



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

**(Additional Estimates)**

TUESDAY, 15 FEBRUARY 2005

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Tuesday, 15 February 2005**

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

**Senators in attendance:** Senator Payne (*Chair*), Senators Allison, Bartlett, Evans, Ferguson, Greig, Kirk, Ludwig, Nettle and Scullion

**Committee met at 9.01 a.m.**

**ATTORNEY-GENERAL' PORTFOLIO**

Consideration resumed from 14 February.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

**Management and Accountability**

Mr Robert Cornall, Secretary

Mr Miles Jordana, Deputy Secretary Criminal Justice and Security

Mr Ian Govey, Deputy Secretary Civil Justice and Legal Services

Mr Richard Oliver, General Manager, Corporate Services

Mr Graham Fry, General Manager, Information and Knowledge Services

Mr Trevor Kennedy, Chief Finance Officer

**Outcome 1 – An equitable and accessible system of federal civil justice**

**Output 1.1**

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Amanda Davies, Assistant Secretary Administrative Law and Civil Procedures Branch

Ms Sandra Power, Assistant Secretary Civil Jurisdiction and Federal Courts Branch

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division

**Output 1.2**

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Mr Karl Alderson, Assistant Secretary, Office of Legal Services Coordination

Mr Jim Faulkner, Assistant Secretary, Constitutional Policy Unit

**Output 1.3**

Ms Kathy Leigh, First Assistant Secretary, Family Law and Legal Assistance

Ms Sue Pidgeon, Assistant Secretary, Family Pathways

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Dr James Popple, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division

Mr Paul Griffiths, Assistant Secretary, Legal Assistance Branch

**Output 1.4**

Ms Renée Leon, First Assistant Secretary, Office of International Law  
Mr Bill Campbell QC, General Counsel (International Law)

**Output 1.5**

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

**Output 1.6**

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division

**Output 1.7**

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division  
Ms Katherine Jones, Assistant Secretary, Native Title Unit  
Mr Steven Marshall, Assistant Secretary, Native Title Unit

**Output 1.8**

Dr James Pople, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division  
Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch  
Mr Paul Griffiths, Assistant Secretary, Legal Assistance Branch

**Outcome 2 – Coordinated federal criminal justice, security and emergency management activity, for a safer Australia****Output 2.1**

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division  
Mr Anthony Seebach, Acting Assistant Secretary, Criminal Law Branch  
Ms Robin Warner, Assistant Secretary, International Crime Branch  
Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch  
Ms Robyn Frost, Principal Legal Officer, International Crime Branch  
Mr Anthony Coles, Principal Legal Officer, International Crime Branch

**Output 2.2**

Mr Keith Holland, First Assistant Secretary, Information and Security Law Division  
Ms Maggie Jackson, Special Adviser  
Mr Mike Rothery, Acting Assistant Secretary, Critical Infrastructure Protection Branch  
Mr Geoff McDonald, Assistant Secretary, Security Law and Justice Branch  
Ms Catherine Smith, Principal Legal Officer, Security Law and Justice Branch

**Output 2.3**

Mr David Templeman, Director General, Emergency Management Australia

**Output 2.4**

Mr Paul de Graaff, Acting Executive Director  
Ms Leonie Mack, Assistant Secretary, Security Programs Branch  
Ms Belinda Moss, Assistant Secretary, Information Coordination Branch  
Mr Mark Withnell, Acting Assistant Secretary, Policy and Services Branch

**Output 2.5**

Mr Paul de Graaff, Acting Executive Director

**Administrative Appeals Tribunal**

Mr Doug Humphreys, Registrar  
Mr Chris Matthies, Manager, Legal Policy and Research  
Mr Steve Wise, Finance Manager

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer  
Mr Andrew Phelan, Director Corporate Services

**Australian Customs Service**

Mr Lionel Woodward AO, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr John Jeffery, Deputy Chief Executive Officer  
Mr Murray Harrison, Chief Information Officer  
Mr Jon Brocklehurst, Chief Financial Officer  
Rear Admiral Russ Crane, Director-General, Coastwatch  
Ms Marion Grant, National Director, Border Compliance and Enforcement  
Mr Phil Burns, National Director, Cargo and Trade  
Mr Peter Thomson, Acting National Director, Border Intelligence and Passengers  
Mr Tim Chapman, National Manager, Passengers  
Ms Sue Pitman, National Manager, Trade Measures

**Australian Federal Police**

Mr Mick Keelty, Commissioner  
Mr John Lawler, Deputy Commissioner  
Ms Audrey Fagan, Chief of Staff  
Mr Trevor Van Dam, Chief Operating Officer

**Australian Institute of Criminology and Criminal Research Council**

Dr Toni Makkai, Director

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General

**Australian Transaction Analysis Centre (AUSTRAC)**

Mr Neil Jensen PSM, Director  
Mr Alf Mazzitelli, Chief Finance Officer

**Commonwealth Director of Public Prosecutions**

Mr Damian Bugg QC, Director of Public Prosecutions  
Mr John Thornton, Acting First Deputy Director  
Mr Ian Bermingham, Acting Deputy Director Legal and Practice Management  
Ms Stela Walker, Deputy Director Corporate Management

**CrimTrac**

Mr John Mobbs, Chief Executive Officer  
Ms Nicole McLay, Chief Financial Officer

**Family Law Council**

Professor Patrick Parkinson, Chairperson

**Human Rights and Equal Opportunity Commission**

The Hon John von Doussa, President  
Ms Pru Goward, Sex Discrimination Commissioner  
Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner  
Dr Sev Ozdowski, Human Rights Commissioner  
Ms Diana Temby, Executive Director  
Ms Rocky Clifford, Director Complaint Handling

Ms Susan Roberts, Director Legal Services  
Mr Stephen Duffield, Director Human Rights Unit

**Office of Film and Literature Classification**

Mr Des Clark, Director  
Mr Paul Hunt, Deputy Director  
Mr John Robinson, Business Manager

**CHAIR**—I declare open this public hearing of the Senate Legal and Constitutional Legislation Committee. The committee will today continue its examination of the Attorney-General's portfolio, commencing with the Australian Federal Police, which will be followed by the Australian Security Intelligence Organisation. 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. The committee has agreed to the date of 8 April 2005 for receipt of answers to questions taken on notice and additional information.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General, Mr Robert Cornall, the Secretary of the Attorney-General's Department, and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 1.10, which states in part:

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

Further, resolution 1.16 states:

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

Evidence given to the committee is protected by parliamentary privilege, and I remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister, do you or Mr Cornall wish to make an opening statement?

**Senator Ellison**—No, Madam Chair.

**Mr Cornall**—No, thank you, Madam Chair.

[9.04 a.m.]

**Australian Federal Police**

**CHAIR**—We will proceed to questions for the Australian Federal Police. I welcome Commissioner Mick Keelty and officers of the Australian Federal Police. Before we begin, Commissioner, on behalf of the committee, can I please convey the condolences of the committee on the death of Adam Dunning in the Solomon Islands, to both your organisation and his family, if you could pass them on to them. I think I speak on behalf of the entire committee; we would be extremely grateful. Also, in light of recent events, Commissioner, I

note the efforts of the Australian Federal Police, particularly in relation to disaster victim identification in Thailand, in the wake of the earthquake and tsunami.

**Mr Keelty**—Thank you, Madam Chair. I will pass that on.

**CHAIR**—We will go to questions, starting with Senator Ludwig.

**Senator LUDWIG**—The Labor Party associates itself with those remarks as well. Thank you, Mr Keelty. The first issue is the annual report. I do not think we have that at the moment. You have a reporting date which is not in November, like all the others. You have a number of Senate sitting days for the production thereof. Is it due or do you still have a period of grace before it needs to be provided?

**Senator Ellison**—It is being tabled today.

**Senator LUDWIG**—That will give me a great opportunity to read it while we speak.

**Senator Ellison**—With the election break, Chair, the report could not be cleared earlier. We will be able to get a copy to Senator Ludwig as we table it, which I think we will be doing this morning. I do not think we can do much more than that. Certainly, we can take questions on notice on the report and include them as questions on notice from this round of estimates.

**Senator LUDWIG**—Chair, could you give consideration to the suggestion that the next time we sit we use two hours in the evening to deal with matters arising from the annual report? The difficulty with dealing with questions on notice is that it only gives me today or tomorrow to peruse the annual report. I am moving onto other areas between today, tomorrow and Friday.

**Senator Ellison**—We could extend the time for lodging questions on notice. We have done it before for a day or two. In view of the circumstances, I cannot see any problem with extending it for a week.

**CHAIR**—It is a matter for the committee. We might consider Senator Ludwig's request for a brief hearing on a sitting night when it is no great obligation on committee members and we could come back to the AFP and you, Minister, in relation to the report. We can also contemplate the option of engaging with the annual report in terms of questions on notice. We will have a look at both options.

**Senator Ellison**—Okay.

**Senator LUDWIG**—Thank you, Chair. Mr Keelty, were Australian Federal Police personnel in Pakistan on 24, 26 or 29 October 2001? That is in relation to Mr Habib.

**Mr Keelty**—Thank you for your condolences, Senator. The AFP was present during an interview with Mr Habib on 26 October in Pakistan in company with ASIO, and on 29 October 2001 in Pakistan in company with ASIO. The only other occasion that the AFP had direct contact with Mr Habib was in Guantanamo Bay on 15 May 2002.

**Senator LUDWIG**—In respect of the two occasions in Pakistan on 26 and 29 October, were any other officers other than ASIO officers present? There have been reports that there was a DFAT officer. Had you had cause to accompany a DFAT officer in Pakistan, even if you were not present during the time? Are you aware whether Australian Federal Police had accompanied a DFAT officer to see Mr Habib?

**Mr Keelty**—I am not aware that there was a DFAT officer present at the time AFP and ASIO were present.

**Senator LUDWIG**—What was the nature of the visits on 26 and 29 October in Pakistan, and the role played by the AFP in those two visits?

**Mr Keelty**—The nature of the visit was to ascertain how Mr Habib had become caught up and in the custody of the Pakistan authorities.

**Senator LUDWIG**—Can you explain how that occurred?

**Mr Keelty**—We went and interviewed him. The interview was not a criminal interview. The interview was conducted largely by ASIO, and the AFP's presence there was in support of ASIO.

**Senator LUDWIG**—Was ASIO the only one doing the interviewing of Mr Habib at that time? Was the AFP actively engaged in the interview?

**Mr Keelty**—No, we were not actively engaged as such. It was more an ASIO interview to ascertain the circumstances surrounding Mr Habib's custody in Pakistan. The actual tape-recorded interview done with the normal protocols of the AFP was done in the interview with Mr Habib at Guantanamo Bay on 15 May 2002.

**Senator LUDWIG**—Were there any recordings of those interviews in Pakistan on the 26th and the 29th?

**Mr Keelty**—As I understand it, there was no audio recording. There were notes taken by the officers who were present.

**Senator LUDWIG**—That was by the Australian Federal Police and ASIO, as far as you are aware?

**Mr Keelty**—As far as I am aware, that is correct.

**Senator LUDWIG**—With regard to the nature of the two interviews on the 26th and 29th, can you say what the upshot of those was? And what necessitated the second interview on the 29th?

**Mr Keelty**—I am advised that Mr Habib was very protective about why he was there, how he got to be there and where he had been prior to coming into the custody of the Pakistani authorities. He was evasive in his answers and, by and large, was not cooperative. They went back on the 29th to ascertain further information to, as I understand it, corroborate other intelligence holdings about where Mr Habib had been and what he had been doing. The interview in May 2002, which, as I said, was an interview conducted with the normal protocols of a criminal interview, was to ascertain whether Mr Habib had in fact committed any offences against Australian law as it existed at that point in time.

**Senator LUDWIG**—Was that under the direction of the Attorney-General, or was it an AFP investigation?

**Mr Keelty**—It was an AFP investigation.

**Senator LUDWIG**—What was the result of that AFP investigation?

**Mr Keelty**—The Guantanamo Bay investigation?

**Senator LUDWIG**—Yes.

**Mr Keelty**—Material was gathered in terms of what Mr Habib had to say. The investigators also went to Pakistan to try and gather evidence on what Mr Habib was doing in Pakistan. The allegation was that he had been training with LET, Lashkar-e-Taiba, the terrorist group in Pakistan, that he had been in Afghanistan and that he had been supported financially by LET. They have, in layman's terms, a halfway house where they accommodate, train and feed people. He was trained in specific areas—as we understood it, in firearms training. That was a precursor to his crossing the border to Afghanistan and being accepted as part of the efforts of al-Qaeda.

**Senator LUDWIG**—With regard to that interview, did Mr Habib raise any allegations about his treatment in Guantanamo Bay?

**Mr Keelty**—Mr Habib only ever raised issues about his treatment in the interviews in Pakistan, but not about his treatment by Pakistan authorities. He raised them in the context of alleging that he had been kidnapped and tortured by people in yellow uniforms. That allegation, in the circumstances of his prevarication in his answers, was not treated seriously. The period of time he was talking about was considered to be covering for the period of time that he had been in Afghanistan with al-Qaeda.

When he raised the next lot of allegations, which was in the interview at Guantanamo Bay, they were reported. There was a DFAT officer present for that interview and they were reported in the appropriate way to the Department of Foreign Affairs and Trade. On the three occasions he was interviewed by the AFP he was not seen to be in physical harm. There was no evidence of him having been physically harmed. Nevertheless, the allegations of maltreatment were passed on.

**Senator LUDWIG**—In respect of the two instances in Pakistan, did he raise allegations of mistreatment or torture on both occasions or just in the one interview, or was it only at Guantanamo Bay?

**Commissioner Keelty**—As I am instructed, the allegations he made in Pakistan during the discussion with ASIO were not about his treatment by the Pakistani authorities; it was about people in a yellow uniform kidnapping him and torturing him, which we saw as an alibi for his presence in Afghanistan. In other words, he was not aware of what we were aware of, what the intelligence agencies were aware of, in terms of his movements in Afghanistan. Our people formed the view that in order to cover for that he concocted a story about people in a yellow uniform kidnapping and torturing him. So they were treated quite differently to the allegations made in Guantanamo Bay, where he was not sure where he was maltreated but said he was maltreated by people who spoke the Egyptian language. He was not certain himself whether he had been to Egypt but it was that period of time when he was held captive that he alleged that he was tortured. Some of those allegations are similar to the allegations he has now made public but not all of them. As I say, DFAT were present and it was a matter for DFAT to follow through.

**Senator LUDWIG**—All right. So in respect of the allegations made by Mr Habib in Pakistan, the Australian Federal Police did not follow it up any further. You did not raise it

with the Pakistani authorities, investigate it any further or write a report for further investigation. Is that right?

**Commissioner Keelty**—That is correct, because the officers took the view that the allegations made in Pakistan were a concoction.

**Senator LUDWIG**—In respect of the allegations made by Mr Habib in Guantanamo Bay, a report was prepared by the Australian Federal Police or by the DFAT officers present?

**Commissioner Keelty**—It was agreed that DFAT would follow that through because it is the normal DFAT role to address the issues of the welfare of an Australian overseas who is taken into custody. It would not matter whether it was in those circumstances or someone who was arrested in another country for a criminal offence—the AFP role is to establish liaison with the law enforcement agency and the issue of welfare is a consular issue and one that is done by DFAT.

**Senator LUDWIG**—Are you aware whether the allegations related to mistreatment in Guantanamo Bay itself or were broader allegations of mistreatment prior to being put in Guantanamo Bay, and whether or not they were then subsequently followed up by AFP at all?

**Commissioner Keelty**—As I am instructed, there were no allegations of mistreatment in Guantanamo Bay. The only allegations made by Mr Habib about mistreatment were at a period of time between Pakistan and his being held captive in Guantanamo Bay. It was agreed that they would be followed up by and be the responsibility of DFAT, as is the usual case. That was not only an agreement on the ground in the US; it was also an agreement on the ground through interdepartmental committees here in Canberra.

**Senator LUDWIG**—After 29 October, when he was last interviewed by the Australian Federal Police in Pakistan, did the Australian Federal Police track his movements or become aware of his movements from there? When did you find out where he actually moved to?

**Mr Keelty**—We were not in a position to track his movements. Our next knowledge of where he was was when he was in Guantanamo Bay.

**Senator LUDWIG**—Did you make any effort to ascertain where he went to after 29 October?

**Mr Keelty**—No. We are obviously aware that it is alleged that he went to Egypt, but we are unable to confirm that.

**Senator LUDWIG**—And when did you make those inquiries? Were they recent inquiries or were they made at the same time?

**Mr Keelty**—When Mr Habib was interviewed on 15 May 2002 in Guantanamo Bay he was unsure himself whether he had been to Egypt. All he knew was that he had been to a place where the people who were dealing with him spoke Egyptian.

**Senator LUDWIG**—Did the Australian Federal Police make inquiries to ascertain whether he had been in Egypt?

**Mr Keelty**—No, we did not. It was not within our purview to be able to make those inquiries. Mr Habib is Egyptian born. Whilst he has dual citizenship of Australia and Egypt, he has not exercised his dual citizenship. It was on 17 April 2002 that we became aware that

he was in US custody in Guantanamo Bay, so it was roughly a month later on 15 May 2002 that we interviewed him in Guantanamo Bay.

**Senator LUDWIG**—During the period between when you first became aware that he was in Pakistan and then subsequently Guantanamo Bay, although you indicated that there were only three occasions upon which you were present during an interview, was the AFP advised or kept informed by other agencies about his movements, his whereabouts or what interviews he had had during that period?

**Mr Keelty**—We were unsure, because he was not in AFP custody. To put some context around this, his capture in early October 2001 was less than a month after the World Trade Centre collapse in which 3,000 innocent people going to work had lost their lives. His capture was similar to the capture of a number of people from a number of nations around the world thought to have been sympathisers of or fighters with al-Qaeda at the time. In the context of 2001 and early 2002, we were dealing with something that was quite foreign in terms of criminal law enforcement. We were learning as we went in terms of what each country with people in custody was going to do.

**Senator LUDWIG**—In respect of the interrogation by any other officials outside of the Australian Federal Police or ASIO on those three occasions that you were present, did you receive any reports from US authorities, Pakistani authorities or other authorities about interviews conducted with Mr Habib or did you make inquiries as to whether any interviews had been conducted and obtain reports about them?

**Mr Keelty**—I am not aware of any reports obtained by the AFP about other interviews. I will have to take that question on notice about specifically what inquiries we have made in respect of any reports that may have existed about other interviews conducted by other agencies. My knowledge at the moment is that we would not have been aware of those, so we would not have been in a position to inquire.

**Senator LUDWIG**—Were there any authorities other than the Australian Federal Police and ASIO present on 26 and 29 October 2001 and 15 May 2002 in Guantanamo Bay? As far as you are aware, were the US authorities or Pakistani authorities present at the time of the interview?

**Mr Keelty**—My memory is that the Pakistani authorities were present during the interviews in Pakistan and that DFAT was present during the interviews in Guantanamo Bay. I am unaware whether there was a US presence inside the room in Guantanamo Bay, but I will find that out.

**Senator LUDWIG**—In the time that the Australian Federal Police was in those three locations, it was only ASIO in the first two instances which was doing the interviewing of Mr Habib. Was it the Australian Federal Police or DFAT in the last?

**Mr Keelty**—It was the AFP in Guantanamo Bay, with ASIO.

**Senator LUDWIG**—Did DFAT ask any questions?

**Mr Keelty**—Yes. As I understand it, DFAT asked a series of questions from a welfare perspective, which is normal in those circumstances, as I pointed out.

**Senator ALLISON**—What reasons did the United States give ASIO or you about why Mr Habib was in custody?

**Mr Keelty**—I am not sure that the US authorities gave the AFP a direct reason why he was in US custody, but I think it was clear in terms of the fact that the US had a number of people in custody who were captured in circumstances, whether they were either with al-Qaeda or had trained with al-Qaeda.

**Senator ALLISON**—It was clear why.

**Mr Keelty**—I think it was common knowledge that the US had taken into custody a number of foreign nationals who were fighting with al-Qaeda.

**Senator ALLISON**—When did the United States inform the Australian government that it had Mr Habib in custody?

**Mr Keelty**—The AFP was notified on 17 April 2002. I am not sure when the Australian government was advised.

**Senator ALLISON**—How was that notification provided?

**Mr Keelty**—To the AFP?

**Senator ALLISON**—Yes. Was it a letter or a phone call?

**Mr Keelty**—My memory of it is that it was through ASIO, but I will stand corrected on that. If I am wrong, I will correct the record.

**Senator ALLISON**—And it was a notification simply that he was in custody?

**Mr Keelty**—That is right.

**Senator ALLISON**—In custody in Pakistan.

**Mr Keelty**—I thought you were talking about in US custody. You asked me, ‘When did the AFP or the Australian government find out he was in US custody?’ I assumed you were talking about Guantanamo Bay. In respect of Pakistan—

**Senator ALLISON**—So in Pakistan he was in Pakistani custody?

**Mr Keelty**—We were advised that he was taken into custody by the Pakistan authorities on 5 October.

**Senator ALLISON**—By whom were you advised—the Pakistani authorities?

**Mr Keelty**—The FBI’s legal attache in Pakistan advised our AFP liaison officer in Islamabad that a person who had a name similar to Habib had been detained in Pakistan. That person was later positively identified as Mr Habib.

**Senator ALLISON**—So it was the United States that informed us.

**Mr Keelty**—It was the US legal attache in Islamabad.

**Senator ALLISON**—In Pakistan. Was the relationship between the Pakistani authorities and the United States attache understood at the time, in terms of who had captured Mr Habib and was holding him in custody?

**Mr Keelty**—I would have to take that on notice and talk to the person who was involved in the interviews.

**Senator ALLISON**—When did the advice arrive about Mr Habib being taken into custody in Pakistan?

**Mr Keelty**—On 5 October 2001.

**Senator ALLISON**—With regard to the allegations about torture, you said the allegations were passed on—a little earlier. To whom were they passed on?

**Mr Keelty**—That is the allegations of torture made by Mr Habib when he was interviewed by the AFP in Guantanamo Bay. They were passed on to the DFAT officer who was present during that interview. I can confirm, Senator Ludwig, that there were no US officials present during that interview in Guantanamo Bay.

**Senator ALLISON**—Is that it by way of process about allegations of torture? Did DFAT give you any response to those allegations, suggest they were being investigated or anything like that?

**Mr Keelty**—No, and nor would there be a need to because DFAT have a responsibility for the welfare of Australian nationals who are in custody overseas. It is not an AFP role.

**Senator ALLISON**—The AFP presumably abides by the Geneva convention with regard to its own investigations?

**Mr Keelty**—Yes, we do, and yes, we did.

**Senator ALLISON**—Was there any attempt by the AFP to establish whether the United States at Guantanamo Bay or in Pakistan were also doing so?

**Mr Keelty**—No, because there was no role for the AFP to do that.

**Senator ALLISON**—What was the AFP's role?

**Mr Keelty**—To establish whether Mr Habib had committed a criminal offence.

**Senator ALLISON**—Is that how we normally conduct relations with other countries regarding their treatment of suspected terrorists or others?

**Mr Keelty**—Mr Habib did not present, when interviewed, with any physical evidence of having been tortured. They were allegations that he had made and in the normal course allegations such as that would be followed through by the Department of Foreign Affairs and Trade, because the AFP has no role in then going to other countries and making inquiries about the treatment of a person in another country.

**Senator ALLISON**—So you concluded that his allegations were unfounded because there was no physical sign of torture?

**Mr Keelty**—I did not say that, Senator.

**Senator ALLISON**—I thought you just said there was no sign of torture.

**Mr Keelty**—No, I said there was no sign of maltreatment when he was interviewed in Guantanamo Bay, nor was there any sign of maltreatment when he was interviewed in

Pakistan. The allegations that he made in Pakistan were thought to be a concoction to cover the time that he was in Afghanistan.

**Senator ALLISON**—Yes, I heard you say that.

**Mr Keelty**—The allegations that he was tortured in Guantanamo Bay were passed on to DFAT, or DFAT was present, and DFAT took responsibility to chase down those allegations.

**Senator ALLISON**—There was no further dialogue between you and DFAT as to whether they had chased it down?

**Mr Keelty**—No, because it is not our role, and we had no further contact with Mr Habib after that point in time.

**Senator ALLISON**—If I can just get this from you: the physical presentation of Mr Habib suggested to you that this was a concoction?

**Mr Keelty**—No, don't confuse what I am saying here. The allegations of hijacking and torture that he made in Pakistan were thought to be a concoction and there was no physical evidence of torturing there that was obvious to our person who was present. In respect of the allegations made in Guantanamo Bay, the AFP was not in a position to conclude in any way whether those allegations were true because they were not allegations that he was tortured in Guantanamo Bay; they were allegations that he was tortured in some other place where all Mr Habib knew was that the persons who conducted the torture spoke Egyptian. So we were simply not in a position to test the veracity of that claim. We were of the view that it was a role for DFAT in the normal course and it was agreed that DFAT would chase down those issues as part of their consular role in terms of the welfare of an Australian national held in custody overseas.

**Senator ALLISON**—In passing on those allegations did you offer a view as to the veracity of the claims?

**Mr Keelty**—There was no need to because it was a claim about being tortured in an unknown place and we really could not take it any further.

**Senator ALLISON**—Because Mr Habib was not sure where he was, you felt it was not necessary to contact the Egyptian authorities, the Pakistan authorities or any other authorities who were known to have had custody of Mr Habib at any stage, to verify the claims—is that right?

**Mr Keelty**—No, that is not right, Senator, and I did not say that. There was no place to go to follow down the claim, if it was the AFP's role to follow down those claims. It is not our role to follow down those claims and we did not.

**Senator ALLISON**—You say there is very little evidence that Mr Habib was in Egypt. Would you expect to see something on his passport? What sort of evidence would you expect to find?

**Mr Keelty**—I did not say that Mr Habib was in Egypt. The AFP is not in a position to confirm whether Mr Habib was in Egypt. Mr Habib's own words were that, wherever he was, wherever he had been taken to, the people spoke Egyptian.

**Senator ALLISON**—During the time that Mr Habib is said to have been in Egypt, were you informed of that suggestion?

**Mr Keelty**—I am not aware that we were. If I am wrong, I will correct the record.

**Senator ALLISON**—If there had been an allegation, say in Australia, that he was in Egypt—as there was, I recall—would you have investigated that allegation? If so, what would you have done?

**Mr Keelty**—It is not the AFP's role to investigate that. We really had nowhere to go with it.

**Senator ALLISON**—So the AFP has no role unless, as in this instance, ASIO takes action? Is that how your relationship works and your role works?

**Mr Keelty**—Our role was to investigate whether Mr Habib had committed a crime against Australian law. On the issue of his treatment and the allegations he had to make about his treatment, when you consider that our view was that he was in the custody of the Pakistan authorities between when we saw him in Pakistan and when he was then held by the US in Guantanamo Bay, our role did not extend to establishing his movements from those points because he was in fact in custody. It is not an issue that we would have necessarily focused on.

**Senator ALLISON**—According to the Attorney-General on the 14th of this month, the government asked Egypt if Mr Habib was there, and the Egyptian government said he was not. How did the government come to hear about that? What informed the government as to the likelihood that he was in Egypt?

**Senator Ellison**—I think that was answered yesterday by the secretary of the department. These questions as to what the government knew really are more appropriately put to the secretary, who of course dealt with questions at length yesterday. The commissioner can answer questions about the Australian Federal Police but, as to the Australian government and what it did and what it knew, that really is more a whole-of-government answer, if I can put it that way. The secretary answered that yesterday.

**Senator ALLISON**—Can I just ask one further question. The allegations which have been made: would you regard those as being defined as torture? If they were true, would you regard it as being outside the Geneva convention, with regard to the treatment of prisoners?

**Senator Ellison**—Madam Chair, I think the question about the Geneva convention is not really a question which the commissioner can answer.

**Senator ALLISON**—Perhaps you could answer it, Minister.

**Senator Ellison**—We had Mr Campbell yesterday from the Office of International Law, who dealt with questions on the Geneva convention. The extent of the allegations made by Mr Habib have been referred to the United States. The tape of the interview with Mr Habib has been referred to the United States. There is an inquiry ongoing in relation to these allegations and really the government believes that is the way it should be handled. We are not going to pre-empt any outcome of that inquiry or prejudge it. We have referred the matter to the United States authorities and that is where the matter rests for the moment.

**Senator ALLISON**—Does the Australian government in any form, whether ASIO or the AFP, have any involvement in that inquiry?

**Senator Ellison**—Apart from providing the allegation complained of and the statements of Mr Habib, I am not aware of any participation by the Australian authorities in that inquiry. I will take that on notice and provide any further detail if that is necessary.

**Senator ALLISON**—Would you expect Mr Habib to be called before such an inquiry in the United States?

**Senator Ellison**—That is a matter for the United States authorities. I am not too sure whether Mr Habib would volunteer himself to go to the United States to give evidence but that would be a matter for Mr Habib and United States authorities. If they wanted to take evidence from him I am sure that arrangements could be made.

**Senator ALLISON**—Does the AFP have any involvement in the ongoing surveillance of Mr Habib?

**Mr Keelty**—I am not prepared to comment on that.

**Senator Ellison**—That is an operational matter.

**CHAIR**—It is always the case in this committee that matters that are operational are not commented on in the public hearing. Are there any further questions in this area?

**Senator SCULLION**—Like most Australians, my knowledge of this issue has come to me through the newspapers. I have not caught up with the details of what happened to Mr Habib and the processes. You have talked about him being kidnapped by some people in yellow uniforms. How did he explain that? What were the circumstances surrounding that? Whereabouts was he when he was kidnapped? Was he in a car? What were the circumstances?

**Mr Keelty**—That is why not much credence was given to that part of his story. He alleged he was kidnapped and tortured by people in yellow uniforms during the period of time when we understood he was in Afghanistan, and our reading of that allegation was that he was trying to make an excuse for his presence in Afghanistan and also quite clearly trying to cover for himself should it become known to the Australian authorities that he had been in Afghanistan. Once he was questioned about the detail of that he was unable to come up with any answers. That gave rise to the view by the investigators that no credence could be given to that allegation.

**Senator SCULLION**—You simply did not come up with anything? When you asked him questions like, ‘What language did they speak?’ and ‘Where did it happen?’ there were no answers forthcoming?

**Mr Keelty**—I cannot confirm the actual questions they asked but certainly the opinion they formed was that there was no credence to be given to that part of his story.

**Senator SCULLION**—He also alleged that during that time they tortured him. Was there any physical evidence of that?

**Mr Keelty**—Certainly there was nothing apparent to the people doing the interviews.

**Senator SCULLION**—You said you had information and that you felt he was in Afghanistan anyway. Within your capacity to respond, what sort of information was that? I accept that you may not be able to answer that.

**Mr Keelty**—I cannot give you the details of that.

**Senator SCULLION**—Okay, fine. Are there any ongoing inquiries into whether Mr Habib has contravened any aspects of Australian law?

**Mr Keelty**—No. On 18 November 2002 we advised the minister that, on the evidence available to us from the interview conducted in Guantanamo Bay and the material gathered by the AFP as part of the investigation, as the law existed at that point in time there were no offences committed by Mr Habib.

**Senator SCULLION**—When you first spoke to him in Pakistan I assume you asked him about the chain of events and what he was actually doing in Pakistan. What did he say he was doing there?

**Mr Keelty**—He was giving excuses as to his presence there. He was not forthcoming as to how his travel there was funded. He was not forthcoming about how his accommodation and everyday subsistence was being funded. The investigators formed the view that he went there to train with the LET and be paid for that training and that he was then offering his services to al-Qaeda, for which he was going to be paid a sum of money—basically, in layman's terms, almost as a mercenary.

**Senator SCULLION**—Have you or the AFP received any information since that time to change your view on those matters?

**Mr Keelty**—No, not at all.

**Senator SCULLION**—Thank you, Mr Keelty.

**Senator ALLISON**—One other question, if I may. I have just been reminded that the government wrote to Mr Habib's wife to indicate that he was in Egypt. Were you aware of that?

**Senator Ellison**—I think that is a Foreign Affairs question. That would not be anything to do with the Australian Federal Police; that question should be asked of Foreign Affairs at estimates.

**Senator ALLISON**—On the question of whether there were any physical signs of torture, as alleged: was a medical examination provided at the time of the interview or subsequently?

**Mr Keelty**—I will just find out. I thought there was. Could I take that question on notice? I want to be absolutely sure whether or not a medical was done.

**Senator ALLISON**—Thanks. Could you also advise whether the AFP had any advice with regard to the date on which the Australian authorities might have been aware that Mr Habib was in Egypt—whether that was relayed to the AFP.

**Mr Keelty**—Yes, I will take that on notice.

**Senator Ellison**—It might assist Senator Allison to know that yesterday we tabled a letter dated 3 February 2005 to the lawyers for Mr Habib asking him to detail the allegations or the

claims he has made so that the government could consider them. We have had a lot of comment in the press, a lot of general statements and a television interview with Mr Habib. I draw to Senator Allison's attention the letter that the Attorney-General's Department has written to the lawyers for Mr Habib. That might be of assistance.

**Senator ALLISON**—Another matter which was raised in the press—and I do not think any verification has been asked for—is that, at the time of Mr Habib's arrest, he was said to have been on a bus, two Germans were being interviewed, he had intervened and that had resulted in his arrest. Is there any truth to that report?

**Mr Keelty**—I am not in a position to clarify that any further at the moment. I would need to talk to the person who was present during the interview. Can I take that on notice, please?

**Senator ALLISON**—Yes. It would be useful to know what the Pakistan authorities said, or the United States authorities—I am not sure whose personnel actually arrested him. Does the AFP know whether it was US personnel or Pakistan personnel who arrested him?

**Mr Keelty**—The information that I have is that it was Pakistan authorities.

**Senator LUDWIG**—More generally, in terms of officer training methods, are you able to say whether your officers are trained in the ability to recognise the difference between interviewing and torture techniques—those sorts of issues? As far as you are able; it might cross into an operations area. In terms of training Australian Federal Police officers, they do interview techniques, but are they trained in recognising torture or torture techniques—not to do them as such but to recognise them?

**Mr Keelty**—In terms of our training in conducting interviews, firstly, there is legislation that controls the interviews conducted by AFP officers, and our criminal interviews are video and tape recorded. There are limitations as to the length of time a person can be interviewed and there are limitations as to the areas about which a person can be questioned. The ultimate test for the admissibility of an interview conducted by an AFP officer is with the court—that the interview was conducted in accordance with what is known as the judges rules in terms of the test of fairness. That test of fairness then leads to a test of admissibility. So the training we have for our people is how to properly conduct interviews so that they would be admissible into Australian courts. They are certainly not taught any processes that would lead to the harm of an individual. They would not only be subject to disciplinary charges from the AFP's perspective if they were to engage in that activity; if the court became aware of that activity the court would obviously exercise its discretion in regard to the activities of the police.

**Senator LUDWIG**—I think I have asked you this before on a number of occasions during estimates and other processes: you have a general complaints handling process where a complaint is made against the Australian Federal Police. Maybe you would like to refresh my memory in relation to how that works.

**Mr Keelty**—Where a complaint or an allegation is made against an officer in the conduct of an interview or conduct in dealing with a member of the public—whether it be a suspect, a witness or simply a member of the public in the everyday activities of the police—that complaint is subject to the Australian Federal Police complaints legislation. An internal investigation is conducted by our professional standards area, and the complaint in any event is recorded with the Commonwealth Ombudsman, who then has the choice to be involved in

the investigation of the complaint or to oversight the investigation of the complaint. In any event, they need to satisfy themselves that the complaint was adequately dealt with by the AFP.

**Senator LUDWIG**—Thank you. Turning to the operation in the Solomon Islands, prior to December, when officer Adam Dunning was shot and killed, had the AFP received intelligence of increased activity by criminal elements in the Solomon Islands? If you are able to say, what was the nature of that intelligence?

**Mr Keelty**—The answer is yes. The AFP had access to a range of classified and open source material informing us of the operational risk to our people. Since the commencement of RAMSI—the Regional Assistance Mission to the Solomon Islands—over 3,100 information reports had been received by the joint intelligence group. Over 500, or one-sixth, of those reports had been received after 22 December, so the bulk of them obviously were prior to 22 December, when Adam Dunning was murdered. The joint intelligence group that is part of the Regional Assistance Mission to the Solomon Islands also had information from the International Police Monitoring Team. There were 2,632 of the information reports that I mentioned received between June 2003 and the day before Adam Dunning was murdered, being 21 December. Of those information reports, 37 related to escapes from Rove Prison, 26 related to attacks on RAMSI, six related to combined attacks and prison escape information, eight expressed anti-RAMSI sentiments, one report was on the intimidation of a member, 15 were incidents of rocks thrown at RAMSI vehicles and there were reports of assaults on members.

The reports were followed up wherever possible, depending on the nature of the information and the ability to follow it up, particularly as some were reported by anonymous callers or were overheard conversations in public places, and some of the reports were duplicated. They were the same source reporting to a variety of sources.

The majority of the information that was coming in was rated what we call F6—that is, it was unable to be clarified or given any further credit unless it was further investigated. Raw information cannot always assist in the development of credible intelligence or in the development of substantive evidence. Nevertheless, the reports were taken seriously. Some information was available in relation to the activities of James Tatau. There was some information around that he had expressed anti-RAMSI sentiment, but it was just raw information which had not been further developed and certainly was not in the realms of admissible evidence. We also consult regularly with the Defence Intelligence Organisation, and a military threat assessment was developed as a result of the information that had been gathered in respect of the operations of RAMSI.

**Senator LUDWIG**—Following the murder of Officer Dunning, aside from the murder investigation itself, is the AFP conducting a review of the nature of the intelligence that was received, the response of the Australian Federal Police in relation to that intelligence or the adequacy of the equipment or tactics deployed during that period, particularly with officers overseas in both Papua New Guinea and the Solomons?

**Mr Keelty**—What happened was that, when I went to Honiara on the day of the shooting, I took with me two officers from Canberra. One is a senior officer from the intelligence area,

the other is a senior officer from the investigations area. I asked them to conduct a review of the murder investigation and the force protection measures that were put in place after the 21 October shooting, and I have asked for those outcomes to be replicated in Papua New Guinea and to be replicated in other missions such as East Timor.

One of the things that preceded the murder of Adam Dunning was the shooting of a RAMSI vehicle on 21 October. The investigation into that shooting resulted in a number of force protection measures being implemented by the head of the participating police forces mission in the Solomon Islands. They conducted a large number of inquiries after that shooting. They tasked a number of intelligence resources to gather information in relation to that shooting. They had a devoted operational group established, they had appeals for public information and they also used the Royal Solomon Islands Police to conduct media pleas for information from the community. Armed patrols were commenced in targeted areas and there were random patrols through the area where that shooting had taken place.

Following the development of intelligence in relation to the shooting on 21 October, five search warrants were executed: four on 4 November and one on 4 December. The 4 November warrant resulted in a small quantity of ammunition, including two 12-gauge shells, being seized. There were two 5.56 rounds, seven 7.62 rounds, one .303 round and 12 spent 7.62 casings seized.

One of the warrants executed on that day led to the discovery of a .177 calibre air rifle. But the main outcome was that a 40-millimetre gas cylinder launcher was seized; two semi-automatic SLRs were seized; one 12-gauge shotgun was seized; one SR88 was seized; a mark 1 semi-automatic carbine was seized; a Remington .22 automatic was seized; a crossbow was seized; a 12-gauge shotgun barrel was seized; six crossbow bolts were seized; three SLR magazines were seized; three SR88 magazines were seized; one nine-millimetre magazine was seized; and over 1,000 rounds of ammunition of various calibres were seized. Recovered on 16 December from an open area was one SR88 automatic weapon and one Ultimex 100 mark 3 machine gun. A vehicle thought to be containing Tatau was intercepted—this was before the murder.

There were nine suspects nominated for the 21 October shooting. The efforts of the task force that had been established—Task Force Texas—did not stop at all. Unfortunately, we were simply unable to capture Tatau, who emerged as a possible suspect in the 21 October shooting. To this date, neither the weapon involved in the 21 October shooting nor the weapon that was involved in the murder of Adam Dunning have been seized, despite the large operational activity and the arrest of persons for the murder.

**Senator LUDWIG**—More particularly, has the manner of the way you gather intelligence changed now as a consequence of the murder of Adam Dunning?

**Mr Keelty**—It has not changed, Senator, because the review that was conducted by the persons tasked with that review did not come up with any intelligence failure. In fact, I can tell you that at the briefing that I received in Honiara on the afternoon of the shooting the investigators did outline to me that their principal suspects were Ome and Tatau, and that has turned out to be the case in terms of the persons that have been charged. So they were on the right track. The difficulty was in locating them. Whilst Ome was arrested on 22 December—

that is, the day after the shooting—the investigators were unable to find Tatau until some time later. I think he was arrested in January this year—I will give you the date. So it was not an intelligence failure as such; they knew who they were looking for. It was simply very difficult to locate him. Of course, he was aware that they were looking for him. He had absconded on bail—this is Tatau. He had been on charges for robbery and assault and in fact was in custody in Rove Prison but was bailed. The issue that we are going to pick up is the issue of bail, because we have a number of offenders over there who have re-offended. The date of Tatau's arrest was 11 January.

**Senator LUDWIG**—In respect of the equipment or tactics, have they changed or has there been a review of those since the murder of Adam Dunning?

**Mr Keelty**—There were a number of protection measures in place after the October shooting. There were a number in place with RAMSI as it was. Again, it is almost like the answer I gave before about September 11. We quickly forget because of the passing of time and so many things happening, but it was only in July last year that we celebrated the success of RAMSI and the 12-month anniversary. I do not have the figures in my head at the moment but my memory of it was something of the order of 5,000 arrests. I just do not have the figure in my head, but it was many thousands of weapons. In fact, there was a public ceremony which Nick Warner presided over with Ben McDevitt. They concreted all the destroyed weapons into a memorial. There had not been a weapon used in an offence in that 15 months since RAMSI was commenced in July 2003 right through to the shooting in October 2004. The issues that were being addressed were being risk managed on the available intelligence.

With regard to the 21 October shooting, there was a call for additional ballistic vests. The ballistic vests and helmets are rated at the highest level of United States National Institute of Justice standards for ballistic resistance for police body armour, so they are the best possible available vests and helmets. One of the difficulties we have been dealing with is the weight of the vest. The vests, with the ceramic plate attached, weigh 8.5 kilograms and the helmets weigh 1.5 kilograms, so they are quite heavy in a tropical environment. We have been working to find a lighter-weight vest that will provide as much protection as possible, but the protection has to be balanced against the risk. For example, we do not wear vests in Australia in the conduct of our community policing activities unless it is a high-risk operational environment. Similarly, the optics of police being in the Solomon Islands walking around with body armour is not conducive to building community confidence in the police and building the confidence of the RSIP, the Royal Solomon Islands Police, when they in fact have access to those sorts of protection measures but choose not to access them except in high-risk operations as we would do here in Australia.

Whilst 20/20 hindsight is a wonderful thing, I can tell the committee that I am absolutely satisfied with the force protection measures and the risk assessments, including the military intelligence that we had in terms of the risk against our people. Everything that could be done was being done. There was a ballistic vest in the rear of the vehicle that the deceased was in. Officers can choose to access these types of protection if they choose. It is rare that we actually direct them to, except in high-risk environments. I am absolutely satisfied that everything that could have been done was being done and that everything available for the

protection of our people was available for our people. The issue of choice is one that we are obviously still working through.

