonesian government on several occasions about the decision to take the vessel to Indonesia. There was an opportunity for the Indonesian government to consider that information and at no stage, as I have indicated in my opening statement, was there any indication that the Indonesian government would not be dealing with these people through the regional cooperation arrangements.

Senator FAULKNER—I am sure you have seen the comments of Mr Natalegawa, who is described as Indonesian foreign ministry spokesman. I do not know if that is a fair description; it is a media description. Is that a fair description?

Mr Killesteyn—I understand he is one official in the Indonesian government.

Senator FAULKNER—He has basically suggested that the Australian government effectively told the Indonesians what they were going to do.

Mr Farmer—I do not have that statement in front of me.

Senator FAULKNER—I will quote it. This is what Marty Natalegawa said on the *PM* program on 14 November this year:

Agreement was not sought, nor was it given by Indonesia to the decision given by the Australian authority to basically expel them out of Australia. Information was shared with us that the boatload of people were to be driven out of Australia again, but it is not a matter of them being pushed back to Indonesian waters. We were assured that they were to be taken out of Australia's waters and not into Indonesia's waters, but rather in the direction from which they came from.

Mr Killesteyn—That is an accurate media report, if I can put it that way.

Senator FAULKNER—Yes. It is in his own words.

Mr Killesteyn—I do not particularly want to make comments on what ministers from the Indonesian government have said, but there were equally other comments that were reported in the media from other Indonesian ministers which indicated that these people would be given an opportunity through the UNHCR to determine any asylum claims.

Senator FAULKNER—We have Mr Natalegawa's comments—he made some other comments as well. Let's not go there. Why don't you advise the committee, Mr Killesteyn, of what contact your task force had with the Indonesian authorities? That might be a sensible place for us to go.

Mr Killesteyn—The people on the task force—my members specifically?

Senator FAULKNER—Yes.

Mr Killesteyn—None. All of that was done through the Australian Embassy in Jakarta and, as I explained in my opening statement, the range of advice that we gave, through the embassy in Jakarta to various Indonesian government officials.

Senator FAULKNER—Did anyone in the department of immigration—in Senator Vanstone's department—have discussions with the Indonesians?

Mr Killesteyn—Yes. As I explained in my opening statement, there were discussions between the DIMIA representative in Jakarta and Immigrasi. This was after the initial advice which had been provided through our ambassador in Jakarta.

If I can work through the time frame again, so that it is clear, the first advice to the department of foreign affairs spokesman and the secretary-general was on 5 November. That was almost two days prior to the time at which the return towards Indonesia commenced. At that time we gave them assurances about assistance by the use of international agencies such as IOM and UNHCR. On the following day, 6 November, a formal advice was provided, as is the way in these things, through a third-person note to the Indonesian government. That formal note was then followed up on the same day, Thursday, 6 November. An immigration official spoke to IOM Jakarta, letting them know about the arrangements so that they could start preparations.

There was a series of points at which advice was being provided, and plenty of opportunity between the time of the first advice on 5 November and the time at which the vessel not only commenced the tow but was due to arrive off the island of Yamdena, which was around mid-morning on the Saturday.

Senator FAULKNER—That is helpful and I appreciate that. But isn't the regional arrangement for dealing with asylum seekers or have I misunderstood this? That is its purpose, isn't it?

Mr Farmer—No. It began as a means of dealing with people who were attempting to leave Indonesia to travel illegally to Australia. In other words, the question of whether they were asylum seekers or not was not central to the origin of the arrangements. The arrangements in practice incorporated procedures for, in effect, determining whether people would make an asylum claim. Of course some people do and some people do not.

Senator FAULKNER—Are you saying the regional arrangement is broader than dealing with just asylum seekers?

Mr Farmer—I think that is what we have consistently said.

Senator FAULKNER—This is not written down anywhere. There is nothing written down about the arrangement at all. The arrangement is completely informal. If I went to the IOM and the UNHCR, would they say it is not about asylum seekers?

Mr Farmer—We have given evidence before the committee in which we have addressed the issue you are talking about. As we said, we do not have a written agreement with, for example, the government of Indonesia. We have arrangements which the two governments, in what I would think would be a model of cooperation, have developed between them. It is a model which has been subsequently successfully used in other areas. To use Mr Killesteyn's construct, we have a very effective arrangement with Indonesia which reflects the very close working relations that we have with its government.

Mr Killesteyn—Looking at it as a chronology of events in how this thing operates, the first point rests with Immigrasi, where essentially they detain those people who are illegally in Indonesia. The second point is referral by Immigrasi to IOM. IOM talk to these people about the options that they have, which include returning, leaving the country voluntarily, or if any of those people then indicate a matter to do with asylum or make statements of that kind, referral then to the UNHCR for further processing.

While the processing by UNHCR continues, IOM provides the board an quarters for those individuals. There is a filtering which does not assume that everybody that starts in the process is an asylum seeker. It starts with a group of people who are ostensibly illegal and it gradually works through to finish with a number going home voluntarily and a number being assessed by the UNHCR. Some of those who are assessed as refugees will then move into a process managed by the UNHCR to seek a settlement outcome for them. Where the UNHCR makes an assessment that they are not refugees, they will be given a further opportunity to re-present claims and have them reassessed by an independent person. If no further claims are warranted or are not found, the process of seeking some other return arrangement will be managed once again by the IOM.

Senator FAULKNER—We are told that it is for illegal travellers from Indonesia. Does that include crew? Are there any arrangements for the smugglers under this regional arrangement? Where do they fit in?

Mr Killesteyn—The regional cooperation arrangements are about people seeking illegal entry into Australia. It does not cover arrangements in relation to the crew.

Senator Vanstone—I am sure the Federal Police can give you plenty of information about the very good cooperation that law enforcement has in Indonesia, which cooperation is used regularly.

Senator FAULKNER—I appreciate the role of the AFP and their very extensive knowledge in that area. In relation to the briefings provided to the Leader of the Opposition last week, you can assure me that—

CHAIR—There is a division, Senator. I suggest that the committee adjourn for 15 minutes, including the time it takes to do the division, so perhaps five minutes on top of that.

Proceedings suspended from 8.56 p.m. to 9.17 p.m.

CHAIR—Ladies and gentlemen, we will reconvene. I ask officers to come back to the table. We will continue with questions from Senator Faulkner. I understand Senator Bartlett also has some questions which will follow on and then we will take stock of where we are.

Senator FAULKNER—Mr Killesteyn, just to wrap up that issue before the division—because this has been raised in the parliament, the briefing given by the department and Mr Crean—you can confirm for the committee that what you have told us in relation to those arrangements and the regional arrangements is consistent with information provided to Mr Crean in his briefing?

Mr Killesteyn—Absolutely.

Senator FAULKNER—Thank you. I was asking about the issue of the whereabouts of the crew and I appreciate the information that has been provided by witnesses from the Australian Federal Police. Can an official indicate to us what has happened to the *Minasa Bone* boat itself? Where is the vessel, in other words?

Federal Agent Negus—Senator, we have no further information on the location of the boat either. That question has been asked of POLRI. However, they have no indication where that vessel currently is.

Senator FAULKNER—Were there any tracking devices placed on that vessel by Australian authorities?

Federal Agent Negus—Certainly not to my knowledge, no.

Senator FAULKNER—So this thing has gone to port in—

Mr Killesteyn—Yamdena Island, Port of Saumlaki.

Senator FAULKNER—Thank you, Mr Killesteyn. Saumlaki is the name of the port. After arriving at that port we just do not know where it went.

Federal Agent Negus—That is correct.

Senator FAULKNER—Do we know if it has left that port or not?

Federal Agent Negus—We are making inquiries with the Indonesians at the moment about that. No, we do not know at this time.

Senator FAULKNER—At this stage it may still be there; it may have gone.