**Senator LUDWIG**—Since the death of Adam Dunning, has there been a directive for them to wear these ballistic vests? What is the nature of the directive now?

**Mr Keelty**—Following 22 December 2004, the wearing of vests outside the headquarters area was initially made mandatory at all times but that has since been varied in accordance with the risk of the patrols. As I said to you, this is a difficult area. Even our people on duty outside this parliament are at risk. They do not wear ballistic vests because the risk is assessed as not requiring it, but they are armed. Similarly, I think it is really important that, if we are going to do capacity building of police and get community confidence in police in places like the Solomon Islands and Papua New Guinea, we do not have a quasi-military appearance of the police there. Part of the reason for the failure of the Royal Solomon Islands Police has been the lack of confidence of the community in the police.

As best we can, we want to emulate the sorts of conditions that we enjoy here in Australia. We want to develop less reliance in the community on weapons. As I say, there had been extraordinarily good success in terms of weapons that were seized. There were in the order of some 4,000 weapons seized prior to this shooting. Clearly what we are trying to do is strike a balance in the risk, and what we need to do is to address that risk in terms of force protection measures. But at the same time we need to develop community confidence in policing and develop policing that is free and a community that is free of the fear of guns being used.

**Senator LUDWIG**—I also saw in the *Australian* newspaper that Federal Police are considering using armed vehicles in ‘troubled countries, including the Solomon Islands and Papua New Guinea’. Is that still a consideration? Are you examining that at the moment?

**Mr Keelty**—I know, for example, that we have trialled armoured vehicles here in Australia even for our own close personal protection duties. We do have some armoured vehicles here that are used for close personal protection duties but they are totally inappropriate for deployment to areas such as the Solomons or Papua New Guinea. In fact I consider them some of the most difficult vehicles to use. They are Australian manufactured vehicles that are sent across to the US and made bulletproof, but they come back and are not very good in terms of maintenance and other issues that arise with them. There is a review currently being conducted—I think by the department—in respect of those vehicles. But the deputy might have an answer specifically in relation to deployment to missions.

**Mr Lawler**—I can advise the committee that we have been reviewing portable body armour for vehicles. This is a new development and is used in certain parts of the world by other countries. We have been assessing its viability. It is effectively a kit of high-tech antiballistic material which is positioned in a way inside the vehicle to provide added protection to the passengers. It is not as effective as an armoured vehicle, of course, but it provides a level of protection, and that capacity is currently being researched and will be sourced if appropriate.

**Senator LUDWIG**—How many AFP officers are deployed or stationed in Papua New Guinea at the moment?

**Mr Keelty**—The total number varies as the force builds up its capacity there. I will give you the actual figure. It is 126 as of today's date—'he says confidently'. It is here; I just cannot see it. There are currently 126 members deployed in PNG, with a full complement of 210 policing and specialist personnel occurring by mid-2005.

**Senator LUDWIG**—Separate from that, is the minister aware of PNG's notorious raskol gangsters, who have alleged they intend to shoot and kill when confronted by Australian Federal Police officers? What is the minister's response to that? It is worrying to me.

**Senator Ellison**—I have said publicly on several occasions that I regard the deployment to New Guinea as a very dangerous mission. No-one is underestimating for one minute the danger of it. We visited PNG, we had the forum there, and these issues were discussed. That is why we are taking it on a step-by-step basis. I visited one of the police stations that were provided with vehicles and personnel. I saw the great change that has occurred in such a short time in relation to patrols. Our personnel—our police—are out there on patrol. I think that operational matters and how they should be conducted are things best left to the Australian Federal Police. But certainly from a government point of view, we are only too mindful of the dangers our personnel face on a daily basis. We have to remember that we also have officials from Finance, Attorney General's and Customs—a whole range of officials—who are assisting the Papua New Guinea government and people. They too face dangers. It is certainly a step-by-step process. Once we expand beyond Port Moresby, we will face even more challenges. The operational aspects are best left to the Australian Federal Police.

**Senator LUDWIG**—Has the murder of Officer Dunning changed what you do in Papua New Guinea, Mr Keelty, or the way you address security issues for the Australian Federal Police?

**Mr Keelty**—It has only changed in respect of the equipment that we are trying to source to enable our people to have access to ballistic vests that will not create other OH&S issues because of the weight involved in the tropical environment in which they are operating. The risk is always assessed on the available intelligence. The strategy for Papua New Guinea is quite different from that for the Solomon Islands. The enhanced cooperation programs have a number of stages, which commenced in September last year. At the moment they are trying to establish good law and order in Port Moresby before they venture into the regional areas and subject themselves more directly to the raskol gangs. A significant amount of work has been done in re-establishing and rebuilding three regions within Port Moresby. The first of those was opened up in December at Gordons Police Station and the others will come online shortly.

The learnings that have come out of the Solomons I can assure you will be replicated in PNG and in East Timor. It would be irresponsible of us, and certainly me as the head of the organisation, not to ensure that that occurs. But again I emphasise that it is a difficult thing to balance. In Papua New Guinea, of course, we are working on joint patrols with the Royal Papua New Guinea Constabulary. It is slightly different to the arrangement we have got in the Solomon Islands, where we have the senior position as part of the participating police forces in the Solomons. In Papua New Guinea we are there as advisers to the Royal Papua New Guinea Constabulary to, if you like, enable them to do the work that they need to do within their own jurisdiction, whereas we have a much more active role in the Solomon Islands.

**Senator LUDWIG**—I turn to a different issue, the Windsor allegations. As I understand it, they were originally raised on 24 September 2004. Are you aware on what date the Australian Electoral Commission referred the case for your investigation?

**Mr Keelty**—On 20 September 2004 the Electoral Commission, as I understand it, received the information concerning the allegations. On 21 September 2004 the AEC referred the matter to the AFP.

**Senator LUDWIG**—On what date?

**Mr Keelty**—On 21 September 2004.

**Senator LUDWIG**—It is my understanding that neither Mr Windsor nor Mr Anderson and Senator Macdonald were informed about the investigation by the Australian Federal Police—is that right?

**Mr Keelty**—Sorry, I did not hear the question.

**Senator LUDWIG**—We can ask in a number of ways. As I understand it, you did not interview Mr Anderson or Senator Macdonald. But did you notify Mr Windsor, Mr Anderson or Senator Macdonald that you were investigating the particular allegations?

**Mr Keelty**—No. In fact, it was not even until 17 November that we informed our own minister of the investigation. Basically, as in most cases, we do not alert people who are potential witnesses or suspects in order that we maximise the opportunity to gather the best available evidence. What had happened is that on 7 October 2004, following the obtaining of signed witness statements from Mr Tony Windsor, Helen Tickle, the campaign secretary for Mr Windsor, and Mr Stephen Hall, the campaign manager for Mr Windsor, and the conducting of a taped record of interview with Mr Greg Maguire, who was identified as the suspect in the matter for the purposes of the complaint, having taken the matter that far, in other words having spoken to the complainant and to the witnesses who were there with the complainant or working for the complainant and then speaking to the suspect, we referred the matter to the Commonwealth Director of Public Prosecutions.

They advised us on 19 November that there was no evidence to support the allegations of corruption of a Commonwealth public official under section 141 subsection (1) of the Criminal Code 1995 or indeed an allegation of bribery under section 326 subsection (2) of the Commonwealth Electoral Act 1918. The Commonwealth DPP advised that none of the versions of the conversation related by any of the witnesses amounted to an offer to give or confer a benefit. Based on the Commonwealth DPP's advice and the fact that even if Mr Windsor's statement was taken at its highest level there was still no criminal offence disclosed, it was decided that there was no need to conduct further interviews and the matter was finalised.

**Senator LUDWIG**—You indicated that your minister, Senator Ellison, had been informed on—what date was that?

**Mr Keelty**—On 17 November.

**Senator LUDWIG**—What about the minister that looks after the AEC? That would be Senator Abetz.

**Mr Keelty**—We would not normally write to that minister; we would write directly to the AEC. To give you a complete answer, on 22 November 2004 we provided our minister with a written brief advising of the outcome of the investigation and that the matter was to be finalised. I am not sure whether our minister would inform the AEC minister or not. I will leave that with our minister.

**Senator Ellison**—I cannot actually recall if we did, but I will take that on notice.

**Senator LUDWIG**—Thank you.

**Senator Ellison**—By that stage I think it was pretty much out in the public arena.

**Senator LUDWIG**—Yes, I think he would have known by then.

**Senator Ellison**—My advice to Senator Abetz would not exactly have been of enlightenment in view of what was going on publicly.

**Senator LUDWIG**—I can imagine his response being to ask whether you had read the paper or not. The question was more aimed at the protocol. Where these allegations are made, where it is primarily an allegation made under the AEC and a potential offence there, I thought the protocol was for the Australian Federal Police to then contact the relevant minister—in that instance it would be the AEC's relevant minister—to inform them that an investigation was being undertaken. That was my understanding of how the protocol works. I garnered that from your speech some time ago in relation to these procedures. You can correct me if I am wrong; that is how I understood it.

**Mr Keelty**—I will have to check the protocol. I understand that what we do is write back to the AEC, being the complainant department, and we leave it in the hands of the AEC as to what they do with their minister. The protocol for us enables us to inform the minister of significant matters affecting his or her responsibility. Our minister does not have any role in deciding which matters will be investigated by us, nor does our minister have any role in deciding how we should conduct the investigation. We simply informed our minister on 17 November that the matter had been investigated and referred to the DPP and then, after receiving the advice on 19 November of the legal position taken by the DPP, we informed our minister on 22 November.

**Senator LUDWIG**—I guess these are in part operational issues, and you will obviously tell me how far you can assist the committee given this may be an operational issue. There seems to be, when you look at some of the information in the media about this particular incident, that there is a doubt as to why a number of people were not interviewed in respect of the matter. You have indicated some of the potential allegations that could be made, but I think there are also others that may be around, such as conspiracy. I suspect the case is now closed. I do not know whether it has been sought to be reopened or whether there is new information that might have been referred to you to reopen it—you could correct me there as well.

There is Mr Tony Windsor, who is the member for New England; Mr Stephen Hall, Mr Windsor's campaign chair; Ms Helen Tickle, Mr Windsor's campaign secretary; Mr Anderson, the Deputy Prime Minister and Leader of The Nationals; Senator Sandy Macdonald; a black-haired woman alleged to be present at the meeting; Mr Greg Maguire;

and Mr Treloar. Not all of those people that may be able to further the inquiry were interviewed. It is one of those things that exercises my mind. Looking at all the potential charges or offences that may have been committed, there is conspiracy and there are a few others that come to mind. I do not know whether you rule those out or rule them in or do the investigation only focusing on the AEC. Perhaps you could help the committee with that.

**Mr Keelty**—Yes, Senator. I take your point: it is a difficult area because there is so much public interest generated in the outcome of the investigation. The question becomes whether ourselves or the DPP in the public interest release the results of the investigation. If I can speak hypothetically rather than risk offending any particular person, sometimes a lot of these politically sensitive investigations are done to suit the individual's case or the individual's cause—or the allegations are made to suit the individual's case or the individual's cause. More often than not they generate a significant amount of publicity in their own right, which tends to suit the individual's cause.

The difficulty we have is that, if I then issue a statement or make a media appearance to outline the outcome of the investigation, we then get into a public debate about the investigation and the credibility of the investigation, which I do not think helps either party. It also touches upon the area of the legal professional privilege that might attach to the advice that we are receiving from the Commonwealth DPP. Obviously, on some occasions I would wish that advice to be public, but that will not be on every occasion. So I cannot choose when and if we release the advice that we have been given from the DPP.

In respect of this particular matter, the question you have just asked, the long line of witnesses that you have just read out and your mention of the law of conspiracy, to be guilty of the offence of conspiracy there has to be a substantive offence which you are conspiring to commit—and the same goes for any attempted offence or any inchoate crime. When the DPP told us that, at its highest level, the allegation that had been made and the key witnesses to support that allegation would not amount to an offence at law, it left us in a position where we had really nowhere to go. But I do take your point and, subject to our own minister's views, we will look at that issue, when so much public interest is generated in these cases, of how best to deal with it in the interests of the public. Perhaps the best way to deal with it is through this process of estimates hearings, where people do get more of an insight into some of the activities that we have undertaken.

**Senator BARTLETT**—I want to clarify that point because it is the second time you have referred to it: you are specifically saying you got advice from the DPP that, even accepting that absolutely every allegation that was made by Mr Windsor had been said, there was no prospect of a criminal offence having occurred?

**Mr Keelty**—That is correct, Senator.

**Senator LUDWIG**—That is what I understood, so there is no point, from what you are saying, in pursuing further evidence from other witnesses because with respect to his allegations alone there is nothing more to investigate. Is that what you are saying?

**Mr Keelty**—No.

**Senator LUDWIG**—In the sense that the allegations that he makes do not amount to an offence under the AEC Act?

**Mr Keelty**—I guess I want to be careful here that I am not doing a disservice to the Commonwealth Director of Public Prosecutions—

**Senator LUDWIG**—He has recently received an award as well.

**Mr Keelty**—And recently gave evidence before this committee as well. I do not want to do anything improper by providing insight into the advice.

**Senator LUDWIG**—Do you want to take that on notice and get back to us?

**Mr Keelty**—If I could.

**CHAIR**—It would be more appropriate to take a considered approach to that response.

**Senator BARTLETT**—In a sense, boiling it down to newspaper-speak, which I know does not mean it is automatically accurate, for someone to go to an MP and say, ‘You resign and we’ll give you an ambassadorship,’ is not illegal. That would be what I would take out of what the advice you have got says, so I think clarification would be helpful in that regard.

**Mr Keelty**—That is correct. Again, if I could speak hypothetically, sometimes witnesses do not come up to proof either. What is said in a newspaper and what is said in an interview are different. And what is said under parliamentary privilege, dare I say, is quite different to what is said in a formal, tape-recorded, video-recorded police interview.

**Senator BARTLETT**—Sure.

**Mr Keelty**—Hypothetically speaking.

**Senator LUDWIG**—I raised this yesterday with Attorney-General’s. It is an article from the *Sydney Morning Herald*, ‘Guns for drugs and gold as PNG trafficking revs up’. It seems sometimes that I have to rely on these for my information. The article said:

A sophisticated network is smuggling marijuana from Papua New Guinea into Australia via the Torres Strait ...

That is the nub of the issue. Is the AFP aware of any network smuggling marijuana from PNG into Australia via the Torres Strait island of Daru?

**Mr Keelty**—I am not aware of the report.

**Senator Ellison**—Can I just ask, Madam Chair, who was it who said that in the article? I saw a copy yesterday.

**CHAIR**—This is a reference to an article that Senator Ludwig has just passed over.

**Senator Ellison**—It was a police minister from New Guinea, wasn’t it?

**CHAIR**—I will have a copy made and handed down to you so we know exactly what we are talking about.

**Mr Keelty**—But I can inform the committee that the issue of arms smuggling and cannabis trafficking through the Torres Strait has been around for a long time. In fact, this came out of Port Moresby. There is nothing new in the allegation, but I have to say that, having headed up the area of the AFP in that part of Australia—in fact, I opened the AFP station in the Torres Strait as part of the National Illicit Drugs Strategy in 1998, I think it was—and given our presence in Papua New Guinea now, we are aware generally that there is a lot of movement of people within the Torres Strait under the Torres Strait treaty, but certainly there has never been

any hard evidence of gun smuggling or cannabis trafficking in an organised way across the Torres Strait. So, I am aware that this allegation surfaces from time to time. I think in the past I have even spoken to Senator Macdonald, who has an interest in that area, and we have looked at information on it that had been given to him directly, but we have never been able to establish any hard evidence.

The other thing is that the AFP, Customs and the Queensland police operate in a very cooperative way out of Thursday Island and we do regular joint patrols up into Daru. And, as I say, we even have the Papua New Guinea end of it covered now, so certainly there has been no hard evidence of this, to my knowledge.

**Senator LUDWIG**—How many of those patrols that you mentioned—the joint AFP-PNG patrols—were done in 2004?

**Mr Keelty**—I do not have the figure on me, but if I could take that on notice I will be able to give you that advice.

**Senator LUDWIG**—All right—and those that are now scheduled for 2005, whether or not they are routine. I understand there have been a couple, but I would like to know whether you are now stepping that up to more or continuing on the same basis.

**Mr Keelty**—Certainly.

**Senator LUDWIG**—Has the AFP received any request from the PNG government about an increase in the number of patrols?

**Mr Keelty**—Not that I am aware of. Again, the number of patrols will be dictated by the available intelligence. I notice now that this report says that there were only two patrols undertaken this year. I will check to see whether that is the case—but that does not prevent, of course, one-off patrols by each of the agencies involved. In fact, I know that Customs has a vessel up there. They have had a helicopter up there. The Queensland police air wing operates up there from time to time. So a considerable amount of resources are put into patrolling the area. I cannot think of the company, but one of the defence reserve units also patrols in that area. They are based in Cairns and patrol the Torres Strait. I will get you the detail on that.

**Senator LUDWIG**—Thank you. Minister, has there been any request to the Attorney-General's from Papua New Guinea for the AFP to increase their patrols?

**Senator Ellison**—We had the forum in New Guinea just before Christmas. To my knowledge, no request was made by the PNG government. The Torres Strait was discussed, of course, with all the issues that relate to it. We have an agreement for people coming over to see relatives and such. But there was no request made for an increase in AFP patrols. I will take that on notice. If there is anything further I can add then I will certainly add that. The Torres Strait was discussed, of course, as a crucial area. It is a place of intense surveillance. We did discuss the question of Customs patrols but not AFP patrols.

**Senator LUDWIG**—Turning to the overseas deployments, how many AFP officers are presently deployed or stationed overseas? Could you differentiate between those which are at posts—that is, on regular overseas engagements—and those deployed, in the sense of meeting an overseas obligation or operation. I am happy for you to take that on notice if you do not have that with you.

**Mr Keelty**—We do have that. I can give you a number of figures—not that I would ever anticipate your questions.

**Senator LUDWIG**—I thought you might be able to by now.

**Mr Keelty**—After seven years?

**Senator LUDWIG**—I do not think it is quite that long, but it is getting close.

**CHAIR**—If you are counting, it is long!

**Mr Keelty**—Not as commissioner, though. As at December 2004, the total of all overseas deployments was 481. That includes 77 state and territory police deployed as part of the international deployment group initiatives. I will break them down for you. In the Solomon Islands there are 111 AFP, 33 state police and 47 AFP Protective Service officers, making a total of 191. In fact, would you like me to table this?

**Senator LUDWIG**—It might be easier.

**Mr Keelty**—With the consent of the minister and the chair, I can table that. The total figure is 481. That includes: Solomon Islands; the 57 who form the international network, which you specifically asked me to exclude; Cyprus; East Timor; the external territories of Christmas Island, Cocos Island and Norfolk Island; Jakarta, where they are in an operational role on the joint counterterrorism team; Papua New Guinea; Nauru; Jordan, in the Middle East; other international deployment group deployments; and in DFAT missions at Kuala Lumpur, Port Moresby and Jakarta, which is where we have our Protective Service officers. There are seven counterterrorism people placed overseas working with local authorities. I am just advised that the counterterrorism figure will change as a result of the bombings in the Philippines overnight. We have been asked by the Philippines police to provide some assistance.

**Senator LUDWIG**—In terms of the percentage of your uniformed staff that are overseas rather than operating in Australia, what is the breakdown?

**Mr Keelty**—Based on that figure of roughly 400 AFP, it is less than 10 per cent.

**Senator LUDWIG**—There was a media statement back in September and it was reiterated in January by the Chief Executive Officer of the AFP, Mr Torr, who indicated that he thought that the AFP was stretched too thin, in the sense of having a significant number of overseas commitments as well as the operations in Australia. Are you stretched too thin?

**Mr Keelty**—The issue there is that we have actually been funded to do these things. We have been funded to provide police for the Solomon Islands, New Guinea, East Timor and Cyprus. We have been funded for the counter-terrorism offshore capability. We had specific funding for the people who responded to the tsunami in Thailand. We have been funded for the people who will go today to respond to the Philippines bombings overnight. Despite the rhetoric from the Police Association and despite the fact that we have been funded for all those operations, in the past five years we have met our portfolio budget target of 65 per cent of our resources being devoted to high- or very high-impact matters at home. So, whilst the organisation has had enormous demands placed on it—and I again acknowledge the words of the chair and yourself at the outset of this hearing—the organisation continues to perform very well. It goes to the people in it and the commitment that they have.

The staffing levels have grown from 2,851 in June 2001 to 3,545 as at December 2004, which is an increase of 694 staff. So we have been recruiting heavily over that three-year period and we continue to recruit as the government engages us in other programs. I must mention the support of the state and territory police. In that figure of 481 deployed overseas, 77 are state and territory police. We have just finalised negotiations with the New South Wales Police. I spoke to the New South Wales minister yesterday, and we will have another 20 New South Wales police added to that. So we do have a significant amount of resources being tapped into right around the country.

**Senator LUDWIG**—Would you concede at least that a large percentage of those resources which are still in Australia are not experienced officers; they are new? There are 694 that are, in the broader sense, new to the AFP—I do not know about their previous experience in the field.

**Mr Keelty**—Before I go into a breakdown of years of service, I should say that the profile of a police officer in the AFP is quite different to the profile of a police officer going into other police forces. Our average age is 29. In fact it is nudging 30. Over 70 per cent of them have degrees and that indicates they have had work life careers before they came into policing. Many of them have had policing careers. In terms of years of service, those who have zero to three years of service are only 34.5 per cent of the organisation. Those with four to six years of service represent 22.1 per cent of the organisation. This is investigative resources, not the protective service resource. That is almost a quarter of the organisation that has four to six years experience. There is a gap of people with seven to 10 years experience, which is represented by only 5.6 per cent of the work force. That I think historically goes back to a recruiting gap in the early to mid-nineties. And 22.7 per cent of the organisation, nearly a quarter again, have 11 to 20 years experience, while 15.1 per cent of us have more than 21 years experience—and some of us are showing the wear and tear of that. So we are very focused on balancing the skill level and trying not to leave areas denuded of experience. But of course in a growing organisation that is a challenge for management. I can tell you that that is something that this executive team has been focused on for almost the past two years.

**Senator LUDWIG**—Are any of the 694 staff still in recruit school or have they passed through?

**Mr Keelty**—I think there are only 20 in recruit class at the moment. I should add that there are 177 experienced police waiting to enter the organisation laterally if we accept them. I have written to each of the state and territory commissioners to advise them that that may be the case, so there is quite a level of experience waiting to come into the AFP as well as what we have in the organisation already.

**Senator LUDWIG**—So I should find another topic to talk to you about next then. I do not have any further questions.

**CHAIR**—As there are no further questions for the Australian Federal Police, Mr Keelty, thank you for your assistance and that of your officers. We will move on to the Australian Security Intelligence Organisation, but, Mr Cornall, do you have an answer that you wish to place on the record before we do that?

**Mr Cornall**—There are two very small matters arising out of yesterday's hearing. One question that came out of Customs' estimates last night was the correct title of the SUA convention. The correct title is the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.

**CHAIR**—That is an enormous relief to all of us. Thank you, Mr Cornall.

**Mr Cornall**—The second issue comes out of some questioning addressed to the Australian Crime Commission by Senator Ludwig. He asked whether the Department of Immigration and Multicultural and Indigenous Affairs has access to the ACID database. The answer to that is yes, and there are 31 current DIMIA users with active ACID logons. He also asked if there were details of the number of searches of ACID made in the 12 months to 14 February 2005 by each agency with access to the database. I have those particulars and I can table the details.

**CHAIR**—Thank you very much, Mr Cornall. Does anything flow from that that senators want to pursue?

**Senator Ellison**—There is one other matter. Senator Ludwig last night questioned Rear Admiral Crane and Mr Woodward about the joint offshore protection command, JOPC. We were all grappling for a shortened version or title of it. The Customs DLO in my officer has reliably informed me that a popular reference is 'jop-C'. So if you hear 'jop-C', that is what they are talking about.

**CHAIR**—Introducing new pronunciations of acronyms into the estimates process is perhaps counterproductive. Thank you very much for that clarification, Minister.

**Senator LUDWIG**—Thank you, Chair. I would not stick with that one. I will tell you later why.

**Senator Ellison**—Okay. We had better put a hold on that one—back to the drawing board.  
[10.55 a.m.]

#### **Australian Security Intelligence Organisation**

**CHAIR**—We are starting with questions from Senator Kirk.

**Senator KIRK**—I have some questions in relation to contact by ASIO with Mr Habib. As I understand it, the first access that ASIO personnel had with Mr Habib was in Pakistan in October 2001. Is that correct?

**Mr Richardson**—That is right.

**Senator KIRK**—Do you have the dates?

**Mr Richardson**—We interviewed Mr Habib on three occasions in Pakistan in October 2001. The first occasion was on 24 October. That was an interview conducted by ourselves. On the second occasion, 26 October, and on 29 October, it was an ASIO-AFP interview with ASIO taking the lead.

**Senator KIRK**—How many ASIO personnel were present at those three events?

**Mr Richardson**—One.

**Senator KIRK**—You say that on 26 and 29 October they were joined by an AFP officer.

**Mr Richardson**—I do not know how many AFP officers there were. I know there was one ASIO officer.

**Senator KIRK**—Other than those three dates in October, was there any other access by ASIO to Mr Habib at any other time?

**Mr Richardson**—No.

**Senator KIRK**—What was the purpose of the access by ASIO to Mr Habib on those three occasions? Was it to interview or interrogate him?

**Mr Richardson**—It was to interview him in connection with his activity prior to being taken into custody in Pakistan on or around 5 October.

**Senator KIRK**—Was Mr Habib the only one interviewed on that occasion or were there witnesses who—

**Mr Richardson**—No. Mr Habib was the only person interviewed. There was a second purpose to the interview on 24 October—that is, the first one. That was to raise some matters of a consular nature on behalf of the Department of Foreign Affairs and Trade. As has been stated publicly, consular access was denied Mr Habib while he was in custody in Pakistan and certainly no Foreign Affairs official had access to or saw Mr Habib during his time in custody in Pakistan. Against that background, our officer on 24 October raised some matters on behalf of Foreign Affairs and also provided to Mr Habib the business card of the consular officer in the embassy in Islamabad.

**Senator KIRK**—To whom did the business card belong?

**Mr Richardson**—As I said, to the consular officer in the Australian embassy in Islamabad.

**Senator KIRK**—Mr Adams?

**Mr Richardson**—Well, whoever that was.

**Senator KIRK**—When he was being held in Pakistan, who was the detaining authority, so to speak? Was it the Pakistani police?

**Mr Richardson**—It is my understanding—well, I do not know. It was certainly the Pakistani authorities.

**Senator KIRK**—On those three occasions that you mentioned when the ASIO gentleman had contact with Mr Habib, did he at any stage raise any allegations of torture against him?

**Mr Richardson**—The only allegation he raised in respect of torture was in an interview on 26 October in which under questioning about his activities before he was taken into custody on or around 5 October he claimed that he had been kidnapped by people in yellow uniforms and had been tortured. We did not believe that and we do not believe it to this day, because we have a fairly good idea of what activities he was involved in before 5 October and they certainly were not with people in yellow uniforms.

**Senator KIRK**—Even accepting what you say, that his allegations in your view were not true, who would be these people in yellow uniforms? What would he be referring to?

**Mr Richardson**—I would not have a clue. You would need to speak to him.

**Senator KIRK**—I thought perhaps that was the uniform of a particular authority in that area, but apparently not.

**Mr Richardson**—He was not in Pakistan during the time we are talking about and I do not know who would have kidnapped him and tortured him where he was, which was in Afghanistan.

**Senator KIRK**—When the ASIO officer was informed of this torture, I take it that the ASIO official, like you, did not think there was any substance to it. But were there any investigations made, or was it more or less dismissed as being something that just could not have occurred?

**Mr Richardson**—It was dismissed because we had a fairly good idea of what he had been up to. He was actually with people in Afghanistan who had a history of murdering innocent civilians, rather than actually being kidnapped by anyone. So his claim about being kidnapped while he was in Afghanistan and tortured simply lacked credibility in terms of what we knew.

**Senator KIRK**—So it is your understanding that prior to 5 October he was in Afghanistan but associated with these individuals that you speak of rather than—

**Mr Richardson**—No, he was—I have not got the precise date but for most of the period prior to him being taken into custody on or around 5 October he was in Afghanistan, not Pakistan.

**Senator KIRK**—I understand. Who was he taken into custody by on or around 5 October?

**Mr Richardson**—By the Pakistani authorities.

**Senator KIRK**—I am trying to determine the extent to which these allegations were considered and investigated.

**Mr Richardson**—We did not consider that they needed to be considered or investigated. We considered they were humbug and we believe they are humbug today if he was to raise them again.

**Senator KIRK**—When did ASIO become aware that Mr Habib was no longer in Pakistan?

**Mr Richardson**—We formed a view in mid to late November that he was most likely in Egypt, and that was the basis of the Foreign Affairs representation to the Egyptian authorities for consular access to him. We established to our satisfaction that he was definitely there in February 2002.

**Senator KIRK**—As I understand it, your information about him most likely being in Egypt in mid to late November came through DFAT rather than through your—

**Mr Richardson**—No. It was through our own activities.

**Senator KIRK**—So really at this stage, in mid to late November, ASIO was keeping a watching brief on this gentleman. He was not really of any particular interest to you. You were just keeping an eye on him, so to speak.

**Mr Richardson**—Mr Habib had been of interest to us for some time. He was even of more interest to us following his presence in Afghanistan before, on and after 11 September 2001.

**Senator KIRK**—But, upon his transfer or travel to Egypt, ASIO still maintained an interest in him?

**Mr Richardson**—Yes, most certainly. And we retain an interest in him to this day.

**Senator KIRK**—But, as I understand it, it was really for DFAT to concern themselves with matters of his welfare, consular access and the like.

**Mr Richardson**—That is right. I think it is on the public record that DFAT made numerous representations to seek access to him from the time we formed a view that he was most likely there.

**Senator KIRK**—Which was around February 2002.

**Mr Richardson**—No. We formed the view that he was most likely there in mid to late November, and we established to our satisfaction that he was definitely there in February 2002.

**Senator KIRK**—When Mr Habib was moved from Pakistan to Egypt, I understand from what you are saying that ASIO was not notified of that by the Pakistani authorities or by the Egyptian authorities.

**Mr Richardson**—That is right.

**Senator KIRK**—You had to make your own inquiries in order to determine his whereabouts.

**Mr Richardson**—That is right.

**Senator KIRK**—Is that what normally happens in those circumstances? Is there usually contact with—

**Mr Richardson**—We had not previously had circumstances of the kind that existed following 11 September 2001 so—

**Senator KIRK**—It was novel.

**Mr Richardson**—I am not able to draw a comparison.

**Senator KIRK**—Is it fair to say that it was DFAT who first became aware of Mr Habib's presence in Egypt or was it ASIO?

**Mr Richardson**—No, it was ASIO. I think I said in answer to an earlier question that we formed a view in mid to late November that he was most likely in Egypt and that formed the basis of the representations that Foreign Affairs were making to the Egyptian authorities.

**Senator KIRK**—I understand. Thank you.

**Senator LUDWIG**—Are you able to say how you formed that view?

**Mr Richardson**—No.

**Senator LUDWIG**—All the good questions you do not seem to be able to ask!

**CHAIR**—You can ask them. It is a question of responses.

**Senator KIRK**—Does ASIO have any information or knowledge that the United States, as I understand it, has engaged in the practice of ‘rendering’ prisoners to third countries known to use torture as an interrogation technique, such as Egypt?

**Mr Richardson**—We have no information as of fact about that. However, I have read that in the media, as you would have read it.

**Senator KIRK**—You probably cannot say, but you say you have no factual basis for that conclusion. Is there intelligence to that effect or is that something you cannot disclose?

**Mr Richardson**—No. I would simply stop at saying that we do not know as of fact.

**Senator KIRK**—Back in October 2001, when ASIO did have access to Mr Habib, did ASIO officers at any time witness any interrogations of him by any other individuals—Pakistani authorities or US authorities?

**Mr Richardson**—No.

**Senator KIRK**—When the interview took place it was just the single ASIO officer and the AFP officer on the two occasions you mentioned and the ASIO officer on the first?

**Mr Richardson**—They were other people present; however, on the occasions that we saw him—on 24, 26 and 29 October—he made no claims of mistreatment except for his comments relating to his activity before he was taken into Pakistani custody on or around 5 October.

**Senator KIRK**—So there was no witnessing by ASIO officers of any interrogation by Pakistani or United States officers?

**Mr Richardson**—No.

**CHAIR**—Senator Kirk, Senator Scullion has some questions in this area as well.

**Senator KIRK**—I just have a couple more.

**Senator SCULLION**—Obviously some of the questions from my colleagues are going to why perhaps you discounted his allegations about these people in the yellow uniforms. Are you aware of any other paramilitary police or any other organisation that would wear yellow uniforms in the region?

**Mr Richardson**—I will put it this way—we have not made inquiries.

**Senator SCULLION**—Setting aside your obviously firm belief that he was in fact somewhere else, which obviously discounts the story, when he related this series of events, did you put to him questions in regard to who they were, what nationality they were, what the nature of the torture was, how long he was kept and where he was kidnapped—the normal sort of questions?

**Mr Richardson**—A series of questions were put; however, they were inconsistent with our knowledge of what he had been doing.

**Senator SCULLION**—So you could say that you are in possession—I do not want to go into detail; obviously you will not be able to give me that—of what you would consider pretty hard evidence that he was in fact in Afghanistan prior to the 5th.

**Mr Richardson**—He was—full stop.

**Senator SCULLION**—You were investigating the process to establish whether or not he had contravened any Australian law.

**Mr Richardson**—No, that is a matter for the AFP. We were pursuing matters consistent with our legislative responsibility. We do not have the powers to charge or arrest, and under our legislation we concern ourselves with threats to security as defined in the ASIO Act.

**Senator SCULLION**—In the context of your response, you were obviously concerned; there was your comment about the fact that he was consorting with people about whom you used the term ‘murderers of innocent people’. I think that is appropriate, but perhaps the usual vernacular would be ‘terrorists’. It would strike me that you were convinced that he was at that time a security risk to Australia. Would you say that was the case then—or not necessarily a security risk to Australia but a security risk?

**Mr Richardson**—He was considered that, yes.

**Senator SCULLION**—Are there any circumstances that have occurred or knowledge that you have gained since that time to now, presently, that would change your view that he could be a security risk to Australia?

**Mr Richardson**—The precise position now needs to be calculated and seen in the context of what has transpired over the last three or so years. He certainly remains of legitimate security interest to us today, in the same way as anyone who we knew or suspected had trained with al-Qaeda and had contacts with other groups such as the LET would. We have no less or no more responsibility under our legislation in respect of Mr Habib than for anyone else who we know or have reason to suspect has trained with al-Qaeda and has had contact with other terrorist groups. We would not be doing our job if we did not pursue that interest.

**Senator GREIG**—Mr Richardson, there are three points I would like to pursue. I am uncertain if Senator Kirk pursued this, so I apologise if there is some double-up here. I wanted to clarify something in terms of dates. When were Australian authorities first notified that Mr Habib was in US custody in Pakistan? You have mentioned the date of 5 October.

**Mr Richardson**—No, I have not. That was Pakistani custody, not US custody.

**Senator GREIG**—So he was not in US custody in Pakistan.

**Mr Richardson**—He was taken into Pakistani custody. As Commissioner Keelty answered earlier on, the first occasion on which we were aware that he was in US custody was in mid-April 2002.

**Senator GREIG**—Do we know the gap between when he was taken into Pakistani custody and the notification of that to Australian authorities?

**Mr Richardson**—Notification of what?

**Senator GREIG**—Of his detention by Pakistan authorities.

**Mr Richardson**—Could you repeat the question.

**Senator GREIG**—To paraphrase: when were Australian authorities notified that Mr Habib was taken into custody in Pakistan? I am looking at the gap between when he was detained and when we as a nation were told about it.

**Mr Richardson**—I will have to confirm this, because I do not have that precise date in my head, but I think from memory it was somewhere around 8 or 10 October.

**Senator GREIG**—What was the process in terms of Australian authorities being notified of that?

**Mr Richardson**—I believe it was as stated by Commissioner Keelty in questioning not long ago.

**Senator GREIG**—Was it during that communication that the Pakistani authorities gave their reasons for Habib's detention?

**Mr Richardson**—He was taken into custody by the Pakistani authorities because he aroused their suspicion, for whatever reason, on or around 5 October. There was earlier questioning, in which people asked questions about the media reports re the two Germans he was with, them being questioned and Habib intervening. That led to him being taken into custody. I do not know the precise details of that, but, for whatever reason, he aroused their suspicion and was taken into custody on or around 5 October.

**Senator GREIG**—So those suspicions were not in any way detailed by the Pakistani authorities.

**Mr Richardson**—No. We and others were actively looking for Mr Habib before 5 October because of his activity in Afghanistan and our concern about that. There was considerable interest in ascertaining his whereabouts.

**Senator GREIG**—Once you were notified of his being in custody in Pakistan, how long was it before Australian authorities went to see him?

**Mr Richardson**—We had access to him for the first time on 24 October.

**Senator GREIG**—Do we know how many times Mr Habib was visited by Australian authorities between the time he was first taken into custody and his transfer to Guantanamo Bay?

**Mr Richardson**—Yes. In answer to earlier questions I said that ASIO interviewed him on 24 October. ASIO and the AFP interviewed him on 26 October and 29 October. So we had access to him on three separate occasions.

**CHAIR**—Are there any further questions?

**Senator LUDWIG**—Yes, but not in this area. Turning to rail security, has ASIO been asked for, or has it provided, an assessment of the threat facing commuter rail services in various states?

**Mr Richardson**—I would have to take that on notice. Certainly there was a meeting of state-federal transport ministers in Perth on or about 30 April of last year, at which I provided an overview of the security environment and made specific reference to transport. There was discussion that followed in relation to railways, because that briefing took place within six or so weeks of the bombing in Madrid, so it was something very much on people's minds.

**Senator LUDWIG**—Is it an ongoing involvement that ASIO has in relation to any rail initiatives—or is it simply an advisory role or a request for advice?

**Mr Richardson**—We have an advisory role and we respond to requests. To put that in context, we have a role in the critical infrastructure protection, and part of our responsibility is to develop and maintain a database of information on critical infrastructure in the country as provided to us by Commonwealth and state authorities and by the private owners of such assets. We also have a role in providing threat assessments in relation to that infrastructure. At the moment, under the auspices of the National Counter-Terrorism Committee, we are working through a set of broad sectoral threat assessments based on certain priorities. Over and above that, we respond to specific requests for threat assessments made by Commonwealth or state authorities.

**Senator LUDWIG**—Yes, I think it is something I have asked you about before. In particular, are you able to say what threat levels are available to those various sectorial levels that you indicated? In other words, can you detail that, or is that a matter of confidence between that sector and the request for the advice from ASIO?

**Mr Richardson**—Some of the broad threat levels are made public, but most of them are a matter between ASIO and the authority we provide them to.

**Senator LUDWIG**—And that is part of the critical infrastructure role you play?

**Mr Richardson**—Yes.

**Senator LUDWIG**—Turning to another matter, if you recall the Philip Flood report in particular, and the inquiry into Australia's intelligence agencies, advising on the impact of the military action in Iraq as one of the functions that ASIO are able to do. Were you provided with, or asked to provide, a request of advice about the impact of the military action in Iraq on the safety of Australians?

**Mr Richardson**—We have most certainly provided a threat assessment in relation to that. That is also an issue on which I have made some public comments.

**Senator LUDWIG**—Yes, I think I recall those. Are you able to say when that advice was provided and how many times it was requested?

**Mr Richardson**—I am not sure, but on the first occasion we provided advice it was simply contingency advice in the event of Australia's involvement. It was not predicated on any knowledge or assumption. It was just a cautious and professional thing to do. Subsequently, we have regularly provided threat assessments relating to Australian interests in Iraq and other threat assessments to which Iraq has sometimes been relevant.

**Senator LUDWIG**—Does that include the safety of Australians in Australia as well?

**Mr Richardson**—Yes.

**Senator LUDWIG**—Are you able to provide an assessment or a synopsis of the advice that you provide government—or do you only provide it in the sense of what the threat level is currently at?

**Mr Richardson**—I think I outlined that in some detail in the speech I gave to the Sydney Institute in late October last year. But as I have said publicly on a number of occasions, it is important to distinguish between our threat assessment role and the broader public political

debate that goes on around our involvement in Iraq. I have gone into that in some detail publicly.

**Senator LUDWIG**—Was that in the Sydney Institute paper or elsewhere?

**Mr Richardson**—It was both in the Sydney Institute paper and elsewhere.

**Senator LUDWIG**—Are they available on your web site?

**Mr Richardson**—Yes, they are.

**Senator LUDWIG**—In respect of the advice that you provide, is it broad or general advice?

**Mr Richardson**—It depends on the information available. The long and short of it is that up until now our involvement in Iraq has not led to any change to the general threat level in Australia, which remains at medium. Our involvement in Iraq did, however, lead to an increase in threat levels in respect of Australian interests in a number of Middle East countries, as detailed by the Prime Minister in answer to a question from the Leader of the Opposition on 24 March 2003.

**Senator LUDWIG**—How do you form the conclusion that there is a difference? Is it on the basis of advice or intelligence that you receive? How do you differentiate when you then say that the threat level remains at medium in Australia but that in respect of overseas it is, to use my term, heightened?

**Mr Richardson**—It is very much driven by the information available to us. I would not have thought it surprising that the threat level to Australian interests in Iraq and in a number of countries in the Middle East would be higher than it is here in Australia generally.

**Senator LUDWIG**—Is one of the factors that is taken into consideration whether we have particular border protection in place—the nature of the protection?

**Mr Richardson**—That is part of it, but it is also the information available. As I have mentioned publicly, first of all, threat levels are set by ASIO as part of our statutory responsibility. Ministers are advised of threat levels; they do not set them. Under legislation, the person in my job is required to ensure that only matters relevant to security are taken into account in setting threat levels. The current threat level in Australia overall is medium, part of the definition of which is that a terrorist attack is considered feasible and could well occur. The next level up is high, and part of the definition of that is that a terrorist attack is considered likely. So for ASIO to move the general threat level for Australia overall from medium to high, we would need to have information which would enable us transparently to explain why it had gone from medium to high. We could not raise it from medium to high simply on the basis of whether a majority of people in Australia considered that our involvement in Iraq made us more at threat. Equally, we could not raise it from medium to high simply because some people believed that a commitment to pull troops out by Christmas made us more at threat. Those broader debates are perfectly legitimate in their own contexts but are not relevant to the professional responsibility we have in setting the formal threat level.

**Senator LUDWIG**—Turning to a more mundane issue, that of your office accommodation, do you still share with ONA?

**Mr Richardson**—Yes—or ONA shares with us.

**Senator LUDWIG**—Are there any modifications planned to the building to accommodate any increase to ONA staff?

**Mr Richardson**—Both we and ONA are growing. We have received additional moneys to accommodate more staff. You might recall that one of the recommendations of the Flood report was, firstly, that ASIO and ONA be kept together and, secondly, that funding be provided to enable us to be kept together.

**Senator LUDWIG**—On page 118.

**Mr Richardson**—Yes. That is a matter that is currently being considered in the context of the 2005-06 budget.

**Senator LUDWIG**—So you are not being pushed out by ONA or shifting your staff out as a consequence of ONA's expansion in the current office environment?

**Mr Richardson**—We will be accommodating some staff elsewhere—outside of our building. That is both to accommodate our own growth and to assist ONA with their expansion. ONA and ASIO have a very good relationship. We are very important to each other, as indeed all members of the intelligence community are. We consider it important enough for us to stay together for us to move some people out to accommodate some of their growth.

**Senator LUDWIG**—That is very accommodating of you.

**Mr Richardson**—We are.

**CHAIR**—As there are no further questions for ASIO, Mr Richardson, thank you very much for assisting the committee. It is my understanding, unless my colleagues advise me otherwise, that that brings matters for the Attorney-General's portfolio to a conclusion in this consideration of estimates. There have been a large number of questions taken on notice. As ever, the return date is 8 April 2005. The committee would be grateful for the department's assistance with responses to those questions. I thank the minister and Mr Cornall and all of your officers for your assistance with our estimates.

**Proceedings suspended from 11.34 a.m. to 11.48 a.m.**

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS  
PORTFOLIO****In Attendance**

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs

**Department of Immigration and Multicultural and Indigenous Affairs****Executive**

Mr Bill Farmer, Secretary  
Mr Wayne Gibbons PSM, Associate Secretary  
Mr Ed Killesteyn PSM, Deputy Secretary  
Ms Philippa Godwin, Deputy Secretary  
Mr Bernie Yates, Deputy Secretary

**Internal Products****Financial Services**

Ms Louise Gray, Chief Financial Officer, Financial Strategy Division

**Parliamentary and Legal Services**

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

**Information Technology and Office Services**

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

**Human Resource Services, Internal Investigations and Property**

Mr John Moorhouse, First Assistant Secretary, Corporate Governance Division

**Outcome 1 – Contributing to Australia’s Society and Its Economic Advancement****Through the Lawful and Orderly Entry and Stay of People****Output 1.1 – Non-humanitarian entry and stay**

Mr Abul Rizvi PSM, First Assistant Secretary, Migration and Temporary Entry Division  
Mr Greg Mills, Acting Assistant Secretary, Migration Branch  
Ms Arja Keski-Nummi, Assistant Secretary, Temporary Entry Branch  
Mr Bernie Waters, Assistant Secretary, Business Branch  
Ms Jacki Hickman, Acting Assistant Secretary, Delivery Innovation Branch  
Mr Neil Mullenger, Director, Research and Statistics Section

**Output 1.2 – Refugee and humanitarian entry and stay**

Mr Peter Hughes PSM, First Assistant Secretary, Refugee, Humanitarian and International Division  
Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch  
Ms Rosemary Greaves, Assistant Secretary, International Cooperation Branch  
Ms Robyn Bicket, Assistant Secretary, Humanitarian Branch

**Output 1.3 – Enforcement of immigration law**

Mr Steve Davis, First Assistant Secretary, Unauthorised Arrivals and Detention Division  
Mr Jim Williams, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch  
Mr David Doherty, Assistant Secretary, Detention Contract and Infrastructure Branch  
Mr Garry Fleming, Assistant Secretary, Detention Policy and Coordination Branch

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

Ms Yole Daniels, Assistant Secretary, Compliance and Analysis Branch

Mr Todd Frew, Assistant Secretary, Entry Policy Branch

Ms Janette Houghton, Assistant Secretary, Identity Fraud and Biometrics Branch

Mr Richard Bontjer, Acting Assistant Secretary, Border Security and Systems Branch

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

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

**Output 1.4 – Safe Haven**

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

Ms Robyn Bicket, Assistant Secretary, Humanitarian Branch

**Output 1.5 – Offshore asylum seeker management**

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

Mr John Okely, Assistant Secretary, Offshore Asylum Seeker Management Branch

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

**Output 2.1 – Settlement services**

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

Ms Jennifer Bryant, Senior Assistant Secretary, Settlement Branch

**Output 2.2 – Translating and interpreting services**

Mr John Williams, State Director, Victoria State Office

Mr Chris Greatorex, Director, TIS National

**Output 2.3 – Australian citizenship**

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

Ms Mary-Anne Ellis, Assistant Secretary, Citizenship and Language Services Branch

**Output 2.4 – Appreciation of cultural diversity**

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

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

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

**Output 3.1 Indigenous Policy**

**Office of Indigenous Policy Coordination**

Mr Peter Vaughan, General Manager, Land and Resources Group

Ms Helen Hambling, General Manager, Policy Evaluation and Budget Coordination Group

Mr Bryan Palmer, Manager, Performance and Evaluation Branch

Ms Kathryn Shugg, Manager, Policy Innovation Branch

Mr Pat Watson, General Manager, Corporate and Business Support Group

Mr Brian McMillan, Manager, Investigations Branch

Ms Ros Kenway, Manager, Legal Branch

**Outcome 4 – The economic, social and cultural empowerment of Aboriginal and Torres Strait Islander peoples in order that they may freely exercise their rights equitable with other Australians**

**Output 4.1 Policy and Advocacy**

**Output 4.2 Evaluation and Audit**

Mr Pat Watson, Acting Chief Executive Officer, Aboriginal and Torres Strait Islander Services

**Outcome 5 – Effective delivery of policy advocacy support and program services to Aboriginal and Torres Strait Islander peoples**

**Output 5.1 Promotion of Cultural Authority**

**Output 5.2 Advancement of Indigenous Rights and Equity**

**Output 5.3 Improvement to Social and Physical Wellbeing**

**Output 5.4 Economic Development**

**Output 5.5 Capacity Building and Quality Assurance**

Mr Pat Watson, Acting Chief Executive Officer, Aboriginal and Torres Strait Islander Services

Mr Mike Fileman, Acting Chief Financial Officer, Aboriginal and Torres Strait Islander Services

**Migration Agents Registration Authority**

Ms Venie Ann Moser, Executive Officer, Migration Agents Registration Authority

Mr Len Holt, National President and Director, The Migration Institute of Australia Limited

Mr David Mawson, Chief Executive Officer, The Migration Institute of Australia Limited

Ms Laurette Chao, Immediate Past President and Director, The Migration Institute of Australia Limited

**Migration Review Tribunal**

Mr Steve Karas AO, Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

**Refugee Review Tribunal**

Mr Steve Karas AO, Principal Member

Mr John Blount, Deputy Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

**CHAIR**—Good morning, ladies and gentlemen. The committee will now commence its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding according to the general order on the circulated agenda. The committee will begin with general questions to the departmental executive. 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. The committee has agreed to the date of 8 April 2005 for receipt of answers to questions taken on notice and additional information.

I welcome Senator the Hon. Amanda Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Bill Farmer, the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs, and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in

connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses,' and in particular to resolution 1.10, which states in part:

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

Further, resolution 1.16 states:

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

Evidence given to the committee is protected by parliamentary privilege, and I remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I note that there remain six outstanding answers to questions on notice from the supplementary estimates round in December 2004. I thank the department for its assistance in bringing those other answers back to the minister. I also apologise for any confusion in relation to the commencement of these proceedings today. We are trying to fit in as many people's different programs and agendas as possible, and that has proved perhaps slightly ambitious. If there were communication issues between the parties, I apologise for that. Minister or Mr Farmer, do you wish to make an opening statement?

**Senator Vanstone**—Yes, Madam Chair. Thanks for the opportunity. I do think there has been some miscommunication but, as I understand it, one of the senators on the committee has a flight to catch at some point and, as a consequence of that, some arrangements we had hoped could be made could not be made. I do not think that is the end of the world; we will live.

**CHAIR**—In fact, our proceedings this morning took less time than the committee expected, which is of course often the case in estimates.

**Senator Vanstone**—That may be true as well. In any event, we will survive. I would expect that there would be some questions under the general area in relation to Ms Rau, and that is the context in which I want to make some initial remarks. I understand the committee would have some genuine concerns in this area. You will understand I think they have some political ones as well; that is the nature of the business that we are in. They have to be dealt with side by side.

Senators will know that the government has established an inquiry to try and find out whether there is anything that the department could have done and did not do, or anything they did do that they should not have done. Similarly, there is the matter of making inquiries vis-a-vis the state agencies that are involved, because there are four jurisdictions that have knowledge of Ms Rau and her difficulties, some by one set of names and others by another.

When we have all of that information, everyone will be in a much better position to assess what changes, if any, need to be made to systems. I do not say 'if any' to imply that I suspect

there will not be. I am a great believer that all of us could do things better; probably each day if we went back over and reviewed matters, we could do something better. We are very keen to see if there is anything we could do better. I feel sure that the state governments are in the same position. I have not had any indication from either of the state governments that they do not want to cooperate or, equally, that they do not want to get to the bottom of this. Their own public statements would confirm that.

I also want to make it clear that I understand the role of estimates. I think that previous estimates that I have been involved in would indicate that. I understand that the role of estimates is to make the executive accountable, and that is only appropriate. I certainly do not want to limit the committee's considerations. However, as I have indicated all along in relation to the Rau matter, it is my view that there are a number of perceptions that are now held by the community generally, and certainly by some specific people, as to her condition—that is, the state of her health, as evidenced by certain types of behaviours—and also certain remarks have been made in relation to the manner in which she was treated that I believe to be incorrect.

My first concern in this context is for Ms Rau's mother because, as I have said on a number of occasions, it does not matter how old Ms Rau is; she is Mrs Rau's daughter. If you believed some of the comments that have been made about the behaviour that might be indicative of a problem and you believed that your daughter was in that condition, it would cause you great distress. Equally, if you read and believed some of the things that I have read in relation to the manner in which she has been treated, that would cause you distress. I have also said before that, if you then found out that was not true, you would then be wondering what had happened in this system that had allowed someone to be in that position. So it is not just a matter of Ms Rau's privacy; it is a question of the broader issue in relation to her family and how much needs to be canvassed today. I note that, despite significant criticism from some quarters when the government said they would have a private inquiry, some members of the family also favour a private inquiry to get to the bottom of this.

I do want to be careful that we do not put into the public record things that might further breach Ms Rau's privacy or that would otherwise remain private. There is a fine line there, because there is a point at which the privacy rules can be overruled as a consequence of things being in the public arena. I will get some advice as to the extent to which advocates and the media can put allegations in the media and, because they have done that, claim the right to have someone's files and their personal details traduced, if that is the right word, through the media in the same way that untested and unsubstantiated allegations have consistently been. I am aware that there are portions of the privacy rules that say that there may come a point in particular cases when the public interest requires or at least allows the privacy rules to be overruled. I want to think very carefully about the difference between what the public is interested in—or what advocates are interested in or what politicians might be interested in—and the public interest.

When questions come up in relation to that matter, we may well take those aspects on notice in order to have the opportunity to give serious consideration to those aspects. Of course, if there are questions that do not go to those matters and that relate to the chronology of events, processes and time lines, if we have that information we will give it to you today.

we have not, we will get it for you as quickly as we can. We will therefore have to consider the questions as they come up in relation to the degree to which we can or should answer them today.

We do not yet have the facts on this matter and that is why we had the inquiry, but nonetheless I do want to clarify a couple of things, just to put things in perspective. For example, I am advised that a couple of times a year—well, more than a couple of times, but a couple of times in this specific example—DIMIA officers locate someone who is then subsequently established to be either a permanent resident or lawfully in Australia. Some of the reasons that people might not straightaway make us aware of their circumstances might be quite complex and might relate to their own personal circumstances or behaviour. For example, someone arrested for drink-driving might have given false particulars that might occasion us to believe that they are an unlawful noncitizen. Someone might claim to be a United States citizen, perhaps thinking that they could be deported to the United States.

Other people might have other reasons, pertaining to their family circumstances, that they do not want to give you the correct information. One such example might be that, if a gentleman found himself in circumstances that he would rather his family not become aware of, he may seek to portray himself as being someone else. No doubt if you had a history of these over the years you would find enough stories to make a very interesting book. But generally these things are resolved very quickly, in a matter of days. What we obviously want to get to is why Ms Rau's matter was not resolved as quickly. That will be the subject of the inquiry.

Just to give an example of the capacity of incorrect information to get out and take hold, I go to the example of the South Australian Public Advocate. I choose that example because that is an official position that has responsibilities associated with people with a mental health difficulty and, in particular, those who are perceived to not be able to speak on their own behalf. So it is probably a very good example. No doubt that is why the media chose to go to Mr Harley, who is the public advocate, or why Mr Harley chose to make himself available. I am not sure which happened and it matters little in that context.

Mr Harley did some interviews, I think in Adelaide, on Monday. By Monday night we had the *7.30 Report*, a very well-respected current affairs program on the national broadcaster, asserting that Mr Harley had been trying for two months to get Immigration officials to listen to the story and to do something but they were basically arrogant and heavy-handed. He could not have any success and they would not listen to him. That is a very serious allegation given the responsibilities the immigration department and the minister have for people who are in detention. To have someone holding that high office in South Australia with that specific responsibility in relation to people with mental health difficulties and who cannot speak for themselves to be trying for two months and having an immigration department that wilfully refused to listen is a very serious allegation. It turns out to be completely baseless, and I know that by Mr Harley's own hand.

I am grateful to Kerry O'Brien and the *7.30 Report* because, when I contacted them on Tuesday to indicate that I had followed the matter up and Mr Harley had said no such thing, they immediately agreed, without any argument, to investigate the matter. On Wednesday they carried an albeit limited correction but a correction nonetheless. That is appropriate for a

current affairs body that wants to and does hold itself out as being credible. But I invite senators to go back and look at the *7.30 Report* and see how the whole program was based on that. Judge for yourselves whether the cutaways of Mr Harley, as a consequence of the *7.30 Report* believing that he had been working for two months to get Immigration to do something about it, gave the inference that Mr Harley was fully informed on these matters and had made some inquiries and was therefore an authoritative person to comment.

On Tuesday I received a letter from Mr Harley on the public advocate's letterhead indicating that he wanted to correct an impression that had been given. Not an impression that had been given; a blank statement by the ABC in relation to this matter. It was as a consequence of having received that letter from Mr Harley that he sent to me privately that I contacted the ABC. It was somewhat of a surprise to me to find out that the ABC had not been given the same notification. After all, the public advocate had seen that the wrong impression had been given and had sought to assure me that that was not the case. It was not clear to me at all that the ABC knew about that. In fact, when I spoke to Mr O'Brien, he certainly did not know about it. The explanation for them not being able to correct it on Tuesday was that Mr Harley had been in court on Tuesday and was therefore unavailable for them to contact. Therefore they could not sort out the detail of his response by Tuesday. That is fair enough. They are entitled to check out what I say. I only wish there had been further checking of what Mr Harley had said on the Monday. I understand that. I am grateful to them for correcting it.

Of course, the ABC was not the only one. One of the most senior journalists in the gallery with one of our respected daily papers ran the same story in print—and Mr Harley never said this; I have been over the transcripts—and repeated it on Radio National. The advice I have, although I have not subsequently checked this article, was that that major daily—and this was on the weekend—is still running that story. Not just any story, not just a little mistake; this is quite a serious allegation—that someone charged with the responsibility of speaking on behalf of people who cannot speak for themselves was trying to do something for two months and Immigration were not listening, when it is in fact baseless.

Mr Harley's letter to me indicates that he did not contact us because he believes that as a state official the immigration department regards him as beneath contempt. I do not personally regard that as a satisfactory explanation from Mr Harley for not having contacted somebody. If he feels dissatisfied with the personal treatment there is nothing to restrict him from sending a letter either to the DIMIA manager at Baxter, to the secretary of the department or to myself. And given, frankly, that I have had an association, as is known, Mr Harley for a number of years—and I do not believe I have ever treated him with contempt or as being beneath contempt—I see no reason why he did not ring me. But nonetheless that is the story that is out there. That is not a minor error of fact. It is pretty substantial. But there are others.

I have today sent a letter to Mr Harley asking him what steps he has taken to correct the public record, that I am aware of the correction with *The 7.30 Report* but I am interested in what he has done to ensure that the good office of public advocate in South Australia is not further misused. I have further asked Mr Harley if he would be good enough to share with me what steps he has taken within the South Australian jurisdiction to raise the Rau matter. I have done that because I think officers of the immigration department, people who were caring for

Ms Rau in Baxter, are entitled to have the truth. And we are entitled too—all of us, the public—to have the truth of Ms Rau's treatment at the hands of officers made public. They are entitled to be defended when their reputations have been traduced unfairly.

I say that I have asked Mr Harley what he has done within the South Australian jurisdiction because there are a number of things he could do, being the South Australian Public Advocate. Having had dealings with the immigration department and having been, as I understand it, appointed a guardian—we have a number of people who do have guardians that are in care in South Australia—he either would know or is in a position to know what the process is when someone has a mental health difficulty, that is, the relationship between Baxter, or Immigration, and mental health services in South Australia. Knowing what that process is or being able to find it out, presumably, could have and may well have targeted his concerns to them, and who knows what outcome that would have had. Anyway, I just put that on record. I think that is the clearest example I can give you without going into other examples that relate to Ms Rau's personal condition.

**CHAIR**—Thank you, Minister. Mr Farmer, is there anything that you wish to add?

**Mr Farmer**—Thanks very much. I have just one point about the outstanding questions on notice. As you know, we pride ourselves on serving the committee to our best extent possible. The outstanding questions are ones which I believe are outstanding for a number of departments because they are being coordinated on a whole-of-government basis.

**CHAIR**—Because they are large, cross-portfolio questions. Thank you very much for clarifying that. As I indicated, we are always grateful for your assistance with the answers that we do get. We will start with questions from Senator Ludwig. But, as you will note, colleagues, there are a large number of senators present. We will start with Senator Ludwig, then perhaps go to Senator Bartlett for a period and then others as required.

**Senator Vanstone**—Before Senator Ludwig starts, I will give you an indication of how seriously people take this. One of our senators raised in the Senate the issue of the Public Advocate in South Australia, on behalf of the opposition. The opposition believed that the South Australian Public Advocate had these concerns. So it is not just a case of 'don't worry; no-one believes the papers'—as we often say: why do we buy novels when we can read the newspapers?—the opposition in the Senate took it seriously enough to ask a question based on the premise that that allegation was true.

**Senator LUDWIG**—Can the department confirm whether or not they have drawn up a chronology of events surrounding Ms Rau and, if they have, I wonder if you could provide that to the committee.

**Ms Godwin**—Yes, we are in the process of trying to draw together a complete chronology. It is of necessity a draft, because each time we look at an event it raises questions about how else we might be able to flesh that out. So it is a work in progress, it is a draft. I do not believe it is currently in a position where we could table it, but that is a matter for the minister.

**Senator LUDWIG**—So, what have you got at the moment that you can provide?

**Ms Godwin**—We have working documents—

**Senator Vanstone**—It is work in progress.

**Senator LUDWIG**—I was just trying to avoid—as a mechanism to save time—going through each event piece by piece if there is a chronology that is available, even a draft one.

**Senator Vanstone**—I understand that, but Ms Godwin has given you a fair and proper answer, and that is: of course we are trying to put together an appropriate chronology. But there will be an occasion when you look at something and you want further information on it. You go and get the further information and, in Ms Godwin's terms, that fleshes out the chronology. So at this point it is a work in progress. Given the substantive—I cannot say 'misreporting', because I believe the media are simply reporting what they are told, so it is not as if they have deliberately done this, but somebody has—amount of information out there which is incorrect, I am more than reluctant to add to that. When we have the full and correct picture, of course we will make that available.

**Senator LUDWIG**—Thank you. Do you know when that will be available?

**Senator Vanstone**—No.

**Senator LUDWIG**—In the foreseeable future?

**Senator Vanstone**—I can see a long way into the future, but can I pick the date on which that will be? No.

**Senator LUDWIG**—All right. Thank you. Regarding the Cornelia Rau matter, can you clarify at what point DIMIA ordered her detention—my words—and what the process involved is? How does that come about? Perhaps you could explain that to the committee.

**Ms Godwin**—Perhaps if I start and, in terms of more general procedures, other colleagues may want to add to it. Police drew her to the attention of DIMIA officers in Cairns, where we have a small office, somewhere around late March—I think 30 March or something like that. Police had previously been alerted about her and made contact with her, and on the basis of the information from that contact they had called us. On the basis of the information that was provided, the officer did a couple of things. He sought to check our movement records, which is standard procedure, and he also asked the police if they would ask her some further questions. Armed with those two pieces of information, the fact that he had not been able to identify her in the movement records and the other information that he had been provided with by the police, the officer then faxed to the police—and again this is standard procedure—a request for her to be detained. She was then taken to a police station.

The police station is actually 500 kilometres away from Cairns. It is a standard procedure in a remote locality of this sort. As I understand it, the officer then spoke to Ms Rau—or, as we knew her, Anna Brotmeyer—by phone and asked her further questions. At that point I think he decided that it would be appropriate to ask the police to bring her to Cairns so that the officers could interview her in more depth. So she came to Cairns, and officers, I think the next day, went to see her to interview her in more detail.

**Senator LUDWIG**—Is there a copy of that fax available?

**Ms Godwin**—I do not have one in my papers. It would be on the file. The files are being made available to the inquiry. I do not have the files with me.

**Senator LUDWIG**—I was wondering if you could make that available to the committee. Is it a standard form that is used?

**Ms Godwin**—That is my understanding, but we will confirm that.

**Senator LUDWIG**—Coming back from the dates, what time was the fax sent? Was it sent to the police officer or the Coen police station, if there is one? How was it conveyed?

**Mr Davis**—According to the records that I have been provided with here—and that has been extracted from the file—the fax to police was at 11.10 in the morning.

**Senator LUDWIG**—To where?

**Mr Davis**—To the Coen police station.

**Senator LUDWIG**—Was there a name of an officer that it was directed towards?

**Mr Davis**—I do not have details of the names of the officers it was directed towards.

**Senator LUDWIG**—That was on which date?

**Mr Davis**—That was on 31 March 2004.

**Senator CHRIS EVANS**—If I interrupt, Ms Godwin, you said somewhere around 30 March. Given the minister's concern that we have accuracy, I think it would be useful if we had exact dates. This is part of the problem; we have not actually got exact dates. Could we be clear about what you are saying. Was it 30 March?

**Ms Godwin**—That, as far as we are aware, is the first contact between the police and DIMIA. The police themselves had made contact with her, according to the dates we have been given, on the 29th. I beg your pardon—the police were contacted on the 29th. The police made contact with her on the 30th and they forwarded details to us on the 30th as well. On the 31st, we went through the process that we have just described of checking the databases, talking to the police et cetera.

**Senator CHRIS EVANS**—Thank you. Sorry to interrupt.

**Ms Godwin**—That is fine.

**Senator Vanstone**—Can I say, Senator, that I welcome your commitment, which I take to be from this point on, to ensure that what is correct in relation to this matter is what goes on the record.

**Senator CHRIS EVANS**—Certainly, Minister, and I give you the opportunity to make sure that you correct the record with any concerns you have. You have given us a long lecture about your concerns. This is your and the department's opportunity to set the record straight and provide the Australian public with the correct information. I am sure you look forward to doing that, because we did not get it in parliament last week and we started off with a 'maybe around the 30th'. I think this is our chance to get it right.

**Senator Vanstone**—With respect, I am sorry that you regarded the introductory remarks as a lecture. I do not always look at remarks other colleagues make in that context but, if you did, I am sorry you took it that way. I was invited to make an opening statement. You will understand that, given the force of attention and assertions with respect to the treatment of Ms Rau. I do not want my colleagues in Immigration to misunderstand me here but I am not so much concerned with defending them—although that is my job and I would do that if it was

appropriate, I can assure you. I am particularly concerned about the misinformation vis-a-vis Ms Rau and the status of her health and treatment. We do want to get it right.

I do not see today as the opportunity to set the record straight; I see it as an opportunity to give you as much of the information as we appropriately can without further adding to the problems that have already been brought upon the Rau family in terms of reporting. The inquiry will get to the bottom of what happened. As I have indicated, if Mr Palmer has any difficulties in the inquiry, he has been told to come back to the government. That includes in relation to his capacity to get evidence—reluctance, difficulties or whatever. I feel absolutely certain that, when he does make his recommendations, there will be a much fuller airing of the issues. Why? Because we will then have the facts of what happened.

**Senator CHRIS EVANS**—I know that is your opinion; I do not want to debate it with you. Your private inquiry has been called. We have a different political view about whether that is appropriate. But this is the Senate's opportunity to question the department.

**Senator Vanstone**—It is the start of the Senate's opportunity. The Senate has an ongoing opportunity. This is a starting point.

**Senator CHRIS EVANS**—Yes. We will take the opportunities allowed to us under Senate procedures—

**Senator Vanstone**—Good. That is appropriate.

**Senator CHRIS EVANS**—and hopefully you will cooperate and we will get direct answers to direct questions that are as simple as: what date did you detain her?

**Senator Vanstone**—And that is perfectly appropriate.

**Senator CHRIS EVANS**—We did not start off on a particularly positive note, so can we just get on with that and the Senate will take its opportunities?

**Senator Vanstone**—I hope we can, Senator.

**Senator CHRIS EVANS**—Good.

**CHAIR**—That is in fact my intention. If we could continue with questions, that would be helpful.

**Senator LUDWIG**—Thank you. The facts related to the authorisation—correct me if I am wrong—for the police then to detain Cornelia Rau, or the person they knew as—what?

**Mr Davis**—At that stage she was known to the department as Anna Brotmeyer.

**Senator LUDWIG**—And that was on the faxed form?

**Mr Davis**—That is my understanding from the material I have here, yes.

**Senator LUDWIG**—You might want to confirm that. You were also confirming whether it was a standard form that was used and who it was faxed to. Who was it faxed by? Was that the officer that you referred to earlier—the department of immigration official?

**Mr Davis**—It was faxed by a DIMIA compliance official in our Cairns office.

**Senator LUDWIG**—Was that the person that the police had rung or was it another individual?

**Ms Godwin**—I do not know if we have that information yet.

**Mr Davis**—Not that level of detail.

**Senator LUDWIG**—Perhaps you can confirm whether or not it was one and the same officer that the police informed—you said, as I understand it, that the police informed DIMIA. Who did they inform in DIMIA and what did they inform them of?

**Ms Godwin**—Yes.

**Senator LUDWIG**—The police were then authorised to do what as a consequence of that faxed form?

**Mr Davis**—The police were authorised to detain her and she was taken—my answers will be based on the material I have been provided here—to the Coen police station, in Queensland.

**Senator LUDWIG**—At what time was that? Do the records show what time that was done?

**Mr Davis**—No. We have been advised that a telephone conversation occurred and the officer concerned did some more systems checks based on further names that she provided in a telephone conversation—a range of names. And then subsequent to that telephone conversation the officer requested the Queensland police to transport her to Cairns.

**Senator LUDWIG**—Perhaps you could clarify this when you can. You are using information that you are currently provided with. If it turns out to be different from what you have been given, I understand you will correct the record.

**Mr Davis**—Yes.

**Senator LUDWIG**—At the point of the return to the Coen police station—I have missed the concept—was it the police officer talking to DIMIA or was it the police officer inquiring on behalf of DIMIA about the identity of this person?

**Mr Davis**—The telephone conversation I referred to a moment ago?

**Senator LUDWIG**—Yes.

**Mr Davis**—I have been advised that was a conversation between our DIMIA officer and Ms Brotmeyer, or Ms Rau—a conversation that he had with her on the telephone with which she gave to him further names, and he did further systems checks before he requested her transfer to Cairns.

**Senator LUDWIG**—So, at the point the police went and used the form, is that the point at which DIMIA exercises the control over the detainee? Is that the point of detention? I am just trying to establish at what point DIMIA assumed responsibility.

**Ms Godwin**—I think it would be more accurate to say she was detained under the powers of the Migration Act, but, as you would be aware, the Migration Act specifies a range of people beyond Immigration officers who are authorised to hold someone on behalf of Immigration under the act. So a police officer would be acting in that capacity.

**Senator LUDWIG**—So they are authorised to—using your words—hold them on behalf of DIMIA.

**Mr Davis**—Yes.

**Senator LUDWIG**—At what time did that occur? Was that at the point of the police officer receiving the form and then going out and—

**Mr Davis**—I do not have the details of the times but I do have the detail of the time she left Coen by vehicle with the Queensland police—it was four o'clock in the afternoon. So presumably what I have described occurred between 10 past 11 in the morning and four o'clock in the afternoon.

**Senator LUDWIG**—When she was at the Coen police station, was she being held there on behalf of DIMIA by the Queensland police?

**Mr Farmer**—That is a question that I would prefer to get some legal advice on because clearly, as I understand it, the police were acting pursuant to the Migration Act. Whether in doing that they were doing it on behalf of DIMIA I think is a quite different question and one on which I do not feel confident at this moment to make a statement. I just do not want to say something that might be misleading. I would like to get some advice on that.

**Senator LUDWIG**—You are not suggesting the police were acting pursuant to the migration law on their own?

**Mr Farmer**—No, absolutely not. That is not what I said. You asked a particular question and I answered the particular question by saying I do not know what the legal view would be on that. As you asked, I want to be as helpful as I can and get a proper view for you.

**Senator LUDWIG**—I just understood that the police were acting on behalf of DIMIA by the authorisation for the form that was faxed to them and then the subsequent phone conversation.

**Mr Farmer**—Yes. That is true as a statement of the sequence of events, but you asked a particular point about status, and I would like to check that so that we give you the right answer.

**Senator LUDWIG**—Do you have a list of what the system checks were that were then undertaken by the DIMIA official? This is in respect of the phone interview at the Coen police station by Ms Rau and the DIMIA officials.

**Mr Davis**—There are records on the file showing the system checks undertaken by the officer, and what I have here says that he did system checks and at least three other names were provided, but there may have been more. The detail is on the file. I have a range of details here.

**Senator LUDWIG**—Perhaps you could take that on notice and provide it.

**Mr Davis**—Yes.

**Senator LUDWIG**—Are the system checks—forgive me; I have some knowledge of DIMIA's systems—passenger movements, visa requests or current visas or passport checks? What was undertaken?

**Mr Davis**—They were both system checks in the sense that we have a central system which will tell an officer of the lawfulness or the nature of the visa or whatever is held by an individual as well as movement record checks to see if she had moved across the border.

**Senator LUDWIG**—That was in respect of the three names that were provided?

**Mr Davis**—At least three names.

**Senator LUDWIG**—And you will be able to provide that detail?

**Mr Davis**—Yes.

**Senator LUDWIG**—Thank you. From the Coen police station, was there a request on the phone to the police officer then to escort her to the Cairns watch-house? How did that come about?

**Mr Davis**—I understand it was following the conversation and the further checks the officer made. I do not have a record here of how that was communicated to the Coen police, but the Queensland police at Coen were requested to bring her to Cairns.

**Senator LUDWIG**—And that was by the DIMIA official on the phone?

**Mr Davis**—I understand it was by phone, but I do not have that confirmed right here.

**Senator LUDWIG**—I am happy for you to clarify that at some point. What did the system checks turn up? They did not turn up those three names; did they turn up anything else?

**Ms Godwin**—That is a level of detail that we do not have. They were not able to identify her as Anna Brotmeyer or as Anna Schmidt, and she gave us a couple of different spellings. All of those things were checked. We were not able to identify her as the holder of a valid visa. As Mr Davis has already said, there is a range of systems records that would demonstrate the sorts of processes the officer went through. The fundamental point is that they were not able to establish that she was the holder of a visa.

**Senator LUDWIG**—Is a procedural process put in train once that system check—that initial check—does not confirm that person's identity?

**Ms Godwin**—I am not quite sure what you mean.

**Senator LUDWIG**—Is there a manual that says what happens next when the Immigration official does a systems check and cannot find a valid visa? Is there a procedural manual which says, 'Take these options or do this or do that'?

**Mr Farmer**—To clarify, I do not think that the process failed to establish her identity. As I understand it, the process—

**Senator LUDWIG**—They were my words. They were going to get back to me as to what it did.

**Mr Farmer**—Because you are going on from that question it is important to clarify that the process did not do that. The process was to establish in effect whether the person had a visa.

**Senator LUDWIG**—One of the persons, I guess—several names were given.

**Mr Farmer**—Yes—that the person under one or other of the names had a valid visa.

**Senator LUDWIG**—That was not found. What happens next? Do you try to establish the person's identity?

**Ms Godwin**—I might ask Mr McMahon to flesh out the procedural question you are asking. There are a variety of written procedures on the location of people who are thought to be unlawful and so forth. The act is clear on the point that if someone is located and the officer has a reasonable suspicion that they are an unlawful noncitizen then the officer is obliged to detain them. At this point we had a person who was claiming to be Anna Brotmeyer and she also gave us another name. She explained why there were two names. She could not be located as the holder of a valid visa and, in addition to that, she had also, in a variety of interviews, indicated that she had arrived in Australia only a few months before. On all of those bases the officer formed a view that she was most likely an unlawful noncitizen. At that point he had no alternative but to detain her because of the way the act operates.

Once someone is detained the act requires that, if they have no matters before the department, that is, applications or anything of that sort, we are required to remove them as soon as reasonably practicable. From that point the officers were intent on trying to establish with certainty her identity as a German national, because that is the information she had provided, so that a travel document could be obtained to enable us to remove her—something she was indicating she wanted to do.

**Senator LUDWIG**—Coming back to that point, what was put in train by the officer once he could not find the name given on the visa checking system?

**Ms Godwin**—As I understand it, he asked the honorary German consul based in Cairns to speak to her.

**Senator LUDWIG**—We have not got her back to Cairns yet.

**Ms Godwin**—Yes, she is in Cairns by this point.

**Senator LUDWIG**—She has been transported from Coen to Cairns. She left, as I understand it, at approximately 4 p.m. from Coen. What time did she arrive in Cairns?

**Mr Davis**—The information I have here is that she arrived at 2 a.m. on 1 April. She was interviewed that day by the DIMIA officer.

**Senator LUDWIG**—What time was that?

**Mr Davis**—I do not have the details of the time.

**Senator LUDWIG**—Morning or afternoon?

**Mr Davis**—I do not have that.

**Senator LUDWIG**—Can you check that, please. Where did she go at 2 a.m.? Where was she detained?

**Mr Davis**—The Queensland Police Cairns watch-house.

**Senator LUDWIG**—Was a DIMIA official there at 2 a.m. to see her?

**Mr Davis**—I do not know.

**Senator LUDWIG**—Can you check that?

**Mr Davis**—Yes.

**Mr Farmer**—Just as a point of interest, I am not sure that in those cases there is any general requirement or practice that a DIMIA officer be present when the person is under the control of a state police force. My colleagues might be able to help me on that general point, leaving aside the factual point of whether one was or was not in this case.

**Senator LUDWIG**—I was going through that painstaking process of trying to obtain the factual chronology of events that took place. As a consequence, sometimes I guess it can leave some questions unanswered, but I was going to come back to some of those. Certainly, Mr Farmer, you always have an opportunity to inform me of what is the practice. I have asked occasionally what the procedures and practices are, and I am still waiting on an answer to that earlier question about what the actual processes were in terms of what is put in train when you discover that the person you are questioning is not on the visa checking system, what you do next and whether your procedures lead you to a point, as you have indicated, where the act requires you to detain that person. I am sure that will be forthcoming at some point.

**Mr Farmer**—Whenever you like, Senator.

**Senator LUDWIG**—On 1 April, was the same DIMIA compliance officer involved who had been following the matter?

**Mr Davis**—Yes.

**Senator LUDWIG**—Are they issued with a case file that they then pursue or do DIMIA officials do other work as well? Are files shared? What is the process?

**Mr McMahon**—It would be normal practice for details to be put on our client service system, which is the major enterprise-wide system that we use for basically establishing the details around a person, particularly around visa issue et cetera.

**Senator LUDWIG**—Is there a record of interview from 1 April by the DIMIA official?

**Mr Davis**—On files, yes.

**Senator LUDWIG**—Is that available to the committee?

**Mr Davis**—I do not have it here.

**Ms Godwin**—We will have to take it on notice.

**Senator LUDWIG**—Is there a summary of what occurred that you can provide to the committee?

**Ms Godwin**—I do not have a summary in the notes. The notes, in a sense, are a statement of what steps were taken and, in a sense, the conclusions that were reached, but there is no summary.

**Senator LUDWIG**—Perhaps you can tell us what you understand happened at the interview on 1 April.

**Ms Godwin**—As I understand it from the material that I have read, Ms Brotmeyer, as she was known to us, continued to assert that she was from Germany, that she had recently arrived in Australia. The officer had no reason to disbelieve any of that and, as a consequence, asked the honorary consul to speak to her. The honorary consul, according to the notes I have got, spoke to her on 2 April.

**Senator LUDWIG**—So there was one interview on the 1st. Do you know how long that was for?

**Ms Godwin**—We know that she was interviewed on the 1st. I do not know whether it was one and I do not know how long it was for. Those are details we will have to take on notice.

**Senator LUDWIG**—What was the purpose of that interview?

**Ms Godwin**—The officers would normally, if they are going through the process of—

**Senator LUDWIG**—Not normally. I want to know in this instance, if you are aware of it; if not then perhaps you can find out and come back and tell us.

**Ms Godwin**—I will follow the precise point you are asking. But the fact is that when a person is suspected of being an unlawful noncitizen it would be normal practice to interview them.

**Senator LUDWIG**—For what purpose?

**Ms Godwin**—To establish the details so that we can be certain we know sufficient detail to obtain a travel document if travel is the issue or check whether they are making an application for anything—all of those sorts of questions would be part of the general procedure. The precise issues that were in question in the interview with Ms Brotmeyer are not matters I have here and I will have to take that on notice.

**Senator LUDWIG**—You might also want to take on notice what precise details were asked for, particularly whether or not you were trying to confirm what further system checks were undertaken to confirm whether there was a valid visa or an expired visa and, at that point, whether there was consideration given to determine her identity as a separate step.

**Ms Godwin**—She was continuing to state that she was Anna Brotmeyer and, as far as we knew, she was Anna Brotmeyer. The issues for us were to establish the circumstances of her arrival in Australia, to establish her status in Australia and to get sufficient detail so that we could obtain a travel document for her if that were appropriate. I am not sure that it is correct to say that we—

**Senator LUDWIG**—I asked; I did not say it.

**Ms Godwin**—I know, and frankly I think at that point there was a view that she was who she said she was. The issue was whether we could get a clear picture of her circumstances and status.

**Senator LUDWIG**—For how long was she detained by DIMIA at this point? Is that the right word to use in this instance?

**Ms Godwin**—She was detained under the Migration Act. She was still at the Cairns watch-house.

**Senator LUDWIG**—How long was she in Cairns for?

**Ms Godwin**—She went to Brisbane on 5 April, which was the following Monday.

**Senator LUDWIG**—That was to where?

**Ms Godwin**—She was transferred at that point to the Brisbane Women's Correctional Centre.

**Senator LUDWIG**—What paperwork has been generated as a consequence of that? I take it she was still detained under the Migration Act by DIMIA, but the facility she was detained in was first of all the Cairns watch-house until 5 April—and on 5 April she was transferred to the women's correctional centre.

**Ms Godwin**—Yes. There are two points to make about that. That is right: the Cairns watch-house and then the Brisbane Women's Correctional Centre. The Migration Act also makes it clear that state correctional facilities are authorised places of detention under the Migration Act—and in Queensland, because we do not have an immigration detention centre, it is standard practice in these sorts of situations for people to be either detained in the local watch-house or, if it looks like it might be more than a few days, usually transferred to Brisbane. That is what happened in this instance.

**Senator LUDWIG**—Is there paperwork generated? Do you contact the women's correctional centre? Is there a memorandum of understanding in place? I take it you do not just roll up at the door?

**Ms Godwin**—There are longstanding arrangements with the Queensland correctional services department. There is a working memorandum of understanding that has been the subject of ongoing negotiations over a long period. But the basis of the arrangements is, in a sense, an established operational procedure. The MOU is an attempt to formalise those standing arrangements. In terms of the paperwork that would have been generated, we will have to take that on notice.

**Senator LUDWIG**—Who requested the transfer?

**Ms Godwin**—I am not sure that I have got that. I do not know if Mr Davis has got it.

**Mr Davis**—It appears from the records that there was a dialogue between Cairns and Brisbane but it is not clear from the paperwork that I have whether it was Brisbane or Cairns that requested she be brought down. I do not have that level of detail.

**Senator LUDWIG**—Perhaps you could provide that at some point. Is that done by phone call or is it done by a letter? If it is done by a letter, could we have a copy of that?

**Ms Godwin**—We will have to check that.

**Senator LUDWIG**—In relation to the Brisbane Women's Correctional Centre, what is the procedure in this particular instance? Is there a procedure that you contact them by telephone and say that you have a, what, for them? Do you say a person, do you say an unlawful noncitizen?

**Ms Godwin**—I think we will have to check all of that level of detail. The fact is, as I say, that there is a longstanding operational practice whereby these sorts of transfers occur relatively regularly. Whether they are by exchange of letters or simply through a series of phone calls I do not know and we will have to check. But this process is essentially consistent with standard practice in these sorts of circumstances.

**Senator LUDWIG**—Was Ms Rau accompanied in the transfer from Cairns to the Brisbane Women's Correctional Centre by a DIMIA officer?

**Ms Godwin**—I do not think they would have been accompanied but we will have to check that.

**Senator LUDWIG**—How was the transfer effected?

**Ms Godwin**—She flew from Cairns to Brisbane.

**Senator LUDWIG**—Was she escorted?

**Mr Davis**—She came by Queensland police air wing, so the police presumably made the transfer. I have no information to suggest a DIMIA officer accompanied her.

**Senator LUDWIG**—Is that the usual procedure, that the air wing provide a plane and fly a person to the Brisbane Women's Correctional Centre?

**Mr Davis**—Yes, I understand that is the standard procedure in Queensland. If you like, it is like a request for service from DIMIA and the police. This is a matter of longstanding practice and procedure in Queensland.

**Senator LUDWIG**—At that point, when the Queensland police then hand her over to the Brisbane Women's Correctional Centre, is the phrase they use? Or that they deliver her to the Brisbane Women's Correctional Centre for, what, detention?

**Ms Godwin**—She was transferred. She continued to be in detention under the Migration Act, so it was simply a transfer of location.

**Senator LUDWIG**—I see. Was DIMIA at the Brisbane Women's Correctional Centre when she was transferred there? When did they next—

**Ms Godwin**—We would have to check that. The chronology we have got indicates that an officer went to the prison to interview her on 7 April, but whether there was anyone there at the point when she arrived at the prison we would have to check.

**Senator LUDWIG**—What checks had been done since the original DIMIA check in the visa that you indicated earlier, up to 7 April? Is there a record or log of what further checks were made, and what was the nature of those checks?

**Ms Godwin**—I think I would have to take that on notice. We have got a list of the systems that were checked and the various agencies that were spoken to, but whether any of that happened between 1 April and the point at which she was interviewed in Cairns and then the transfer, I just do not have that detail.

**Senator LUDWIG**—All right. Perhaps you can take that on notice and provide it to the committee when you have it.

**Senator CHRIS EVANS**—Just to be clear, you do not have the dates of when the various checks were made. Is that your evidence, Ms Godwin?

**Ms Godwin**—I have the details of a variety of checks, but what I thought Senator Ludwig was referring to was whether, for instance, we had made any other systems checks of our own. I know the dates on which we sent material to the Queensland missing persons unit and those sorts of things, but as to whether we had further interrogated the databases between 1 or 2 April and 7 April, when she was seen again in Brisbane, I just do not have that level of detail.

**Senator LUDWIG**—There are two points. You will have a log of your system's internal checks that have been made in relation to the information that you had in relation to Ms Rau—

**Ms Godwin**—That is as I understand it, yes.

**Senator LUDWIG**—and you will be able to obtain that.

**Ms Godwin**—Yes.

**Senator LUDWIG**—The second part that I was going to go to was what other checks, outside your current system, you then put in train between 31 March and 7 April. Do you have that available?