Federal Agent Negus—We cannot say.

Senator FAULKNER—There are only two alternatives, I suspect.

Federal Agent Negus—Yes, and I cannot say.

Senator FAULKNER—Unless it sank, or something like that.

Senator Vanstone—That was a piece of intellectual genius.

Senator FAULKNER—Thank you.

Senator Vanstone—We are in wonderment of—it is either there or not there, seems to be—

Senator FAULKNER—I appreciate that you are up with the play, Minister. That is good. We do not know where the boat is and we do not know where the crew is.

Federal Agent Negus—That is correct.

Senator FAULKNER—Do we define the crew here—can someone assist me—as people smugglers? Are we able to say whether the crew here are people smugglers?

Federal Agent Negus—We are certainly investigating whether those people would qualify under Australian law as people smugglers at the moment.

Senator FAULKNER—Is that work being undertaken by the AFP?

Federal Agent Negus—Yes, it is.

Senator FAULKNER—Is that part of those broader investigations you mentioned previously?

Federal Agent Negus—We are hoping to interview and re-interview the passengers on the *Minasa Bone* who are now in Indonesia.

Senator FAULKNER—Are you able to say—either Minister or an official—to me what the current Australian policy is in relation to arresting the crew members of people smuggling vessels?

Federal Agent Negus—Senator, each case would be treated on its merits, of course. An assessment would be made of the available evidence and then appropriate decisions would be taken.

Senator FAULKNER—Is any official at the table able to say whether there has been a change in Australian policy in relation to these matters? Minister, you did not follow this one quite so closely?

Senator Vanstone—No. Fascinated as I am with your—

Senator FAULKNER—Thank you, Minister. Are you able to say what the current government policy is in relation to arresting crew members of people smuggling vessels?

Senator Vanstone—The policy is to assess each boat as it arrives, as to what should happen with it. What would happen with it and the people on it will depend on a range of factors. Where the boat is—

Senator FAULKNER—We do not know where this boat is.

Senator Vanstone—No, where the boat is at the time the government is making a decision as to what to do with it. Whether the government is prepared to bring people onshore to process them. Of course, that would then mean the crew could come onshore and be dealt with, if they were in fact people smugglers. But if a decision was made that the people were to go offshore, that may entail a requirement that the crew go as well. There are different ways. There is a range of ways to frustrate the actions of people smugglers. One of them, of course, is to prosecute or detain and seek to prosecute crew members on the basis, hopefully, that when they go back they have had a not terribly pleasant experience and do not want to do it again and word spreads that that is the risk crews will run.

Another, of course, is to not allow the smugglers to be successful; not allow the people to come onshore and therefore not to make whatever claims they want to onshore in Australia. There will be occasions when you want to use one method and there might be occasions when you will want to use another.

Senator FAULKNER—Yes, okay. But in this case we do not know where the crew is and we do not know where the boat is.

Senator Vanstone—Not at this point, but when we made a decision as to what we wanted to do, we knew where the crew, the boat and the cargo were.

Senator FAULKNER—Are you able to say then, Minister, at what stage a decision was made to allow the crew to remain on the boat and not apprehend them, if that was an option?

Senator Vanstone—I think, with respect, your characterisation is incorrect. A decision was made—and there has been policy for some time that wherever possible and appropriate we will have people who are seeking to come to Australia illegally, processed offshore.

Senator FAULKNER—Yes, but we are talking here about the crew. In many cases we are talking about the people smugglers themselves.

Senator Vanstone—In order to return the boat, having made the decision that we would—and this is our policy; that people will be processed offshore wherever possible—we have to return the crew with it.

Senator FAULKNER—Is that consistent with what happened to those asylum seekers that ended up at Nauru?

Senator Vanstone—The people who were involved in that matter are best to comment on that.

Senator FAULKNER—Yes.

Senator Vanstone—Not me.

Senator FAULKNER—That is the issue: is it consistent with what has happened before?

Mr Farmer—You are really talking about different things, though. In the case of boats which are returned towards Indonesia, what you are really doing there is keeping crew on board in order to permit the safe return of the passengers. They are already obviously facing a number of dangers at sea and so the rationale is that you do not increase those dangers by taking the crew off. You leave the crew on to take them back to Indonesia. In the case of people on Nauru, they of course did not travel on their own boats to Nauru. They, in a variety of ways, were—

Senator FAULKNER—I know that, but the original SIEVs. I know the SIEVs did not go to Nauru.

Mr Farmer—Yes.

Senator FAULKNER—I am well aware of that.

Mr Farmer—I am trying to set out the logic of it for you. In some circumstances, as you know, people were in earlier years dropped on Ashmore Reef, for example, and the people

who transported them there left them there and went. In other circumstances, the people were apprehended and the people who were driving the boats were arrested.

Senator FAULKNER—What the minister said to us is, ‘It is a case by case basis, a decision is made.’ Is that right? Are decisions made on what to do with the crew on a case by case basis?

Mr Farmer—If you are going to attempt to return the boat in the direction whence it came, with the aim of its returning to Indonesia, then that is the decision. Once you have made the decision, the other matter follows.

Senator FAULKNER—Is that a policy then? If a boat is to be returned whence it came, then the crew is returned intact with the boat. Is that the policy?

Mr Farmer—I believe that has been the practice. I am not in a position to answer that particular question.

Senator FAULKNER—I am sure someone from the task force can.

Senator Vanstone—Senator, the questions I have given you, I have no problem with the answers, but I just say I had not contemplated that you would entertain, or that anyone would entertain—I just had not contemplated this, taking the cargo of a boat into international waters in the direction whence they came, just outside Indonesian waters and leaving them there without a crew.

Senator FAULKNER—I am not suggesting that.

Senator Vanstone—Because that is the point that Mr Farmer made—that if you are going to return them to a particular place and there is a continuing sea voyage to be had, that you obviously would want to leave the crew with them—if you are not making that assumption, I am glad you are not, because the safety of those people would be at risk if you set them off on that voyage without the crew. The next assumption is, do you bring them to the mainland or send them elsewhere?

Senator FAULKNER—There are a range of options. On 27 August 2001, Minister Ruddock announced this policy:

Most vessels approach an Australian territory and come within our territorial waters, if we see them at sea we warn them and counsel them that they’ll be breaching our law, the crew will be charged with people smuggling...

and on it goes. That was 27 August 2001 and I am trying to understand if there is a policy change. You do not necessarily need, in this case—I do not know the details in relation to *Minasa Bone*. That is why I am asking the questions. It may not need four crew, it may only need three. It may only need two. There has been a naval escort. So it goes on.

Senator Vanstone—Not into Indonesian waters, there was not.

Senator FAULKNER—There may be a range of circumstances that give options. I thought what you were saying, Minister, was that these things are determined on a case by case basis.

Senator Vanstone—What I have said to you is that the Australian government’s policy is wherever possible to have people who are seeking to enter Australia illegally processed for

any claims they might want to make offshore. What you do with each boat would need to be decided on a case by case basis. You may have a boat that lands, for example, on one side of Australia versus another. There would be different considerations about where they will go.

Senator FAULKNER—This is the point. What about Minister Ruddock's press release of 13 November 2001, 'Return of 37 unlawful arrivals to Sri Lanka':

Of the 32 Sri Lankans who remained on Cocos Islands, 27 were still having their cases assessed, while five other were awaiting travel documents. Six crew members have been taken to mainland Australia to face charges of people smuggling.

It does seem to me that there are, at least on the two occasions I have quoted to you, very different approaches. What I am trying to understand is first of all has there been a change of policy? If there has not been a change of policy, are these things being looked at on a case by case basis? That is why I was asking you the broad policy question, Minister, but specifically I am interested, obviously in relation to the *Minasa Bone*, precisely if a decision was made—and if so when—not to apprehend the crew?