**Ms Godwin**—I do not have anything recorded here, so I will have to take on notice whether anything else was done. You have to bear in mind that at that point we had already put her in touch with the German consulate—

**Senator LUDWIG**—Yes, I was coming back to that.

**Ms Godwin**—with a view to her providing them with information for them to go and check their records and hopefully be able to provide her with travel documents.

**Senator LUDWIG**—So you will take it on notice about the time from 31 March, when you detained her—and do you prefer the term 'detained' or 'responsible for'? I am happy to use whichever phrase closely fits the description of assuming the responsibility of the person.

**Ms Godwin**—I think for practical purposes she was detained.

**Senator LUDWIG**—You indicated that there was notification of the missing persons unit in Queensland. Was that between 31 March and 7 April?

**Ms Godwin**—No.

**Senator LUDWIG**—So you are going to check your records as to whether there were any other external checks at that point?

**Ms Godwin**—Apart from what I already have. As I have said to you, at that point she had already been put in touch with the consulate. It would usually be standard to allow that process to take its course.

**Senator LUDWIG**—Did the honorary consul in Cairns provide a report to you about their view of the person, who they might be, whether they were on an expired visa, whether they were German et cetera?

**Ms Godwin**—My understanding is that, in the conversation with the consul, Ms Brotmeyer—now known to be Ms Rau—confirmed details that she had previously provided to us and to the police. That is the note I have here. I do not have a record of that interview, and I do not have information about whether the consul gave us a report or whether the honorary consul simply said, 'I've got the details and I need to go away and check.' That will have to be taken on notice.

**Senator LUDWIG**—Yes, please. Is it standard to contact the relevant honorary consul in the case of a detainee?

**Ms Godwin**—It is standard if the person agrees to that. While I do not have a note to that effect, I am assuming that Ms Brotmeyer agreed to see the honorary consul.

**Mr Farmer**—By way of background, I can say that occasionally foreign representatives in Australia make the point to us that, when any of their nationals are detained, we should advise the consul concerned. That is not our practice and cannot be, because of the privacy legislation. Consuls are advised only with the permission of the person in detention. That is the standard procedure.

**Senator LUDWIG**—Was that given in this instance?

**Ms Godwin**—I am making an assumption that it was, but we will have to check that.

**Senator LUDWIG**—When was the missing persons unit in Queensland, which you mentioned earlier, notified or when did DIMIA seek assistance from them?

**Ms Godwin**—On 29 April we sent them information which included names, aliases, dates of birth and photographs. We also provided some information about what she had said at various points in interviews. On 30 April, the next day, we received back some information from the missing persons unit which said, ‘Queensland Missing Persons has no record of the above persons.’

**Senator LUDWIG**—Was there a letter that you sent to the missing persons unit in Queensland or an email or a fax? How did you convey the information?

**Ms Godwin**—I think I mentioned it, but the information I have here is that we sent them a fax.

**Senator LUDWIG**—Is a copy of that fax available?

**Ms Godwin**—I do not have it. I presume it is on the file.

**Senator LUDWIG**—I wonder if you could make that available to the committee.

**Mr Farmer**—We will take that on notice.

**Senator LUDWIG**—And the return—was that a fax, an email or a phone conversation from the missing persons unit in Queensland?

**Ms Godwin**—According to the note I have got—but again this will be checked against the file—it is a handwritten note on the original fax, which was returned from the missing persons unit. So I am assuming that is a fax back from them.

**Senator LUDWIG**—Similarly, if that can be made available, I take it you will take that on notice.

**Ms Godwin**—We will take that on notice.

**Senator LUDWIG**—The date of the interview by DIMIA at the Brisbane Women’s Correctional Centre; when was that? I think you mentioned that it was the 7th.

**Ms Godwin**—It was 7 April.

**Senator LUDWIG**—And how long was that for?

**Ms Godwin**—I do not have the details of the time.

**Senator LUDWIG**—And what was the purpose of that interview?

**Ms Godwin**—Essentially the same purpose. The officers believed her to be an unlawful noncitizen. They were obliged to try and make arrangements for her to depart. In order to do that they needed to get her a document and so they were focused on trying to establish her circumstances. We also have a procedure whereby people who are detained in correctional facilities are required to be visited so that we can maintain contact with them even though they are in a facility that is operated by the correctional services.

**Senator LUDWIG**—Is there a record available of that interview? Did the DIMIA official make a record or a note of that interview?

**Ms Godwin**—My understanding is that there would be some record. Whether it is a file note report or an entry into the ICSE system that Mr McMahon mentioned before I do not know, so we would have to take that on notice too.

**Senator LUDWIG**—If it is available then you might want to give consideration as well, but we would make the request and ask for it. At that point, when was the next interview by DIMIA with Cornelia Rau—I will call her Cornelia Rau, as it is her proper name.

**Ms Godwin**—I just need to look at the dates of contacts. It is not on the general notes that I have. I am just looking to see whether we had them. She was seen on 7 April and then—and this is something that is still the subject of checking—the officer has records of attending the prison facility on 30 April, 17 June, 28 July and 3 September, but it would be standard practice at those visits to see a number of individuals. We have not been able to check the records yet to see whether or not he specifically saw her. He is certain that he saw her on at least one of those occasions and also on 30 September, but whether he saw her on the other occasions as well is one of the details—

**Senator LUDWIG**—What date in September?

**Ms Godwin**—On 30 September, but he also was at the prison on 3 September and the other dates that I mentioned. As I say, it is standard practice to see a number of people at the same time. We just have to check those records.

**Senator LUDWIG**—So you will be able to confirm the dates that he actually visited the Brisbane Women's Correctional Centre and interviewed or spoke to Cornelia Rau.

**Ms Godwin**—I certainly expect to be able to confirm that. We have not got that level of detail yet.

**Senator CHRIS EVANS**—Are you saying to us now you cannot at this stage tell us the dates on which the DIMIA official had contact with Ms Rau?

**Ms Godwin**—No. I can tell you that we have confirmed dates for 7 April and 30 September—we have confirmed dates for those. We also know that the officer was at the prison on four other occasions.

**Senator CHRIS EVANS**—I thought that was what you said, but the fact that the officer was at the prison may mean that he may well have been visiting other detainees et cetera or be there on other business. Surely the officer would have been asked the question by now: did he visit Ms Rau on those other dates?

**Ms Godwin**—He recalls speaking to her on at least one other occasion, but which of those occasions is a matter that is being checked. Whether he spoke to her on other occasions as well is also being checked.

**Senator CHRIS EVANS**—But there was no record of visiting of prisoners? Surely the Queensland correctional service would have to let him into the cell or provide access, for instance.

**Ms Godwin**—That goes to the point I made right at the beginning. The chronology is what we have got so far. You are pointing to other sources of information which we have not yet pursued.

**CHAIR**—We will break for lunch.

**Proceedings suspended from 1.01 p.m. to 2.04 p.m.**

**CHAIR**—We will recommence and start with questions from Senator Ludwig.

**Senator LUDWIG**—We have got part of the chronology and we can clarify the remainder of it at some point, but coming back to deal with some of the issues that we have covered already, what types of inquiries were made then? You mentioned one, which was the missing persons database for the Queensland police; a letter was sent off to them. What other searches were made? We have got from when she was in Coen to at least the Brisbane Women's Correctional Centre—up to the point when she was transferred to Baxter. Perhaps you can tell us that date.

**Ms Godwin**—When she was transferred to Baxter?

**Senator LUDWIG**—Yes.

**Ms Godwin**—She went to Baxter on 6 October.

**Senator LUDWIG**—So if we use that window between those two dates of 31 March and 6 October, what searches were then done, both internal and external?

**Ms Godwin**—There are a couple of things. We have already mentioned movements records, ICSE and those sorts of things. As well as that, an overstayer report was generated to see whether we could identify her on the list of overstayers. The reason for that sort of thing is that, as you know, while some people overstay only a short period there are people who overstay for lengthy periods of time. The longer that is, the less likely there will be an immediate record on the visa databases and so forth. So they generated an overstayer report and found a name that was very similar to the one she was using. So that generated a further series of checks to see whether we could identify that person as her.

As well as that, we have talked about the Queensland missing persons unit. I will just look at this other thing by date. I am just trying to see if there are any other references to systems before I say a couple of other things. No, I think they were the main processes internally but, as we have with each of the other things, I will check whether there were actually any other specific systems that we checked.

She had already been in contact with the consulate, who were, as we understood it, making their own inquiries about her identity. During that period she also completed an application for a travel document. There were discussions with the German consulate in New South Wales

about that application. We also sent photos and details of her background to our post overseas in Berlin to see whether or not they could precisely identify her. She had talked about, at one point, having a German identity card, which apparently is standard practice in Germany, but claimed that she had destroyed that. She gave us an address in Germany, so there were a variety of inquiries to try to progress that. She was interviewed again by the German consulate in Brisbane on 7 September. That is it in terms of the actual systems and the nature of the inquiries. I have got specific dates on various things but that is the nature of the inquiries that were being conducted at that point.

**Senator LUDWIG**—So you will be able to provide the committee with information as to what searches were done in both the systems and the log between 7 April and 6 October. Effectively, the external searches in Queensland had centred on the Queensland missing persons unit and there was only that one search that was done of that. You did not go back again?

**Ms Godwin**—No, once they said they did not have a record.

**Senator LUDWIG**—Was that done prior to her going to the Brisbane Women's Correctional Centre?

**Ms Godwin**—No. I think 29 April was the date I gave you.

**Senator LUDWIG**—Was that the time that the person from DIMIA visited?

**Ms Godwin**—The first interview with DIMIA was on 7 April. That was the discussion we were having just before lunch. We have some specific dates and we also have other records of when the officer was at the prison, but we just need to check.

**Senator LUDWIG**—You should be able to check this afternoon as to whether they were there or not. As I understand it, with the Brisbane Women's Correctional Centre, you would have to identify who you are and who you are visiting. I am not sure whether you would have to specify the purpose of the visit but you would at least have to identify the person you were then going to visit. The DIMIA officer in this instance, I imagine, would have file notes and reporting notes as to who they visited, on what date they visited and the purpose of the visit. If they do not have that, I would be very surprised, quite frankly.

**Mr Farmer**—With respect, the people who are dealing with this matter are here before the committee. You were talking about our doing something this afternoon.

**Senator LUDWIG**—Surely you can say whether, between 7 April and 6 October, officer X visited Cornelia Rau twice or more and what the purpose of each visit was. You said it was definitely twice, but you do not know about all these other dates. I find it difficult to understand why the officer, even if they are here, cannot say, 'I did actually visit on such and such a date.' Surely they keep file notes.

**Mr Farmer**—I think before the break we said that we would be making inquiries, and we took that question on notice.

**Senator LUDWIG**—All right.

**Senator CHRIS EVANS**—I do not think that is right. I tried to nail that down. Ms Godwin said she could confirm that DIMIA visited on 7 April and 30 September, but she was not clear

whether the officer had in fact seen Ms Rau in between those dates. She did mention three or four other dates where he had been at the prison but was not clear whether he had visited Ms Rau. There was some suggestion that he thought he had. I suppose what the committee are indicating is that we would find it hard to believe you would not have a record of which prisoners your officers visited and we would also be quite concerned and shocked if you had not visited Ms Rau for five months. The point is, surely you now know, after all the public interest and the concern about this matter and, no doubt, the pressure on the department, which of your officials visited Ms Rau when. That is really the question. Which of your officials visited Ms Rau at the Brisbane Women's Correctional Centre and on what dates? I don't think it is reasonable to expect us to say that you are going to take that on notice.

**Mr Farmer**—I had understood that that is what the committee agreed before lunch, but my understanding may have been incorrect, in which case we are ready to pursue the matter now. We are always in the committee's hands.

**Senator CHRIS EVANS**—Can you tell us the dates upon which DIMIA officials visited Ms Rau in the Queensland women's correctional centre?

**Mr Farmer**—As I understand what the deputy secretary said before lunch, there was one visit in April and another visit in September. The officer had said that he has a recollection of at least one other visit. He visited on a number of other dates and we are trying to establish on which of those dates he may or may not have seen the person whom we believed then to be Ms Brotmeyer.

**Senator CHRIS EVANS**—For these purposes, we have been using Ms Rau's proper name, but we concede that you did not know that at the time.

**Mr Farmer**—That is right.

**Senator CHRIS EVANS**—I am not trying to create a conflict about that, but we know her proper identity. It seems more polite to refer to her as to who we now know her to be. I am not trying to trip you up on that. You made it very clear you did not know her identity at relevant stages. I am just indicating for your sake that we are not trying to verbal you in the sense that you somehow knew who she was before you said you did.

But, Mr Farmer, I would have thought one of the first things that happened inside the department when all this blew up was that you got a record together of DIMIA's contact with Ms Rau. You are saying to us that you know you visited her on 7 April and interviewed her, you know you visited her on 30 September but you still cannot be sure if you visited her in between those two dates. Is that right?

**Mr Farmer**—That is correct. Can I just say, as we said at the beginning of the session this morning, in response to Senator Ludwig's question, we are still in the process of trying to pull together a very detailed chronology. Mr Palmer's inquiry also of course will do that, and it will be making inquiries of the Queensland and indeed other state authorities. So that information will come out. We are gradually fleshing out what we were doing. The extent to which we can or should do that—make inquiries of the Queensland authorities now that the Palmer inquiry has been settled—is not something that, as far as I am aware, we have come to a concluded view on.

**Senator CHRIS EVANS**—So you are not sure whether or not it is appropriate for you to now seek information from the Queensland correctional authorities about these matters?

**Mr Farmer**—I think that is a question.

**Senator CHRIS EVANS**—We might come back to that; I think Senator Ludwig would be interested in that. But I am sure you have asked DIMIA officers to tell you when they saw Ms Rau and what records they have of those meetings. I just want to be clear on this: we have got 7 April and 30 September, and we have a suggestion from an officer that he may have seen her some time in the intervening period. Is that a fair summary? I presume that means we do not have records of a DIMIA visit to her other than on those two occasions of 7 April and 30 September.

**Mr Farmer**—I am not aware that we have confirmation of that on the records. I am afraid I am not in a position to say anything.

**Ms Godwin**—Perhaps if I could make one additional comment. I do not know whether or not there is a record. We have tried as faithfully as we can to give you the information—our current state of knowledge. The point that we made right at the beginning is we are trying to pull together all the threads and flesh this out, but as you would also be aware there have been a number of areas of interest in relation to the management of Ms Rau and we have had people working on a variety of those factors. Now, it just means, as we said at the beginning, that not all parts of the chronology have been able to be concluded around every question. And that is one of the questions where, given that we had a reasonable sense of the order in which things happened, we had not gone back to simply delving down into that level of detail. We are doing that but we do not have the answer at the moment. I do not know whether it is on the file or not, or whether we will in fact have to go back to talk to individual officers.

**Senator CHRIS EVANS**—When did this case become of concern to the department? When were you first alerted that Ms Rau might not have been detained appropriately?

**Ms Godwin**—We became aware that she was an Australian permanent resident on the afternoon of 3 February.

**Senator CHRIS EVANS**—And you are saying that in the intervening period you have not been able to ascertain when DIMIA officials spoke to her?

**Ms Godwin**—I am saying we have been able to ascertain a whole range of information and we are trying to make sure that where there are any gaps in the chronology we are filling those in, but that means that there are still some gaps. This is one of them.

**Senator CHRIS EVANS**—I accept the proviso that you may discover better and further information, but you have a record of an interview on 7 April—

**Ms Godwin**—Yes, as I understand it.

**Senator CHRIS EVANS**—and you have a record of an interview on 30 September?

**Ms Godwin**—We have confirmed those dates and we have confirmed the dates that we gave you before and we have the officer's recollection that he spoke to her on at least one other occasion. Which of those dates is that occasion has not been established yet.

**Senator CHRIS EVANS**—But you have not got any ability to confirm the officer's recollection? You have on the 7th and the 30th. Why are you confident about the 7th and the 30th but not about the other date? What is it you have got—is it a record of interview on 7 April? You obviously have more confidence about those two contacts than you do about the potential of the third. What is it that gives you that confidence—a document, a record of interview, a file note?

**Mr Davis**—It is a combination of records on the file—that is, file notes—and the officer's casebook or whatever he uses to make his own notes. That has given us sufficient confidence on the two particular dates. In his notebook he also has some records of other discussions, but what is not clear is exactly which of those other dates those notes came from. That is the extent of what we have so far in terms of collected information.

**Senator CHRIS EVANS**—Could you tell me what the normal procedure is for a DIMIA official to record contact with a detainee. I think you referred to your database before. Do you enter each contact?

**Ms Godwin**—Compliance officers would normally keep a notebook and as well as that they would normally record contacts in the client system, although it is true from time to time not all records are transferred into ICSE. They might have got them in their notebook and not transferred them or something of that sort. In order for completeness and accuracy we are checking all of the sources of information, including the officer's own recollections.

**Senator CHRIS EVANS**—But at this stage you have not made a decision about whether you are going to contact the Queensland correctional services for their records of interviews with their prisoners because of the question about whether that would be interfering with the Palmer inquiry. Is that a fair—

**Ms Godwin**—We have not done it yet. The question arises about whether it would be appropriate at the moment.

**Senator CHRIS EVANS**—I will let Senator Ludwig continue his line of thought, but just as a starting point for that, I suppose, what can you tell us about what happened on 7 April?

**Ms Godwin**—On 7 April she was interviewed and, as I understand it, continued to provide information that she was Anna Brotmeyer, also known as Anna Schmidt. She gave an explanation for why that name was relevant. She also gave details about where she was born, where she was raised. She was able to describe her passport. She described how she had arrived in Australia and roughly what she had been doing since then—moving around; she mentioned various places that she had been—all of which was consistent with the ongoing contact that we had had with her that she was a German national recently arrived—when I say recently, I mean within the last several months—and was not the holder of a visa. After that the officer then made inquiries of the overstay report and all those sorts of things that I mentioned before.

**Senator LUDWIG**—What was the purpose of interview on the 30th?

**Ms Godwin**—On 30 September?

**Senator LUDWIG**—Yes.

**Ms Godwin**—Again I do not have the file note or that detail so I would have to check that, but it was an opportunity to give her notice that there was an intention to transfer her to Baxter at that point. Whether there were other matters discussed, I do not have a record of here, or a note of.

**Senator LUDWIG**—Where is that record kept?

**Ms Godwin**—I presume it is either on the file or in the ICSE record, and those things, as I say, are progressively being checked to flesh out just the simple chronology.

**Senator LUDWIG**—Can you come back with that today?

**Ms Godwin**—I do not know if we can come back today. Someone has got to check the file. If it is not on the file they will have to check other records.

**Senator LUDWIG**—When is the earliest that you can come back to the committee? We are meeting this week. The detail I imagine that you could come back with would be the file note that was lodged by the officer, whether it was only about the impending transfer to Baxter or whether other matters were discussed of a more general nature. Surely that is not too difficult to drag off a computer, if there is a file note. If there isn't a file note, you can tell us that too.

**Ms Godwin**—Yes, we can do that.

**Mr Farmer**—We are very ready to attempt to do that and we will provide that to the secretariat, if we possibly can, in the next 48 hours. Perhaps the point I was making earlier was a general one: I have some queries about our capacity to give you a very full set of information about the whole chronology in this next couple of days. If there are particular things that are of interest to you, we will do our darnedest to get the information.

**Senator LUDWIG**—I appreciate that. Thank you. In terms of the reporting arrangements between the Brisbane Women's Correctional Centre—under the Queensland Department of Corrective Services—and DIMIA, particularly in regard to the welfare and health of the detainee, how are those arrangements carried out? In this instance, what was communicated precisely to DIMIA? What did DIMIA request in relation to the health and wellbeing of Cornelia Rau whilst in detention?

**Ms Godwin**—The specific nature of what was communicated, we simply do not have. As I say, the chronology is a statement of the steps that were taken. The questions you are asking go to the nature of exchanges and I do not have notes on that. My understanding—and we will need to double-check this and confirm it with you—is that there is reasonably regular contact between DIMIA officers and the prison, if there is someone in there being detained as an immigration detainee. I assume that some of those contacts are by phone and others are of course by visit, as we have already mentioned. At that point there would be general discussions with the prison authorities about the immigration detainees and where things are up to. The exact nature of the relationship, in terms of the information about Ms Rau, we will have to take on notice.

**Senator LUDWIG**—When can you provide that? It seems that Ms Rau spent some time with the health authorities that were provided by the correctional services department and with another hospital to which she had been transferred. I want all of that detail. When was

that? In other words: the file, the dates and all of that. Did they require permission from DIMIA to take those steps and, if so, was that permission given, who was it given to and when? Or was it the case that DIMIA was not advised and was only advised at some other point? I think those are the important things that need to be clarified, as soon as possible, in terms of trying to work through the chronology.

**Ms Godwin**—Sure. Just on that point, my understanding is that we were advised and that that would be normal practice. But, consistent with our general approach, if a detainee requires treatment—say, a detainee needs medical treatment—that is made available under the normal circumstances by the authorities who have the care of that detainee. So there would not have been a requirement for us to give permission for her to go for medical treatment, but my understanding is that we were certainly advised that that happened.

**Senator CHRIS EVANS**—When you hand a detainee held under the Migration Act to a correctional facility, to be held for you, they become responsible for the health care. Is that what you are saying?

**Mr Davis**—As a general rule, for the day-to-day health needs and things of that nature, yes, that is true. In this particular case in this referral to the hospital and her placement in the hospital, we do have notes on record of DIMIA and the prison authorities cooperating and working together for that placement and further assessment in the hospital to occur. So it was, if you like, jointly facilitated and authorised. We have on our files the results and outcomes of those hospital assessments as well. This was a situation where, day to day, the prison authorities or the police would meet those general health needs, but the significance of this one is that we were well aware of it and, indeed, worked together with the Queensland correctional authorities for the hospital assessment.

**Senator CHRIS EVANS**—Is it a fee-for-service thing with you?

**Mr Davis**—Yes.

**Senator CHRIS EVANS**—So you pay the Queensland corrections service for her detention?

**Mr Davis**—We have a daily rate with most state governments, which we pay for them to hold people in immigration detention in their facilities.

**Senator CHRIS EVANS**—Does that include the health costs?

**Mr Davis**—My understanding is that, for standard day-to-day people in their facilities, we pay a standard rate. As far as I am aware, that includes the health costs.

**Senator CHRIS EVANS**—So one of the triggers for contacting you about her receiving special health care might have been that they were going to bill you for that, I suspect.

**Mr Davis**—It could have been. I do not actually have any detail or advice on the payment for this placement in hospital. I presume that would have been a matter that was under discussion and we would have paid in the circumstances. I would have to confirm if we were asked to pay and whether we did. I do not have that detail.

**Senator CHRIS EVANS**—Perhaps you could take that on notice. Do you know whether that was one of the issues discussed in the exchange between the officers, the correctional service and DIMIA? She is effectively your prisoner but sort of outsourced to them.

**Mr Davis**—From the advice I have received, and from the records I have seen, the nature of the discussions was primarily about the need for her to have the assessment and the nature of placing her for that assessment, not the financial aspects of it. But I do not rule out that they were discussed.

**Senator CHRIS EVANS**—I missed a point earlier before handing back to Senate Ludwig or someone else. When did you get final advice from the German honorary consul or the German embassy? I presume the honorary consul position in Cairns is not highly resourced. I have got a mate who is an honorary consul in Perth and it is very much a love job. I suspect he or she had to contact the embassy and hand over the formal inquiries to them. But when did they advise you, effectively, that Ms Rau's aliases did not stand up and she was not known under any of those names?

**Ms Godwin**—We had final confirmation—formal written confirmation—from the German embassy on 24 January.

**Senator CHRIS EVANS**—This year?

**Ms Godwin**—Yes.

**Senator CHRIS EVANS**—What was the nature of the ongoing contact with the German embassy then? I will come back to the specifics. I am just trying to understand what was occurring.

**Ms Godwin**—On 2 April, as we have mentioned, the honorary consul met with her in Cairns. On 11 May—but it says 'date approximate'; I am not sure why the date is approximate, whether it was a fax or something of that sort—there was contact between our office in Brisbane and the New South Wales German consulate, who had carriage of the matter at that time.

There was further contact on 17 September. The honorary consul in Brisbane visited Ms Rau in the prison in Brisbane. In November we made contact with the German consulate in Sydney, because that was where the matter was being progressed, and they advised that the appropriate contact then was the consulate in Melbourne. We spoke to the consulate in Melbourne around that same time, in the middle of November. They asked if we would pass their contact details to Ms Rau, and we did that. On 6 December there was further contact between a DIMIA officer and the German consulate in Melbourne. As a result of that telephone conversation, they asked if we could send them some further information, including a scanned photo of Anna Brotmeyer—Ms Rau. That was done, and on 9 December there was further contact from the consulate in Melbourne indicating that they were continuing to make checks.

On 5 January there was contact saying that they had completed police checks in Germany and were having trouble identifying Anna Brotmeyer. On 14 January there was further contact between DIMIA officers and the Melbourne consulate, and on the 20th Anna called the consulate herself. On the 24th we received a call from the German consulate in Melbourne

confirming that they were not able to establish that she was a German citizen and that they therefore had no further authority to make inquiries.

**Senator CHRIS EVANS**—Thanks. I know the chair wants to give someone else a go, which is perfectly appropriate. In finishing that, I just want to be clear. There seemed to be a lot of activity suddenly at the end of the year with the consul, while there was no activity it seemed from May to September. What brought on a lot of contact with the consul in December? Contact was not maintained or did not seem to go with much intensity in the earlier months of her detention.

**Ms Godwin**—I guess there are a couple of points to make. When someone is located in the community, generally speaking the management of that case—seeking a travel document and so forth—is done by compliance staff in the relevant state. Generally speaking they would do what was done in this case—they would initiate contact and they would send a request for a document with relevant details. Then, of course, it is a question of waiting for that to come back. When she was transferred to Baxter, one of the issues was that we have a section in central office here responsible for the oversight of removal policy and also handle more complex removal cases. So the fact that it had not progressed to resolution at that point meant that an officer from the central office went to Baxter to interview her in October and then continued to try to progress the matter with the German consulate.

**Senator CHRIS EVANS**—So the trigger was her going to Baxter and those greater central office departmental interventions that actually brought to a head the question of identification.

**Ms Godwin**—As I say, we have a process whereby in a sense cases are normally managed in state offices, but where they are complex or not coming to resolution quickly staff in central office who handle the more complex cases get involved, and that is what happened in this situation.

**Senator CHRIS EVANS**—Just as it seemed quite stark that there was not any contact with Ms Rau between April and September from DIMIA officials—with this one proviso that we are not yet clear about—it seemed that there was no active contact with the consul to identify her either between May and September. I am trying to understand why those processes did not start, given that from the very start you had been concerned that she was actually an illegal German overstayer. It just seems that there was all this activity in December after she had gone to Baxter, but nothing between May and September when she was held in Brisbane.

**Ms Godwin**—That is a process of us following up. I do not think it necessarily follows that the German consulate had not themselves already put inquiries in train in Germany. We ourselves had sent information, as I mentioned a bit earlier, to our post in Berlin to ask them to try to progress matters at that end. I hesitate to try and speculate, but it would be usual in this situation for inquiries to be put in train and then for there to be a period where people wait to see whether those inquiries return the relevant information, the document or whatever.

**Senator CHRIS EVANS**—How long do you normally wait? You are holding somebody in prison.

**Ms Godwin**—Yes. It is true that cases can be more or less complex. It is obviously always easier if someone has either a current or an expired travel document and all of those sorts of things. In this case we had none of those things.

**Senator CHRIS EVANS**—I accept that it is complex, but you made the point earlier in a response about visits that you had a requirement to make contact with a person held in detention under the act. You did not detail for us what that was. Is it monthly? Is there a time requirement or is it just a duty under the act?

**Ms Godwin**—No, it is not a duty under the act. It is instructions to our staff about the monitoring and oversight of people.

**Senator CHRIS EVANS**—We will come back, obviously, to the question about whether you think that has been met. Again, you said you had contact with the consul in May and nothing else happened till September—and no-one worried about it in the meantime?

**Ms Godwin**—I did not say nothing else happened. As I say, we ourselves sent information overseas to Berlin during that period. There was the travel document that was completed. We sent information to our post overseas in July. We had contact from them in November—they were following up a number of things. We had further contact with them in December. What I do not have are details of what steps the German consulate itself was taking during that period. I do not think I have any further details that I can add at this point.

**Senator CHRIS EVANS**—All right. We will come back to it later. Thank you, Ms Godwin.

**Senator BARTLETT**—I guess we have focused a lot on trying to establish the identity of Ms Rau over the time she was in detention. Has this particular case caused you to recheck the validity of all the other people you have in detention—whether there are any queries about their identity or reasons for their detention? I think we have about 1,000 or so in detention. The majority are not asylum seekers, but are there any of those where there would be question marks about the reasons for their detention or their validity that you have rechecked as a result of this incident?

**Ms Godwin**—I do not think we have literally gone through every single individual in the detention centres but that is because in the vast majority of cases we either already have a clear-cut confirmation of who they are or clear-cut evidence of how they arrived. We have their identity in terms of either their nationality but not necessarily their correct name or we have their correct name but not necessarily their correct nationality. As you would know, we have talked in this place before about people who claim to be one nationality and who, in the event, are established as having a different nationality. But I think we have looked at those records and are able to be confident that we have a clear picture of the people who are there.

I would point, though, to the point the minister made in her opening remarks and that is that from time to time—certainly not a lot, but regularly—people come to our attention who for a variety of reasons give us misleading information or information which is not able to be immediately confirmed. In a small number of instances those people are subsequently found to be Australian permanent residents or otherwise lawfully in Australia. So it does happen from time to time that we have difficulties of this sort with people who go into detention, but generally those are resolved quickly. In this case, it was not resolved quickly.

**Senator BARTLETT**—I guess we can go into this a bit further when we get to the detention area—I do not want to broaden it all out here. As you would know I am sure, there were reports this morning about the French person who was detained apparently incorrectly. I

have had suggestions made to my office about a Korean woman, for example, who was legitimately in the country but was found whilst visiting someone in rural Victoria and put into detention for a week. I suppose the broad question that many people would ask is this: if we have a person here who was detained even for a week or so—and obviously in this case it was for a very long time—whether it is through dispute over identity or dispute about their lawful status, how widespread is that? What I want to try and ascertain is: have there been actions taken as a result of this instance to change any procedures or check what has happened to date to make sure that there are not other people who are incorrectly detained, whether it is for 10 months or one week?

**Ms Godwin**—As I have said, it certainly is the case that from time to time either a person's identity or status in Australia is not immediately confirmed when they are located. The point that I made before in earlier remarks was that the way the act works is that if an officer has a reasonable suspicion that the person is an unlawful, they are obliged to detain them. Sometimes, as a result, a person is detained because an officer has a reasonable suspicion. If that reasonable suspicion is dispelled, however that happens, then the person is obviously immediately released from detention. So there are a small number of cases in that sort of situation, but we have a reasonable degree of confidence about people who are in detention now. People are located all the time. This is an ongoing process.

**Senator BARTLETT**—I guess my question goes to: is there anything to date that you have changed, or are looking at changing, as a result of this? Or will you wait until the inquiry is finished, look at all of that and then potentially change the procedures?

**Mr Farmer**—Certainly the general point there is that if the inquiry makes findings we of course will be very anxious to look at those and then take action. I make one comment, though it may be self-evident. Generally speaking, in these circumstances we are dealing with people who have a strong interest in giving us information which will enable them to be released from detention. That is the usual dynamic. The complexity of the case that we are talking about now arose in part because that dynamic was not there.

**Senator BARTLETT**—Obviously the French incident which has got some coverage has some different issues, but I will leave that till later. I go to some of the comments that the minister raised by the Public Advocate in South Australia. I very much take her point about the desirability of not letting incorrect allegations run in the media for a long period of time. I can recall incidents of extremely distorted allegations being run through the media for a week or more that tend to stick forever regardless of how many flaws are in them, and people then assume that all of that is true. I guess I could use the example, to show my understanding and sympathy for your action, of some of the allegations that were made about your predecessor in regard to cash for visas et cetera. There were splashes all over the media for a long period of time and, when it was actually verified that there was not anything to substantiate that, there were two lines on page 11 or whatever. The mud sticks. I understand that and have a lot of sympathy for it. Given that case of how much perceptions can be influenced by what is reported in the media, surely it would be beneficial to allow the full facts to be out in the public arena much more comprehensively than appears likely to happen with the inquiry.

**Senator Vanstone**—I have some sympathy with that view. I know that one of your colleagues asked me a question and I think it was clear in the Senate that I thought the

assumption was that there would be people busily trying to destroy videos, whereas in fact a video proves either side of the coin, doesn't it? You do not know until you have looked at them what is there. I am advised—I have not actually seen the remarks myself—that if not all the Rau family then some can understand the desire for a private inquiry into this matter. It is a very, very difficult situation.

Put public officials aside in the sense of ministers; with respect, I might even say secretaries are expected to take the burden. That is the rub of being at the top of the department and organising it. I think bureaucrats are used to reading all kinds of rubbish about themselves in the general, as in 'the immigration department', meaning everybody in it. I think I intimated in the Senate, if not in a press conference, a not very long but nonetheless videoconference with the people involved in the day-to-day activities with Ms Rau, and I have tremendous sympathy for them. I mean, you be the parent of someone who has been a nurse, a guard or whatever, or you be the person who is involved, and imagine that your friends and family or your daughter or son are involved in allowing those sorts of things to happen to someone on the basis that the media have been told it was happening. Ask yourself how you would feel about your job and the consequences for that. People pay very little regard to that. There are lots of people out there working very hard, doing their very best job, to the best of my knowledge in a very good way, and showing quite the appropriate degree of normal human compassion for people in difficult circumstances.

On your remarks as to the mud sticking, in a political sense I think you have to take that. It comes and goes, so when things go well you get the credit and when things go badly you have to take the blame, and in between you have to take a bit of mud anyway. But I see no reason why people who are properly doing their job of caring for someone should have to put up with that kind of rubbish. For that reason I would be very keen to see the truth in relation to Ms Rau out.

But of course the mechanism for doing that means two things. You would necessarily re-raise the same allegations publicly. You could not expect the media not to cover them, so it would all be out again—'Somebody says X happened.' As you say, at the end it would be a small bit on page 11—actually, it would be an even numbered page where it would be less likely to be read—outlining what had happened. We all know there is genuine disagreement in Australia—it is not very substantial but it is there—about mandatory detention policies. Within that, there are some who have particular views about the mental health of all detainees. I do not think you could expect them not to use a public inquiry to advance their views. There are some who think we need an inquiry into mental health services in Australia. I have some views on that, but I am keen to get the facts out. I think it is impossible to do that in a public inquiry—albeit that, for the reasons I have indicated, I would like that—without giving further airing to what I believe will be found to be unfounded allegations and without providing the mechanism for people to misuse an inquiry.

As for a judicial inquiry, with the greatest respect to my former colleague's lawyers, it is a field day whenever you have a judicial inquiry. Mr Palmer is a very experienced law enforcement officer. He has been guaranteed to have such resources as he thinks he needs. He has been advised, if he has any concerns about people fudging or about not getting access to appropriate information, to raise that with us. I am not ruling out that Mr Palmer will come

and say that we need to make some modification, but let us try to get to the bottom of this as quickly as we can in relation to Ms Rau and focus on Ms Rau and get to the answers in relation to that as quickly as we can. I believe the best way to do that is through the inquiry in the form we have set up. If as a consequence of that it becomes clear that we cannot do that—as I say, we have indicated that Mr Palmer is to come back to us—and if at the end of it there are other matters that need to be pursued then some of them may be a subject of public inquiry. But I am not at all keen to see Ms Rau used in that context.

**Senator BARTLETT**—My point was in part that, if allegations cannot be disproved in public, they are more likely to continue to run. Is there some scope for a mechanism, even short of open public hearings, such as the release of the day's transcripts after they have been checked for defamation or whatever so that these things can be more open? I think the one thing most likely to enable misunderstandings and differing versions to continue to run is if there is no light shone on the situation.

**Senator Vanstone**—I understand the proposition you put, and I am actively turning my mind to the means by which we can assure Mrs Rau or give her some comfort, without prejudging the issue, in terms of the allegations that have been made.

**Senator BARTLETT**—You addressed some of the comments from Mr Harley, the South Australian Public Advocate. Some other comments I saw reported and quoted were that in 40 years of professional life he had never dealt with such arrogant public servants. That generates concern in me as I imagine it would for the head of the department. Firstly, is that quote correct? Are there issues in relation to that that you are following up?

**Senator Vanstone**—I have not yet gone through and checked the quotes against the quotes, if you like.

**Senator BARTLETT**—You indicated you had had some correspondence with him.

**Senator Vanstone**—Yes. Mr Harley wrote to me and said an incorrect impression had been given by the *7.30 Report*, that he had not contacted us in early December and that in fact he had not contacted us—they are my words, but the effect of what he said is quite clear—until the Friday Ms Rau was released. In other words, in the whole story about the concern of the South Australian Public Advocate some things came over as conclusions about her treatment—which is a conclusion I think people are entitled to draw. Normal people have jobs, and when they go home and are eating their dinner and watching telly or when they listen to the radio in the car on the way home and they hear the public advocate say X, Y and Z, I think they are entitled to draw a conclusion that he has drawn a conclusion.

His letter makes it clear he did not contact us at all. His terminology in the letter was something to the effect that—this is sort of in semiquotes—'because I am a state official, the immigration department regards me as beneath contempt'. How Mr Harley feels about himself in the context of the immigration department only he can say, but I can say that I have had state officials in other contexts speak very positively about the cooperation they have with the immigration department. For example, we have got a pretty good relationship with mental health services in South Australia. Clearly, there may be things that could be improved but I have not had criticism of that. I have actively had other officials and members of parliament

in my own state and a couple of others due to visa arrangements mention how positive the relationships they have with the immigration department are.

Be that as it may, if I think you do not like me and so I do not want to speak to you because I feel diminished and beneath contempt when I am in your presence because of the way you make me feel, you shocking ogre, then I have a choice. I can write you a letter. Furthermore, without having the act that sets up Mr Harley's position in my head, I am satisfied that, if he has any concern as to his capacity to conduct his duties, he is encouraged in the act to raise the matter with one of two ministers, which, as a consequence of administrative arrangements in South Australia, now means the Attorney-General. It used to be in another portfolio and now it is in the same portfolio. I do not know whether Mr Harley has done that—whether he has said, 'I can't possibly be relied on to carry out my duties with respect to people in Immigration because they don't like me.' I have no idea whether he has done that. That will be a matter for his minister to pursue.

As a matter of record, about four—I say 'about four' because you have to check the exact dates—people have gone into health care at Glenside during Ms Rau's detention in Baxter. Let us put it no higher than an indication—since everyone thinks because of these reports that the immigration department never wants anyone else to make an assessment of the mental health care of someone—that during that time there were four people, I am told, who did go to Glenside through the appropriate processes. The fact that Ms Rau did not is an indication that, using the process in place for assessment of whether someone needs for that to happen, the assessment was that it did not need to happen.

I have one further point to make in relation to that. We do acknowledge that guardians have a role. Clearly, they have a role. We can provide—I will check whether we can actually provide this without the names—you with an indication of the cases where guardians have been appointed. The immigration department works very effectively with them. But it is also true that a guardian is not above the immigration law. The immigration department are not above the immigration law. They cannot simply and independently say, 'We don't like the way the immigration law operates in this instance. We think something else can happen,' and equally a guardian cannot. A guardian can work with Immigration insofar as the guardian's authority goes as long as it does not surpass immigration law. If Mr Harley does not understand that, we would be happy to provide him or the South Australian government with assistance as to how that works. Other people have been appointed as guardians who may not say it is a fun experience—I imagine handling someone with a mental incapacity is always difficult—but who acknowledge that we each have our boundaries we have to work within.

**Senator BARTLETT**—I would appreciate being able to see some of the things that you referred to in your answer at some stage—other guardians and examples of that.

**Senator Vanstone**—Yes, sure.

**Senator BARTLETT**—Is this the first you or the department have been aware of antagonism or concerns with the public advocate in South Australia? Are his views he is expressing a total shock?

**Senator Vanstone**—I will let the officials answer for specific cases and their own experiences, but my understanding is that Mr Harley has been involved in a couple of cases

specifically where—in my understanding—he may have had views as to where someone ought to be with which the department did not agree. That necessarily sometimes involves robust discussions.

**Senator BARTLETT**—On that broader issue—not just with Mr Harley, because whether or not relations were good before they might not be so fabulous for a little while after this, I suspect—have you got or have you been able to establish details of communications from other South Australian government officials about Ms Rau and concerns about her, particularly from health officials? I received an email around mid-January—I am just searching for it—passed on by some South Australian health officials, clearly expressing concern about reports of this woman’s situation and whether or not it might be better for her to be in another location. Have you been able to detail other representations or contact made with South Australian health department or other people?

**Senator Vanstone**—I will make a general remark and then hand it over to the officials for the details. The advice that I have is that there is an agreed process to follow if people are concerned as to mental health and the need for a further assessment. I believe I made it clear in the Senate—but if I did not I will just make it clear here—that my advice is that pretty soon after she arrived at Baxter, despite the assessment from Princess Alexandra Hospital that she did not exhibit the diagnostic criteria for a mental illness, she was seen by the GP and the psychologist, and there was an assessment that she needed further assessment. She was seen by the psychiatrist, who concluded, as I recall, that it was not easy to rule out various options that might be at play here but that she did have a problem and that we should get it properly assessed. We then started to follow the process for getting that proper assessment—admission to Glenside for assessment.

That process involves contacting a particular area in mental health services, which I have heard referred to as ETLs—I can give you the details—a body for remote and rural services. It is a triage arrangement for contacting them and going through the details of the patient as you know them and a decision being made as to what has to happen. My advice is that did happen in the middle of November, that further contact was made in January with a view to Ms Rau being admitted to Glenside for assessment and that the assessment was that she was not appropriate to section—I understand this is the terminology—which means ‘send against her will’. Therefore, obviously, we were having contact with those mental health officials. I do not know which mental health officials you are talking about. We were talking to the ones with whom we have an agreed arrangement that they are the ones to talk to.

**Senator BARTLETT**—That was an intro, I gather!

**Ms Godwin**—And an accurate one. I might ask Mr Davis to comment; he has the various details. But I just want to confirm the point that the minister has made, that we do have a close and constructive working relationship with state health authorities. We have had an extensive process of dialogue about the appropriate protocols to be followed in cases where there are concerns about people’s mental health. That has included meetings, workshops and exchanges of draft MOUs, and that process is close to conclusion. The other point that I think it is important to focus on is the public remarks of Dr Jonathan Phillips, I think last week, where he indicated that he did have a cooperative working relationship with the department

and, indeed, any time he had wanted access to the centre he had been given it—I do not have the words in front of me, but I think his phrase was ‘willingly and without delay’.

**Senator BARTLETT**—That was Dr Phillips?

**Ms Godwin**—Yes.

**Senator BARTLETT**—What is his official position—he is the head of the mental health department?

**Ms Godwin**—He is the senior South Australian official with responsibility for mental health. Anyway, I will ask Mr Davis to make comments about the specific dates and contacts in relation to her referral.