Mr Farmer—Senator, I think the first reference you made was to a statement by Mr Ruddock in August. If my memory is correct—I am not 100 per cent certain of this—that would have predated any of the returns to Indonesia.

Senator FAULKNER—Fine; so the policy now is to safely return the travellers. That's right, isn't it?

Mr Farmer—I think the minister put the policy in a slightly different way.

Senator FAULKNER—Safely return the travellers and let the crew go?

Senator Vanstone—Senator, I think you agree with this: that if you make a decision that a boat is to be returned whence it came and there is from that point on a continuing sea journey, it is appropriate to not send that boat forward without a crew to manage the boat. It is not a case of making a decision that you will let the crew go, which you seek to characterise this as. It is a case of making a decision that you will return the boat whence it came, that it will be in such a condition as to be able to return from that point to Indonesia, where it came from, and at that point the people will be processed and allowed to make their claims. It follows that when you are using the policy of returning people whence they came, which is a part of having people processed offshore, you will obviously leave the crew with them for safety reasons.

Senator FAULKNER—Isn't it true, Mr Killesteyn—and perhaps someone from the Attorney-General's Department will be better placed to answer this; if they are, I am happy to hear from them—that, whether you are a mastermind or a key figure, a principal in a people smuggling operation on the one hand, or on the other hand just crewing a boat, as I understand what I heard in the second reading speech when we had established new people smuggling provisions in the Crimes Act, aren't all those people covered by those new provisions?

Mr Killesteyn—That is best addressed to AFP or Attorney-General's Department.

Federal Agent Lawler—Senator, certainly that would be the case if there were available evidence sufficient, on reasonable grounds, to suspect that those people had been in contravention of Australian law.

Senator FAULKNER—How was Mr Ruddock able to come up with his figure of 2,000 potential asylum seekers waiting to come? Can you assist us with that, Mr Killesteyn?

Mr Killesteyn—My apologies. I missed the question.

Senator FAULKNER—Mr Ruddock very recently talked about 2,000 potential asylum seekers waiting to come to Australia. Are you able to give us the background to that figure?

Mr Killesteyn—There are various estimates of the number of ‘potential illegal immigrants’, I think is their name. The figures are quite clear to us. There is a large number. On the basis of the intelligence we would have, we would certainly estimate that the figures are in the thousands. You are never going to get absolutely precise information. In terms of the potential, it is valid to say that it is a large potential. It is not one or two. It is not dribs and drabs. There is a large potential.

Senator FAULKNER—But this is a figure that Mr Ruddock has used publicly, I think you would be aware, in the last few days: 2,000. Is that on advice from the People Smuggling Task Force?

Mr Killesteyn—I am saying that the number of potential illegal immigrants continues to be large. We will never be able to put a precise figure on it, but in terms of the potential I think the parameters that have been used are a fair indication.

Senator FAULKNER—Thank you. I accept that evidence and I appreciate it. But I am asking, was the figure that Mr Ruddock used publicly of 2,000 asylum seekers waiting to come to Australia based on information provided by the People Smuggling Task Force?

Mr Killesteyn—I have no information on that particular question. I cannot answer that question.

Senator FAULKNER—You are the chairman of the task force.

Mr Farmer—Senator, the function of the task force is not to advise every minister on issues—

Senator FAULKNER—We have a People Smuggling Task Force. I want to be assured that Mr Ruddock would not pluck the figure out of the air. Of course he has.

Mr Farmer—That is your view and it is not my—

Senator FAULKNER—It did not come from the People Smuggling Task Force, we know that.

CHAIR—Senator Faulkner, perhaps Mr Farmer could complete his answer.

Mr Farmer—The People Smuggling Task Force is not charged with advising every minister on every matter relating to people smuggling or illegal entry. Having had the experience of working with Mr Ruddock for a long time, I do not know him to be a person who plucks figures from the air.

Senator FAULKNER—I am asking, did it come from the task force? It did not.

Mr Farmer—That is right; it did not.

Senator FAULKNER—Fine. We know it did not. We do not know where it did come from, I assume, Mr Farmer.

Mr Farmer—I do not know who advised Mr Ruddock. He is not my minister.

Senator FAULKNER—I know. But preventing asylum seekers is core business of your department, Mr Farmer.

Mr Farmer—That is true, yes.

Senator FAULKNER—I think it is a reasonable question to ask given that—

Senator Vanstone—You have asked it and been given your answer.

Senator FAULKNER—Yes. Given that Mr Killesteyn is here as chairman of the task force, given that we have the secretary of Mr Ruddock's department here and others, if someone knows where the figure came from, please tell us. I think it is clear you don't, and that is fine. As you do not, it is proper to say to the committee that you do not.

Mr Farmer—That is right—I do not know where the figure came from. If you look at the figures, just under 4,000 people—as we said earlier on—have been processed under the regional cooperation arrangements in Indonesia and, of those, about 670 have returned voluntarily to their countries of origin or countries of prior residence; about 470 remain in Indonesia under the care of the IOM; and a little over a thousand have been found to be refugees by the UNHCR and about 700 of those have been resettled to other countries. If you take those figures—670-odd, 470-odd and a bit over a thousand—that leaves you with about 1,800 unaccounted for and there are various possibilities for those people. We do not know where they are. I can go through the possibilities.

Senator FAULKNER—That is incredibly loyal, Mr Farmer. Let me refer you to an article in the Melbourne *Age* newspaper of Monday, 17 November. It is headlined 'Kurd boat testing us: Ruddock'. I would like to quote the third paragraph in its entirety:

Attorney-General Phillip Ruddock said a man called Ayoub, who reportedly organised the Kurds' boat trip to Australia, was a well-known associate of a major Indonesian people smuggler who was testing Australia's policy as a preliminary to reopening the route to Australia.

As I always do, when I quote from a newspaper, I accept it is a newspaper quote but I have no reason to doubt its accuracy. Can anyone from the task force, Mr Killesteyn, indicate to the committee, if you are aware, whether the *Minasa Bone* was connected with this known smuggler called Ayoub, as has been reported in Mr Ruddock's name on 16 and 17 November?

Federal Agent Lawler—As you have indicated earlier, the AFP investigation into these offences is ongoing. The AFP needs to be very careful in relation to the information that it discloses publicly, in the context of that investigation. I am sure you appreciate that.

Senator FAULKNER—I do accept that, Mr Lawler.

Federal Agent Lawler—I can say that there are a number of suspects that the AFP is investigating in relation to this matter.

Senator FAULKNER—Thank you. When did your investigation commence, Mr Lawler?

Federal Agent Lawler—The investigation commenced on 5 November.

Senator FAULKNER—So Australia's Attorney-General drops this name out on the 16 and 17 November. If it is all right for the Attorney-General to speculate about it publicly, I assume it is not unreasonable for me to ask questions about it at a Senate estimates committee. Would I be wrong?

CHAIR—I assume that is a question you are directing to the minister, Senator Faulkner?

Senator FAULKNER—It was actually a question to Federal Agent Lawler but I am happy if the minister cares to answer it.

CHAIR—Given that you are asking Federal Agent Lawler to make a response on whether it is reasonable for the minister to have done something and for you to then do something—

Senator FAULKNER—No, be fair.

CHAIR—Your own reasonableness is your own business but I will ask the minister if she has a view.

Senator FAULKNER—So that I can correct you, it was Mr Lawler who indicated when this particular investigation commenced.

CHAIR—I was not talking about that, Senator Faulkner. I do not need correcting. Minister?

Senator Vanstone—Thank you, Madam Chairman. It is a matter for ministers what remarks they make publicly and a matter for various houses of parliament to pursue them on those, if they wish to. It is not something that I think civil servants can comment on. They cannot get into the mind of a minister. They can only answer questions to the best of their knowledge, belief and understanding at the time and within the proprieties of their own activities, which of course in relation to people like the Federal Police include their operational requirements.

Senator FAULKNER—Mr Killesteyn, was this information about Ayoub provided by the People Smuggling Task Force to Minister Ruddock?

Mr Killesteyn—Not from the People Smuggling Task Force, no. As the minister has said, I cannot comment any further. However, I think the committee should note that there was already speculation in the media about particular smugglers, so it is quite possible that the reference to this particular gentleman was simply responding to media speculation that was already there.

Senator FAULKNER—I have seen no other reference before or since to this particular name. You may be able to point one out to me. Is there an official from the Attorney-General's Department who can indicate whether that information was provided to Minister Ruddock?

Mr Zanker—No information was provided by me to Mr Ruddock on that matter—no briefing.

Senator FAULKNER—Thank you. We do not know how this little gem dropped out into the public arena.

Mr Zanker—I do not know, no.

Senator FAULKNER—I appreciate that you do not know. Mr Killesteyn, does the People Smuggling Task Force report directly to Mr Ruddock?

Mr Killesteyn—No, it does not. I report to my minister.

Senator FAULKNER—You do, but there are also reporting arrangements to other ministers.

Mr Killesteyn—That is correct. The task force essentially operates on the basis that there are representatives from the various agencies that have a role in dealing with this particular issue. Each of the representatives reports to their respective ministers and provides advice to those ministers. My accountability is to Minister Vanstone.

Senator FAULKNER—Yes, I appreciate that. Who are the other ministers with direct reporting arrangements? The Prime Minister is one, isn't he?

Mr Killesteyn—The Prime Minister and cabinet are on the people-smuggling task force, together with the Attorney-General's Department, the defence department, Coastwatch, Customs, Foreign Affairs and Trade.

Senator FAULKNER—Who is the Attorney-General's Department representative on the task force these days?

Mr Zanker—That would be me and Rene Leon.

Senator FAULKNER—So, Mr Zanker, you could confirm to the committee that, like other departments and agencies, you would brief your minister.

Mr Zanker—We tell the minister's office what—

Senator FAULKNER—Thank you for that. That is as I am sure members of the committee would expect. Minister, I indicated to Senator Bartlett that I would give him an opportunity to ask some questions. The chair has politely reminded me of that commitment, and I will honour it, so I will interrupt that line of questioning now for that purpose.

CHAIR—You get a word in, Senator Bartlett!

Senator BARTLETT—If the current Attorney-General is aware of things like a potential people-smuggler that he is able to name or approximately 2,000 people potentially capable of trying to reach our shores, would that sort of information also normally be available to the immigration minister?

Senator Vanstone—You are asking me to have knowledge of what the people on the task force pass back to the Attorney, in order to say it is the same information, and I do not have knowledge of that. In relation to myself, as you know, I am still very new in this portfolio and, frankly, saying as little as I can until I feel more comfortable. I was chastised—maybe not so far as a chastisement—nonetheless by the ever-present media for not giving them as much information as they thought I had in relation to the boat and then had the experience of giving out the information that I had, which was that no asylum claims had been made, and then was chastised for that. Frankly, until I have been in this portfolio for considerably longer, I will undoubtedly hear lots of things that I will, in later months, be confident of passing on, but I am not at that point yet. I think, therefore, discretion is the better part of valour.

Senator BARTLETT—I understand that, but I had thought the Attorney-General's representatives on the task force had said they had not passed that information on or it had not come through the task force. Is that right or wasn't I listening?

Mr Zanker—That is correct.

Ms Leon—We did not pass that information from a task force meeting to the Attorney, but that is not to say that he might not have got that information from elsewhere in his portfolio. We report to him on matters of international law and closely related matters that arise in the task force, but obviously he has a large department and he may well have received that briefing from elsewhere.

Senator BARTLETT—I appreciate that and, in that sense, it probably adds up a bit better, because it means that you are not passing on stuff to your minister that is not being passed on to the other minister if it has not come through the task force at all. Would that be the sort of information that would come through, say, the AFP to the Attorney-General?

Federal Agent Negus—No, it would not.

Senator BARTLETT—We touched a couple of times on the regional cooperation arrangements. I heard most of those answers, and I think I have a bit of a handle on it. The figures that were mentioned before—and slightly more precisely in the opening statement—were 3,912 processed, 673 non-refugees returned and 1,093 found by UNHCR to be refugees. I was going to ask about what my maths tells is the other 2,146. Mr Farmer just said that approximately 470 of those are with IOM, presumably awaiting opportunities to be returned to their country of origin or some other area. Does that mean that the other 1,670-something were assessed not to be refugees, are not under the auspices of IOM and have left, through their own devices, or that they are still in Indonesia or elsewhere?

Mr Farmer—Senator, I think that the answer to that will be a combination of things but, by the very nature of it, we would not necessarily know. For example, it might be people who are still in Indonesia but are not, in effect, in arrangements taken care of by IOM, so they have left accommodation and so on that has been provided by IOM. Another possibility is that they would be people who have left Indonesia, but without assistance from IOM or the authorities, so they would not register. There may well be other possibilities.

Senator BARTLETT—When you say '3,912 people processed', is that processed by you and HCR, all of them, or is it potentially by others as well?

Mr Killesteyn—The figure of 3,912 is the number of people who have come under the umbrella of the regional cooperation arrangements. In a sense, these are people who have been through the chronology that I painted before from Immigrasi—Indonesian immigration—to IOM, to UNHCR and then either resettled or returned voluntarily. I can go through it again to make it a bit clearer. Three thousand nine hundred and twelve is the cohort under the RCA. Six hundred and seventy two of that 3,912 have been returned voluntarily through the IOM. Four hundred and seventy are currently still under the care of IOM, for one reason or another. They may be people who have been assessed as refugees by UNHCR waiting resettlement or they may be people who have not been assessed. There are 778 people who have been resettled.

You end up with a figure, if my maths is correct, of 1,920 out of the 3,912 who are no longer in Indonesia. The balance of 1,892 are people who, in some way, are unaccounted for. They may have returned, they may have left Indonesia, they may still be there, but they are people who are on the list as having at one point or another been under the care of IOM but are no longer there.

Senator BARTLETT—I will not try to nail down every last person, although I think there is a point to trying to ascertain how these arrangements work, for a couple of reasons. You say that 1,920 out of the 3,912 are not in Indonesia. You mentioned that 778 had been resettled out of the 1,093 found to be refugees.

Mr Killesteyn—I am sorry, I have made an error there. I need to re-count. 3,912 is the cohort. 672 have returned voluntarily.

Senator BARTLETT—They were non-refugees; found not to be refugees, I think. They were assessed as not refugees.

Mr Killesteyn—Not necessarily. They have returned voluntarily. That is the only categorisation I can give them at this stage—returned voluntarily.

Senator BARTLETT—I am pulling that from your opening statement that said 672 of those were assessed as non-refugees.

Mr Killesteyn—It is more likely that they were not assessed as refugees.

Senator BARTLETT—Okay.

Mr Killesteyn—Seven hundred and seventy eight have been resettled.

Senator BARTLETT—They would be UNHCR.

Mr Killesteyn—That is correct and there are 470 potential illegal immigrants who are under the care of IOM, so they would still be in Indonesia. What we have is a figure of 1,892 unaccounted for—that is people who have been under the care of IOM at some point but we do not know where they are now—plus 470 that are still under IOM's care that would still be in Indonesia. We are talking about 2,362 people that could still be in Indonesia, of which we know 470 are in Indonesia.