**Mr Davis**—It is a question of how much detail you would like. Like all detainees who go into the Baxter detention facility, she was subject to a health induction process by the nurse. It was within days of her being there. She was seen by psychologists within the centre because of concerns the nurse had even at the point of induction. They did have available to them the reports from Queensland, which said that, whilst displaying some odd behaviour—and the minister said this in the press conference the other day—there was no diagnosis of mental health criteria. They had that information available to them.

Psychologists soon after arranged for a referral to a specialist psychiatrist. In early November, the psychiatrist indicated that, whilst not being definitive on the nature of diagnosis, he wished for further assessment to occur and, in the meantime, for her behaviour within the facility to be monitored. Essentially, contact at Glenside then ensued. That was on 6 November. Within days, the triage, the rural and remote service, were contacted by the Baxter medical officials. A whole body of material was sent to them on 17 November. She continued to be managed and cared for in the centre. At that point, the material was in the hands of the South Australian authorities for them to give us further advice on the next steps and potential placement into Glenside from there.

The next contact we have on record is of a discussion between our psychologist on site and the rural and remote service in early January where he was following up the material provided and looking for further assistance on further assessment. After a dialogue between the psychologist on site, a GP on site and the rural and remote service, the decision was made between the three of them for her to not be moved to Glenside for further assessment but continue to be held within the facility and, obviously, by being held within the facility, be further cared for by us.

**Ms Godwin**—If I could clarify one point, my reading of the documents is that it was not so much that they had formed a view that an assessment was not necessary but that it was not appropriate to, as the minister said, section her so that that assessment could be conducted on an involuntary basis. There is an indication of consideration about whether she would go on a voluntary basis, and she would not do that. I think that is an important distinction. I am sorry to interrupt, but I do not think at that point there was a view that the assessment was not necessary. It was just the question of whether we could, in fact, require it of her on an involuntary basis.

**Senator CHRIS EVANS**—Just so that I am clear in my own mind about how this works, I can understand the issues around having someone sectioned in the general community, but you have been detaining this woman for eight or nine months against her will, I assume, anyway, so the question of her will has not been a major issue in this debate. She has been held under the migration regulations against her will. I presume she has not volunteered to be there. I know she made some applications at some stage. I am trying to understand the legalities of sectioning when you are effectively a prisoner. Is there a different legal construct there, or not?

**Ms Godwin**—Yes, there is. The fact that someone is detained under the Migration Act means that they cannot be out in the Australian community. It does not therefore remove from them any other rights they might have—for example, in relation to medical treatment. So if someone refuses medical treatment we do not have the power to force it on them, just as would happen in the community. If an individual in the community was thought to be unwell and people concerned about them wanted that person to have treatment but the person themselves refused to have treatment, it could not be forced on them. That is the purpose of the power under the mental health acts in various states: to be able to give people involuntary treatment. But it is something that doctors obviously exercise with great care and thought, because it is a serious step to take.

**Senator CHRIS EVANS**—So who had the power, in Ms Rau's case, to have her sectioned?

**Ms Godwin**—The doctor can sign the order—the GP or the visiting psychiatrist. But, regardless of which doctor, none of them would do it without careful consideration of whether it was appropriate.

**Senator CHRIS EVANS**—I was just trying to understand the relationship between DIMIA's powers and doctors' powers for someone who is in the normal community. Obviously she is a special case in that she is detained under the Migration Act.

**Ms Godwin**—Yes, but the Migration Act only covers detention for the purposes of the Migration Act. It does not, as I say, mean that we can therefore do things to people which would not be able to be done if they were in the community.

**Senator CHRIS EVANS**—So you can detain her indefinitely but you cannot get her sectioned?

**Senator BARTLETT**—If you got her sectioned and moved to Glenside, she would still be in Glenside under Immigration detention anyway.

**Ms Godwin**—That is correct. Both powers would be in operation at that point.

**Senator BARTLETT**—As you said has occurred three or four times in the last year.

**Ms Godwin**—That is correct.

**Senator Vanstone**—As Ms Godwin said, the point is that the immigration act does not so much give Immigration the right as obliges them to detain people who they have a reasonable suspicion are unlawful non-citizens. It does not take away the other rights that they have as humans. One of the fundamental rights is to say, 'I'm not taking those pills.' Not, as I have made clear, that we can believe all that we read in the media, but I have read that she, at some

earlier point, had medication and she did not want to take it. That may be the case—I do not know—but people have the right to refuse medication and treatment. I am loath to warm in any way to a proposition that an immigration department be given the right to send people to mental facilities against their will.

**Ms Godwin**—If I could just clarify one point: there is a very specific and limited power in the migration regulations which enables the secretary—and only the secretary; it is not a delegated power—to order medical treatment, but that is a very limited power and it is where the person themselves is suffering from a condition which is itself assessed by a doctor as being life threatening. It has been used extremely sparingly, first, and, secondly, where the person is physically ill and in real danger—for example, rehydration orders where someone is refusing to eat or drink.

**Senator CHRIS EVANS**—I am glad you raised that, because it struck me and I would be surprised if there were not that power because we have been through it with people in other detention issues. So that is right. I am not necessarily arguing a case—I am just trying to explore the powers here—but it seems to me the woman had been held in detention for a long period of time. You, I suspect, at this stage were convinced she was not who she said she was. She had tried at least two or three identities on you, so there must have been some doubts about what was going on with her. I am just trying to explore what the legal situation is. You seem to be saying, ‘That is an issue for the doctors, not for DIMIA.’

**Ms Godwin**—In that situation, yes, it definitely is an issue for the doctors because, as I say, the limited powers that we have got relate very specifically to life-threatening conditions and the sort of situation I have described. Another important point to make is that, while the secretary can order treatment in those circumstances, the regulations specifically indicate that that does not imply that a medical practitioner is therefore obliged to give the treatment. So it could happen that the secretary orders treatment in that situation, but a medical practitioner or a medical authority could say, ‘Even so, I’m not prepared to give that person that treatment against their will.’ That is also a possibility in that sort of situation. The circumstances within which you can, in a sense, force treatment on someone are very limited. In this situation, where there had not been an assessment that the person was at risk to themselves or others, the view was taken that an order for involuntary treatment was not appropriate at that point. That was in the early January period.

**Senator BARTLETT**—You mentioned Dr Phillips’s name, I think, before. Did you actually receive a request from Dr Phillips for an assessment to be made?

**Ms Godwin**—Can I just clarify one point? That assessment that was made in early January—that it was not appropriate to sign an involuntary treatment order at that point—was taken in consultation with specialists at Glenside; it was not simply taken by the doctors at Baxter.

**Senator BARTLETT**—Glenside is state run isn’t it?

**Ms Godwin**—Yes.

**Senator CHRIS EVANS**—How could that occur? We have had this issue about privacy. Are you telling me that doctors who had not examined her were part of the decision making?

**Ms Godwin**—No. There is a protocol for referral and that protocol was being followed. That is the information that Mr Davis was giving you earlier whereby a referral was made to Glenside. Consistent with that referral, as between medical professionals, a referring doctor generally provides—

**Senator CHRIS EVANS**—Was that done with Ms Rau's permission?

**Ms Godwin**—I do not precisely know the answer to that. It is not, of course, uncommon to make a referral and to send supporting documentation with the referral. That, in any event, happened.

**Senator CHRIS EVANS**—With or without permission is not uncommon?

**Senator Vanstone**—I think I can give an answer to that. Where you suspect someone may need the specialist care of a mental health facility and you have arrived at the point where you are considering if that can be done against their will, it would not make a lot of sense to ask them if you could do that because you are already at the point where you are considering whether, in their own interests, you ought to do it against their will.

**Senator CHRIS EVANS**—That runs exactly counter to the previous argument that was advanced. Which is it?

**Senator Vanstone**—I wish life were that simple.

**Senator CHRIS EVANS**—That is why I was surprised by the earlier argument. It seems you can get them referred but you can't get them—

**Senator Vanstone**—No, we cannot get them referred.

**Senator CHRIS EVANS**—But you did.

**Senator Vanstone**—We have a process of seeking specialist advice and that process is followed. It involves taking advice from mental health experts at Glenside.

**Senator CHRIS EVANS**—The question I asked is: did Ms Rau give permission for you to refer her and her medical records to those people?

**Senator Vanstone**—Ms Godwin was in the middle of answering that when I raised the issue that, clearly, when you are at the point that you are considering whether you will take away someone's right to refuse medical treatment—when you are at that serious a point—I am not sure that you can do that by going to the person who does not want the medical treatment and asking them if you can do that.

**Senator CHRIS EVANS**—That is what I thought was strange about your earlier argument. That is why I am exploring it.

**Senator Vanstone**—You are talking about whether we can ourselves, as DIMIA officials, do something. Doctors can.

**Senator CHRIS EVANS**—We have established Mr Farmer could as well under certain circumstances. I do not want to stress that. Clearly the power is there in special circumstances.

**Senator Vanstone**—Apart from this particular power, which is quite circumscribed, as a citizen and accidentally at the moment—well, not accidentally but quite deliberately, by the Prime Minister's request—of happening at the moment to be the immigration minister, I will

not be voting for circumstances where you give undertrained DIMIA officials in health matters the power to commit people to mental health facilities. I can assure you I will not be supporting that.

**Senator CHRIS EVANS**—Sure. And some Australians have concerns about the power of DIMIA officials to detain permanent residents for 10 months as well. So there is a clash of rights there.

**Senator Vanstone**—They do not. Let me make it very clear—there is no power whatsoever for DIMIA officials to detain people whom they believe to be permanent residents.

**Senator CHRIS EVANS**—Whom they believe to be.

**Senator Vanstone**—That is right.

**Senator CHRIS EVANS**—There is obviously the power for them to do it, though.

**Senator Vanstone**—There is an obligation on DIMIA officials to detain people they have a reasonable belief are unlawful noncitizens.

**Senator CHRIS EVANS**—But the fact of the matter is that we have established that there has been the power for a permanent resident to be detained for 10 months. All I am trying to work out is where the clash of these rights occur.

**Senator Vanstone**—No, with respect, we have not—that is just the point I have made. I am sorry to interrupt you, but we must make this clear. We cannot accept that the public who might be reading your part of the transcript—and by that point they would have got to be insomniacs, because they would have been with us since whatever time we started—and who then give up will see it on the record that DIMIA has the power to detain a permanent resident. DIMIA does not have that power. DIMIA officials have the obligation to detain people whom they have a reasonable belief—I will give you the exact wording; I am told it is ‘suspicion’—are unlawful noncitizens. They have no power whatsoever to detain permanent residents, citizens, visitors or anybody who has a reason to be here.

**Senator CHRIS EVANS**—The fact of the matter is that someone was detained. That is why we are here.

**Senator Vanstone**—Yes, and the reason for that is the person presented themselves as unlawful noncitizen.

**Senator BARTLETT**—I am not sure this is elucidating information; I think this is engaging in two sides of an argument.

**Senator Vanstone**—There is no argument as to the powers. They are very clearly circumscribed in the act.

**CHAIR**—Let us go back to Senator Bartlett in terms of questions. For the benefit of members of the committee and officers, can I indicate in relation to the timetable for this afternoon that we will be breaking into this questioning process at 4 p.m. to invite the MRT and the RRT to appear before the committee as they were scheduled to do today. They have travel commitments which we are endeavouring to help them meet. At the conclusion of that process we will return to this questioning process.

**Mr Farmer**—May I add a footnote to the earlier discussion?

**CHAIR**—Before you do that, can I see if there is any demur or concern in relation to that proposal from members of the committee or from your side?

**Senator BARTLETT**—It should be a brief footnote.

**CHAIR**—Mr Farmer, if we may have your brief footnote, we will then go back to Senator Bartlett.

**Mr Farmer**—Thanks very much. It is in relation to the earlier point about the migration regulations and the power given to the secretary to take decisions about medical treatment for detainees in some circumstances. I want to make two things clear. Firstly, that is exercised on the basis of advice from a doctor that a particular line of treatment is necessary for the safety of an individual. Secondly, in terms of the exercise of that power, during my period as secretary there have been occasions when I have not agreed to sign an instrument. I have done that only in circumstances, as I recall, where I was not satisfied on the basis of advice from the doctor that the treatment was immediately necessary.

There have been some occasions when a doctor has said, 'I believe that if this thing is untreated for the next two days then the person will be in danger and I, the doctor, want permission to intervene if, during that two or three days, I assess that that is necessary for the well-being of the patient.' My approach has been, 'I am available. If you come to that view then I am available to consider your view and sign an authority then.' But I have not done it, if you like, in the sense of giving someone a blank cheque for a period of days. So two things are necessary: one, a view by a doctor and, two, a decision by me that in all the circumstances an authority is the appropriate thing to do at a particular time.

**Senator BARTLETT**—There are some broader issues I might leave till output 1.3. Did you actually receive your request from Dr Phillips, who you mentioned is the head of South Australia mental health—I think that is what you said his title was—for a medical assessment to be made of Ms Rau in January and was that agreed to or not?

**Mr Davis**—Perhaps I can go on from where I left off on the chronology before we had some other discussions. The discussion I mentioned before occurred on 7 January. Ms Rau was asked if she would go voluntarily and she declined to go. Subsequent to that we started to consider whether alternative detention arrangements or something else was a pathway that was worth considering. On 21 January we contacted a non-government organisation in Adelaide to begin a discussion to at least explore whether we could find an alternative to—

**Senator BARTLETT**—Tell us who that is. Which organisation?

**Ms Godwin**—With your concurrence, could we take that on notice, only because we have not told them we were going to mention them today.

**Senator BARTLETT**—Sure.

**Mr Davis**—We were then approached on 24 January. One of the senior officers who works for me received a phone call from Dr Phillips. What prompted him to ring them is a matter for him but he rang to ask about an unknown German woman in Baxter. Someone had obviously raised with him some concerns. We indicated to him broadly what some of the background was, particularly in terms of her mental health and the care she was getting. He indicated a

willingness to facilitate a further assessment at Glenside, even if that was not done on an involuntary basis. We followed that up the same day. My officer spoke with the rural and remote team and the person in charge there, who is within the South Australian mental health system, as I understand it, reported to Dr Phillips. Whether that is a direct line of accountability is a bit unclear to me. Consistent with his offer to facilitate a further assessment, we began a process with Glenside to facilitate access to their facility. That process then went back to the protocol type process. The Glenside people then had a dialogue with the medical staff on site, including psychologists and GPs. Within that context we were also advised that, while Glenside preferred a scheduling, or whatever the word is—

**Senator BARTLETT**—Sectioning, do you mean?

**Mr Davis**—yes, sectioning for the purpose of her going there for further assessment. They were willing to take her voluntarily, but that process was then put in the hands of the GP and Glenside.

**Senator Vanstone**—Voluntarily on their own part, that is.

**Mr Davis**—After a period of discussion and further assessment within the facility by the GP, an order was signed by the GP on 3 February for her to be sectioned and moved to Glenside for further assessment. That decision-making process was in train from 24 January through to the decision being signed by the GP on 3 February. As it turns out, she was also identified that same day and, subsequent to her identification, she was released into the care of police and ambulance services on the evening of 3 February because the authority signed by the GP still had legal force. Therefore, upon the resolution of the migration reasonable suspicion matter, she was released into the care of police and ambulance services.

**Senator BARTLETT**—So she was sectioned anyway but, as it turned out, not as a detainee. She ceased to be in detention at the same time as being sectioned.

**Mr Davis**—It was on the same afternoon that the sectioning was signed and she was identified. Irrespective of that, by the evening of 3 February the identification issue had been resolved and the sectioning instrument had already been signed by that time, so the ambulance service and police came to the facility and took her into their care.

**Senator Vanstone**—Officials might have further detail but in some of the material I looked at in relation to this there were two—I am not limiting it to two—psychiatrists from Glenside that the Baxter health people were meant to get in contact with over this period. With respect to at least one of them, there was a difficulty in making contact, and the difficulty was that he or she was on or travelling to the west coast. As you know, at around that time we had some terrible fires and there were people in real need of assistance. I have no idea how many psychiatrists or other people from Glenside were involved but the explanation that was offered for at least one of them not being available on his mobile was because he was travelling and probably out of range.

**Senator BARTLETT**—Is it possible to get file notes of all those conversations between DIMIA officials and South Australian health officials provided?

**Ms Godwin**—Can we take that on notice?

**Senator BARTLETT**—Certainly. I asked a couple of times last week in question time about whether the detainees would be able to give evidence to the inquiry.

**Senator Vanstone**—I said yes to you at one point with a paper, and you thought I was going to read something out. Mr Palmer can talk to people in the detention centres if he wishes. He will be able to ascertain who has direct knowledge and who does not because the records of where Ms Rau was at any particular time will be available to him.

**Senator BARTLETT**—The detainees who may have been in areas of the detention centre that Ms Rau was in will be able to tell Mr Palmer what they say they witnessed should they wish to do so.

**Senator Vanstone**—Yes. Mr Palmer does not have a limitation in that context as to who he speaks to in the detention centres.

**Senator BARTLETT**—I presume they do not have to tell him anything if they do not want to. There is no compulsion but if they wish to tell him things, do they get any assistance in relation to that? I do not know whether it would be legal or whatever but, having met many of them, it would be a potentially intimidating situation when some of them are living in fear of being deported at any time to say things to what they would perceive to be a government official. If they wish to speak to him, would they get any sort of assistance?

**Senator Vanstone**—I am not sure what sort of assistance you mean.

**Senator BARTLETT**—I am not sure what it would be either, but there are people.—

**Senator Vanstone**—Mr Palmer will have whatever services he needs to get the right information and if he needs translation services they will be provided.

**Senator CHRIS EVANS**—I think Senator Bartlett is asking about getting someone to explain their legal rights and the implications of any evidence they give. Given that they are incarcerated and, as he says, some of them are in fear of deportation, will someone be able to explain their legal rights to them?

**Mr Farmer**—I am not sure that Mr Palmer has turned his mind yet to the arrangements that he will adopt for interviews. We are not aware of the arrangements he might have in mind or be forming in his mind. The point that the minister makes from my perspective is absolutely the one that needs to be made: the things that Mr Palmer decides he needs will be provided by way of assistance—and I think that this question has come up before in the context of the Flood inquiry. I think it was raised there about assistance or guidance that people talking to Mr Flood might require. I believe that this issue will be addressed by the inquiry.

**Senator BARTLETT**—Taking into account the privacy issues, of course, and obviously Ms Rau is not DIMIA's responsibility anymore, is there ongoing contact now between DIMIA and the family? Is any sort of assistance being provided to assist them with the current situation?

**Senator Vanstone**—We do have some correspondence from the Rau family with respect to whether any assistance could be provided in the conduct of the inquiry. I will look very carefully and very sympathetically at that.

**Senator BARTLETT**—Is there an ongoing liaison officer or someone they are able to deal with, whether it is for assistance with the inquiry that is ongoing, Ms Rau's situation in Glenside or any of those sorts of things? I am not suggesting money per se, but I am talking about a liaison person who can help them through the bureaucratic maze and some of the questions or give them other assistance with what they are going through.

**Senator Vanstone**—We have not nominated a specific person. If nominating a specific person was not seen as precluding the Rau family from talking to anybody else, we would be happy to nominate a central person for them if that was deemed to be of assistance.

**Senator BARTLETT**—I do not know if you have or not.

**Ms Godwin**—As far as the inquiry is concerned, that is clearly a matter for Mr Palmer. As far as Immigration is concerned, on the evening that it was established that Ms Rau was in fact an Australian permanent resident, the manager at Baxter, whom I think you have met, had a lengthy discussion with the family. The family has her contact details and is able to talk to her at any time should they wish to. There is obviously the sensitivity of wanting to be as helpful as possible to the family but recognising that Ms Rau herself, as an adult, also has rights to privacy and so forth. The manager is conscious of that. As far as I am aware, there has not been any regular contact. There may have been one or two calls, just about practical matters. But, as the minister says, if there is a requirement for or a purpose to a more senior central contact then that certainly could be arranged.

**Senator BARTLETT**—Has any consideration been given to one-off financial assistance for travel across and those sorts of things, or does that raise legal issues, like apologies?

**Ms Godwin**—It has not come up as an issue as far as I am aware, apart from the correspondence the minister has already referred to.

**Senator BARTLETT**—Which correspondence that you have already referred to are you talking about?

**Senator Vanstone**—I said we had had contact seeking some assistance in relation to the inquiry. It was a letter.

**Senator BARTLETT**—That is the one you said you would be sympathetic towards.

**Senator Vanstone**—Yes. That is not a conclusion drawn; it depends on the circumstances. Frankly, it might have something to do with the format that Mr Palmer chooses to follow. I want to indicate I am very sympathetic in this matter, meaning the whole thing, to Ms Rau's parents.

**Senator NETTLE**—A number of times various witnesses have referred to a small number of people being wrongfully detained, and I wonder if we can get some figures—I am happy for this to be on notice—on the number of people who have been wrongfully detained per year.

**Senator Vanstone**—I am sure we can do that for you, but I make a point so that another misunderstanding is not inadvertently or otherwise conveyed. There has not been a suggestion that people have been wrongfully detained. People are rightfully detained if Immigration officials at the time of detention have a reasonable suspicion that they are an unlawful

noncitizen. If it subsequently becomes clear that they are not and then they are not let out then they are wrongfully detained. But if you mean people whom we subsequently discovered—

**Senator NETTLE**—Found to be wrongfully detained.

**Senator Vanstone**—no, they were not wrongfully detained—were not who we believed them to be then we will give you that list.

**Senator NETTLE**—Perhaps in providing that list you could indicate the period for which they were detained as well.

**Mr McMahon**—Can I just say that I do not believe there is any way we can get that information. We can collect some information around it, but certainly our preliminary examination of our systems suggested we would not be able to extract information on that basis.

**Senator NETTLE**—I will leave the challenge open to you as to whether you are able to provide us with that information or not. So I am interested in the period for which they have been detained and perhaps the nationalities as well, if that is appropriate. Could we also get an indication of how many of those people have had settlements. I am referring to the example of the French man where there was a settlement. Could we get an indication—not the details—of how many have had a settlement. I am presuming from comments made this morning that each of those settlements includes a confidentiality component, so I am not asking for that information but how many of them have settlements relating to them.

**Senator Vanstone**—It is an irony, isn't it, that French case? I have seen some advice as to the reason the suspicions were held and, given that advice is correct, Immigration would have been criticised if that person had been let through and was later discovered to be somebody we did not want. In contrast, and understandably, people say, 'You didn't get it right that time,' but on another occasion when a French person came through on whom we had no information we were criticised for not holding them. So sometimes I think the officials in this area just cannot win.

**Senator NETTLE**—I understand that the French consul is continuing to wait for an apology and a response in relation to this.

**Senator Vanstone**—That is not my advice. My advice is that a reply was given the day after we received the letter—is that right?

**Mr McMahon**—They wrote to us on the 4th, as I recall, and we responded on the 5th. They subsequently provided a third person note to the Department of Foreign Affairs and Trade, which I believe it did not respond to because all the information had been tabled on the 5th.

**Senator NETTLE**—Perhaps in getting that information it would be possible to get details of the amount of money that has been spent as a total on both the detention and the settlements for those individuals we are referring to, so not stipulated but as a total for both the people subsequently found needing to be detained—or whatever the words are that you are happy with—and their settlement.

**Mr Farmer**—We will do our best. The question of how much was spent on their detention is a bit more complicated than might seem at first blush, so I do not know how comprehensive we will be able to make that bit of the response.

**Senator NETTLE**—Thank you. I want to move now to the issue of Ms Rau. I want to turn to some comments, and if you need to correct things along the way then please do. There were reports in the *Sydney Morning Herald* on 12 February in relation to the interview that was carried out between the honorary consul in Cairns for France and Germany and Ms Rau. The consul was told by Ms Rau at that point that she had entered Australia having been dropped off along the coast of Darwin after paying a people smuggler in Russia €1,000 to get her to Indonesia or that she had walked her way through China or both—the consul commented that it was absolutely unbelievable. The reports go on to say that she reported to DIMIA about that meeting and that she also reported that she believed Ms Rau needed urgent medical attention. So I just wanted to check whether those pieces of information, as have been reported, were reported to DIMIA.

**Ms Godwin**—As I said this morning, we have a snapshot of that contact here which says that she continued to assert that she was German and had recently arrived. The point about needing urgent medical attention I am not aware of, and I will have to check that. I also indicated that I am not aware at this point whether she actually provided a report or how that information was conveyed—or whether it was conveyed. I took all of that on notice this morning, so if it is okay with you I will add those additional points that you are making now to that.

**Senator NETTLE**—Okay. Could I just get an idea of when we might be able to get an answer to that?

**Ms Godwin**—We will pursue all of the questions we have taken on notice as quickly as we possibly can; but as you will recall there were various detailed points that will require a bit of tracking down. We will do it as quickly as we possibly can, but I am not conscious at this point of whether we have actually got that information readily to hand or whether we will need to go back to individual officers.

**Senator NETTLE**—Could I ask whether the primary basis for the reasonable suspicion that Ms Rau was an unlawful noncitizen was her claim that she was a German illegal immigrant in Australia?

**Ms Godwin**—No, I do not think that is a fair summary of what I said this morning. The fact is that the police spoke to her and relayed that information to DIMIA officials. DIMIA officials checked movement records and databases, as is standard procedure, to establish whether they could find that she was the holder of a visa. When she got to the police station at Coen, the officer spoke to her by telephone to see whether there was further information, and, putting all of those contexts together, formed the view that she was an unlawful noncitizen.

**Senator NETTLE**—Before I go on with questions about Ms Rau, when we were talking more generally about other people who had been detained, I meant to ask you about reports that I have received—and Senator Bartlett mentioned it before—about a Korean woman who arrived in Australia on a three-month visitor visa to visit her boyfriend who was picking fruit in a rural area of Victoria. There was an immigration raid on that property, she was flown to

Baxter detention centre where she spent somewhere between a week and two weeks before the mistake was realised and she was released. I just wondered if you were able to confirm that situation. I understood that she was in Baxter in late November-early December 2004.

**Ms Godwin**—I will have to take it on notice.

**Mr McMahon**—Yes, we will have to take it on notice. I do not have details of that.

**Senator NETTLE**—Back to Ms Rau—

**Senator Vanstone**—I'm sorry, could you clarify: what is the story about that Korean woman?

**Senator NETTLE**—My understanding is that she was here on a three-month visitor visa and she was visiting her boyfriend who was here working as a fruit picker on a farm in Victoria. She was visiting; she was not working there. There was a raid on the property and she was one of the people who was taken and was believed to be an illegal immigrant working on the farm. She was taken to Baxter detention centre where she was held for somewhere between a week and two weeks before the mistake was realised. I was just asking whether you had any capacity to confirm or verify that situation.

**Senator Vanstone**—We will chase that up.

**Senator NETTLE**—Moving to Ms Rau's claim that she was a German illegal immigrant, given that she had given a number of names for herself and—in what we heard from the honorary consul—a variety of different examples about how she had got there, which the honorary consul described as being absolutely unbelievable, was there any thought given to carrying out a psychiatric assessment for the purpose of determining the veracity of her claim that she was a German illegal immigrant?

**Mr Farmer**—I think that the first thought was the appropriate one, namely, that we would carry out checks of the department's databases. That was the immediate and required action.

**Senator Vanstone**—And can I say that a psychiatric assessment is what you would undertake to ascertain the mental health of the person. A psychiatrist is in no position whatsoever to ascertain the lawful immigration status or otherwise of someone. What Immigration were concerning themselves with was the lawful immigration status.

**Senator NETTLE**—I suppose what we have heard is that she claimed to have walked through China; she claimed to have arrived from a Russian people smuggler. Those claims were described by the honorary consul as totally unbelievable. We have heard that she was giving a variety of different identities and stories and that the honorary consul thought that she needed urgent medical attention. My reading of the situation—it is purely my reading of the situation—is that when someone is describing a range of different unbelievable scenarios the question of whether a mental illness came into play or not may help to solve that situation where someone is putting forward a range of different arguments described as totally unbelievable. Did that question enter their mind in the determination?

**Mr Farmer**—I believe that the factual answer to your question is no. That is my belief. If the answer is otherwise, I am not misleading you. My reading of the chronologies is that at that stage the circumstances did not lead an Immigration officer or anyone else to that conclusion.

**Ms Godwin**—Sometimes in the early stages of an investigation of this sort it is possible for people to try to put different explanations to us. People claim to be, for example, stowaways on ships to avoid telling us where they came from and how they got here. It is true that in a small number of cases people have individually been dropped off by boats in the northern part of Australia et cetera. While you say that the claims were completely unbelievable, the fact is that an Immigration officer's job at that point is to try and establish whether the person has a lawful basis for being in Australia, and if you cannot establish that almost regardless of the sort of circumstances then they can reasonably form a view that the person is here unlawfully and therefore we are obliged to detain them.

**Senator NETTLE**—Just for the record, it was not me saying the words 'absolutely unbelievable'; that was the honorary consul.

**Ms Godwin**—I understand that. I did not mean to imply that I thought you had said that. I do not know whether the honorary consul said that—

**Senator NETTLE**—It has been reported.

**Ms Godwin**—That is right, and we will try to check that.

**Senator NETTLE**—Shall I move on now?

**CHAIR**—It depends where you are going to, Senator Nettle.

**Senator Vanstone**—If we are breaking at 4 p.m. for the other tribunals, I think you are pushing your luck.

**Senator NETTLE**—Do we want to break now for the other tribunals?

**CHAIR**—If the tribunals are ready we can do that. We are not leaving this area of questioning; we are merely interrupting it for the purpose of hearing from the tribunals and then we will return to it.

[4.00 p.m.]

### **Migration Review Tribunal**

#### **Refugee Review Tribunal**

**CHAIR**—Mr Karas, welcome. My apologies for the shifting of times during the day today, but we are all finally here. I welcome you and your officers and we will continue with questions from the committee now to the MRT and RRT, starting with Senator Kirk. Senator Kirk, are we going to treat these as two separate sets of questions, one set to the MRT and one set to the RRT, or do you wish to do them in tandem?

**Senator KIRK**—I think it is perhaps best to deal with the RRT and then go on to the MRT, if that is suitable.

**Mr Karas**—So you want to deal with the RRT first? That is okay.

**Senator KIRK**—Could you tell the committee the number of cases that were finalised in the last financial year?

**Mr Karas**—From 1 July to 31 January 2005, 1,873 cases were finalised by the Refugee Review Tribunal. That compares with 3,672 cases finalised in the same period last year,

which is down by about 49 per cent. Would you also like me to refer you to the number of applications or cases that have been lodged?

**Senator KIRK**—Yes, that would be helpful.

**Mr Karas**—To 31 January 2005 from 1 July 2004, 1,514 cases were lodged with the Refugee Review Tribunal, which is down some 468 cases from the 1,982 cases lodged for the same period last year. It is a fall of about 23.6 per cent.

**Senator KIRK**—In the figures that you gave me, you said there has been a reduction of 49 per cent until 31 January. Are you anticipating that there will continue to be a considerably lower number of cases?

**Mr Karas**—We think that the trend is, as shown over the last financial year, that the number of cases that are coming to the tribunal are less than has been the case in the past. There is some talk that there might be an increase in the caseload with the temporary protection visa applications, the FPV applications, but at this stage we are averaging about 200 to 220 cases a month with the Refugee Review Tribunal.

**Senator KIRK**—To what do you attribute this drop in the number of cases?

**Mr Karas**—A number of matters, including government policy in relation to the lack of boat arrivals in the last few years. It also appears as though there have not been as high a number of applications from onshore applicants arriving, usually legally, with other forms of visas. I do not know if Mr Blount has any further information.

**Mr Blount**—I think that apart from the undocumented boat arrivals fall-off, there has been, as the principal member has indicated, a fall generally in applications onshore at the primary level which has flowed through to us. That is a reflection of a trend that we have also seen to a lesser and greater extent elsewhere in the world. The other element, with regard to the onshore caseload here, is that it appears anecdotally that the number of what have in the past been referred to as unmeritorious cases—cases which advance very bare pro forma claims which typically do not respond to an offer of a hearing and just go through the process, and which was a matter of some attention by the government a year or so ago—have fallen off significantly. I think that is also due in part to the fact that, as a result of the effective elimination of the backlog, the time lines have improved greatly both with the department of immigration and with the tribunal. That certainly reduces the incentive for unmeritorious cases to simply sop up 12 months going through the system.

Let me just illustrate that. For the financial year to date until the end of January, for the cases finalised during that period at the tribunal, the average total time from lodgment to finalisation was something like 23 weeks whereas, for the same period in the previous financial year, it was in excess of 40 weeks—and it would have been higher a year before that. I think that things like that certainly have an impact on the really unmeritorious cases—the ones that do not even advance a serious claim. They have dropped off significantly. That has been an element as well. There are a number of different things coming together.

**Senator KIRK**—Have any new policies been put into place in the tribunal that might have contributed to this decrease?

**Mr Blount**—I think that, among other things, the expeditious dealing of cases. Apart from the fall in lodgments, we have had a number of measures in place over the last several years, including a very structured policy in the way we constitute cases and address older cases. This has also contributed to the elimination of what used to be referred to as the backlog. I think that continues, and that is all part of the time line exercise, which is a contributing factor. I suspect that most of the reasons apart from that are external to the tribunal, because it does seem to be part of a broader trend. I think it is the case that the same trend is evident in the primary applications going to the department as well.

**Mr Lynch**—If I may add to that briefly, on the question of policy, we have implemented internal procedures quite successfully, following the government policy on integrity measures with regard to the migration industry. We have developed internal systems regarding our relationships with authorised recipients, who are largely migration agents representing applicants in both the Refugee Review Tribunal and the Migration Review Tribunal. We have improved our relationships with DIMIA and with MARA in the reporting of misconduct of advisers who submit frivolous applications or conduct themselves improperly against their code of conduct. We think, although perhaps it is too early to say, that that combined with the other policy measures and the other practices has caused this downturn. It is not a sudden downturn; it is a downturn over the last 12 to 18 months.

**Mr Karas**—Mr Blount referred to the backlog. As at 31 January 2005, there were 886 cases on hand with the Refugee Review Tribunal, which compares with 1,996—almost 2,000—which were on hand for the same period last year. That is a decrease of well over 50 per cent.

**Mr Blount**—It was about double that a year before that. It has gone down over three or four years from about 5,000. I should say that, now that we are down to a figure of just below 900, probably something like a couple of hundred of those would be recently lodged cases within the last three or four weeks which are essentially waiting for the DIMIA file to catch up with the application and so on before they can be constituted. The balance would all be active cases with members at various stages of processing. We are probably down to a working throughput and there is probably not a great deal of scope for it to fall very significantly beyond that.

**Senator KIRK**—How is this impacting upon the workload of the tribunal members?

**Mr Blount**—Very largely, the resource of members we have and the caseload we have have gone in step. There have been two things which have helped that to be the case. When reappointments were made to the tribunal last year when the current terms of the overwhelming majority of members fell due, the numbers that were reappointed by the government took account of the caseload trends.

At the same time, all of the part-time members who were reappointed to either the RRT or the MRT were in fact cross-appointed—across the two tribunals. As was explained at that time, this was to provide flexibility in meeting the different workloads of the two tribunals. As a result of that flexibility, we also took steps quite recently to get the RRT cross-appointed members to shift their workload across from RRT cases, where we are on top of the case load, to the MRT, where there are still significant numbers being addressed. That has worked quite

effectively and we have been in a position to efficiently match the resource with the case load, and we are quite happy with the way that has been developing. I do not know whether the registrar or the principal member want to add anything on that one, since it concerns the other tribunal; I only have a role on the RRT.

**Mr Lynch**—If I could add to what Mr Blount said. The tribunal has taken advantage of the government's decision to cross-appoint, which we believe was a very necessary move. What we have been able to do is continue to use a very substantial body of expertise amongst the cross-appointed members, who are fully trained, fully experienced RRT members—we have invested a great deal of time, effort and taxpayers' money in training them to the point that we have—and fortunately most have indicated a real willingness to take on board the work of the MRT. We commenced training towards the end of the first quarter of this financial year and we completed a second tranche of training just recently. I think we have up to 17 or 18 members ready to take on MRT work, as they finalise their RRT work, and we think that will be a substantial boost to the MRT's resources—to try and reduce its cases on hand.

**Mr Karas**—A full-time member of the Refugee Review Tribunal in Sydney who works 230 working days a year would be expected to complete 120 cases; in Melbourne a full-time member working the same number of days, 110 cases; and it is pro rata for the part-time members. I should point out that overall, as at 31 January, there were 74 members of the Refugee Review Tribunal: 16 full-time members, including the deputy principal member, the principal member and the four senior members; 15 part-time members who are not cross-appointed to the Migration Review Tribunal; and 43 cross-appointed members—that is, members of both the Refugee Review Tribunal and the Migration Review Tribunal. Of those 74 members, 40 are female and 34 are male.

**Senator KIRK**—So, on the whole, across both tribunals and including the cross-appointments that you have referred to, has the number of appointments remained steady in terms of full-time load? Or has there been some reduction or increase across the board?

**Mr Karas**—Basically it has remained steady, on the MRT as well. There are presently 67 members of that tribunal, 43 of whom are cross-appointed, as with the Refugee Review Tribunal. If you would like more detail in relation to the 67 members of the Migration Review Tribunal, I am happy to go into similar detail on the number of full-timers, part-timers and female and male members.

**Senator KIRK**—Yes, that would be helpful—and also perhaps some comparison.

**Mr Karas**—All right. Of the 67 members of the Migration Review Tribunal, eight are full-time, which includes the principal member and two senior members; 16 of the part-time members are not cross-appointed to the Refugee Review Tribunal; and 43 part-time members are cross-appointed to both tribunals. Of the 67 members, 26 are male and 41 are female.

**Mr Lynch**—The number of positions is as Mr Karas has indicated, but in terms of actual persons or bodies we had some turnover at the end of the appointment periods of the last group of members, whose appointments expired at the end of June last year. Twenty-three RRT members, including 14 full-time members and nine part-time members, were not reappointed. On the MRT it was 15, I think: one senior member took an appointment to another tribunal outside the portfolio and 14 other members of the MRT were not reappointed,

also reflecting the downturn in lodgements. The number of full-time members not reappointed to MRT was four; the number of part-time members was 10. So in effect we have been able to maintain essentially the same number of members available to each tribunal. The numbers, in the 70s for the RRT and in the late 60s for the MRT, are largely the same, the intention being to use the cross-appointment, the skill and expertise of those members, in both tribunals.

**Senator KIRK**—In relation to the reappointments, I wrote down some figures of four and 10. Was I correct in writing those down?

**Mr Karas**—Yes.

**Senator KIRK**—Was the reason for their reappointment that they did not reapply for the position or what? How are these decisions made?

**Mr Lynch**—This is a government process of appointment of members. Certainly the case modelling that the tribunal undertakes in both tribunals is a key factor in determining what resource effort and what amount of taxpayer dollar ought to be invested in the tribunals to undertake the cases on hand. The expiry of the appointment of the members concerned was a convenient time to take stock of the case loads of both tribunals. As it turns out, thankfully, it was a very good decision because, as we have indicated, we are struggling at the moment to ensure that we have the surplus or redundant RRT member capacity who are cross-appointed now shifted onto the MRT. We are trying to train them up as quickly as possible and get them onto the backlog in the MRT.

We have been through a fairly difficult time in terms of measuring resources against the case load. It has been volatile. It has travelled through the floorboards in the RRT's case. The MRT has been less dramatic. That has posed a challenge for us in the tribunals in terms of maintaining member interest. We have had a difficult time keeping members who are committed interested in staying with us. Many members have had interests and continue to have interests outside the tribunals. Many of those have decided to move on.

**Senator KIRK**—I am just trying to understand the process of reappointments. As I understand it, the selection criteria are made public and existing appointees have to show that they meet those selection criteria that are publicly made available. Is that the way the process works?

**Mr Lynch**—This process distinguishes itself from other processes. This was not a general recruitment round for the membership of the tribunals. Government took the decision to consider interest in reappointments and invited expressions of interest in the early part of last year, I believe. On acceptance of expressions of interest, those expressions were submitted to government.

**Senator KIRK**—My understanding is that 163 decisions were remitted for reconsideration during 2003-04. Do you have any details as to how many of those were reversed on reconsideration in the RRT?

**Mr Karas**—From 1 July to 31 January 2005, 606 decisions were set aside, 1,192 were affirmed, 44 were withdrawn and 31 were otherwise finalised. That is of the 1,873 cases that I referred to earlier. Of those, 32.4 per cent were set aside and some 63.6 per cent were affirmed.

**Senator KIRK**—Has the process for the tenders to develop the joint case management system been finalised?

**Mr Lynch**—The tenderers for the case management system, which is, as you say, a joint case management system, were considered. Recommendations were made to the joint management board of the tribunals for a scoping study to be undertaken by one of the tenderers as an initial phase to establish precisely what product could be supplied at the cheapest and best-value cost to the tribunals. At the board level we have recently undertaken a decision which limits us in terms of our financial exposures to a trial period with one of the tenderers—the firm’s name is Volante. We are hoping over the next three months to review their progress in providing us with case management systems that will not only service the two tribunals’ requirements; we have an amalgamated staffing structure now, so we are expecting a service that is going to be capable of use by a common service delivery mode which we have developed. We expect to progress that if satisfactory evidence is shown of their capability development, particularly in light of its interactivity with DIMIA systems. We are looking to progress our development of case management systems in line with DIMIA so that our interoperability and sharing of information under the Migration Act and regulations can be more efficiently achieved.

**Senator KIRK**—The trial period is for three months. Is that correct?

**Mr Lynch**—We have given them a three-month period. I think Mr Jones, who is supervising that project, might like to add to that.

**Mr Jones**—The proof of concept phase started at the beginning of January and is due to be completed by 22 March.

**Senator KIRK**—Is any of the case management system up and running now? You said it started at the beginning of January, so it has been going for a month or thereabouts?

**Mr Jones**—That is right. So there are things like development workshops and what have you occurring this week. The idea behind proof of concept is not necessarily to develop a full system but to prove the relationship with the supplier at a relatively low cost—we are talking about something like 17 per cent of the overall tender value.

**Senator KIRK**—That 17 per cent will be paid at the conclusion of the three-month period?

**Mr Jones**—That is right.

**Senator KIRK**—And how was the judgment made about the viability or operability of it? Is the decision made by the management board? How is it assessed?

**Mr Lynch**—There will be a recommendation made to the board by the director of our IT section through Mr Jones. We will assess progress. Largely it is a question of developing a relationship of confidence but also confirming that they can deliver the nature of product that we are looking for to take us into the future. Legislative change needs to be taken account of. There is a range of whole-of-government programs that we need to be able to respond to—responses to parliamentary committees and such like or reports on a range of topics. But our other stakeholders in government require information at short notice and we are looking to maintain a capacity of not only servicing those stakeholders but also managing ourselves

much more efficiently than we can at the moment. Our two systems really are in need of overhaul.

**Senator KIRK**—At the end of the three-month period, if a decision is made that this is the way to go, when will the whole system be put into place so that it can be up and running across the board?

**Mr Lynch**—We hope it will be by the end of the year. It is a project that has been lingering for a couple of years, at least since I have been a registrar—I think it even predated me. So we do want to see some completion, some finality, particularly because we have amalgamated our staffing structure in Melbourne. We are doing that by 1 May this year, when we collocate our Sydney registries in Sydney. So to make efficiencies for the staff and to make these common services through staff available to members of both tribunals, we really do need the technology to support that level of service.

**Senator KIRK**—In the unlikely event that the project does not go as well as you wanted, is it a matter of going back to the drawing board and finding another tenderer?