Senator BARTLETT—You said 470 potential illegal immigrants, to use your terminology without getting into arguments about the illegality—

Mr Killesteyn—No, I said 470 are under IOM care. They may be potential illegal immigrants because essentially we are talking about people who might at some stage get fed up with the arrangements in Indonesia for one reason or another, such as not getting the outcome they want, and could seek some sort of illegal entry to Australia. It has been proven that there are a number of people that we processed in Nauru, I believe, who were known to the IOM.

Senator BARTLETT—In your opening statement you said 1,093 had been found to be refugees by the UNHCR—your final line of your opening statement.

Mr Killesteyn—That is correct.

Senator BARTLETT—I presume the 778 resettled people are a subset of that.

Mr Killesteyn—That is correct.

Senator BARTLETT—The other 315 are not under the IOM, are they? They are under UNHCR awaiting resettlement. Is that correct?

Mr Killesteyn—I would need to take that on notice and confirm precisely how the arithmetic works. On the basis of the advice here that is not totally clear.

CHAIR—Perhaps you should have done that a little while ago.

Senator BARTLETT—My intention is as someone who thinks if we can make a processing or assessment system work in Indonesia that provides people with a realistic prospect of resettlement, then it is a good encouragement for them not to take the extra risk to go jumping on boats and those sorts of things. We want to try to get a sense of how effective it is in providing that option.

Mr Killesteyn—Indeed. I can give the committee a bit more information which illustrates the strength of the arrangements that are in place. Just looking at the resettlement of the 778 that I mentioned to third countries, Sweden took 178, Norway 119, Canada 135, New Zealand 118, Australia 125, USA 47, Denmark 27, United Kingdom 18, Finland 10 and Germany one. There is a very clear spread of resettlement opportunities for people, including to Australia.

Senator BARTLETT—If those people subsequent to 2001 were resettled in Australia, what sort of visa would they get?

Mr Illingworth—People being resettled in Australia from Indonesia would be brought in under the subclass 451 five-year temporary visa.

Senator BARTLETT—Should that happen with our small number of apparent Kurds, were they to be assessed by UNHCR and found to be refugees and Australia decided to accept them, would that be the visa they would get under normal circumstances?

Mr Illingworth—It will have to be decided on the individual case when we get to that point but it would appear that that would be the most appropriate visa. The issue would be whether these people had resided for more than seven days in a country where effective protection could have been sought and obtained at some point in their travels to Australia. That is a matter that ultimately will be decided on the facts of the case in each circumstance.

Senator BARTLETT—I appreciate that. Without wanting to labour this point further, when you are getting those figures and the maths sorted out—the 3,912—could you clarify if those people who have gone through IOM have all got to UNHCR. You say in your statement 3,912 have been processed. I just want to know if that means assessed by UNHCR or simply put on a list by IOM.

CHAIR—You want that information added to the answer to the question that is taken on notice?

Mr Farmer—We will work it out along those lines.

Senator BARTLETT—Thank you. My final question in this area goes to the effectiveness of the cooperation arrangements and its potential value in encouraging people to not risk boat journeys. In relation to this recent incident there were some quite strong comments from UNHCR—quite critical comments about the actions of the government. It is probably in the

ear of the beholder to some extent. I am usually a bit frustrated that UNHCR is not more critical. I suspect the government is always frustrated that they are too critical but these seem to be stronger criticisms and stronger expressions of concern than usual. I saw reports that the government sent an envoy or something to the UNHCR in Geneva to talk about it a bit more.

Was there anything specific about this that led to their concern being, what appeared to me, expressed more strongly than usual? Was there some belief on their part that the cooperation arrangements that would normally allow people to be assessed in Indonesia might not be certain to be applied in this case?

Mr Killesteyn—We have a very good working relationship with UNHCR. They have been involved in the regional cooperation arrangements from the first time that they were introduced.

I note that some of the statements made by the UNHCR in Geneva did not say that we were in contravention of the convention. We have had further discussions with UNHCR about this matter. We have agreed that we will continue to work together. I would be surprised if the UNHCR was not concerned about some of the statements that were made by Indonesian ministers, as Senator Faulkner was previously referring to them. It needs to be added that there were various statements from various people. What we were working towards was a very confident view in relation to the RCA because of their history. We had further meetings with the UNHCR and the working relationship, both here and in Geneva, continues to be strong. It continues to focus on ways in which we can try to deal with people-smuggling as an issue.

Senator BARTLETT—I am pleased to hear that about the working relationship; not that I had any reason to believe the contrary.

In your opening statement you mentioned that the two options that were settled on were return from whence it came—that is, Indonesia—or Nauru. Is there any reason why Christmas Island was not an option? That is still an excised place. It would certainly be easier to get to than Nauru.

Mr Killesteyn—We obviously have a very good processing centre in Nauru. The Christmas Island facility is currently being used for processing of the passengers from the *Hao Kiet*—that is, Vietnamese. We were of the view, given that it had just been recommissioned, that the *Hao Kiet* passengers should be processed. They are being processed in a very different regime—under the Migration Act—and we felt it was important to separate different groups of people being processed under different regimes and, therefore, the view was that Nauru as an ongoing offshore processing centre would be the most appropriate place.

Senator BARTLETT—A couple of weeks ago the earlier version of this estimates was advised that there was still no current or renewed MOU with Nauru. Is that still the case?

Mr McMahan—There was an agreement to extend but no final MOU has been put in place.

Senator BARTLETT—Would the lack of a final MOU have any impact in terms of being able to bring new arrivals, such as these, to Nauru?

Mr McMahon—I would not expect so, no. I will put it the other way around. It would confirm our ability to be able to bring new arrivals to Nauru.

Senator BARTLETT—What time of the day—specifically Canberra time—were the regulations gazetted?

CHAIR—We have an officer of the Attorney-General's Department to assist you with that response, Senator Bartlett.

Mr Graham—The *Gazette* notice was posted on the noticeboard at 5.25 p.m. on Tuesday, 4 November, and appeared on the Internet a few minutes later.

Senator BARTLETT—I did ask this question on the day, because we were actually holding estimates at the time. It was a different officer who gave the answer so I will try you out; I am sure you will say the same thing. There were obviously some issues to do with what, from your answer, is clearly actual retrospectivity of about three hours and 25 minutes, roughly speaking. The answer given by the officer, and your statement here, says they operate from straight after midnight on the day of gazettal. I imagine you would be aware of competing legal opinions and public debate about that—whether or not backdating to the first minute of that day only applies if you specify a date, as opposed to just day of gazettal. Has there been any legal action or court determination around that particular area of the Acts Interpretation Act that you are aware of?

Mr Graham—Not that I am aware.

Senator BARTLETT—In terms of the assessment made about the vessel being seaworthy—it was assessed by the Navy, and I do not know if we have anyone here who would be able to answer this—is there any legal or formal definition or test of what constitutes seaworthiness?

Mr Killesteyn—I think that is a matter properly for Defence to handle.

Senator BARTLETT—I will see how we go with that. The statement also says that 'the HMAS *Geelong* released the vessel without incident', around 7.30 in the morning Canberra time, 8 November. You may have covered this and I may have missed it. Where exactly was it released? Was it at the so-called border of Indonesian waters or just outside?

Mr Killesteyn—It was released in international waters but just outside of Indonesia's territorial seas.

Senator BARTLETT—Are you able to say how far from the port they were when they were released?

Mr Killesteyn—No, I am not. I cannot answer that. That is another matter for Defence.

Senator BARTLETT—How are you able to know that the boat will go there? Do you pull back a bit and maintain surveillance or tell them, 'This is the port just over here. Off you go'?

Mr Killesteyn—Again, that is a matter for Defence. The port of Saumlaki was chosen because it was the closest Indonesian port to Melville Island. The heading, if you like, 'From whence it came towards Indonesia', was based on that judgment that the shortest possible time under which the vessel would be towed would be facilitated by taking it to the closest

Indonesian port, released just outside of Indonesian waters. This needs to be referred to Defence, but it would be obvious that it would be heading towards that closest port.