**Mr Lynch**—If we have to, we will, but we are developing a level of confidence with this particular firm. We believe it has the credentials, the support, the resources, the systems and the licences that we need. We are confident that we can continue to do business with them at this stage, but we will need to see proof of that. We are keeping our powder dry for the time being.

**Senator KIRK**—How many tenderers for the system were there?

**Mr Lynch**—I think there were half a dozen, but I will have to defer to Mr Jones on that.

**Mr Jones**—We would have to take that on notice. There were at least five or six, from memory.

**Senator KIRK**—Was the tender process publicly advertised?

**Mr Jones**—Yes.

**Senator KIRK**—My next lot of questions are about how the case management system will enhance connectivity to existing DIMIA systems. I think you have touched on that during the course of your comments, Mr Lynch. Perhaps you could give us a bit more detail.

**Mr Lynch**—Sure. From where I sit, it is important that we comply as fully as possible with our statutory obligations to supply DIMIA with information regarding changes of address of applicants and authorised recipients and advisers to applicants. We wish to make available to DIMIA some access to our systems to identify changes of address themselves. At the moment there is a great deal of manual effort, which is cost intensive. We would look with appropriate security and limitations to enable ‘read only’ of where progress is at with a particular MRT case or a particular RRT case.

Interestingly, members of the tribunals are not terribly inclined at the moment to utilise the case management systems that we do have, which are not that user friendly, to the fullest extent that they could to make themselves more efficient. We are looking for this new case management system to enable them to monitor and manage their cases far more effectively than they have instead of relying on staff. We think their performance will improve, but we

also think our relationship with portfolio agencies will improve as well, as will the relationship between our two tribunals. We feel that a joint case management system will massively improve the speed with which we do business across the board.

**Senator KIRK**—Are the efficiency gains that you speak of part of the criteria for determining whether or not you will proceed with the full intake at the conclusion of the three-month period?

**Mr Lynch**—We have actually done some scoping study prior to the tenders going out to establish what efficiencies can be derived in the tribunals. We have workshopped with staff. We have tried to identify what application processes can be abbreviated or streamlined. If you look at the two parts of the Migration Act dealing with the two tribunals, the application processes are almost mirror images of each other. We are looking, through the case management system, to reflect what currently we do not have. We currently have two very clunky case management systems. We have staff at the moment using both systems, having to be trained on both and wasting a great deal of effort and time. We think their lives will be made better at the same time.

**Senator KIRK**—The information will not really change; it is just an easier way to access and retrieve it. Is that how it is going to go?

**Mr Lynch**—I think the quality of information that will be not only entered into the system but also elicited from it will be improved. Our capacity to respond to parliament will be that much better than it is currently. I think our capacity to monitor trends within the tribunal activity where we see blockages with case processing by staff or members, where we see cases taking unnecessarily long periods of time, sitting on the compactus too long before being constituted to members or sitting on a member's floor for too long, will enable us to report better and quicker. At the moment, we have a senior management group in both tribunals that meets monthly and reviews these statistics that we produce. They are of a reasonably good quality, but we have to put staff to a great deal of effort to produce those reports. We hope that that will be ameliorated by this new joint case management system.

**Senator KIRK**—What is the estimated cost of the entire system when it is installed?

**Mr Lynch**—The original costs were well in excess of what we were capable of paying for, but we are hoping that the total cost of about \$3 million between the two tribunals will be the right amount.

**Senator KIRK**—Are there any plans to integrate the JCMS with other cross-departmental databases? I am thinking, for example, of CrimTrac or SmartGate—those kinds of things. I know it is a much larger project, but has there been any consideration of that?

**Mr Lynch**—There is no planning for that. Those would be policy decisions that would need to be taken at a later date, but there has been no debate in recent times on that sort of development. We certainly need a system that can at least link at the case management level to monitor case flows between DIMIA primary decision making and the merits review tribunals.

**Senator KIRK**—So there would be the capability there if there were the resources perhaps down the track to link in these systems?

**Mr Lynch**—Technology could be developed that way, but there are policy issues that we have not begun to analyse, and it is something that we would no doubt take on board if there was a need.

**Senator KIRK**—Going back to tribunal members, do you have a breakdown of how many of the tribunal members—this is probably across both tribunals—have a non-English background and/or are of Aboriginal descent?

**Mr Karas**—I do not have that information at hand but we could obtain it because biographies of the members are contained in the annual report. We have not specifically asked that of members, and it would be on a volunteer basis, one would think.

**Senator KIRK**—Nevertheless, is there any effort made to ensure that there is adequate representation across the board of the various—

**Mr Karas**—I think it would be true to say that the membership of both the tribunals does reflect the community, including ethnic communities and people from a non-English-speaking background. We appear to cover the whole ambit, if I can use that expression, in relation to the membership of the tribunals. They come from a wide variety of backgrounds. They are not only lawyers. There are some who have tertiary qualifications but they come from backgrounds where they have worked in the private sector with refugee organisations, nursing, and a host of backgrounds other than law and the public service.

**Senator KIRK**—Is the background of members made available—their professional background if not their ethnic background?

**Mr Karas**—Short biographies of each of the members are contained in the appendices of the last annual report. It has always been the case on the Migration Review Tribunal, as far as I can remember or recall, that short biographies, including qualifications, background and matters of interest are included in the appendix to the MRT annual report. Last year, for the first time, similar biographical detail was included for the members on the Refugee Review Tribunal.

**Senator KIRK**—Is that information available on the web site?

**Mr Karas**—Yes.

**Senator KIRK**—In terms of non-English-speaking backgrounds, that is something you do not inquire of the members because of privacy reasons?

**Mr Karas**—It is not a specific question. No-one has to tick a box or anything of that sort.

**Mr Lynch**—The competencies required for appointments and the background and experience levels required to become a member ordinarily attract a group of respondents that are very capable either orally or in writing of communicating ideas and their judgments. So it is not an uncommon thing, because of the representative spread of our members, to have applicants occasionally ask for another member to be appointed to their case because that person carries a name from their home country that they might be uncomfortable with, and we certainly take that on board.

**Senator KIRK**—In the recruitment or reappointment process is ethnic diversity—or cultural diversity, for want of a better term—something that is taken into account?

**Mr Karas**—Cultural sensitivity is taken into account on the basis that a person seeking employment with the tribunal, given the wide range of applicants we deal with, has to be culturally sensitive and aware.

**Senator KIRK**—Just focusing again on the RRT, as I understand it they do not publish all of their decisions—is that correct?

**Mr Karas**—That is correct, yes. It is the same now for the MRT. Only decisions of particular interest are published for both tribunals, constituting about 20 per cent of the total decision making of both tribunals.

**Senator KIRK**—What is the reason for not publishing them all?

**Mr Lynch**—There is a statutory reason for that. The registrar is only authorised to publish decisions of particular interest. There is a cost issue there. We have exercised that nicety for the Refugee Review Tribunal for many years. MRT published all of its decisions from its inception because its decisions were of particular interest—every decision was of particular interest to the industry. But we ceased that nearly 12 months ago, I think, and lined that up with the same publication policy followed by RRT because we felt that sufficient time had passed and the industry had grown sufficiently in competence to be able to undertake its own research of case law and facts. So we have limited the MRT publications to 20 per cent.

**Senator KIRK**—Did you say that it is the registrar who makes the decision as to the 20 per cent that are published?

**Mr Lynch**—We have set it at 20 per cent, but that is an internal decision made by the joint management board. Originally the principal member made that call for both the MRT and the Refugee Review Tribunal. But since then the board has considered a uniform policy across both tribunals and we now have a common approach to our publications.

**Senator KIRK**—So the legislation does not provide for a particular percentage? It just picks a particular interest.

**Mr Lynch**—It is decisions of particular interest. We could not make it far less than 20 per cent. We could, if there was particular interest in 50 per cent of our decisions, publish 50 per cent. But we do not have that sense. In terms of the migration industry, there was an audience of about 300, I think, at the MIA's national conference last year and only one agent, to my recollection, expressed a desire to have that policy decision reversed. He found it convenient to line up similar circumstances so that he did not have to put much effort into his cases. He did not get much sympathy from the rest of the audience.

**Senator KIRK**—So the choice is made, I assume, on the basis of the precedential value of the particular decision?

**Mr Lynch**—We have set criteria. Precedential value is certainly one, as is the importance of a particular decision and whether it is likely to be controversial or sensitive in terms of our stakeholder interest. There are three or four criteria, but I think that covers the range.

**Senator KIRK**—Generally, as I understand it, RRT sits as a one-member tribunal, but there is also the possibility for two or three members to sit. Is it common for there to be more than one member hearing matters?

**Mr Blount**—I do not think that for the RRT there is a statutory provision to sit with more than one.

**Mr Karas**—It is more than one on the MRT, but our practice for both tribunals is that only one member sits in relation to an application. It would have to be an exceptional case for more than one member to be asked to sit on a case coming before the MRT.

**Senator KIRK**—What would warrant an exceptional case?

**Mr Karas**—Perhaps the introduction of a new visa class which is so wrought with apparent complications that if in fact, to use your words, a precedential value is going to be established by the decision of the first case in that category then it might need a couple of members so that other members will feel confident that in fact the decision that has been reached is not coming from one person but from a couple of people. If I cast my mind back, when the tribunal was first given the 816 caseload—the December 1989 entry permits—at that time the principal member had a two- or three-person tribunal set up to hear the first cases and make the decision on the basis that, because there was more than one person making the decision and a whole range of views were being canvassed and looked at, that would then add more ‘persuasive’ value for other members.

**Senator KIRK**—You said that was in 1989.

**Mr Karas**—I think it would have been in 1992 or 1993 with the former Immigration Review Tribunal.

**Mr Lynch**—Most of the members feel confident about running complicated matters, even remittals from the Federal Court, the full court and the High Court and even double and triple remittals. We do have a great mentoring system in the tribunals. We also have a policy for senior members, the deputy principal member of the RRT or the principal member to conduct a case where there is some controversy or difficulty seen in either the facts or the law.

**Senator KIRK**—You mentioned remittals, and it made me think yet again about the publication of cases. Are many of the cases that have been remitted published once they have been finally determined? Are they seen to be matters that are of particular interest or does it again depend on the subject matter and the precedential value of the case?

**Mr Lynch**—It would depend on the nature of the case. Often in a remittal from the Federal Court there may only be a fairly minor procedural error involved but it is an error of law nonetheless and a fresh decision maker has to be obtained. Fresh hearings take place. A fresh decision is made, and often it is uncontroversial. It may be affirmed or set aside, and it may reach publication stage. But, unless it meets one of the criteria that I mentioned earlier, it would not necessarily be published. The decisions of the Federal Court and the High Court are of course published and are widely accessible to the industry and to interested parties.

**Senator KIRK**—Would it not be cost effective to publish all the decisions on the web site and make them available in that way? Is that something that would not be feasible?

**Mr Lynch**—It would mean hiring additional resources, probably for little value. We are happy to take on board what you are saying and review what percentage of our cases determined following remittal might be of particular interest, but we feel that the current

criteria we have would pick those cases up in any event. We would not necessarily publish as a matter of automaticity simply because it happened to go to the Federal Court.

**Mr Blount**—I should say that it is not just a question of copying it onto something; it has to be gone through to ensure there is nothing in the decision as it is published which tends to identify the person concerned. So a process is undergone to provide a publication version of a decision. It is not simply a matter of transferring a document from one place to another.

**Senator KIRK**—I noticed that on page 36 of the annual report you state that both tribunals have moved substantially towards common human resource management, as you pointed out, Mr Lynch. You have mentioned that a couple of times. Has that process of human management integration now been completed, or is that still a work in progress?

**Mr Lynch**—It is very much a work in progress. We managed to obtain agreement, without any industrial action, in Melbourne for a common service delivery structure. We achieved that on 16 September last year. Staff have been trained to service both tribunals. Even working in an environment where they commenced habitation of their new premises in Melbourne in a way that serviced two tribunals, we have restructured, changed workstation locations and got staff happy and fully trained. That is working quite effectively.

We are in the process now of developing a structure for Sydney staff to combine the two registries. I said earlier that we are going to co-locate by 1 May this year, and we have premises in Clarence Street. Fitout of those premises commenced this week. We hope to move from the three premises we occupy in Sydney into the one premises—four floors of 83 Clarence Street—on 1 May. The staffing structure that is in development is being consulted now with staff and the unions. It will be settled well ahead of that time. We expect to be in a better position than we were in in Melbourne, where we had to enter the premises with two separate registries serving two separate tribunals. For Sydney, we will combine the staff as we move into the new premises. They will be trained ready to serve both tribunals from day one.

**Senator KIRK**—We will be able to ask in May, no doubt, about how that is progressing.

**Mr Lynch**—We look forward to that.

**Senator KIRK**—So do I. I notice also in the report that you have plans to develop a joint workplace diversity program during this financial year, and I wonder how that is progressing.

**Mr Lynch**—We have a human resources director who is very keen to progress this program. We are in the process of renegotiating our certified agreement and we believe that the current provisions will enable us to develop that program prior to the end of this financial year. We run a number of programs for staff to address the diversity that we find in our tribunals. We attract a very full range of representation from ethnic communities in our staffing. I think it is the nature of the business. It is very attractive to people from a broad range of backgrounds, and the membership is equally diverse. We hope we will move that ahead in the next few months.

**Senator KIRK**—I notice that there has been a rise in the number of applications for judicial review in 2003-04. Is there any reason for that or does that just reflect the increase in the workload generally?

**Mr Karas**—I do not know if there is any particular reason behind that other than perhaps some applicants wishing to prolong their stay in Australia by making an application for judicial review. Basically, in relation to the MRT, the number of cases that do go on for judicial review have been almost constant over the last couple of years, and I think that would similarly be the case with the RRT. I do have figures available for you in relation to the period from 1 July to 31 January this year if you would like those.

**Senator KIRK**—Perhaps you can just give them to us. That would be fine, thank you.

**Mr Lynch**—In relation to the Refugee Review Tribunal, 1,873 decisions were made during that period, 1,285 applications for judicial review were lodged and 1,133 judicial review applications were determined. Of those, 1,029 applications were dismissed either by consent or by judgment and 104 cases were set aside, 39 by judgment and 65 by consent—that is, about 5.5 per cent of all of the RRT cases finalised in that period. For the Migration Review Tribunal, in the period from 1 July 2004 to 31 January 2005, 4,348 tribunal decisions were made, 263 judicial review applications were filed and 287 judicial review applications were determined. Of those, 235 cases were dismissed by consent or by judgment and 51 cases were set aside, nine by judgment and 42 by consent, which constituted 1.2 per cent of the MRT cases finalised in that period.

**Senator KIRK**—So it is quite low.

**Ms Karas**—Yes.

**Senator KIRK**—Those numbers have been around that range for a while?

**Ms Karas**—There has not been a lot of movement in the range of cases or percentages, as I have indicated to the senator.

**Mr Lynch**—There has been an increase, you are quite right, Senator. But it may be something that you might like to address to DIMIA, who conduct the litigation on behalf of the minister. There may be a range of reasons for it but I do not think we have anything reliable to offer you.

**Senator KIRK**—That is fine, thank you. Finally, in relation to the annual case completion targets, I notice that that has been below 100 per cent of the target for a few years now, and I wonder why this is. Is it due to the number of new members who have come on board and perhaps some expectations that they will not be able to meet the same kinds of targets as previous members?

**Mr Blount**—I am not quite sure what you mean. The individual member target of 120—what is below that?

**Senator KIRK**—Yes. The 100 per cent annual case completion target. Sorry, the annual case completion target is what I am speaking of.

**Mr Blount**—Are you referring to the RRT or the MRT?

**Senator KIRK**—MRT. I should have said that, sorry.

**Mr Blount**—That is probably why the formulation did not make a lot of sense to me.

**Mr Karas**—In relation to the MRT, there is a case target that is usually negotiated at or around about the beginning of each financial year. They are anticipating that members will be

able to complete, let us say in the case of New South Wales, 1.38 standard cases a day, or 317 cases for 230 days worked. In Victoria it is slightly less: 310 cases for 230 days worked. There is also a pro rata in relation to the part-timers. On occasions some members, perhaps those who have come on board later than other more experienced members, given the case load as well, may not be able to constantly meet their productivity target.

**Mr Lynch**—It is a bit of swings and roundabouts. There is illness, there is personal tragedy and so on, and some years the performance does vary. But for 2003-04 overall the MRT achieved its best ever figure of 10,022 decisions, the year before that it was 9,714 decisions and the year before that it was 8,583. But you are quite right. That individual productivity does vary and that is something that the senior members of the MRT have a particular role in—to nurture better productivity from their members, mentor them and see where they are having problems. Some members are not lawyers and they need extra development or a change of a visa class that they find particularly complex. With business skill cases, for example, we try and reserve those for members with accountancy backgrounds or senior members who have had substantial experience in commercial conveyancing, solicitor work, trusts and so forth. That figure does vary depending on the case load the member has taken on and depending on, as Mr Karas has said, their expertise, how long they have been with the tribunal and so on. It is a range of factors.

**Senator BARTLETT**—It seems like we have been blending in MRT and RRT a fair bit as we go along, so I will try and do that. I want to go to some of the stats in the annual reports which were tabled not too long ago. With the RRT, you mention in your annual report on page 18 at the bottom that you expect that lodgements will increase because of the further protection visa process coming through, predominantly people from Afghanistan and Iraq. I note in your ‘Cases lodged by source country’ breakdown that you actually do not have Iraq listed. Does that mean that there have hardly been any but you are expecting a pile to come through?

**Mr Blount**—There are, as you know, a large number of Iraqi TPV cases to be processed by the department, so there is potentially a large number of cases which may come to us at some point. There are two factors governing how they impact on us: first of all the timing and the rate at which they are processed by DIMIA and, secondly, the outcomes, because obviously those cases that are finalised but approved by DIMIA will not come to us for review. Therefore we cannot make very confident or firm projections because obviously we cannot speculate with any confidence about the outcome of decisions that have not yet been made. So there is a potential there but what the actual impact will be is difficult to say. At the moment the numbers of Iraqi temporary protection visa holders seeking review of adverse decisions on further protection visas coming through to the tribunal have been relatively limited. I think they are of the order of about 60 or 70 a month at the moment. It is not clear to us whether that is the number which will be sustained or whether there will be a significant increase in that. We do not expect to see any decrease in that in the course of this financial year, we expect to see some increase, but what the timing and the level of that increase will be we really do not know, so we have to be prepared and flexible for what may be a range of numbers. As we mentioned earlier, our arrangements in recent times have been developed with an eye towards flexibility for exactly that kind of contingency.

**Senator BARTLETT**—You mentioned that in the previous financial year ending in mid-2004 the percentage of applications for judicial review increased from 27 to 36 per cent. Has that trend continued in the last six months?

**Mr Lynch**—I think it has been fairly static at those levels. We do have some statistics which might assist. Active applications as at the end of last calendar year totalled 3,181. I think in all there are in excess of 4,000 applications before the courts of all tribunal and DIMIA decision making and the refugee decision making of the RRT I think is just over 3,000. Those are before either the Federal Magistrates Court, the full court or the High Court. But those statistics would probably be better obtained from the department.

**Senator BARTLETT**—The set-aside rates went up in the last financial year compared to the year before. They doubled. Obviously the large chunk of Afghanis that were assessed on the basis of new country information that came in between the primary decision and tribunal assessment would have made a big impact on that, but I notice it also from other countries with smaller numbers. It is a basis, I imagine, but with pretty much all the source countries there was some degree of increase in set-aside rates: from Indonesia, Bangladesh, Sri Lanka and Vietnam as well as the ‘other’ category. That might assist in terms of you showing that you are independent of the department, I suppose, but is there any view you have as to what is behind that increase? Is there a concern about the adequacy of decision making?

**Mr Blount**—I think that the main aspect has been the higher proportion of cases out of some particular countries but there has also been some drift upwards elsewhere. I think that reflects the fact that previously there has always been a proportion of cases—I was referring earlier to the self-evidently unmeritorious cases where there is not much pretence of putting forward claims—that have been dealt with expeditiously by the department. We have overwhelmingly agreed with the outcomes on those, and that has been a component in the overall outcome. As those have fairly dramatically and significantly decreased, at least anecdotally—it is very hard to put a number on them—that would obviously reduce the number of unproblematic cases that flow straightforwardly through the system.

I suspect that that accounts for most of the other drift that you are referring to. Certainly the perception of members has been that the character of the caseload overall has been more problematic or substantive and that there are fewer of those very straightforward cases. In those circumstances you would probably expect to find some drift upwards in the set-aside rate. Historically, of course, it has varied a good deal over the years. In the past, even without the influence of the particular caseloads we have at the moment, the set aside from year to year has ranged from a low of about 7½ per cent to a high of about 13½ per cent in 1995-96. It is something that does vary from time to time with the components of caseload. The more problematic countries tend to result in more close calls, if you like, where, in the face of complicated situations, people come to different conclusions.

**Senator BARTLETT**—With the average time taken for finalisation, I should note for the record a fairly significant drop in the average time taken to resolve community cases. I note that in a positive sense and pass on my praise—

**Mr Blount**—Thank you, Senator.

**Senator BARTLETT**—and then add the ‘but’ at the end: but it is still fairly large—262 days for all cases. I guess splitting them as you have into community and those in detention—268—it is still a fair while although clearly a significant improvement.

**Mr Blount**—That is going down. The figure, as I mentioned earlier, for this financial year to date for the RRT is, I think, 23 weeks. If you multiply that by seven you get about 150 or something. In the same period in the last financial year—that is, the period which is seven months of the period reflected in the figures that you have there—it was over 40, which is certainly in line with that figure. What I am saying is that the figure for the last financial year has improved significantly. It has come down by probably about half in that period. When we come to you later in the year with the annual report covering the current financial year, I think you will find there is a very significant improvement over those 200-odd days, which I hope you will be able to comment on without having to have a qualification, because I think we will see that it continues to improve—and more dramatically than hitherto.

**Mr Lynch**—I wish to add to what Mr Blount has said in relation to your last question and the question before. It is worth observing that the quality of the representation of applicants is improving vastly on what it has been in the past. It goes to what Mr Blount was saying about the frivolous and unmeritorious applications—they have dropped off significantly. We have anecdotal evidence that some applicants are withdrawing their applications to the RRT when advised by staff that they can expect to have a decision within the next three to four months when they were expecting a delay of a much greater period on advice from their adviser. Having said that, we have a Queen’s Counsel turning up at some of our hearings. The additional evidence and the quality of submissions that are being submitted now is much improved on what it was. This requires a great deal more consideration and effort for the tribunal in exercising its inquisitorial powers. That leads to delays and so forth. That is an interesting development. Whether that is linked to integrity measures or not, I do not know, but if at the end of the day the quality of applications is improved, that is something the tribunals would welcome.

**Senator BARTLETT**—Finally, with the cases from people who are out in the community rather than in detention, I know you prioritise the detention cases, but is there any similar prioritisation amongst the people in the community between those that perhaps are outside the 45-day rule and have no work entitlements and those that do?

**Mr Karas**—We do try to complete the community cases within a time line of 118 days. Since July 2004 until the present, 82.6 per cent of all finalisations have been within that 118 days target for the community cases.

**Mr Blount**—We have a system of partial prioritisation which includes but is not confined to detention cases, in that detention cases have to be concluded within tighter time lines but there are other priorities which lead to the case being constituted quickly—within a matter of usually three or four days of getting the file from DIMIA. Those would normally be torture and trauma cases, Federal Court remittals and hardship cases. In the case of hardship cases it is a matter of the applicant or the adviser making a request to us. However, I should qualify that by saying that the significance of that prioritisation has become lower in recent times in that the advantage by being constituted within days now simply gives you perhaps at best a three- or four-week start on other cases, because cases are being constituted quite quickly,

whereas 18 months ago it would have been quite common for them to have waited perhaps six to nine months in the queue to get dealt with. That is no longer the case. So the prioritisation to get constituted quickly—to get to a member's attention quickly—still makes some difference, but it is a less significant difference, simply because the delays that are being overcome are shorter.

**Senator BARTLETT**—I will ask about the MRT statistics—and some of these questions I will ask of the department; they are probably more relevant to the primary decision end. Again, for the record I note the continuing downward trend in the length of time taken to finalise cases in last year's annual report. I hope the trend is continuing downwards—at that time it was 320 days. The category of visa refusals for partners now constitutes nearly 30 per cent of the lodgments. That has gone up quite substantially, possibly because some of the others are going down. So that is a large number of lodgments—close to 3,000 in the last financial year—and there is a set-aside rate of over 60 per cent for those. Obviously, I will ask the department about why that might be, but that is a very steady statistic over three years now. Is there any form of lesson from that quite high set-aside rate that you would try to send back to the department and the primary decision makers, to try and reduce the percentage of set-aside rate? I presume it improves your efficiency if you can reduce the number of appeals being made when you have such a high percentage in that area. The other visa category that has a high set-aside rate is that of visitor visa refusals. What does the tribunal do to try and bring those down at the primary decision maker end, or do you just leave that to the department?

**Mr Lynch**—It is probably not a primary responsibility of the tribunals to undertake that role. I am sure the department takes note of the outcomes in the tribunals' decision making. However, the tribunals' work is that of a *de novo* decision maker and merits review. The quality of evidence that is submitted often by the local sponsor and the range of representations and evidence produced is often substantial and sufficient to warrant a different outcome. Certainly that dialogue with DIMIA is a constant one of how each other's decision making impacts on the other organisation's workloads and quality. It is something that is of great importance to both the tribunal and the department's senior executive in monitoring outcomes in the tribunal. We have a valuable dialogue with DIMIA on cases of interest or concern to them and vice versa.

**Senator BARTLETT**—Could you give a brief reason, if there is one, why the time taken to finalise appeals for skilled and permanent business visas is so much higher than for the others? You have over 600 days, which is still down on the year before, which I guess is something, but it is a lot.

**Mr Lynch**—The priority that we have allocated to those visa categories is of the order of priority 4. We are reviewing our priorities at the moment, but those cases are the more complex cases and, as I mentioned earlier, they are normally undertaken by a senior member. The quality of representation with those is also quite high compared to other applicants' representatives. Very complex information is supplied, often overseas legal documents and certificates that need to be verified and so forth and that can protract the proceedings. The joint management board and the senior management group of the tribunals have asked for greater effort to be put into these cases. We have discussed taskforcing the senior members to

adopt only those cases into their daily work and let some of their other visa decision making go to other members. We think we will be making substantial inroads into those delay periods. You are quite right; they do take longer and that is something that we are aware of and are focusing on.

**Senator BARTLETT**—This is a question that crosses over both. I understand from some of your answers to Senator Kirk that you have a growing number of people taking cases across migration and refugee areas—is that right?

**Mr Lynch**—That is correct; that is developing, yes.

**Senator BARTLETT**—I am sure I asked this question before and you answered it, but I am interested in pursuing and developing it further. Given the statistics about all the set-aside rates for all the different categories of visa—I imagine the very higher ones of over 60 per cent are for a couple of categories and the lowest I think is 27 per cent for bridging visas and temporary business sponsorship—why are those so much higher than the set-aside rates for protection visa decisions where you do not get up over 13 per cent set-aside rates? Is it because you are more thorough with the refugee ones or are you getting more and more of the same people making the decisions on the appeals? It seems to stand out quite significantly that there is a lot lower set-aside rate for the protection visas than for all the other ones.

**Mr Lynch**—That is a very difficult question you have asked; it is a bit like comparing apples and oranges. Refugee status is a very complex subject matter, and determining whether persecution has occurred is perhaps a different exercise, requiring different skill sets in some cases but certainly different considerations and different levels of complexity of evidence—medical evidence in many cases, such as torture trauma evidence—against a visitor visa decision, for example, or perhaps even a bridging visa decision. The regulatory criteria are quite different, and it can be more readily ascertained as to whether they are met in the case of the MRT. That is not to say that that task is not complex; it is and it can be as challenging as a protection visa decision. I do not think it is an easy task to provide a satisfactory answer to you on why the set-aside rates, as opposed to the affirm rates, are greater or lesser on one tribunal or the other.

**Senator BARTLETT**—Thank you; that will do.

**CHAIR**—Thank you very much, Mr Karas, Mr Lynch, Mr Jones and Mr Blount.

[5.17 p.m.]

#### **Department of Immigration and Multicultural and Indigenous Affairs**

**CHAIR**—Could we have the department officers back, Mr Farmer, to continue with the previous questioning? Senator Bartlett is going to continue for a brief period in this area and then we will go back to Senator Ludwig.

**Senator BARTLETT**—I think in earlier questions Ms Godwin, I think it was, mentioned an MOU that is being negotiated with the South Australian government about the provision of and responsibility for health services for people in detention. I appreciate the joys of negotiating between state and federal levels of government, but it does seem to be taking a fair length of time. I know you said that should be concluded soon, but that is a fairly open-ended situation.

**Senator Vanstone**—If I could interrupt you there. There may be some finer points that come into that category, but the advice that I have is that the agreement on the appropriate contact point, while not contained in one document, is nonetheless in writing—that where we have got to so far is agreed and there are just some further refinements. So, what I see as being the critical point is: did we go to the right place? I think that is agreed, but officers might want to comment.

**Senator BARTLETT**—My final question, part 1, is a broader question for the whole portfolio: when is that going to finish and how is it going? That is being asked at the South Australian end as well. I think the more immediate question for this situation is: if that MOU had been concluded, could some of the problems that arose have been avoided—obviously, not in terms of identity but in terms of disputes about health care?

**Mr Davis**—Firstly, the MOU process we have in South Australia is an umbrella MOU across all areas of health. Within that there is an area associated with mental health, and in the area of mental health we have agreed protocols. In the area of mental health we already have agreed protocols with the South Australian authorities. They were sent to us, as agreed, in September. There is some fine tuning, some words here and there, but the processes, the contact points and the arrangements are agreed. There are broader issues as well as mental health issues associated with the broader MOU and that is partly why that has not been signed. But the position on that is also complicated by the South Australian government having restructured its health areas within its own area of responsibility. The MOU was sent to them as something that we were satisfied with and ready to sign in July. It has been with them since that period, awaiting their response, but the restructuring of their own internal arrangements has perhaps contributed to it not progressing from that point.

So from our perspective the MOU is well advanced. We are comfortable with and ready to sign the umbrella MOU on health services broadly with them at any time. If it was available and they had signed it today, I would sign it today. The health protocols on mental health which are going to form part of that have also been agreed with the specific mental health area of the South Australian authorities. It is true that there are some further refinements on process, but that is more around wording; it is not about the contact points or the broad processes. You asked whether it would have made a difference if it was signed or not signed. My view is that it would not have made any difference. The arrangements and contact points are clear and if we had actually signed the document rather than being where we are right now, I feel it would not have made any difference.

**Ms Godwin**—Could I add one thing? Senator, you asked whether it would have made any difference to the disputes that arose.

**Senator BARTLETT**—I think I said ‘controversy’, but anyway.

**Ms Godwin**—Okay, sorry. I thought you said ‘disputes’ about the arrangements. From my reading of the material, and clearly I have not spoken to everyone involved, but from reading about the various steps that were taken, the issue was not about the procedures; the issue was about the appropriate assessment pathway, if you like. Given that inevitably mental health issues are always complex, and given that those discussions were between health professionals at Baxter and health professionals in the state government agencies, I am not

sure that it is fair to characterise it as ‘disputes’. It is more about professional discussions about the appropriate way to proceed. There may well have been differences of view about that, from a professional perspective, but I do not think that the protocols and procedures as such were the issue.

**Senator BARTLETT**—Regarding the identity checking of people—obviously the sorts of things that were done with Ms Rau, and I think you have outlined some of those in earlier questions—I have had it suggested by somebody who appeared to know what they were talking about that, given that she was a former flight attendant with Qantas she would have had an aviation security identity card, with photos and such, which would have been on various databases at a federal level. Is checking those sorts of things part of what you do when you are unsure about a person’s identity, or are there some rules that prevent you from doing that?

**Ms Godwin**—Firstly, I am not aware of the databases that you are referring to and, secondly, I do not think there would have been any reason to check them.

**Senator BARTLETT**—If you have got someone who you are locking up for a long time and you do not really know who they are, what lengths do you go to and how wide a net do you send out there?

**Ms Godwin**—Clearly, we have got an obligation to try to pursue lines of inquiry but we have also got privacy obligations and we also do not have unfettered access to any source of information that anyone in Australia might happen to hold. We cannot just go digging around in all that sort of stuff.

**Senator BARTLETT**—What about within federal government?

**Ms Godwin**—If I could make the third point, there needs to be a reason to think that a particular source of information might be relevant. We have someone who does not mention that she was formerly a flight attendant. We have a different name et cetera. I have no idea what the status of that database is but there would certainly have been no basis for checking that.

**Senator NETTLE**—I will pick up where I finished off before the break when we were talking about psychiatric assessment early on in the process. What was the date of the first psychiatric assessment for Cornelia Rau?

**Ms Godwin**—The first psychiatric assessment she had, as far as I am aware, was the one that was undertaken while she was in Brisbane. That was her actual admission as an inpatient for that assessment. I think the date was 20 August.

**Mr Davis**—She was admitted to the Princess Alexandra Hospital on 20 August. She was there for six days. She was discharged on 26 August. The date that we have for the assessment is 26 August.

**Senator NETTLE**—So four months after she came under the care of the department, she received that first psychiatric assessment—on the date that you mentioned.

**Mr Davis**—Yes. I do have a record of a psychiatrist visit on 10 August, which I believe was a precursor to her admission to hospital, but I do not have any record of medical support services—psychologists or psychiatrists—before that. That would be something that the

Queensland corrections authority would have but we do not have any records prior to 10 August.

**Senator NETTLE**—For any psychiatric assessment to have occurred, would your permission had to have been sought? Is it possible that the Queensland Department of Corrective Services could have carried out their own psychiatric assessment without seeking your permission?

**Mr Davis**—Technically I do not know the answer to that but I know in this case it was a joint process. They and we discussed the arrangements. I do believe we had a role in the arrangements for her placement for the assessments and the process into hospital. That is what happened in this case. I do not know whether it was approved by us per se or whether that is legally required but in this case we cooperated and worked with the Queensland corrections authorities.

**Senator NETTLE**—Given that this process for the August dates was a joint process, as you have described, there would be no reason to assume that Queensland corrections would have done something separate to that—not part of a joint process prior to that.

**Mr Davis**—I would be surprised if we did not know of significant processes but, in terms of day-to-day medical care, we do not have any records.

**Senator NETTLE**—Fair enough. The information that we have is that, as a result of that assessment carried out on 26 August, Cornelia Rau was—I will use the words I think the minister used—not assessed to meet the criteria for a mental illness.

**Senator Vanstone**—If the officer has it there he can give it to you straight from that instead of telling—

**Mr Davis**—The words are: does not reveal the diagnostic criteria for a mental illness.

**Senator NETTLE**—Can you explain for me whether that was criteria for remaining in care at an acute inpatients psychiatric unit or whether it was criteria for having a particular type of psychiatric illness.

**Ms Godwin**—Given that none of us at the table is a doctor, I need to say that we are reflecting what we have been given. My understanding is that doctors, in trying to diagnose mental illness, work to an agreed set of descriptions, definitions, criteria et cetera and therefore the reference in the assessment would have been an assessment of her against those criteria. Hence the reference that she did not meet the criteria for a mental illness. That is not just about being in care; it is about whether she was regarded as having an identifiable, diagnosable mental illness at that point.

**Senator Vanstone**—For the reason that Ms Godwin indicated, none of us here, to the best of anybody's knowledge, is a medical practitioner or has any training in that area, and it is difficult to give you answers where we are happy to say that is the case. That is why Mr Palmer will be provided with such medical assistance in relation to mental health issues as he requires.

**Senator NETTLE**—Is it possible for you to get for us the criteria that measurement was done against? I do not want to know any of the detail, but you said, Ms Godwin, that your

understanding is that there is one set of criteria. I have a similar understanding, and I want to know whether we are talking about the same set of criteria. Is it possible to get that for us?

**Ms Godwin**—As I understand it, there is a published document. I am trying to be careful here. I am not a doctor. If we can get the document and it is relevant—

**Senator Vanstone**—I think there is a risk there. There may be such a document, but, if by giving you that, the department is asserting that Queensland authorities used that, it is a bit difficult. I think we really have to go back to Queensland authorities with respect to that. Ms Godwin has given you a genuine assessment of what she thinks. It apparently fits with yours. It seems rational, but the assessment was not done by us; it was done by specialists in that profession. By way of hearsay, it has been reported back to me through our officials that officials in South Australia indicated that the people who did the assignment or who signed it—I do not know whether more than one gets involved in these things—is a very highly respected person in that field. But I do not think we speak as to what was in his or her mind at the time vis-a-vis a set of criteria.

**Senator NETTLE**—I am not asking you to—

**Senator Vanstone**—The best we could do would be to ascertain whether the relevant college or body has a set of criteria that one expects to use in those circumstances and say, ‘This is generally what one expects to see it reported against.’

**Senator NETTLE**—I have an understanding that there is one set of criteria of which I am aware, which is the most common set of criteria used by psychiatrists working in Australia. I want to know whether the set of criteria that you are talking about is the same set of criteria. If you could get for me those criteria, I would appreciate it.

**Senator Vanstone**—That is the point that I have been making to you. The criteria Ms Godwin is referring to are the criteria that she generally has the view are being used, but that is not assuming that anyone else can put to you that those are the criteria that the Queensland people used. We are not specialists in that field and we cannot speak on their behalf.

**Senator NETTLE**—Yes, but you can check with them what criteria they were using.

**Senator Vanstone**—That is another point. If you are going to what are the general criteria that you have an awareness of that are publicly available, we could get that as easily as you could. But, if you are going to what we can get from Queensland, I think we will have to take that on notice.

**Senator NETTLE**—I am more than happy for you to take that on notice, but I am seeking an answer to that. Did the report from the hospital provide for a treatment management strategy or follow-up strategy suggestion? Did specific recommendations come out of that report from the treatment?

**Mr Davis**—Not that I am aware of, no. The assessment was an assessment.

**Senator NETTLE**—I will move now to the initial psychiatric assessment of Ms Rau once she was at Baxter. Was there a set of treatment management strategies or follow-up suggestions coming from that assessment?

**Mr Davis**—Yes, the psychiatric assessment at Baxter occurred on 6 November, just a day after a month she had been at Baxter. The decision was made not to detain her under the South Australian Mental Health Act. Diagnosis was unclear and options identified for follow-up—if you like, recommendations—were further assessment in a psychiatric facility or to continue to monitor her behaviour while in detention. Indeed, based on the actions taken by our service provider and the medical people at Baxter, my view is that they essentially followed both options, because in parallel with pursuing referral to Glenside through the agreed process they also continued to monitor her behaviour. Indeed psychologists, nurses and others visited her while she was at Baxter on a fairly regular basis, nurses almost daily and psychologists reasonably regularly. So those were the two recommendations and my view would be that both were followed. And it was expressed as an ‘or’—the psychiatrist did not say, ‘Do both,’ he said, ‘These are the options,’ and they did both.

**Senator NETTLE**—I understand that on 10 November there was a request for, as you describe it, a further psychiatric assessment of Ms Rau by psychiatrists at Glenside. I also understand—correct me if I am wrong—that that request was withdrawn on 16 November.

**Mr Davis**—No.

**Senator Vanstone**—I am pretty sure that is not right.

**Ms Godwin**—It was reported in the newspaper that that had been withdrawn.

**Senator Vanstone**—Add that to a long list of things that have been reported in the newspapers.

**Senator NETTLE**—And this is your opportunity, Minister, and I am giving you that opportunity.

**Senator Vanstone**—It is just the start of the opportunity.

**Ms Godwin**—We have queried that particular comment extensively with relevant officials and staff at Baxter. There is absolutely no record of it being withdrawn and it is our understanding that the South Australian health authorities also do not have a view that we withdrew it.

**Senator Vanstone**—It might help if we get the date. On what date did you say the paper alleges it was withdrawn—the 16th?

**Senator NETTLE**—That it was made on the 10th and withdrawn on the 16th.

**Senator Vanstone**—We might have here the date on which all the material was sent in order to help people to make an assessment. Senator Evans was asking before about whether we had permission to send. He wants to pursue that issue. There was a medical report from the Princess Alexandra Hospital, the psychologist’s report and the report of the psychiatrist who said there were these two options, and some other bits and pieces; I think a general incoming admission assessment by the nurse, that sort of stuff. It was all faxed on, as I recall it, the 17th.

**Mr Davis**—That is correct; on 17 November.

**Senator Vanstone**—So, unless there is a conspiracy theory that someone constructed a facsimile a day later in order to make it look like something they had said they were doing and had not done, the sending of the material to Glenside on the 17th would tend—

**Senator NETTLE**—Minister, I hope you are not suggesting that I am proposing that. I am simply asking you questions—

**Senator Vanstone**—No, I am not suggesting you are proposing that at all. I am just looking at you because you are asking questions. I could look away and then you would think I was being rude. I have to look somewhere.

**Senator NETTLE**—That is all right. Thank you for making that clear.

**Senator Vanstone**—Believe me, when we have finally got to the bottom of what happened to Ms Rau and whether we could have done anything better or did anything we should not have done, and possibly before then, I will be looking quite directly at some people quite a lot more closely than I am looking at you now.

**CHAIR**—If all else fails, Minister, look at the chair.

**Senator Vanstone**—Fascinating as you are, Senator Payne, it is just rude not to look back at someone who is asking you a question.

**Senator NETTLE**—All right. I will just go on with this line of questioning. It is also reported—and here is another opportunity—that there was a renewed request for urgent psychiatric assessment in early January.

**Senator Vanstone**—That is certainly true.

**Mr Davis**—That was a renewal of and follow-up to the original request rather than a brand-new request. It was a follow-up with a further letter, and where the further material went I do not know. But certainly there was a further follow-up letter from the psychologist in Baxter to Glenside—it was following up the earlier referral.

**Senator Vanstone**—In fact, the correspondence—and I do not know whether it went by email or facsimile—that I have seen actually starts by saying, ‘We refer to our telephone conversations of early November and the material faxed to you on such and such a date.’ It goes on in the next paragraph to refer to the fact that the woman is not getting better. As I recall it, it did not say that she was getting worse. That was one of the things about monitoring—‘seek an assessment and monitor’. It continued: ‘This woman is not getting better with behavioural modification—that is clearly not the case. Could you please advise the appropriate course of conduct with respect to this woman.’

**Senator NETTLE**—Minister, what do you mean by ‘she is not getting better with behavioural modification’?

**Senator Vanstone**—There was a suggestion that she should be monitored to see if she got better and there were some behavioural issues which were not resolving themselves. So she was not getting better.

**Senator NETTLE**—I was just checking; I was not sure whether you meant that there was a process which was behavioural modification or whether you were talking about monitoring her behaviour—

**Senator Vanstone**—There were two aspects: from monitoring of her health by the nurse, she was not getting better. She was in Red One compound, I think, at that time in January because there were some behavioural issues. Red One is another compound, where there are fewer people, and it is divided into two or three sections. It is quite separate from the management unit where someone will go if there is a serious behaviour issue, self-harm risk or something like that. My advice with respect to that is that she was in the management unit on two occasions: one for a short period of time and one for a longer period of time.