Senator BARTLETT—What are the international waters? Twelve nautical miles?

Mr Killesteyn—It is 12 nautical miles, yes.

Senator BARTLETT—I have learnt something from all these inquiries. I finally know that off the top of my head. There is no specific set of protocols or procedures that you are aware of in relation to that? You have spoken a few times tonight and I do not have any reason to dispute, in one sense, that your procedures or decisions are in part based on not excessively endangering the people on board.

Mr Killesteyn—The PSTF is not in place. That is a matter that is assessed at the time by the Navy. It is a key condition, in relation to return, that vessels can do so safely. The PSTF relies on the advice that we receive from Defence and from the naval commander on board the vessel that is responsible for the return.

Senator BARTLETT—This question may have been covered earlier and, if it has, I will not press it. In terms of the ongoing surveillance operations—Operation Relex and Operation Relex II—is there any assessment under way on whether that needs to be rejigged in any way? I assume there was no warning by our intelligence or surveillance that this boat was going to arrive. Correct me if my assumption is wrong in relation to that. Does that raise any concern about whether or not surveillance is adequate or needs to be reassessed?

Mr Killesteyn—The PSTF is constantly learning. We are constantly evaluating things such as this. We will go through a process of examining whether there was anything else that could have been done in relation to Operation Relex. It is just part of trying to make sure that, in terms of the government's objectives, we are doing the job.

Senator BARTLETT—Was there any review after the arrival of the Vietnamese vessel near Port Hedland?

Mr Killesteyn—Yes, there was.

Senator BARTLETT—Has that been concluded? Have there been any changes made as a consequence of that?

Mr Killesteyn—Not specifically to Operation Relex. Let me point out that Operation Relex is not a fixed thing. It is constantly being judged and assessed on the basis of the intelligence that we are receiving. It is managed in a very proactive way. Much of the management of it is very critically dependent upon the intelligence that we receive—trying to get some idea of what the smugglers are doing; how they might operate; what sorts of potential vulnerabilities they may be seeking. We, the PSTF, are constantly looking at ways in which we can avoid the departure in the first place, as well as the interception arrangements. It is just part of what we do.

Senator BARTLETT—I appreciate that intelligence is not a precise science. That is a point that needs to be repeated. With this last arrival of the people who are apparently Kurds, can you confirm that there was not any intelligence, as far as you know, or sufficiently solid intelligence to lead you to expect this boat was on its way?

Mr Killesteyn—I would prefer not to engage in a debate about what intelligence we may or may not have had. It is clearly an issue where any information that might go to smugglers about the sorts of arrangements we have in place, or the sort of information, can be information to them.

Senator BARTLETT—Returning to where I started and to finish off—and possibly something to take on notice and some general extras about regional cooperation arrangements—my understanding in terms of which parts we pay for, or government pays for as well, in that whole process, is that we fund UNHCR to do assessments. Do we fund IOM for all of these or just the ones that return? These 3,912 would not all be people we have returned. We have not returned that many, have we?

Mr Killesteyn—No. Essentially it is an ongoing payment to the IOM. Essentially we fund the costs of board and quarters for people under their care. In relation to the UNHCR, we do not make any ongoing payments for their assessment processes. They are an internationally funded organisation to do that sort of work in any event. We pay a contribution, like many other countries, to the costs of the UNHCR. But we did, in relation to the regional cooperation arrangements, at the time they were established back in June-July 2000, make a payment which enabled them to set up their office in Jakarta, so they could undertake the processing in relation to this intercepted group of people in Jakarta and Indonesia generally.

Senator LUDWIG—I have an issue in relation to the Northern Territory Supreme Court matter, the writ of habeas corpus. When that affidavit was drawn by the solicitors involved, what information was available? Were they briefed by the People Smuggling Task Force? What did they rely on to draw the affidavits and present them to the Northern Territory Supreme Court?

Mr Eyers—There was not a briefing from the People Smuggling Task Force. The information contained in that affidavit was provided from members of the department and also members of the Defence Force.

Senator LUDWIG—What was that? How was that collated? Where did it come from? Was it oral evidence the People Smuggling Task Force had received from the defence department earlier in relation to—

Mr Eyers—It was information I personally received orally from the people I just referred to. It was not a written information.

Senator LUDWIG—Did you later check that information for its accuracy? Did you ask for a written report?

Mr Eyers—No.

Senator LUDWIG—Why wouldn't you have done that?

Mr Eyers—It was done for the purposes of the litigation of the court action. I relied on the information that was provided to me by those people and that was the basis on which the affidavit was prepared.

Senator LUDWIG—Since then you have had no reason to doubt the veracity or the accuracy of the information that was provided to you?

Mr Eyers—No.

Senator LUDWIG—You have not checked to see whether or not it was accurate?

Mr Eyers—No.

Senator LUDWIG—Are you going to do that now?

Mr Eyers—No.

Senator LUDWIG—You do not care whether it was accurate or not?

Mr Eyers—I believe it was accurate.

Senator LUDWIG—The information that you provided to the court then, was that only the affidavits that you had sworn?

Mr Eyers—Yes.

Senator LUDWIG—What other information was presented, or was it only that?

Mr Eyers—Yes. There were affidavits from the applicant's side, the plaintiff's side. But the only affidavits on behalf of the respondent were two affidavits that I swore.

Senator LUDWIG—The court said that some of the evidence was incredible. I was just curious, given your earlier comment, that you believed the accuracy of information that was provided to you and you did not see any need to go and check it and you still do not. What do you say about the court's view of the evidence, or at least some of the evidence, that it was incredible?

Senator Vanstone—With respect, that is not an appropriate question to an officer. Officers are entitled to have their personal views on a whole range of things. The officers are here to answer questions as to matters of fact, as to what they have been asked to do, what they have done, what their duties are, and to refer policy questions to the minister. It is not appropriate to ask them their personal musings, as informed as I am sure Mr Eyers' musings would be, on comments that a court has chosen to make.

Senator LUDWIG—Minister, what do you say in relation to the court's view of the evidence that was presented—that it was incredible?

Senator Vanstone—I answered a question in relation to that in the Senate the other day and I am happy to refer you to that *Hansard*.

Senator LUDWIG—I am happy to be referred to that.

Senator Vanstone—Then we are all happy!

CHAIR—I would not go that far, Minister.

Senator Vanstone—Some of us are happy. I might take this opportunity, if I may, Senator Ludwig, to ascertain how much longer our happiness is going to stay with us. Do we have any idea what time this joyous function will finish and we will retire to the doom and gloom of our homes or hotels?

Senator LUDWIG—The Senate is still sitting, so some of us will not be able to leave just yet.

Senator Vanstone—No, but this particular proceeding. Can the committee give us some advice in respect of that? We have officers here—

CHAIR—We currently have no advice to give you, Minister, but I will try to ascertain some useful information. I do try to be helpful, Minister.

Senator Vanstone—I know you do. There are people here, no doubt, who have children, lovers, things they want to go and attend to.

Senator LUDWIG—That is perhaps more information than I need to know about.

CHAIR—Possibly adequate, though, for our purposes.

Senator Vanstone—Just to give them an estimate would be helpful in the national interest, I would suggest.

CHAIR—Take statutory declarations on need, but we might not go there.

Senator LUDWIG—I asked at estimates, last time we were here, regarding the latitude or longitude of the vessel when it was first discovered. Is there an answer available in relation to that? Mr Killesteyn, can you help?

Mr Killesteyn—Sorry, I am working on a couple of other fronts here. Could you repeat the question?

Senator LUDWIG—The last time we were here at estimates I asked about the latitude or the longitude of the boat when it was first detected. There was a question I put to DIMIA. DIMIA took it on notice. I was wondering if you had been able to progress that by now.