**Senator NETTLE**—Do you know how long each of those times was?

**Senator Vanstone**—The officials can give you those dates and times.

**Senator NETTLE**—Sure.

**Senator Vanstone**—Apparently, as I have been advised on one occasion, when the suggestion was made that she be moved she did not want to be moved. So people let her stay there and she was eventually progressed backwards—

**Senator NETTLE**—I remember you talking about that.

**Senator Vanstone**—Backwards physically to Red One—not backwards in any other sense. But there is a process in Red One to try and shift people back into the family compound, and that is a generally agreed program of what are appropriate behaviours. People spend a longer period of time in the yard or wherever they want according to that behavioural modification. The advisers can give you more advice on that. But the psychologist was writing in the context of her not getting any better and her behaviour changing. That is in the context of the things being exhibited that you might be concerned about—this is how I read it—have not changed, have not got better. So it is still the same: ‘We still have the same concerns; could you please advise.’

**Senator NETTLE**—Did you want to give us the dates for that?

**Mr Davis**—She was in the management support unit in the Baxter facility twice, the first time for a period of four days and the second time for a period of eight days. In between she spent time in both the red compound and the family compound. When she was initially inducted into the centre she was placed in the family compound and after a period of time, in light of her behaviour, she was moved to the red compound. She was then moved into the management support unit for four days and she went back to the red compound and spent some more time there and in the family compound, and then she spent another eight days in the management support unit a little bit later. Both of those times in the management support unit were during November—one in the first half of November and the other in the latter part of November. After she left the management support unit at the end of November she spent the remainder of her time in Baxter in the red compound.

**Senator NETTLE**—In Red One. Can you tell us the period of time that she spent in Red One?

**Mr Davis**—In total, I have calculated she was in the facility—and I have calculated this myself, so it may need a systems check—for 121 days and in the red compound for 94 of those days.

**Senator NETTLE**—Going back to the early January request for assessment, was that from Mr Micallef, the resident psychologist?

**Ms Godwin**—The letter on the fourth renewing—sorry, your word ‘renewing’, in our view following up—the earlier referral was from the psychologist. After the letter on the fourth there was a series of phone conversations which, as I understand it, involved the psychologist, the doctor at Baxter and the mental health staff at Glenside talking through the issues around the case, the management of the case and what might be the appropriate steps to take. It was at that point that it was again decided that it was not appropriate to section her under the Mental Health Act.

**Senator CHRIS EVANS**—Did both the doctor at Baxter and the psychologist have the power to have her sectioned?

**Ms Godwin**—As I understand it, the psychologist does not have the power; only the doctor has the power.

**Senator CHRIS EVANS**—So the doctor at Baxter had the ability, if he or she was seriously concerned, to have her sectioned.

**Ms Godwin**—Yes, that is right. As I understand it, they are authorised under the act but, as we have discussed before, it is a serious step and there are requirements under the act.

**Senator CHRIS EVANS**—The question obviously gets raised because you were concerned at the lack of response. The evidence you have been giving is that you had to follow up and you had had reports that her condition was not improving. There was concern. You were obviously having management issues. You were moving her back into the management support unit. There was obviously a sense of things not improving and concern. I just want to be clear. It seems that there was a reliance on the South Australian medical or psychiatric service advice on these matters but the sectioning was an option open to the doctor at Baxter.

**Ms Godwin**—Yes, that is true. But, as I say, we have talked about the protocols that have been agreed between the department and the South Australian health department mental health authorities, and it is clear in those protocols that the appropriate way to proceed in these sorts of cases is with careful consultation. They would not expect us, I think, or the health professionals at Baxter, to proceed with such a serious step without consultation, and that is what took place. Indeed, because the authorities at Glenside are specialist psychiatrists and the doctor at Baxter at that point was a GP, that would be a situation of discussion and taking proper guidance from a more senior professional.

**Senator Vanstone**—For clarification, I think the doctor at Baxter is a GP who normally works in Port Augusta and is contracted to do a clinic at Baxter and to be available for other emergencies and that sort of thing. Is that correct?

**Ms Godwin**—Yes.

**Senator Vanstone**—I think it gives—I hope it gives—the community some sort of comfort, in the context of people who might have more serious issues, that we do in fact have a protocol that ensures that we take advice from other people. One of the media reports that I have looked at, for example—and this is obviously loaded, from someone who believes that

everyone who is ever touched by Immigration is destined to never be mentally healthy again—said something to the effect of, ‘I suppose they become inured to that sort of thing and therefore don’t spot a more serious problem.’ It is precisely because of that attitude that some people promulgate that I think it provides a degree of comfort that, where there is a concern expressed by a GP and a psychologist—both of whom I think work outside of Baxter but do contracted work inside, so they are not solely working 24 hours a day in a detention centre—even they, who come from outside and therefore have that fresher approach of outside and a perspective that you could keep because you also deal with people who are not in detention, when they have a concern, should follow this protocol of getting advice from the people who are the ultimate specialists in this area. It gives me a level of comfort that that is the process that is agreed on.

**Senator CHRIS EVANS**—I guess that is what Mr Palmer is going to test, isn’t it?

**Senator Vanstone**—Yes, he is going to see whether the process actually worked.

**Senator CHRIS EVANS**—And whether we should take comfort.

**Senator Vanstone**—Whether it worked. But that is another issue from whether it is the appropriate process. There are the two issues. One is whether that is the appropriate process, and I am saying that I have a degree of comfort from it. There is another issue as to whether it worked on that particular occasion.

**Senator NETTLE**—Ms Godwin, there has been reference a couple of times to protocols. We were talking before about the memorandum of understanding and the mental health component to that, the clinical pathways. Are protocols and clinical pathways the same thing?

**Mr Davis**—They are the same thing.

**Senator NETTLE**—I was just checking that.

**Ms Godwin**—I am always reluctant to do this, but I will just clarify one point the minister made. The GP works both in the Port Augusta community and at the centre. The psychologist was full time—

**Senator Vanstone**—Oh, was he?

**Ms Godwin**—at the centre.

**Senator Vanstone**—That only confirms my comfort that there is a protocol to go elsewhere, which is not to express a lack of confidence in him—or her, as the case may be.

**Senator NETTLE**—Does the behaviour modification program that you were talking about before involve medication and was that the case for Cornelia Rau?

**Mr Davis**—The information we have available is that Ms Rau while at Baxter certainly got no prescribed medication because the doctors did not feel in a position to prescribe medication. It certainly was not used in any behavioural modification process. The information that we have—and this will obviously be subject to confirmation through Mr Palmer’s inquiry—is that she received no medication while she was at Queensland corrections or with the police either. That is our information. There were certainly no prescribed medications at Baxter at all.

**Senator NETTLE**—We were talking about Mr Micallef and the early January psychological assessment. Is it accurate to say that shortly after Mr Micallef was involved in that additional request he left his employment at Baxter detention centre?

**Ms Godwin**—It is true that he finished up there, but again I think a false impression has been created by some media reporting here. Our advice is that he actually tendered his resignation in mid-November, giving eight weeks notice in order to provide time for a replacement to be employed and for an appropriate handover to be conducted. In the event, the new psychologist started work I think four days before he finished so that there could be a proper handover. My understanding is that he has gone to another employer, working part time so that he can progress his studies as well. So it is true that he is not there anymore, but just in the normal changeover of employment.

**Senator NETTLE**—Mr Micallef is reported as having said:

Under the terms of my employment contract at Baxter I am prevented from speaking to the media.

Do you have any comment about that?

**Mr Davis**—Mr Micallef was employed by one of the subcontractors to our contractor. The terms of their employment are a matter between that individual and the subcontractor. We have no information or detail on that, nor do we have a copy of any of his contracts.

**Senator NETTLE**—If it is accurate, as he has stated in the media, that he is prevented from speaking with the media—and this might be something for the minister; I do not know—would he be able to speak with Mick Palmer as part of the inquiry?

**Mr Davis**—Mr Micallef has already indicated a willingness to speak to Mr Palmer in the course of the inquiry, so I assume that will happen.

**Senator NETTLE**—And no objection has been raised by his employer?

**Mr Davis**—None whatsoever. Indeed, all of the staff of both the contractor, GSL, and the subcontractors involved in this case will be made available to the inquiry. The chief executives of all three organisations have asked their staff to cooperate fully, openly and honestly with the inquiry. So I have no doubt that they will have no objections whatsoever. Indeed, they will encourage Mr Palmer to talk with their employees as he needs to.

**Senator CHRIS EVANS**—Your answer struck me as a bit surprising. Are you saying that the department has no conditions on contractors about privacy, confidentiality or treatment of the employees employed under the contract with the department? I find that quite surprising.

**Ms Godwin**—No, we are not saying that. In fact, the contract, as far as I am aware, explicitly says that the contractor and their employees are bound by relevant legislation to do with privacy and so forth. I think the point Mr Davis was making was that we do not know what the precise terms of Mr Micallef's employment contract were.

**Senator CHRIS EVANS**—I think the impression they created was that there were no conditions. That is why I thought I had better jump in—I would be very surprised if that was the case. I think Senator Nettle was really after, first of all, from you an understanding of what obligations DIMIA and the Commonwealth place on their contractors and their staff in terms of privacy and confidentiality.

**Ms Godwin**—We can give you that because it is all in the contract, which is publicly available. I was going to add in relation to Senator Nettle's questions that, almost regardless of the precise details of Mr Micallef's contract with his specific employer, I would have been very surprised in any event if he spoke to the media, because of the privacy and other considerations which are, as I say, part of our contract with the service provider.

**Senator NETTLE**—The comment he made to the media about not speaking with them was in relation to his contract, not in relation to privacy issues.

**Ms Godwin**—I understand that. I was just going to say that, almost regardless of that, I would also have expected—and indeed I think this would be his view as well—that privacy would have prevented him in any event.

**Senator NETTLE**—I wanted to move on to talk about the Immigration Detention Advisory Group. I understand that they visited Baxter detention centre on 16 December.

**Mr Davis**—I am sorry, Senator, I was looking at the contract to try and find the clauses for you.

**Senator NETTLE**—Feel free.

**Mr Davis**—I will perhaps reference clause 11.3 in the contract. It is on our web site if anyone would like to look at it, but I do have that here if we need to go into it further.

**Ms Godwin**—Clauses 11.3 and 11.4 are both relevant, because 11.4 deals with the situation where someone is no longer employed but nonetheless still has privacy obligations.

**Senator NETTLE**—Thanks; I might leave that.

**Mr Davis**—Sorry, I was not listening to the question. I apologise.

**Senator NETTLE**—I was asking about the Immigration Detention Advisory Group, which I understand visited Baxter detention centre on 16 December—is that right?

**Mr Davis**—Yes.

**Senator NETTLE**—I understand that a Catholic priest who regularly visits Baxter raised concerns with that group on that occasion about a mentally unstable female in Red One compound who was causing a great deal of distress to other Red One detainees. I wanted to ask whether the Immigration Detention Advisory Group passed that information on to the department and the minister.

**Mr Davis**—The Immigration Detention Advisory Group did visit the centre on 16 December. They had a closed meeting with a number of religious representatives. I understand that the gentleman you are referring to was there. There was no DIMIA officer at that meeting. Following that meeting, they did ask for a briefing on Ms Rau, or Ms Brotmeyer as we knew her then, and our DIMIA manager at Baxter gave them a briefing on her situation and her case. That is as far as I have in my records. I am not aware of further follow-up or issues. Mr Fleming was at the centre at the time with the group. Whether or not the Immigration Detention Advisory Group have raised any matters with the minister following that, I am not aware of.

**Senator NETTLE**—We might need to wait until the minister comes back for that one.

**Mr Fleming**—I was at that meeting at which IDAG raised the matters following. Mr Davis's account is accurate.

**Senator NETTLE**—Are you aware of whether or not that information was passed on to the minister?

**Mr Fleming**—I am not aware, no.

**Senator NETTLE**—We will have to wait. There was some discussion before about non-government organisations being approached to take over the care of Ms Rau. I know that the Australian Refugee Association do similar work and took over the detention of the Baktiaris. Were they approached at any stage to take over the care of Ms Rau?

**Mr Davis**—They were the organisation we approached—and I mention before 21 January. Alternative detention arrangements require a lot of work and a lot of dialogue between us and NGOs. That was the first contact we had made with them on the matter. I believe there was a subsequent phone call a few days later with them. Like in all cases of alternative detention, they were asking questions about the care needs and the situation of the person we were asking them to consider. I certainly have no indication of any unwillingness from them to assist us. There were tentative steps to make contact with them and, from our perspective, look at options that might be available as we moved forward.

At that stage of the process she was in the facility. As we have said before, her behaviour was not getting better. It was not getting worse, but we had an open mind as to whether an alternative detention arrangement was the appropriate way forward at that point. That is why we made the contact to at least alert them to her case. I guess we would have then followed that up in due course. They are not things you organise overnight. I can only say to you that I am aware of two contacts on 21 January and a subsequent contact with them and, clearly, they asked us to provide more information on what we were after before we could move any further forward. That is where we were when subsequent events happened with her identity and so forth.

**Senator NETTLE**—Why was the department at that stage considering alternative detention?

**Mr Davis**—I guess, like all people in our care, we felt that we had someone who had some behaviour that was difficult to manage within the facility, and it was not appropriate in our view to move her into the residential housing project because of potential for that behaviour to become difficult in that environment as well. We were then just looking further at our options. We have had a number of individuals and families placed in alternative detention before, some of them very difficult with significant medical issues and others for whom that is less of an issue. We felt as we moved forward that it was an option worth exploring. It seemed to us an appropriate thing to look at in the circumstances we were in at that time.

**Senator NETTLE**—So the behaviour that Ms Rau displayed meant that alternative detention was a consideration.

**Mr Davis**—Yes.

**Senator NETTLE**—But you have described the behaviour Ms Rau displayed as not fulfilling the criteria of mental illness and therefore moving to a psychiatric—

**Mr Davis**—That is a medical judgment and was on a parallel pathway. What I am saying is that within the Baxter facility GSL, our contractor, had tried a number of times to move Ms Rau back to the family compound. Due to her behaviour, her refusal to go and a number of factors, that was not achieved. I said that she was in the Red One compound from the end of November through to her release from the facility. There are records of at least four occasions where consideration has been given to moving her back and for one reason or another it has not happened. I guess in those circumstances it is clearly the case that, if moving back to the family compound where the other females and a couple of children are at the moment in the facility or the residential housing project is not an option, like we have done in many other detention cases, alternative detention is an option that we will start to explore or look at. What sort of alternative detention was appropriate for her is something that would take some time to work through and establish. I am not saying that we could instantly move her into the community and ARA could take care of her; it was more a situation where we had opened a dialogue with them that we had someone who we had some care concerns about, someone for whom we thought that perhaps an alternative detention arrangement was the way to move forward to manage her individual needs. That is really how we see it.

**Senator NETTLE**—So do you see the option of alternative detention as a midway step between somebody who may be exhibiting behavioural symptoms that did not fulfil the criteria of a mental illness or a psychiatric assessment but, as you describe, created behavioural issues for you within the centre—

**Mr Farmer**—The officer has already made the point that they are really quite different things. One involves an assessment by medical professionals and leads down a certain path. The other is our ongoing responsibility to look at the care and other needs of detainees. Our responsibility is exercised in many cases where there is no psychiatric or other assessment or question in train. We are simply looking at the people in our care and trying to come to a decision, if there are particular problems, about what is the appropriate way of dealing with them.

**Senator NETTLE**—It strikes me that there is somebody with particular behavioural issues that are creating issues for you in the management of her within the detention centre, so you are using alternative detention as a way to deal with a behavioural issue that you are having difficulty managing.

**Mr Farmer**—I think that is casting it in a quite narrow light. I do not think that our management problems are the full story. We are looking at people who have particular needs and particular care issues and assessing whether those needs can be best addressed in the detention facility and, if so, in which part of that facility, in the residential housing project or in another way—for example, through alternative detention arrangements.

**Senator NETTLE**—I made that comment because that is how that strikes me. If that is not the case, you have the opportunity to say, ‘That is not the case; that is not how we were using alternative detention.’ That is why I made that comment, because that is how it strikes me.

**CHAIR**—Mr Farmer had done so.

**Mr Farmer**—I think I have said it in as clear English as I can manage. I can say it again.

**Senator NETTLE**—No, that is all right. I have some more questions and I am happy for them to be taken on notice if they need to be. We have some understanding of the presence and availability of a doctor, psychologist and psychiatrist at Baxter. Can you take on notice the availability of that form of care for other detention centres? The psychiatrist comes once a month at Baxter. There is a resident nurse, doctor and psychologist—is that right?

**Mr Davis**—There are GP clinics every midday during the week but not on weekends. There are on-site nurses 24 hours during the week and some of the weekend. There are on-call nurses and on-call doctors at all times—24 hours. The visiting psychiatrist visits Baxter on a regular basis. I do not have details on how often he visits other facilities. We do access state mental health facilities and specialists in every state where there is a detention facility and also other specialists. It is not just psychiatrists whom we access. We access obstetricians and all sorts of specialist services. Some of those are contracted services specifically by the subcontractor, some are state health services and some are private services. So there is a range. Psychologists are also available. My understanding is that, if they are not on-site, they are available for access. For a facility like Perth, I am not sure whether we have an on-site psychologist or not but in the larger centres we do.

**Senator NETTLE**—I do not need that information right now. We have some picture of the medical staff for Baxter. Can we get it for the other ones just so that we have got that comparison?

**Ms Godwin**—In the past we have often provided, in a sense, a table of available services. We could draw something up on each of the centres for you on notice.

**Senator NETTLE**—That would be helpful; thank you. Some of the things I was interested in are whether interpreters are available for assisting the health professionals and the amount of time that they are able to spend with detainees. If there is a psychiatrist, for example, visiting Baxter once a month, and if there are a large number of detainees that need to see that psychiatrist at that time, there may be a waiting period for those people. I would appreciate getting some indication of that. Who has responsibility for implementing the recommendations that those medical professionals may make?

**Ms Godwin**—In some respects it depends what the recommendations are. If it is a recommendation for a specific form of treatment, medication or something of that sort, that would normally be supervised and administered by the nurses on-site. If it is a recommendation for a follow-up assessment somewhere—not necessarily a psychiatric assessment—as I understand it, at Baxter anyway, there is a health services manager. She or he would normally take responsibility for ensuring that appropriate referrals are passed on and those sorts of things. It would depend a lot on what the recommendation was. Sometimes the recommendation goes to diet, activities or a whole range of things that might happen in the centre. So the responsibility would depend a bit on what the recommendation was. We can try to pull together a more considered statement on that if that would be helpful.

**Senator NETTLE**—Thank you, yes. I will ask about another example; I do not know if you will be able to elaborate on it. As you explained the medical staff available at Baxter, there is a nurse available but not a psychiatric nurse. If there are psychiatric

recommendations, who of the ongoing staff at Baxter, which does not include a psychiatrist, would have responsibility for implementing those psychiatric recommendations?

**Mr Davis**—We can confirm this, but my understanding is that a psychologist would normally deal with pursuing such recommendations, but in consultation with the health services manager and the other medical staff.

**Senator NETTLE**—When we were talking before about protocols and working with the relevant South Australian mental health authorities, I am aware of an example of a particular Iranian detainee at Baxter who through his lawyer asked for an independent psychiatric assessment. That was refused. But in the space of two weeks and eight court appearances, following an informal request from a judge, the detainee in question was transferred to Glenside hospital for assessment, where he remains. I understand that a number of psychiatric diagnoses have been made for that individual, including post-traumatic stress, paranoid psychosis and depression, and that he has remained in Glenside hospital for nearly two months. To me, that appears to suggest that his admission was well justified and that the care is being provided.

That does not strike me as a good example of the protocols working well, to go through two weeks and eight court cases before a judge's informal request leads to that person being transferred to Glenside hospital. To me that is not a process that is working well. Do you want to make some comments in relation to that? They can be more general, rather than about that case. In that case, as I understand it, an independent psychiatric assessment was requested. That was refused. Is that the standard procedure if an independent psychiatric assessment is requested? Do you want to comment on that?

**CHAIR**—Senator Nettle, you are making it slightly difficult for the officers and the committee because we were pursuing questions in relation to Ms Rau. You branched out in terms of the processes and protocols and we let those go, but if we are now going to move into other specific cases—and this committee has this experience all the time—it will be difficult for the officers to answer whilst maintaining people's privacy when dealing in a very open environment. I was hoping we would be able to conclude the questions in the area concerning Ms Rau and those processes this evening, and then move into the program as it is published. Do you have any more questions concerning Cornelia Rau?

**Senator NETTLE**—I have more questions that relate to the protocols that we have been discussing. I have got some questions that do not relate to an individual case. I could ask some of those questions.

**CHAIR**—Perhaps we could do that and then we will break at 6.30 and have a brief private meeting when the committee resumes at 7.30 to discuss the rest of the evening. Thank you, Senator.

**Senator NETTLE**—When a detainee is placed in the care of the South Australian health services, I presume, and I think I have read this, that the South Australian department charges a fee for that. Who is liable to pay that fee? Is it GSL, DIMIA, PSS?

**Mr Davis**—The department pays for those sorts of fees.

**Senator NETTLE**—At the standard rate with the arrangements that you have?

**Mr Davis**—Yes.

**Senator NETTLE**—Are there any penalties for GSL or for PSS in the transfer of detainees to particular health facilities outside Baxter which would require a fee? This is coming from a report in the *Australian* on 11 February and a quote from the head of psychological medicine at Adelaide Women's and Children's Hospital. The quote says:

To request the removal of a detainee to Adelaide risks bad publicity, expense and not meeting Immigration Department performance targets.

That is the part I am interested in. Are there performance targets? In the relationship between DIMIA and GSL, the provider of these services, are there components of that relationship that deal with any performance targets, financial penalties or clauses that relate to the provision of that sort of care?

**Ms Godwin**—Without knowing precisely what the person was referring to, I think both Mr Davis and I are at a loss. Frankly, the whole construct of the contract, if you look at it, is around identifying and meeting the needs of detainees. To my knowledge, having been involved in the development of the contract—and I will ask Mr Davis to comment in a minute—there are no targets that would preclude someone being transferred for treatment; quite the reverse, in a sense. As I say, if we thought someone needed treatment and it was not being attended to properly, that would be a matter of concern to us. It is true that from time to time there are professional differences about what is the appropriate treatment. If one doctor says, 'X should happen,' and another doctor says, 'Y should happen,' that is not much different to what happens sometimes in the community. The fact of the matter is that if we have a recommendation from a doctor that something should happen that is what happens. I do not know what they are referring to. It would be for them to perhaps elaborate on.

If you look at the contract, not just in an individual context but in its entirety, the whole construct is around the service provider looking at the detainees, trying to appropriately assess their needs and then responding to those needs. That also relates to the earlier line of questioning about alternative detention. If that is appropriate, we try to look at that as well. It is all in the context, as Mr Farmer said, of: what are the needs of this detainee and how can they be most appropriately managed? As I say, the fact that disputes about the appropriate steps arise from time to time are about differences of view about how it should be managed, not about whether or not we should be focusing on needs and trying to come up with an appropriate management strategy for that detainee.

**Senator NETTLE**—As far as you are aware, there are no financial penalties for GSL, for example, to do with the transfer of detainees from Baxter to psychiatric institutions?

**Mr Davis**—Only if they don't do it properly. As I said, if it is appropriate for them to move a detainee, we work out with the health authorities the appropriate way to do that. If it is appropriate for detention officers to accompany people—whether it is with the Royal Flying Doctor Service or by road or whatever—our contractor is obligated to do that and we pay the bill. Indeed, I would only go to the issue of being dissatisfied if they did not fulfil the obligation to move the person, which has never occurred in my experience.

**Senator NETTLE**—I recall a comment that might provide us with some specificity on this issue, but I do not have it with me. I may come back to that after dinner. I have one comment about Mr Micallef, the resident psychologist, from a report in the *Sun Herald*. It said:

On December 20, when giving evidence in a case involving psychiatric care for a detainee, Mr Micallef told the Federal Court he believed a conflict of interest existed between GSL-employed psychologists and the detainees they were hired to care for.

He told the court that detainees did not know if their files were made available to GSL or the Department of Immigration and he acknowledged under cross-examination that that was a problem.

Do you see that as a problem?

**Ms Godwin**—The first point to make is that that was an opinion expressed by one person in a particular context as the result of a particular line of inquiry in a court case. I do not know whether that is a more generally held view. I do not think it is one that has been generally expressed to us. The fact of the matter is that we would regard it as essential that we have qualified practitioners on site, available to the detainees, to assist both with their individual care needs and with their appropriate management within the facility. Inevitably that means there has to be a degree of consultation and collaboration between health professionals, the detention services provider and DIMIA officers on site. I would not characterise that myself as a conflict of interest.

**Senator NETTLE**—Do DIMIA and GSL have access to the medical files of detainees?

**Mr Davis**—There is an agreed set of operational procedures for the medical staff which dictates access. There are occasions where access to or reports from the medical material are needed. For example, in the case of moving someone to alternative detention, if we are going to ask a non-government organisation to provide some support then we may request the medical people to provide some sort of report or outline of their medical needs so that we can then have a discussion. Certainly, detainee privacy is high in our minds. We do not seek such access unless there is need to know or a particular purpose for it. I have just cited an example. Another may be a court case, where DIMIA or the minister is required in court to table documents or whatever. There is a written, agreed protocol between the contractors and us on access, when it is required, how it is done and all that sort of stuff.

**Senator NETTLE**—Is it possible for the committee to receive a copy of that?

**Ms Godwin**—I think that, consistent with all these questions about documents, we would like to take that on notice.

**Senator NETTLE**—That is fine. You were explaining an example where the minister or DIMIA may require a copy of the medical file for tabling in the court. In instances where there was a case between the detainee and DIMIA in the courts, would DIMIA equally have access to those medical files?

**Mr Davis**—I think so, because we have to brief our counsel on the matter. That may require us to have material from the medical files.

**Senator NETTLE**—Can you explain what confidentiality arrangements are in place for detainees in relation to their medical records?

**Mr Davis**—Perhaps it is better to give you that detail on notice. I am struggling to find the words to describe it, but I think it is probably better to provide the detail of that on notice.

**Senator LUDWIG**—What are you providing on notice?

**Mr Davis**—The question was around privacy and access to detainee medical records. I am struggling to recall the exact question asked. I guess what I am saying is that—

**Senator LUDWIG**—Forgive me, but surely you can say whether the medical records are available to GSL staff or not or whether the only people who can access them is a doctor employed by GSL or whether other people have access to those medical records other than a doctor. Who owns the medical records? That is the base question.

**Mr Davis**—The ownership of the medical records is vested in the Commonwealth because they have been created as part of the contract process, and they are held by the medical staff. Access to them is, as I said, through an agreed protocol that has been documented on processes to access them for the purposes of court cases or whatever else, by DIMIA staff—

**Senator LUDWIG**—And you are going to give consideration as to whether that document is available?

**Mr Davis**—That is right. Also, in terms of access for other GSL staff—clearly, on a need-to-know basis—there may be occasions, I cannot think of any off the top of my head, where other GSL staff beyond the medical team need to at least be aware of aspects of the medical records. But that has all been documented in this agreement, and it clearly is on a need-to-know basis.

**Senator LUDWIG**—Who would authorise that on a need-to-know basis? Would that be the primary doctor responsible for the records or the manager of the centre?

**Mr Davis**—As the contract administrator, I guess it would ultimately come back to me, but basically the initial arrangements are for discussion between medical staff and our centre manager, for example. As I said, as long as the protocols are followed then the matter is probably unlikely to be raised with me, because the protocol is an agreed protocol that I have signed off on and approved for the purposes of the contract.

**CHAIR**—Given that it is half past six, we will break now until half past seven. Mr Farmer?

**Mr Farmer**—With your indulgence, might I just ask a question, because we are still, as I understand it, in the general questions.

**CHAIR**—Essentially, yes.

**Mr Farmer**—That general questions section also has internal product issues, so our IT people, our human resources people and our financial, property and office services people are here. Fascinating as I find those things, what I am looking for is whether the committee has an interest that it wishes to pursue tonight on those, if you like, administrative issues.

**Senator NETTLE**—I do not, but Senator Bartlett is not here.

**Senator LUDWIG**—I can only speak for myself. I could put those questions on notice, so if you wanted to instruct them that they can leave you can from my perspective, but I cannot speak on behalf of the Democrats.

**CHAIR**—Although he might hold it against me, my informal discussions with Senator Bartlett lead me to the impression that he was more interested in pursuing the outputs under outcome 1 than, with enormous respect, internal product—which, as you all know, is my favourite turn of phrase from the DIMIA portfolio budget statements! So, I think you are safe in allowing those officers to leave, and if I am wrong I will pay the price with Senator Bartlett. Thank you very much, Mr Farmer.

Can I just say to those officers who may be involved in any matters on Friday for our spillover that the committee will not be meeting in the main committee room. We have been ousted by the Defence portfolio and we will be meeting in committee room 2S3. I propose to say this several times over the next few hours this evening, which will (a) assist me in remembering and (b) make sure all the officers who need to know do know.

**Proceedings suspended from 6.32 p.m. to 7.35 p.m.**

**CHAIR**—We will reconvene. Let us go to the minister first.

**Senator Vanstone**—Earlier today in my opening remarks I used a very clear and stark example of reporting in relation to the role—or non-role, as the case appears to be—of the South Australian Public Advocate in relation to Ms Rau. I did say it was not only the ABC that was involved. I went on to say that one of the senior journalists in the gallery with one of the respected papers had run the same story in print and repeated it on Radio National. My office has been contacted by that person indicating that it is correct to say that about Radio National but that that journalist was not the author of the articles that were run in that particular daily and did not have anything to do with them. I was not asked to correct the record but I am happy to. I simply point out that this might seem to some to be fastidious attention to detail about what is said about oneself but it is perfectly understandable. What I hope is that all journalists understand that nurses working in Baxter, psychologists, psychiatrists and bureaucrats do not have the same opportunity to monitor the media about what is said about them nor to have the record corrected so promptly—or, in some cases, at all.

**CHAIR**—Indeed. Thank you, Minister. Mr McMahon, I understand you have something to add.

**Mr McMahon**—I believe we have identified the case in question. There was a Korean woman who had previously been in Australia as a working holiday maker. She had left legally and re-entered Australia under an electronic travel authority. She was found living in quarters which were custom made for workers. She was with her fiance, who was a student and therefore had permission to work. Some of the answers to the questions that were asked of her were regarded as not forthcoming. The officer reached the conclusion that the woman in question had intentions to work. With an electronic travel authority, there are no work rights.

As a consequence, he took the decision to cancel the visa and then to detain the person. The person was detained on 23 November. She appealed the decision to the MRT. On 1 December, DIMIA staff decided to release her on a bridging visa but with a bond associated with the bridging visa—in other words, to give us confidence that the person was going to be available. On 5 February, the MRT set aside the decision. The MRT in effect operates de

novo, taking a fresh decision. They set aside the decision and her visa was reinstated. There is no issue in this case of unlawful detention.

**Senator NETTLE**—The final comment from Mr McMahon was that there is no unlawful detention in relation to this case. Is that the same lack of unlawful detention that DIMIA says is the case with Cornelia Rau?

**Senator Vanstone**—I will answer that and my officials can add to it. I think that is a gross simplification. What remarks were made earlier in relation to Ms Rau were to the effect that now we know it was unlawful; now we know that it was improper. The point I have made is, then, that it was not improper because the act requires people who are suspected of being unlawful noncitizens to be detained. Equally, there is a requirement once that is resolved that they be released. The power or obligation to detain in the same instance may be the same but the circumstances are entirely different. I think the confusion comes in relation to whether something was unlawful in the sense that the power exists at the time you form the suspicion. You might later clear up those suspicions, but it does not make what you did at the time, because at the time you held those suspicions, unlawful or improper.

**Senator NETTLE**—I agree, Minister. We had that comment and thank you for putting that on the record. We were saying that there exists within the Migration Act the requirement for DIMIA to detain people at some point in the future when their identity or whatever checks are carried out and apart from the requirement of the act there was no requirement to detain people. That was the case in the examples we were talking about earlier. Obviously the circumstances are very different with this Korean woman, and the other ones that I am waiting for will be provided.

**Senator Vanstone**—There would be a whole range of circumstances under which people are detained under the Migration Act lawfully and properly who are subsequently released.

**Senator NETTLE**—Yes.

**CHAIR**—We are going to go back to questions in relation to Cornelia Rau, starting with Senator Ludwig, and continue through this evening with Senator Allison, Senator Nettle and then moving to the outputs under outcome 1.

**Senator LUDWIG**—I think we were at the juncture between the Brisbane Women's Correctional Centre and the Baxter detention centre. You provided the date of the transfer. It was a transfer in the sense that there was no change in the detention. We also established that 30 September 2004 was the last time DIMIA visited her in the Brisbane Women's Correctional Centre, as I understood it. From that last visit, were any other searches instigated to determine the identity of Ms Rau?

**Ms Godwin**—Before or after the 30th?

**Senator LUDWIG**—From the 30th and on.

**Ms Godwin**—From the 30th on, I have already mentioned that we had an officer from central office go to Baxter to interview her.

**Senator LUDWIG**—What was the purpose of that visit?

**Ms Godwin**—To continue to try and draw out any further information that would enable us to establish her details precisely so that we could get her a travel document. The people who went were from the removals policy section in central office. It was for the purposes of trying to effect the removal.

**Senator LUDWIG**—Are you able to say what information they were able to obtain from Ms Rau?

**Ms Godwin**—Essentially, she repeated information that she had previously given. The only additional information that I am aware of that came out at that time was that she indicated she had never travelled outside Germany before travelling to Australia.

**Senator LUDWIG**—Were any further internal or external databases checked from then on?

**Ms Godwin**—I do not have a complete log of all that. We will have to take it on notice as to whether they checked databases again at that point. I do know that at that point we sent standard letters to a variety of other agencies in an attempt to confirm her identity. We sent letters to the Health Insurance Commission in Queensland, Centrelink in Queensland, the Registrar of Births, Deaths and Marriages in Queensland and the driver and vehicle registration authority in Queensland. As I said before, we had further contact with the German consulate. All of that, a variety of contacts, was through October, November and December. In January we were in contact with DFAT to see if we could find passport details for her. We had identified two names similar to hers with roughly similar dates of birth so we were looking to see whether that was who she was. We followed up further in January by sending letters to the Registrars of Births, Deaths and Marriages in New South Wales, South Australia, Victoria, the Northern Territory, the ACT, Western Australia and Tasmania.

An officer was also checking relevant web sites for missing persons, starting with [missingpersons.gov.au](http://missingpersons.gov.au) and then branching out into a variety of specific checks for police and crime stopper web sites for a number of states: Victoria, New South Wales, Queensland, Western Australia, the Northern Territory and the ACT. They also looked on the AFP web site. If you look on the web site [missingpersons.gov.au](http://missingpersons.gov.au), it refers you to a variety of other web sites and the officer's Internet log indicates that he was pursuing all those. He also looked at overseas web sites for missing persons. Because a comment had been made that her accent may have had an element of Polish or some other language, we widened our search overseas to ask officers overseas to pursue inquiries with Polish, Ukraine and Czech Republic authorities.

**Senator LUDWIG**—What date was that standard letter produced and sent to Centrelink, the vehicle registration centres and the like?

**Ms Godwin**—I think that was 22 November.

**Senator LUDWIG**—Prior to that the only contact had been, as you earlier detailed, the check with the missing persons unit in Queensland and internal checks with ICSE and one other you mentioned. You have indicated that there were standard letters from the 30th forward. I am trying to get a reasonable chronology, including the date. Earlier this afternoon we went from Cairns forward to about the 30th—correct me if I am wrong—to work out what checks had been done up to that point.

**Ms Godwin**—As you correctly say, 30 September is the last specific record of an interview between a DIMIA officer and Ms Rau. Then she was transferred to Baxter on 6 October and this process that we were just talking about took place. I do not think it is correct to say that apart from the standard letter it was only internal checks. Throughout that period we were continuing to pursue the discussions with the German consulate and—

**Senator LUDWIG**—Yes. I mean in the sense of external agency checks and external overseas checks initiated by DIMIA.

**Ms Godwin**—There is the DFAT contact, the German embassy and the contacts overseas with us.

**Senator LUDWIG**—Did you ask them to search overseas?

**Ms Godwin**—No. As I explained earlier, we had already sent a request to our people in Berlin with her details, photo and so forth. In January we went back to them and asked them to extend that inquiry beyond Germany.

**Senator LUDWIG**—I accept that and you have that on the record. I will let you finish in a second. I was just trying to establish what precise efforts you made between a couple of discrete periods—from the Cairns watch-house to the 30th. I use that as a juncture because we know there was a visit by DIMIA. Post that we can use the Brisbane Women's Correctional Centre as one discrete period or you can then itemise the discrete searches if you want. I am trying to avoid you going to that sort of detail. I am trying to gather the broad areas that you inquired into. It seems that the significant increase in activity started from around 22 November when you started sending out standard letters to all those agencies, and then you listed from there on significant efforts to contact others about establishing whether she existed on other databases.

**Ms Godwin**—I might be getting tired and a bit thick. I thought we had discussed the period up to 30 November this morning and that we had taken that period on notice. So I have not gone back to that.

**Senator LUDWIG**—I thought that. I was summarising it badly but it is certainly on the record.

**Ms Godwin**—Fine. I have already said that for the period after she went to Baxter I do not have a log for whether we were simultaneously checking the movement records and other things to see whether anything else had emerged in the period. I think I mentioned that we ran an overstayer report for Germans earlier in the period prior to 30 November. That search of the overstayer records was extended. I am just looking for the date. An officer went down on 20 October to interview her again. I do not have a log of the movement records, which we will check to see whether there were any other searches at that time. We started sending out the letters—

**Senator LUDWIG**—I think you have detailed that from then on.

**Ms Godwin**—The one other thing that I did not mention was that there were a couple of people listed in a book that Ms Rau had in her property and we tried to email those people to see whether they could provide any additional information, but that did not elicit any response either.

**Senator LUDWIG**—Are copies of the standard letters available? Could they be made available to the committee?

**Ms Godwin**—I do not have one with me but we could get you one.

**Senator LUDWIG**—Thank you. It seems that from at least Cairns, if we use that as a starting point, to the end of the detention at the Brisbane Women's Correctional Centre and then to the commencement at Baxter, there is a juncture in the nature and style of searches that you conducted. Earlier you were looking for a person in terms of overstaying a visa but from the standard letter, if not slightly earlier than that, the nature of the searches—other than in the early part where one search was done at the Queensland missing persons unit—then refocused on domestic databases: Health, Centrelink, driver's licence and so on and so forth. Why was that?

**Mr Farmer**—It broadened to include those because the inquiries were still being pursued with the German authorities through their embassy and with other authorities through Australian representatives overseas.

**Senator LUDWIG**—Why was it broadened? If the person you were seeking was an unlawful noncitizen and she had only been there for three to nine months, as I think the media had said she had indicated, why would the person be on a Births, Deaths and Marriages database? Why would the person be on a driver's licence database? Why would the person be on a Centrelink or a Health database? I do not know the reason for that but I am asking for you to tell me why you then broadened it to include those. What was the purpose?

**Mr Farmer**—It is not unknown for people unlawfully in Australia to apply for and in some cases receive Centrelink benefits. It is not unknown for people unlawfully in Australia to apply for and get a driver's licence.

**Senator LUDWIG**—A birth certificate?

**Ms Godwin**—It would not necessarily be a birth certificate. It is the Registrar of Births, Deaths and Marriages. It could refer to someone having married in Australia or something of that sort. It does not demonstrate anything other than just trying to establish her details with sufficient certainty to get her a travel document. Throughout this period, all of our contacts with her continued, on her part, to emphasise that she was from Germany and that she wanted to leave Australia and go back to Germany. When we asked if there was anyone else that we could talk to or approach who would have information about her, she said no. That was asked on a number of occasions. The information coming to us consistently pointed to her being a German national who wanted to go back to Germany. Our efforts were to try to establish her details and circumstances with sufficient certainty so that we could get her a travel document.

**Senator LUDWIG**—Had you made a search of the missing persons database or CrimTrac?

**Ms Godwin**—I might ask Mr McMahon to comment on this, but I think the most important point to make is that we do not have open access to CrimTrac.

**Mr McMahon**—That is correct. We do not really have any search capability in respect of CrimTrac. There are some backdoor, automated search logarithms, basically, between our citizenship database and the national name index. If someone applies for citizenship, for

example, we will get a 'clear' or a 'not clear' coming from it. That will then send off some information. If it is a not clear, it is up to the relevant jurisdiction to provide us some information as to why it is not clear. I actually rang the head of CrimTrac today to try to get more information in respect of the evidence he gave yesterday. He was not able to discuss it with me because, as he indicated, I was not an authorised person for the purposes of the discussion. So we cannot get information from CrimTrac ourselves.

**Senator LUDWIG**—In the sense that you do conduct searches of the Australian Criminal Intelligence Database, ACID—

**Mr McMahan**—We do, and she is not on that.

**Senator LUDWIG**—Was that search of ACID done? When?

**Mr McMahan**—I did it today.

**Senator LUDWIG**—Was it done any earlier than that?

**Mr McMahan**—I do not believe so. I do not think we would think to look there. Essentially, that is a criminal database. You look on there for people with a criminal history. That is the purpose of it. The only reason we go into that database is that we have some law enforcement like activities, including investigations, and we do prosecute. We have a joint task force with the AFP. We are involved in prosecutions under the Migration Act.

**Senator LUDWIG**—While you were sending out letters to the health department, Centrelink and driver's licence agencies, did you also consider sending a letter to the Australian Federal Police and asking them whether they could identify the person and give them particulars to help them?

**Ms Godwin**—Your question asks whether we considered it. I am not in a position to answer that.

**Senator LUDWIG**—Did you do it?

**Ms Godwin**—The short answer is that we did not do that.

**Senator LUDWIG**—What ability under the migration legislation do you have to take personal identifiers to identify a person, such as an unlawful noncitizen, as you might have thought Ms Rau was at the time?

**Ms Godwin**—We can photograph people, and we did that in her case. We can take fingerprints at the time, but only if someone voluntarily gives them to us. We asked her a number of times and she refused. But in any event it is not at all clear that, even if we had had that information—and we had the photo, which we provided to the German consulate—she would have been able to be identified, because I am not aware that her fingerprints are on a database. That is the first thing to say.

Secondly, in relation to the photograph, as I understand it there was a missing persons poster. We noticed, when that was published in the newspaper the other day, that it had a line on it which said, 'Not approved for public display.' We asked the New South Wales police what that would mean. Their answer was that, when a poster says, 'Not approved for public display,' this indicates that the person reporting the person missing, usually the family, does not want the information displayed. I do not know whether this was the case in this situation.

They said that this also means that the photo also means that the photo will not be released for display on a missing persons web site. Sometimes this advice changes and cases originally not for display are changed, and posters are released for display. He could not explain why the poster in the press article indicated that it was not approved for public display.

He then indicated that there had been some work being done on the New South Wales site around Christmas. While there would normally be around 150 missing persons, not everyone who was a missing person would be on the site. He was unable say whether Ms Rau was displayed on their site before this work. Our officer actually checked their web site and did not locate her. It may well be—although we do not have confirmation of this—that she was not on the site at the time.

**Senator LUDWIG**—You say you require permission to take those personal identifiers such as fingerprints, photos, signatures, height, weight and size? I think they are all listed under section 186.

**Ms Godwin**—Certainly, as far as fingerprints are concerned, we would have required her—

**Senator LUDWIG**—Can you take me to the section that says that—that you require permission?

**Senator Vanstone**—He wants you to take him to the section that requires permission to take fingerprints.

**Senator LUDWIG**—Yes, and are there regulations under that section?

**Mr Farmer**—This is in the process of changing. I think Mr McMahon can give you some details there.

**Mr McMahon**—Yes. Before the identification and authentication bill went through, we had the power to collect fingerprints but we did not have the power to use force, in effect. The amendments to the act now empower the use of force, but there are a number of processes we will have to go through before we can do so.