Mr Killesteyn—I think we have. I know we pursued it. I do recall that we actually got the longitude and latitude, but I just cannot recall it, I am sorry. I will take it on notice again, but it should not be a matter of pursuing it. I know the answer is there somewhere.

Senator LUDWIG—The defence department also at estimates indicated the first they were aware of the vessel was when it arrived at Melville Island. Was DIMIA aware of any other information about the whereabouts of the vessel that might pre-date or precede that?

Mr Killesteyn—No, not at all. The first advice in relation to the vessel came through the Customs 1800 hotline. Once that information was made known, as a consequence of the local resident informing Customs, then there is a process within the People Smuggling Task Force which is operationalised for time critical information. There is a particular responsibility that essentially rests with Coastwatch, who then have to call multiple people on the People Smuggling Task Force, including myself as the chair. Once that information is obtained, we do whatever is appropriate in the circumstances. From my point of view, the first that I knew of the vessel's arrival was during Senate estimates at around 2.30. It might have been a little bit later. I think I was in the middle of giving evidence. At that point we called the People Smuggling Task Force together and first met at four o'clock.

Senator Vanstone—On that point—sorry to interrupt you—Mr Killesteyn mentioned the resident who rang the 1800 number and, for the benefit of the committee, on my advice that was one Gibson Farmer, a local resident on the island.

Senator LUDWIG—Hopefully, you were not going to provide that level of detail. Another conspiracy!

Senator Vanstone—Another conspiracy! Mr Farmer very kindly gave me a gift the other day, which was my own personal little boat carved by some Tiwi islanders, with a couple of boat people that could be taken in and out of the boat at will. I tell you this story to indicate that Mr Farmer is not only a good citizen who gets onto the Customs hotline, but has a tremendously amusing sense of humour. For the Tiwi islanders to give me my own boat with boat people, I thought, was a very generous and kind gesture. I mention that so that I can highlight that they indicated their support for the excision regulations, as of course did the Tiwi Land Council.

Senator LUDWIG—I am not sure I asked that question. In relation to the Navy patrol boat HMAS *Geelong*, where did it depart from and when was it contacted and told to proceed to Melville Island?

Mr Killesteyn—Again, I think the precise details of that would be best left to Defence. I could only give you a generalisation, which I do not think would help you.

Senator LUDWIG—It does not come to the People Smuggling Task Force that a boat should be dispatched or that a vessel such as the *Launceston* should proceed to a point and when the radio communication might be made to the vessel as to when it should depart and where it should arrive at? That is the type of situation I am trying to—

Mr Killesteyn—In the task force, we were concerned that action was being taken. By the time the task force met at four o'clock, vessels were already being commanded to move towards Melville Island, including HMAS *Geelong*.

Senator LUDWIG—Did you have an estimated time of arrival for those vessels?

Mr Killesteyn—The actual time of arrival was at 2045 Canberra time.

Senator LUDWIG—Yes, I know that was the actual time of arrival, but at four o'clock—

Mr Killesteyn—That was the estimated time of arrival as well, I think. Defence are pretty good at giving estimates.

Senator LUDWIG—Should I refer the issues in relation to the time of departure of those vessels to the Department of Defence?

Mr Killesteyn—For precise times, yes, I believe so. My concern, as well the PSTF's concern, was that a response was initiated, and the most appropriate response was the closest vessel.

Senator LUDWIG—When was the first DIMIA official on the site?

Mr Killesteyn—A team comprising DIMIA, AQIS and Customs was deployed on the same day, 4 November.

Senator LUDWIG—At what time was that?

Mr Killesteyn—Approximately 3.30 in the afternoon.

Senator LUDWIG—Did they interview the people on board the ship?

Mr Killesteyn—No, they did not. By that time, the vessel had been returned to off Snake Bay by the local residents and the team monitored the vessel pending the arrival of HMAS *Geelong*.

Senator LUDWIG—From the shore?

Mr Killesteyn—Yes.

Senator LUDWIG—They watched it?

Mr Killesteyn—Yes.

Senator LUDWIG—They did not ask for a boat to go out and see what was going on?

Mr Killesteyn—No.

Senator LUDWIG—What would be the normal procedure? Is the normal procedure to sit offshore—in this instance, onshore—and wait?

Mr Killesteyn—Operational command was assumed by Commander NORCOM. It was being dealt with as a vessel to be intercepted at sea and managed appropriately, depending upon the circumstances and the information that we found at the time of its interception.

Senator LUDWIG—The DIMIA officials were instructed by Commander NORCOM to—

Mr Killesteyn—Commander NORCOM takes operational responsibility for interception and management of the vessel in accordance with the government's wishes. In relation to the Customs-AFP-DIMIA team, they were told to proceed and to monitor.

Senator LUDWIG—Commander NORCOM took control, indicated to the DIMIA officials that they should—

Mr Killesteyn—Sorry, my apologies, I did not make that clear.

Senator LUDWIG—That is what I was trying to work out. Did they independently decide to sit on the shore or did Commander NORCOM take control and indicate to the DIMIA officials that they should not try to approach the vessel and they should remain on the shore? How did they come to make that decision?

Mr Killesteyn—That was not a decision from Commander NORCOM. That was relayed to them from the People Smuggling Task Force.

Senator LUDWIG—Did the People Smuggling Task Force come to that conclusion because Commander NORCOM indicated that was his operational control or was that your view of the circumstances at the time and that was how they should approach it?

Mr Killesteyn—We were treating this as a vessel to be managed in accordance with normal interception procedures at sea. They would take responsibility for holding the people at sea pending instructions from PSTF, in consultation with ministers, about how to manage this particular vessel. The DIMIA-Customs-AQIS team was there simply to monitor and to watch.

Senator LUDWIG—Did they ever approach the vessel? Were they included in the party to board the vessel to talk to the crew or the passengers?

Mr Killesteyn—No.

Senator LUDWIG—Were any DIMIA officials in the boarding party?

Mr Killesteyn—In terms of the boarding party—that is, the party that first took custody of the vessel and the passengers—that was a boarding party from HMAS *Geelong*. After

assessing that the vessel could be towed to another point, HMAS *Geelong* then moved the vessel from its point off Snake Bay to a point some 14 nautical miles, I believe it was, off Melville Island in international waters and continued to hold the vessel there pending further instructions. After that there was an AFP-DIMIA team that went to the vessel, I think, on 6 November; not a boarding party in the way that you described it, I believe, but a team to conduct interviews, collect intelligence and so forth.

Senator LUDWIG—That was the first contact from, at least, a direct DIMIA official to the crew and the passengers?

Mr Killesteyn—That is correct.

Senator LUDWIG—And that included both DIMIA and AFP?

Mr Killesteyn—Yes. It was a team of, I think, six people. I think there were five AFP, one DIMIA and a couple of interpreters.

Senator LUDWIG—Was that the only visit or was there a subsequent visit? How long was the visit?

Mr Killesteyn—From memory, there were two. There was an initial transfer of the team out to the vessel, but I think they were unable to conduct interviews. I think there may have been some seasickness, obviously, with our own people. They returned on 6 November to conduct those interviews.

Federal Agent Negus—Perhaps I can clarify that. The team went out to the Navy vessel on the night of the 5th, when they spoke to the captain. They returned back to land that night and then returned in the early hours of the 6th. At that stage they spoke to the crew and the passengers.

Senator LUDWIG—What was the purpose of a visit at that stage, on the night of the 5th?

Federal Agent Negus—The new team had recently arrived on Melville Island, having flown from Darwin, and they went out to get a briefing from the captain on the current state of play.

Senator LUDWIG—And the subsequent visit?

Federal Agent Negus—The subsequent visit the next morning—they left at about 6.30—was for the purpose of interviewing the passengers and crew.

Senator LUDWIG—Was that information—the interview findings—then conveyed back to the People Smuggling Task Force?

Federal Agent Negus—I would have to defer to the People Smuggling Task Force for that.

Senator LUDWIG—Mr Killesteyn?

Mr Killesteyn—Yes, it was ultimately conveyed, but at the point on the Tuesday, as I explained in my opening statement, when I asked for precise details of what was said to any officer at any time. Prior to that it had not been conveyed. None of the precise information in relation to the interviews had been conveyed, other than the generalisation that no asylum claims had been made.

Senator LUDWIG—Was that conveyed orally?

Mr Killesteyn—Yes.

Senator LUDWIG—When did the subsequent material arrive, and in what form was it?

Mr Killesteyn—It was written.

Senator LUDWIG—Was it taped interviews or transcripts or notes or written reports?

Mr Killesteyn—It was a written report that I received from each of the agencies who may have had contact. I made a specific request of AFP, Defence, Customs and DIMIA for a precise indication of what was said at any time.

Senator LUDWIG—Are those reports available to the committee?

Federal Agent Negus—Certainly the AFP reports form part of the ongoing investigation and we would not seek to release that because it may be evidence in the future.

Senator LUDWIG—I can accept that. What about others?

Mr Killesteyn—Customs have indicated that they made no contact at all with any of the individuals. The only other remaining report is the Defence report. I would have to take that on advice.

Senator LUDWIG—All right. There is no DIMIA report?

Mr Killesteyn—Because it was an AFP-DIMIA team that went out.

Senator LUDWIG—The AFP wrote the report up and DIMIA made no statement in relation to it or made no separate report? Is that what you are telling the committee?

Mr Killesteyn—There was a separate report from a DIMIA person who was included in that team.

Senator LUDWIG—Is that available?

Mr Killesteyn—I will take advice on that as well.

Senator LUDWIG—All right. I am happy not to trouble your ongoing investigations but however you can help the committee would be appreciated, just to understand the events that led up to the position. I do not have any further questions in relation to this area.

CHAIR—Thank you very much, Senator Ludwig. We will conclude with questions from Senator Scullion and that will bring this evening's proceedings to an end.

Senator SCULLION—Thank you, Madam Chair. I have a few questions and I promise to make them as short as I can. Mr Killesteyn, when you first heard about these unauthorised arrivals on this 1800 number, obviously the people who went out and responded were Commonwealth agencies. At what stage were the Northern Territory police informed or aware of the goings-on on Melville Island?

Mr Killesteyn—There was a Northern Territory police person in the vicinity at the time. I would have to take it on notice.

Senator SCULLION—It is fine if you want to take it on notice.

Mr Killesteyn—Yes—just how that person was involved.

Senator SCULLION—They certainly had knowledge of what had happened on Melville Island.

Mr Killesteyn—Indeed, probably from the local community.

Senator SCULLION—Was there any stage that either the Australian Federal Police or DIMIA would have actually spoken to or been in contact with the Northern Territory Police Force on the island?

Federal Agent Lawler—I might be able to help there. My understanding is that the Northern Territory police did assist during the course of the AFP's activities with transport and other liaison activity.

Senator SCULLION—Thank you for that. Again, in regard to the operational matter, I understand on the second visit to both the *Gawler* and the *Minasa Bone* there were interviews conducted on the vessel. You have indicated that with mal de mer and a few other environmental circumstances, obviously it was not very easy. I also heard that you do not know where these people are. What I am trying to get to is just how much information we have about these. Obviously I am couching it in broad terms. You do not need to interfere in an operational sense but perhaps just in general terms would you consider that the interview that you did conduct with both passengers—and I understand you have already put on the record that you have access to the passengers now, but access to the information that you gleaned from the crew would be in a general term very valuable to ongoing investigations?

Federal Agent Negus—The interviews conducted on the open sea were very brief. Our team, the interpreters and some of the passengers I understand were suffering quite badly from seasickness. As I indicated earlier, we will seek to re-interview many of those passengers now that they are back in Indonesia with IOM. We have things under way to do that. We obtained basic details from them at sea but we would need to re-interview them quite extensively.

Senator SCULLION—Mr Killesteyn, it was not asserted but I was just concerned about the situation of refoulement. I am making the assumption that we established early in the piece that the passengers were not Indonesian nationals. I have assumed that but I have not read it in your opening statement.

Mr Killesteyn—The boat was 18 people, of which it was very clearly four Indonesian crew and 14 people who were presenting themselves as Turkish nationals.

Senator SCULLION—Obviously when they were returning to Indonesia there was no issue with refoulement because it was not the place they were fleeing from. Can you tell me something about the IOM and UNHCR process? You obviously have a great deal to do with that process and this regional arrangement. Have there been any occurrences at all where either of those organisations has facilitated refoulement to any country?

Mr Killesteyn—I am not aware of that. If there was, we would certainly have had it made known to us, particularly by the UNHCR. The IOM, in terms of its return of individuals, will only facilitate the return of an individual to their country or another country if it is voluntary. Their charter does not allow an involuntary return. We can be confident of the IOM's integrity in this process and the UNHCR speaks for itself.

Senator SCULLION—I just want to clarify that there is no suggestion at all that there could even be any serial refolement through that process.

Mr Killesteyn—None at all.

Senator SCULLION—Thank you, Mr Killesteyn.

Mr Killesteyn—Madam Chair, there are two points that I would like to clear up, if you would allow me. Firstly, there was a question from Senator Ludwig in relation to the longitude and latitude of the vessel at Snake Bay. I am advised that this is information that became available from the 1800 number call at the time that we were first notified by the local resident. The coordinates are 11 degrees 25 minutes south and 130 degrees 39 minutes east.

Senator LUDWIG—Clearly a sharp spotter for Customs.

Mr Killesteyn—In relation to the matter of the Attorney's reference to the person known as Ayoub, I have just been advised that the reference was first raised in an article on Saturday, 15 November, an article in the *Weekend Australian* dealing with a particular individual's story of seeking asylum. In that story there is a reference to a person by the name of Ayoub. I am advised that Mr Ruddock's subsequent reference to Ayoub was in relation to this article.

CHAIR—Thank you very much for clarifying those matters, Mr Killesteyn. Across the course of the evening since 7 p.m. there have been a number of questions taken on notice to which officers have undertaken to provide answers. I am acutely aware of the time frame in which we are working. Any reasonable turnaround on these is going to take us very perilously close to the middle and end of December. I wonder what sort of time frame DIMIA in particular envisages that they can respond in, bearing in mind of course that there are a number of questions which pertain to other agencies' involvement in the People Smuggling Task Force. That may exacerbate any problems in terms of getting responses quickly. What I am trying to find is an agreed time for return of answers to questions taken on notice that does not include Christmas Eve or Christmas Day, if at all possible.

Mr Farmer—Without reflecting on the individual questions, I say that we will absolutely do our best to provide them, in effect, as and when we are able to get the information. We will not try and hold up everything until we get the last.

CHAIR—I appreciate that. If I was to say 19 December, which is the end of the last full working week before the Christmas break, and that we would appreciate the department's and officers' assistance with that, we would understand if it is only possible to return part at that stage and part in the new year.

Mr Farmer—We will work towards that sort of time frame.

CHAIR—Thank you very much. As officers are aware, the committee has been sitting this evening at the direction of the Senate. I appreciate that it is not always easy for departments to come together and to bring officers and agencies, so I want to acknowledge the efforts of DIMIA, the AFP, the Attorney-General's Department and Customs, in particular, who have made a silent but meaningful appearance this evening, and thank all of those involved—and you too, Minister, and my secretariat—for assisting in this process. I declare this meeting of the Senate Legal and Constitutional Legislation Committee closed.

Committee adjourned at 10.47 p.m.