**Senator LUDWIG**—When did that come into operation?

**Mr McMahon**—It came into operation on 27 August 2004. As you know, parliament was prorogued on 31 August, and I guess a ministry was appointed in October of last year—late October.

**Senator LUDWIG**—Yes.

**Mr McMahon**—Essentially, there are some delegations required, and some authorisations. The delegations were made by the minister in November, and we are still examining some issues around the authorisations, although we believe we will have them resolved by the end of the month. In effect, it is quite clear that the amendments to the act provide significant additional powers to the department, but they have also increased significantly our responsibilities in a number of areas. In many respects, the way we collected things before was quite uncodified and it has put quite a bit of structure around the way in which we can do some collections.

We have had some legal discussion about the appropriate form of the authorisations, the levels, and some technical issues around the authorisations themselves. I think basically the issue for us is that, because of the nature of the power itself, we want to make very sure that we get it right. Anyway, we are coming to the conclusion of that process.

**Senator LUDWIG**—And the regulations have not been promulgated under that section yet—or have they?

**Mr McMahan**—Sorry; if I said ‘regulations’, I meant ‘delegations’. The taking of fingerprints of people in detention is the one area in which a regulation is not required; it is delegations and authorisations which are required. In respect of the taking of biometrics and in respect of almost all other situations, it does actually require regulations to be put in place.

**Senator LUDWIG**—Yes, it mentions ‘prescribed’, and of course there are no regulations which currently prescribe what they are under the act, as I understand it.

**Mr McMahan**—Correct, except in respect of the taking of fingerprints in detention centres.

**Senator LUDWIG**—So is there a delegation in place for that now?

**Mr McMahan**—There are delegations in place, but the authorisations are not. Our legal advice was that they had to be made sequentially, not concurrently, and so we basically put the delegations to the minister, who approved those, and it is now up to the secretary to approve the authorisations, and the secretary has asked for a number of issues to be resolved to the satisfaction of legal counsel and internal legal advice before he will sign them.

**Senator LUDWIG**—All right. Thank you. So, prior to August, you had the power to take fingerprints but not by force?

**Mr McMahan**—Correct, and that is still the case.

**Senator LUDWIG**—Yes. As I understood your earlier evidence today, the German consulate indicated that Ms Rau was not a German citizen at some point. Did you recommence searches at that point?

**Ms Godwin**—That was latish in January—the 24th, I think. There were still web sites being checked throughout that period beyond the 24th. But I think the other point to make is that, when you bring that chronology together with the discussion we were having before about mental health, at that point the focus of her case manager in Baxter was on resolving the issues around the mental health assessment, and I think that would have been the focus at around that time.

**Senator LUDWIG**—You contacted the missing persons unit in Queensland but no others in any other state until when?

**Ms Godwin**—We did not contact any other missing persons units. As I say, an officer in Baxter interrogated the relevant web sites throughout January. The only other contact we had with missing persons units was a request from New South Wales—there were about three contacts. They of course were making inquiries about Cornelia Rau. I just need to give you a little bit of background on this to explain the process. In New South Wales we have a small unit, which is called the police liaison unit. It is based at the New South Wales police

headquarters in Parramatta. It has two DIMIA staff whose role it is to receive requests for relevant information from New South Wales police and to make similar requests on behalf of DIMIA. It processes between 700 and 1,000 requests a month.

They received three requests from New South Wales police, but if I can just explain: the requests generally come via a systems link that we have. So it was not a generalised request for information. It did not provide either a photo or identifying information about this individual. It was simply a request for us to check movements about a Ms Cornelia Rau. Of course, we did not know the person that we had in detention as Cornelia Rau, so we simply answered the queries in respect of Ms Rau, provided that information to the police, and that was all that happened on that occasion.

**Senator LUDWIG**—In terms of taking fingerprints, you had asked her on a couple of occasions or just the one occasion? I think it is at section 188.

**Ms Godwin**—I would have to take the exact number of occasions on notice, but I understand from reading through the chronologies that there were probably at least a couple of occasions when we asked whether she would give us the fingerprints.

**Senator LUDWIG**—Perhaps you could provide that to us. In terms of then taking a photograph—

**Ms Godwin**—We had a photograph of her.

**Senator LUDWIG**—did DIMIA take the photograph or additional photographs or were they collected from someone else.

**Mr Davis**—Our Cairns officer took a photograph; our Brisbane officer also took a photograph, predominantly in that case for the purpose of the passport application; and our contractor took photographs upon induction at Baxter as well.

**Senator LUDWIG**—Do you require permission for that?

**Ms Godwin**—To take a photo?

**Senator LUDWIG**—Yes.

**Mr Davis**—No.

**Ms Godwin**—I do not believe so.

**Senator LUDWIG**—Under section 188 isn't it the same prescribed circumstance? There are four prescribed circumstances in 188 of the act—that includes fingerprints and photographs. Why is it different between fingerprints and photographs? Where do I see the extra bit that I am missing if I just read the legislation? It just says: 'These are prescribed circumstances.'

**Ms Haughton**—Yes, the circumstances are different in that with the photographs and signatures there were regulations that came into force at the same time as the act changes on 27 August that allowed the continuing practice in DIMIA of being able to take photographs. There is no requirement to have permission to do so. With fingerprints, because they are in detention, there is the context of using force to do so or of doing so where there is no consent. Then there are the additional authorisations that Mr McMahon referred to and delegations from the minister to be put in place first.

**Senator LUDWIG**—Thank you. That is helpful. So from there were any other identifiers collected—height, weight, identifying marks?

**Ms Godwin**—I am not aware of that. We would have had a general description of her height, age and appearance.

**Senator LUDWIG**—And that was circulated to the Queensland police missing persons unit and no other missing persons unit—is that right?

**Ms Godwin**—The information I think I gave before is that we provided the Queensland police missing persons unit with her photograph and the details we had about her at the time, including information about her claimed—

**Mr Davis**—The details as I have recorded here are that her names, aliases, dates of birth—she gave a number of dates of birth over the time she was in detention—and photographs were provided.

**Senator LUDWIG**—And was the Australian Federal Police contacted with the description and asked to see whether they had her on their database or could do a search of their missing persons unit?

**Mr Davis**—We have no record of contact with the Australian Federal Police.

**Senator LUDWIG**—In respect of New South Wales, did they circulate a description as well as a name when they contacted DIMIA?

**Ms Godwin**—No. As I have already explained, the contacts we had from New South Wales were via this system that we have, called ICSE, and they simply asked for details of her recent movements—in effect, ‘Was there any record of her travelling?’

**Senator LUDWIG**—I was just inquiring as to whether or not it included a general description.

**Ms Godwin**—No, it did not. We can take it on notice, but I have actually seen a printout of one of the queries, and it is very specific about her movements. In relation to the AFP, I think we did not inquire, but I would point you to some talking points that I understand the AFP was using when this first became a matter of public comment. It said:

The National Missing Persons Unit has not received any request for support or assistance in relation to Ms Cornelia Rau. There has been no request to include the case of Ms Cornelia Rau in national advertising publicity campaigns.

So it is not clear to me from that that they in fact had information about her, even had we requested it, but I am not suggesting we did—we did not.

**Senator LUDWIG**—I have not asked you that question.

**Ms Godwin**—Pardon me?

**Senator LUDWIG**—I have not asked you that question. I thank you for the information.

**Senator Vanstone**—Senator, I must be going crazy. I thought you did ask if we had contacted the AFP.

**Senator LUDWIG**—But only that: ‘Have you contacted the AFP? Yes or no?’ She answered no. I did not need any further information.

**CHAIR**—Just being helpful, I think, Senator Ludwig.

**Senator Vanstone**—Oh, I see. What you did not ask was what would we have found out if we did ask.

**Senator LUDWIG**—I did not want to burn time doing this either—

**CHAIR**—Let's not do that now.

**Senator LUDWIG**—but we went on to an explanation as to why she did not. I did not ask for why she did not.

**Mr Farmer**—I do not think it was an explanation as to why we did not.

**Senator LUDWIG**—I thought that was what she prefaced her remark with, but anyway.

**Ms Godwin**—I am sorry. I have confused the matter.

**Senator Vanstone**—No, I do not think you have confused the matter.

**Mr Farmer**—It was a point made about what we would not have found, had we done it.

**Senator LUDWIG**—And even that is hypothetical. That is even worse, I suspect. I could ask that question hypothetically too: 'What do you think you'd find if you had have?' But I did not.

**Mr Farmer**—I think the answer is that if we had gone down that burrow we would not have found anything.

**Senator LUDWIG**—I would not stake your career on it, Mr Farmer. I am just not so sure.

**CHAIR**—You know, I am just not sure we are advancing our position here. Senator Ludwig, can we return to questions, please.

**Senator LUDWIG**—Turning to the minister's office, when did you first become aware of the Rau case, if we call it that? It would have been under the alias, I suspect, at that time.

**Senator Vanstone**—Yes. I indicated in an answer to the Senate that it was early in January that my office was first made aware of this case and that, subsequent to that, at a meeting in Canberra, that matter was raised along with some other matters between the same person from my office and officials. At that stage, as you are now aware, the department was very actively involved in discussions with South Australian mental health authorities in terms of getting Ms Rau admitted for the purpose of a proper assessment.

Someone from my office did go to Baxter with the shadow spokesperson for immigration matters and I understand there was a passing reference to the Rau case there, which I did not raise before because I was not aware of it at the time. You give me the opportunity to invite the department to give you, if they have it now, a list of the dates—I do not know that it is appropriate to give the names—on which people either contacted my web site or received the letters—

**Senator LUDWIG**—Yes, I was looking for the broad direction regarding what contact your office had.

**Senator Vanstone**—I have not looked at the list recently but it was pretty late in January when people started raising it. I am glad you have given me that opportunity to put that on the record. I should have done that last week but—

**Senator LUDWIG**—I think we had asked.

**Senator Vanstone**—I was expecting more questions. I think somebody tipped the opposition off and I did not get as many as I had hoped. I think the impression has been created by some advocates that they were desperately trying, over December and January, to raise the issues, in a similar way to the impression that was allowed to be created regarding the advocate. I do not assert this was done by the South Australian advocate; I have never said that, but nonetheless it happened. To the best of my knowledge, apart from a correction that I saw from the ABC, it has not been corrected.

I do not deny that someone may have rung the office at some point and said, ‘I want to talk to you about someone who is in Baxter.’ There is a group called the Circle of Friends, for example, that have an email arrangement and they tell everybody which person to ask about today. It is quite true that they are told, as they are meant to be told, ‘If you’re not representing someone, we can’t discuss the case with you.’

**Senator LUDWIG**—You are the immigration minister. I suspect you would be the target of those sorts of things.

**Senator Vanstone**—There are quite a lot of those people, and we do not make a note of every phone call. Quite frankly, in relation to one group, a message just informally goes around the office that, ‘This is the person today,’ or ‘This is the message today.’ There is a sort of uniformity about it. I do not complain about that. People are entitled to run campaigns and ask as many people as they choose to ring the office about people.

**Senator LUDWIG**—Is the department able to provide those contacts with the minister’s office in relation to Ms Rau, in the sense of her not being known as Ms Rau at the time?

**Senator Vanstone**—I do not know whether they would have made a file note when the office was rung. Let me make this clear: I think we have a very good relationship with the department and it should be the case that, in order to get things done, the phone is used, and someone will have regular consultations by telephone and discuss a range of matters that are on their mind in relation to a range of people, and I welcome that open dialogue. We do not have to put everything in writing to get some information. Equally, we do not say to the department, ‘We won’t talk to any of you people on the phone; you have to put everything in writing.’ But if the department can provide information in relation to those contacts, I am very happy for them to do that, in terms of dates and things like that.

**Senator LUDWIG**—Could you take some of this on notice but in the first instance—

**Senator Vanstone**—Can I ask the officers: do we have the list of those dates with us? For the record it might be handy to give them to Senator Ludwig. He probably does not want to hear all of them now but we could give him the first date on which someone put something in writing. I am referring to the advocates who were seriously concerned, from the moment she arrived in Baxter, apparently, and who asserted that no medical treatment was being given et

cetera. You are familiar with the story. I would really like you to hear the date on which they first—apparently, to our best knowledge—put pen to paper and raised the matter.

**Ms Godwin**—Senator, what I have here is a list of correspondence. What I am not completely sure of is whether it includes all of the web site—

**Senator Vanstone**—Okay; we will give you that later.

**Ms Godwin**—It may do, because depending on the form in which it comes in, sometimes things that arrive on the web site are recorded as ministerial correspondence if they essentially look like a letter. The first letter, according to this record, was on 15 December but all of the other letters are from the January and early February period. The December letter simply says, ‘I’ve got three issues I want to raise.’ It just refers to a young German woman. In a sense, it raises three things: ‘Can I have some information on these three things.’ It does not say, ‘I’ve got reason to be concerned,’ or whatever; it just asks for information. As I say, the rest of the correspondence—the bulk of it; all of it— is in January and early February. I will need to take on notice whether that is the entirety or whether there has been other—

**Senator LUDWIG**—Thank you. I saw mentioned somewhere a section 417. But it cannot be a 417 in the sense that it has to go through the RRT.

**Senator Vanstone**—I can explain that. The departmental officers can add to this if they want but because I was asked by Senator Brown, I think, whether it was direct or indirect—

**Senator LUDWIG**—That is what I have heard.

**Senator Vanstone**—I mentioned in the Senate that I had been advised that day that she had written to me in December but I had not seen the letter. I subsequently did see the letter. She had not written to me in December at all; she had written earlier than that. She had written in relation to getting assistance for citizenship. The advice I was given verbally by someone in my office was that, because she mentioned in there that she was seeking some help, I think I was told that she was replied to through the department in terms of the citizenship issue and because someone thought, ‘That might mean it’s a 417,’ she was sent a standard reply that says, ‘Your application for that will go through the appropriate processes.’ When the letter was looked at properly it clearly was not a 417 because she did not have any applications in to do that. When I answered at the time I said it sounded unusual to reply as a 417 because she was not in a position to put that in.

**Senator LUDWIG**—Thank you, Minister. I just wanted that clarified. Is there a standard brief that goes to the minister’s office when someone is detained for the first time in a detention centre?

**Senator Vanstone**—Gee, I hope that never happens! When we do immigration raids, sometimes we get 40 or 50 people over a weekend.

**Senator LUDWIG**—I was just checking. You never know; I know you are a busy minister. I know you are a diligent minister.

**Senator Vanstone**—You don’t want the minister’s office to be the immigration department. I do not say that we have any less care than we ought to have; quite the opposite, I would say. But there is a reason you have got a whole group of people who are focusing on

this, and you have so many people employed—because it does require far more attention than one office can give it.

**Senator LUDWIG**—Was there one prepared in the circumstances of a 417 application? They go to the minister as well. I am just ruling out these possibilities.

**Ms Godwin**—I do not know, Senator. We would have to look at that. It is not my understanding that it was. I think what happened was that the standard acknowledgement letter was sent, saying, ‘Thank you for your letter; these things take some time. We will let you know once it has been progressed.’ After that it was checked and was found, obviously, not to be a proper request.

So I do not believe there was a brief or anything of that sort at the time. There certainly is not a process of standard briefing on everyone who is taken into detention, because in any given year—because of the flow in and out of the detention environment—there are probably some thousands of individuals over the course of a year. There are not that many people in detention at any one time, but over the course of a year that many people might move in and out of a centre. So there is not a process of: ‘This week we detained the following list of people.’

**Senator LUDWIG**—Senator Nettle asked wide-ranging questions about health, mental services and that area, but what she did not do in this sense—and it is no failure of Senator Nettle, I am sure—was ask for the particular dates of those events. I did not particularly want to go through from go to whoa. We have already done the chronology of some of the material in terms of the travel. I was wondering if you could save me the trouble, unless you are happy to sit here and do that for a little bit longer, by going through the chronology of the times she was in Princess Alexandra Hospital as far as you are aware, the dates when she was visited by—and this is just from my recollection—Glenside or when she went to those different places. Not all of those were wrapped around with a definitive date, as I understand it, from the evidence that was given. They may take a little bit to be obtained as well, so I am happy for you to provide that on notice if you can.

**Ms Godwin**—We will take the bulk of the detail on notice, but if I can just reiterate I think we did confirm the dates that she went to Princess Alexandra Hospital in Brisbane. That was 20 to 26 August. She was first seen in Baxter on I think the seventh by the psychologist.

**Senator LUDWIG**—Yes. Not all the dates were provided.

**Ms Godwin**—No—the key dates. She was first seen on the seventh by the psychologist. She was seen by the psychiatrist on 6 November. There was the referral to Glenside on 10 November, a series of phone conversations back and forth, followed up with the provision to Glenside on 17 November with a range of reports that were relevant to their consideration of the request for admission. That was followed up again on 4 January. There was a series of telephone conversations and consultations between the fourth and the seventh. The next critical date, if you like, in terms of the actual milestones was 24 January, when Dr Phillips spoke to the head of our case management area in central office. Then there was a further series of contacts that Mr Davis mentioned in earlier evidence, resulting in the agreement to her admission.

**Senator LUDWIG**—In relation to the Palmer inquiry, I am not sure how the appointment came about. If you could provide details that would be helpful. Do you obtain a CV of Mr Palmer to determine his suitability for these things? Do you do a probity check or something like that? Is that the normal process?

**Senator Vanstone**—Sorry, I was slightly distracted, if that question was directed to me.

**Senator LUDWIG**—In terms of when you appoint Mr Palmer for such an inquiry as he is now undertaking on behalf of DIMIA, is there a process that you go through to do that, so far as you can say? Is there a CV that is made available or is there a probity check, a conflict of interest check or that sort of thing undertaken? How do we get to that point, as far as you are able to say?

**Senator Vanstone**—The relevant minister and/or their chief of staff or the adviser dealing with that matter would have a number of discussions with a range of people to consider who might be appropriate, and then a choice would be made. On some occasions that may be in consultation with other ministers; on other occasions, perhaps not.

**Senator LUDWIG**—And in this instance?

**Senator Vanstone**—Yes.

**Senator LUDWIG**—What took place—can you say?

**Senator Vanstone**—I do not think it is a problem to indicate that my office consulted with the Prime Minister's office on an appropriate person. No, I did not ask for a CV from Mr Palmer. I do not think I could recite his CV. I would not say that I knew it in that sense. It is in *Who's Who* if anyone wants to look it up, I am told. I think him having been appointed by Labor as a police commissioner in Australia for the Federal Police and then reappointed by us was a fair assumption on my part that he was a good and proper person. As to the conflict of interest issue, yes, you would consider that. There would be various views. Some people would have the view that if you are a past police commissioner you should be kept away from anything that involved police. I have exactly the opposite view. I think that someone who does understand the difficulties police face at the state and federal level and who does bring that informed insight into it is precisely the sort of person that you do need in those sorts of circumstances since the question of identity is a particular issue.

I think it is understood—I hope it is understood by everybody—that if at the first point the Queensland police came into contact with Ms Schmidt, Ms Brotmeyer, Ms Rau it had been established that she was an Australian permanent resident, she would never have gone to immigration detention. She may have gone to the watch-house. There might have been some other matters the police would have wanted to pursue, but she certainly would not have gone there as a consequence of immigration. The whole reason she was in immigration detention was that people, I think properly, formed a suspicion that she was an unlawful noncitizen, so the identity issue is a critical part of this.

Probably the most unfortunate part about this case is there was uncertainty about her identity in the sense that she created a false impression that she was someone else and at the same time she was a person who, through no fault of her own, had a pre-existing mental illness. The degree to which that was operative at the time I cannot say, but the two of those

issues together—someone presenting as an unlawful noncitizen and someone who had mental health issues—I think gives the very simple answer to what has happened and why Ms Rau spent so long in immigration detention. I think therefore Mr Palmer is the appropriate person. He will need mental health expertise as well.

**Senator LUDWIG**—So the issue of conflict of interest was considered as well. Is it the intention to provide secretarial support? Where would that come from?

**Senator Vanstone**—Mr Farmer has had longer discussions than I have with Mr Palmer about this, but one thing has been made very clear: immigration will have a couple of people to assist because, obviously, easy access to understanding the immigration system and who might know what will be of importance to him. He will need a lot of other staff. He will need people independent of DIMIA, and they will be provided. The secretary might be able to give you further information as to that.

**Senator LUDWIG**—I can understand that. I have been struggling with it for some years now and I still keep failing to understand the process.

**Senator Vanstone**—The immigration system.

**Mr Farmer**—That is why we are here, to help them. I have spoken with Mr Palmer, obviously. On the day of his appointment I gave him an assurance that resources necessary to enable him to carry out his inquiry would be provided. What we have done since then is to, as the minister said, set up a two-person liaison team—not attached to Mr Palmer, but in the department—as an inquiry point for him so he has an easy point of access to the department. He has established his offices in the Department of Transport and Regional Services. They have made office space, communications and so on available. He is assembling a team of his own choosing. To the extent that there are costs involved in that team, my department will pay for those costs. To the extent that other agencies are seconding their officers, I believe there will be a variety of arrangements to cover their costs. There is one officer of the department of transport who is being made available to Mr Palmer at his request. I understand that that department is making that officer available free of charge, although it may charge us for some costs. In a nutshell, Mr Palmer is establishing his team and the costs of the inquiry will be paid for by DIMIA.

**Senator LUDWIG**—Will DIMIA staff be seconded to assist directly?

**Mr Farmer**—No.

**Senator LUDWIG**—So there will be liaison between them.

**Mr Farmer**—We have a two-person liaison team as the first point of contact for the team. But that team is based in DIMIA, not in Mr Palmer's office.

**Senator LUDWIG**—Those officers, as far as you are aware, do not have any pre-existing contact with the Rau case?

**Mr Farmer**—That is my understanding, yes.

**Senator LUDWIG**—Just coming back to the Queensland hospital stay, there was permission sought in relation to what was called sectioning in Baxter, in Glenside. During the

admission to the hospital in Queensland, the Princess Alexandra, between the 20th and the 26th, was the permission of Ms Rau obtained then, or how was that undertaken?

**Mr Davis**—I perhaps need more details, but my understanding is that she was seen by a psychiatrist, as I said earlier, on 10 August. The decision was made to arrange for further assessment at the Princess Alexandra hospital. Agreement was completed in accordance with the directions of the psychiatrist under the Queensland Mental Health Act for an assessment on 19 August. She was transferred on the 20th and came back on the 26th. I am reading that as an involuntary move to the hospital, but I do not have the exact words in front of me.

**Senator LUDWIG**—That is the way I was interpreting it as well, but I did not want to come to that conclusion without asking. Can you check whether or not it was an involuntary move?

**Mr Davis**—An officer who knows more details of this case has confirmed to me that she was involuntarily detained under the Queensland Mental Health Act and subsequently moved to the hospital.

**Senator LUDWIG**—When was DIMIA notified of that?

**Mr Davis**—I do not have the first contact on that process as yet. We were aware that this was happening, and indeed it was a joint effort, if you want to put it that way—

**Senator Vanstone**—Did we not cover this before dinner? You have given this answer before, have you not?

**Mr Davis**—Yes, I think I have. So it was a joint process and I understand that our officers were involved, including in aspects of facilitating her placement in the hospital.

**Senator LUDWIG**—More generally than in terms of the Rau matter, is this the first incidence of this? Or have there been other incidents where detention has later been found to be unlawful and compensation has occurred?

**Mr Farmer**—Perhaps we could get over the nomenclature of that problem?

**Senator LUDWIG**—Whatever you want to use I am happy to adopt.

**Mr Farmer**—The minister made the point earlier that the detention of someone suspected of being an unlawful noncitizen is lawful; in fact it is mandatory.

**Senator LUDWIG**—I meant when it becomes unlawful in the sense of this: if you mandatorily detain someone who is an unlawful noncitizen then it is lawful. If it is later found to be a wrongful detention—

**Senator Vanstone**—No, if it is later found that your reasonable suspicion has turned out to be not correct—

**Senator LUDWIG**—What do you then call it? It still must be an unlawful detention in that instance.

**Senator Vanstone**—It was lawful up until the time you discovered that your suspicion was incorrect.

**Senator LUDWIG**—And then post that what is it called?

**Senator Vanstone**—Unlawful detention at that time.

**Mr Farmer**—After that, as happened in the case of Ms Rau, she was released from immigration detention.

**Senator LUDWIG**—What nomenclature do you use to describe where a person has been found to be lawfully detained at the time based on the sections of the act, and then later a court or something might determine—

**Mr Farmer**—We would say that she was lawfully detained at the time, having regard to the provisions of the act; and, in this case, when a finding was made that she was lawfully in Australia, she was released from detention.

**Senator Vanstone**—That is an important point and I am grateful that you are asking that question. So as to save us correcting you every time you refer to it as ‘unlawful’, which I am not suggesting you were doing deliberately, it is important to note that the power comes from the view of the person when they detain them, and when they no longer have that view the person is released.

**Senator LUDWIG**—I understand the concept.

**Senator Vanstone**—Therefore, if you do describe it as an unlawful detention, the suggestion that that conveys to the public is that at the time of the detention it was unlawful; and that is, of course, an incorrect statement of fact—

**Senator LUDWIG**—I take the point, and that is why I asked you to clarify.

**Senator Vanstone**—Believe me, I think we would do well to think of a way, if it is possible, to more appropriately describe such detention as lawfully occurs for its duration but becomes improper and the person is then released—and how you then talk about it without creating the impression that it has been unlawful from the very beginning.

**Senator LUDWIG**—Thank you, Minister. That is the word I was trying to find in the sense that there have been, as I understand it, cases in the past, and there may have been instances where it might have been considered to be improper. Has the department compensated people in that regard? Are there instances of that occurring?

**Mr Farmer**—I think this was raised earlier by Senator Nettle, and we have undertaken to provide such details as we can.

**Senator LUDWIG**—All right. So you cannot recall any in your period of service?

**Senator Vanstone**—He did not say that.

**Senator LUDWIG**—No, but I am asking him: can he recall any in his period of service?

**Mr Farmer**—The minister, in her opening remarks today, noted that there have been occasions when people have been detained because of a reasonable suspicion formed by an immigration officer, and then they have been subsequently released when further details emerged which led to those suspicions being dissipated—

**Senator LUDWIG**—Goldie v Commonwealth is one such instance.

**Mr Farmer**—I am sorry, I am personally not aware of that. In other words, we have said that that does exist, it is generally speaking for cases where people have been detained for

quite short periods, so the case involving Ms Rau stands out in stark contrast to the general, if rare, run of such cases.

**Senator LUDWIG**—All right. And then what you are going to do is take on notice that rare run of instances and indicate the type/nature of the incident and whether any compensation was paid or rewarded or there was settlement—unless it was a confidential settlement.

**Mr Farmer**—We have undertaken to use our best endeavours to get the information. We will be able to provide some information. Just how far back it can go, how comprehensive it is remains to be seen. But we will, as always, make our best endeavour.

**Senator ALLISON**—Mr Farmer, are the cases so numerous that this is difficult to recall? It seems unlikely that you or Ms Godwin would not recall a case of improper detention involving compensation and not be able to tell the committee off the top of your head about such cases.

**Mr Farmer**—I think the questions that were being asked were not about, as you put it, improper detention; they were about cases where people—

**Senator ALLISON**—Were compensated for improper detention. That was the question.

**Senator Vanstone**—It goes back to the issue that Senator Ludwig just raised.

**Senator LUDWIG**—I am happy for you to provide that answer, if you have it, off the top of your head.

**Senator Vanstone**—Compensation for proper detention at the time.

**Senator LUDWIG**—Which was later found to be improper.

**Senator ALLISON**—We are just dealing with semantics. How many people have been compensated for detention?

**Senator Vanstone**—If you simply want to phrase it that way, that is another issue.

**Mr Farmer**—The question that was asked earlier by Senator Nettle went more broadly than that but it did touch on the compensation matter. We said we will—

**Senator ALLISON**—Is compensation rare or is it not?

**Mr Farmer**—I understand that it is rare. There are more cases of people detained and subsequently released because they are lawfully in Australia than there are compensated.

**Senator ALLISON**—But we are asking about compensation.

**Mr Farmer**—Senator, you are now asking about compensation. The point that I was making earlier was that other senators have asked the question—

**Senator LUDWIG**—No—

**Senator ALLISON**—You have said you will get back to us but what I am suggesting to you is that it is very hard to believe that you would not know if there had been other cases where compensation was deemed necessary to be paid. That is the question: are there an awful lot? You say they are rare. How come no-one remembers what they are?

**Mr Farmer**—Senator, with great respect, you are putting words into my mouth. I was saying that, in response to questions by two senators, we will provide details on notice to the extent that we are able to—

**Senator ALLISON**—I did not mishear that, Mr Farmer.

**CHAIR**—Senator Allison, please let Mr Farmer conclude.

**Mr Farmer**—If I could finish my sentence: we will do that. If you would now like to go on to the question of what officers at the table can remember about compensation payments, I am very happy to do that.

**Senator ALLISON**—Thanks

**Mr Farmer**—I will need the help of my colleagues here.

**Mr McMahon**—I might start by talking about Sacko because Senator Bartlett referred to him earlier. It is a very interesting case—many myths have rapidly developed about the case. Compensation was paid in that case. It was paid because of a technicality regarding the way in which we held the person. We had relied on a section of the act which actually had autocancellation of the visa and in the end it was taken that the autocancellation had not worked and we could easily have used another section of the act to have cancelled the visa.

**Senator ALLISON**—And avoided compensation?

**Mr McMahon**—And we would have avoided compensation. Essentially, we relied on part of the act which said that if a person did not present a valid document, their visa is cancelled. In the end we came to the conclusion that the document was valid and therefore the autocancellation provision had not worked.

In respect of Sacko, I wanted to make the point that the judgments that were made about that individual were all very high-quality judgments. I heard this morning in one of the media reports that he was picked up because there was a scratch on his passport. In fact, his passport was examined by an expert document examiner and there were eight indications that there had been photo substitution on the passport, including: paper fibre disturbance; breaking the lamina; excessive glue; damage to the blue-printed security feature; variation in print style of the security feature; a small section of lamina along the top edge of the bearer's photograph and running under the bearer's photograph; the passport contained a lack of security fibre; and the lamina contained a clear printed security pattern which was damaged in the area. We took that as a very clear indication that photo substitution had occurred on the passport.

The person was subsequently questioned and it was noted that the drivers licence had a different signature from the passport. Also he was carrying documentation which we thought odd—payslips et cetera—and he could not provide the phone number of his employer. In other words, we asked a series of questions, all pointing towards irregularities. He was taken into detention on the night of 31 August. On 1 September he was offered contact with the embassy, and he refused that. On 2 September he decided that he would contact his embassy and he made that contact.

At the same time we initiated a request in Paris to check whether or not the document was valid. On the 3rd we were approached by the French embassy, who asked us to release the person. We then saw them on the 4th and asked them to verify the passport. After a process,

the passport was verified and the person was immediately released. I think we came to the conclusion that the passport had been pulled back and reglued. The person was in detention for four days. I think all the judgments around it were right and no compensation would have been payable had it not been for the one simple fact that there was a technical hitch in respect of the visa cancellation process.

**Senator ALLISON**—So he was put in detention for interfering with his passport, even though it was his passport and it was valid.

**Mr McMahon**—No, he was put in detention because we reasonably suspected that he was not the person on the document.

**Senator ALLISON**—And again that turned out to be improper.

**Mr Farmer**—No, not improper at all.

**Senator ALLISON**—His passport was valid. I really did not need to know all that detail. It was very interesting, but we did not need to know all that. Are there any other examples? That is another one that has had publicity.

**CHAIR**—I was interested to hear the details. Given the level of publicity which has been given to this case today, I think it is in fact helpful for the correct information to be placed on the record by the department in relation to this case.

**Senator ALLISON**—I do not disagree, but we have had the story and I just wondered whether there were any others.

**CHAIR**—I do not regard it as a story; I regard it as the reporting of information by the officer concerned. You indicated, Senator Allison, that you wanted to go down this road. Senator Ludwig had not quite finished—he had one more question, as I understand it, in the area concerning Ms Rau. We can either keep going down this road or come back and conclude Senator Ludwig's question and go to you.

**Mr Farmer**—The last word on this was the use of the word 'improper', and I do not believe that should be allowed to stand.

**Senator LUDWIG**—I adopted the minister's word.

**Mr Farmer**—We have gone around this carousel about four times today.

**CHAIR**—I have not enjoyed the ride on any of the occasions, Mr Farmer.

**Senator LUDWIG**—I always like a good spin.

**CHAIR**—We note your concerns. We are doing our best with terminology and, if it needs to be corrected, then please do so, but at the same time we are trying to get through the questions as well.

**Mr Farmer**—It needs to be corrected. We do not agree with the characterisation.

**CHAIR**—Fine, we have noticed those concerns.

**Senator LUDWIG**—My question was only in terms of trying to wrap it up. If you have a look at section 196 of the migration legislation, it seems to say—and I am happy for you to correct me if I am wrong in terms of the interpretation, because I am only reading it plainly; I have not gone to the case law as yet—that if there was doubt in terms of who she was or what

she was in the sense of her identity, at that point you have not been able to ascertain her status as an unlawful noncitizen. If we accept that you were searching for an unlawful noncitizen's status, at the point when you could not determine her status as an unlawful noncitizen—although there is an explanation, reasonable to you, of the types of searches broadened out—and, if after a reasonable time had passed and you had conducted all the searches you could not establish it, even after the German consulate had said, 'She is not a German citizen as far as we can determine,' at that point, from my perspective I am happy to say, it seems there must have been doubt. If you read section 196 it seems to suggest that when you cannot determine status you must release. Am I getting that wrong? I am happy to be corrected, but that is how it seems to read to me.

**Mr Farmer**—My law training is from the university of bush, so let me give the plain person's view of it. If you have reasonable doubt you must detain. What extent of doubt? It is reasonable.

**Senator LUDWIG**—I know, but that is at the beginning. I am talking about section 196, which is at the end point of when you must release.

**Mr Farmer**—That is right. And that reasonable doubt persisted. If you recall, we were broadening our inquiries to include authorities of countries other than Germany—the Ukraine and Poland, if I remember correctly. In other words, we were attempting to find out the nationality or origins of Ms Brotmeyer, as we knew her then. The point at which we must release is the point at which we can establish that the person is lawfully in Australia. That is one possible outcome and the other—

**Senator LUDWIG**—You say it is the point where you have to establish it. I say it is the reverse in the sense that, if you cannot establish it, you should release—if you cannot establish that she is an unlawful noncitizen. I might have that point wrong and I am happy to accept your—

**Senator Vanstone**—I will get you some further advice on that, Senator. I think you asked me this question in the Senate. To the best of my knowledge, belief and understanding there has been no urgent phone call saying, 'We're not happy with the answer that you gave,' to the answer that I gave you at the time.

**Senator LUDWIG**—I am trying to shed light on it more than anything else.

**Senator Vanstone**—We will get you some learned academic light for you.

**Senator LUDWIG**—It seems to me that at the point where you endeavoured to establish her as an identity she had given, the only evidence you had as to the fact she was an unlawful noncitizen was by her own admission. There were no other indicia as far as I could hear.

**Ms Godwin**—No, but—

**Senator LUDWIG**—She told you she was Anna Brotmeyer.

**Ms Godwin**—Yes, and we were not able to establish that she was the holder of a visa to remain lawfully in Australia. And the act is also clear on that point.

**Senator LUDWIG**—I accept that. I am not disputing that. But, in terms of her admission as to who she was—not what she was, but who she was—you only have her admission.

**Ms Godwin**—Yes, but we also have her—

**Senator LUDWIG**—And you then conducted searches as to whether or not that person that she had admitted to being had certain documentation. That is finite. We know that much.

**Mr Farmer**—And none of that led in the direction of confirming that she was a person with a lawful right to remain in Australia.

**Senator LUDWIG**—But at the point that you could not establish that she was positively an unlawful noncitizen, you say that there was no positive duty.

**Mr Farmer**—There is quite a difference between maintaining a reasonable suspicion and then not being able to establish absolutely that something is the case.

**Senator LUDWIG**—I am not gabbling with that. At that point, though, you could not establish she was in fact an unlawful noncitizen right up until the time of her release, in fact.

**Mr Farmer**—We could not establish that she was a lawful noncitizen. That is really the point. Any more double negatives, Senator, and we are going to get into a lot of trouble.

**Senator LUDWIG**—I just thinking of the transcript of double negatives.

**Mr Farmer**—Yes.

**Senator LUDWIG**—I will let it go. Thanks. I will rely on the minister to shed some light on it.

**Senator ALLISON**—I will go back to that question I asked before. I will try to avoid any nomenclature and I will just say: does anybody at the table remember any other recent or not so recent compensations paid out by the department for persons in detention?

**Ms Godwin**—I will begin. I am not sure whether anyone else here has got any further information. There is the other case which I think involved compensation of a Mr Goldie. I am not an expert on Mr Goldie except to say that in a sense it was a very different sort of a case from the one that we have been discussing at length today because his identity was established. It was known that he had been the holder of a visa which had been cancelled. The only matter at issue was whether or not he then had a bridging visa in effect. The officer responsible could not establish that he had a bridging visa in effect and therefore formed a view that he was an unlawful noncitizen. In the event, it was subsequently established that he did have a bridging visa in effect and he was therefore released from detention. That was a complex case because it first went to court and the decision was upheld and then it was appealed and the court found in Mr Goldie's favour—not unanimously. I think the view was taken that, because of the way the visa system works, it should have been able to have been established that he was the holder of a visa but it was one of those ones where there were certainly different views even in the court proceedings.

**Senator ALLISON**—And the compensation amount?

**Ms Godwin**—I have no idea and I also do not know whether it is the subject of a confidentiality order, so I will have to take all of that on notice.

**Senator ALLISON**—No-one else remembers any other cases.

**Mr Davis**—I was just going to say that I have been in this job 2½ years or thereabouts and I am aware of a couple but I do not recall any names, details or amounts. I would concur with Mr Farmer’s observation: from my perspective it is rare, but there have been some cases.

**Senator ALLISON**—So that is a couple in addition to those that have already been mentioned, and over what time frame?

**Mr Davis**—As I say, I have been in this job for 2½ years and I have recollection of maybe one or two but I do not recall any details, amounts or names of particular detainees, I am sorry.

**Senator ALLISON**—Minister, going to your remarks earlier today that you wanted to get to the bottom of this through the Palmer inquiry: what is it that remains to be discovered? What is it that we do not already know about what happened?

**Senator Vanstone**—I think it is for Mr Palmer not to take direction from me as to what I think needs to be resolved. I think he should have free, open and unfettered access to the bureaucrats involved to see what answers he believes can be provided as to the circumstances as to Ms Rau being taken into detention and kept there.

**Senator ALLISON**—So you are saying—

**Senator Vanstone**—I am saying just what I have said—that is what I am saying.

**Senator ALLISON**—Getting to the bottom of it seemed to suggest that there was at least some lack of clarity in your mind.

**Senator Vanstone**—I stand by the answer I have just given you: I think Mr Palmer is entitled to undertake the inquiry—

**Senator ALLISON**—Nobody is suggesting he is not.

**Senator Vanstone**—I will not bother finishing my sentence. I will refer to the answer I have just given you.

**Senator ALLISON**—Can you explain what the legal ramifications are of making an apology to Ms Rau or her family?

**Senator Vanstone**—No, I am not in a position to give you legal advice, but I will say this: to me, an apology is a serious matter; it is acknowledgment of responsibility. It is not something that should be bandied around as some sort of political infotainment—which, with respect, I think some people in some circumstances see it as being. Personally, I have a degree of disrespect for people who say, ‘Will you apologise? Will you apologise? Will you apologise?’ when they do not even know what the facts are—both the people seeking apology and the person who unwisely gives in to that request. I think it just demeans the value of an apology.

An apology, to me, from someone is of real value when it is an acknowledgment, understanding what has happened and then accepting responsibility for it. It is not just a word to bandy around: ‘Oh, I apologise.’ What, will I apologise for everything that has happened that is wrong in the world that I am not responsible for? That would be completely ludicrous, wouldn’t it? An apology only has real meaning when it is associated with content and an understanding of what has happened.

Now, I will tell you this, Senator: it is very, very clear to me from the media coverage that I have seen that there are a large number of people who have not the faintest clue what happened here and, frankly, have little interest. Putting that aside, I do not know anybody in the Commonwealth government—anybody I have spoken to about this matter—who does not deeply regret what has happened. Obviously no-one would want someone in any event who is an Australian permanent resident but least of all someone who had what we now understand to be, if the media reports are correct, a long history of a pre-existing mental condition to be in those circumstances—a history, apparently, of having removed themselves from mental health facilities who in fact has now ended up in one against their will. No-one wants to see that. Everyone that I know of wants to find out how that happened and to see if they, being the institutions involved, could have done anything they did not do or did anything they should not have done.

**Senator ALLISON**—So you criticise those people who presumably call for an apology or wish to make an apology—

**Senator Vanstone**—Senator, I don't—

**Senator ALLISON**—You are interrupting me now, Minister. I have let you have a go.

**Senator Vanstone**—So long as we have got the ground rules for the future, that is good.

**Senator ALLISON**—You are saying that the reason why they should not apologise is they do not have a full understanding; they do not have the facts. Aren't you in the best position to have the facts and the understanding? Doesn't that add weight to the call for you to apologise rather than others?

**Senator Vanstone**—Senator, what I have said is in response to your question to me in relation to an apology. I have not sought to criticise others. I have explained—

**Senator ALLISON**—You just did.

**Senator Vanstone**—I am sorry, Senator, I thought you wanted to set the ground rules that we did not interrupt each other. I do not care what the ground rules are, I can go mano a mano on interrupting or mano a mano on each having their say and I, frankly, am indifferent to which it is. I am happy for you to make the choice. I do find it a little bit stressful if you think it is one rule for you and another for everyone else.

**Senator ALLISON**—Are you finished?

**Senator Vanstone**—Well, on that point, yes.

**Senator ALLISON**—I think you just contradicted yourself. Anyway, let's move on.

**Senator Vanstone**—I am going to lie awake at night worrying about your view in that respect! I can assure you, I will not sleep tonight!

**Senator ALLISON**—You say that the government—I assume this is what you have said, if I can just clarify this—has expressed deep regret. Is that the case? Have you expressed deep regret to Ms Rau and her family?

**Senator Vanstone**—I refer you to the *Hansard* of the answer I have given in respect to that matter. There is little point in going on when I have given an answer and then you seek to

paraphrase it into words that suit you. I stand by the answer I have given you. It will be in *Hansard*.

**Senator ALLISON**—Okay, I will ask you a new question: will you put this deep regret you expressed in writing to the family of Ms Rau and to Ms Rau herself?

**Senator Vanstone**—I have made it public, for all the world to understand. The Prime Minister did so on Sunday—I cannot remember the exact date, but I am sure you know the Sunday I mean—and I have done so at almost every opportunity since then.

**Senator ALLISON**—The question of reasonableness that you mentioned a little earlier—

**Senator Vanstone**—Reasonableness as to?

**Senator ALLISON**—Reasonableness as to whether or not someone was detained unlawfully. You said that it all depends on reasonableness and if you can demonstrate that in this case there was a reasonable expectation on the part of those who made these decisions that it was the right decision at the time. What has been said quite a lot about this case is that testing reasonableness in a prison situation is possible through a series of procedures like appeals or processes that guarantee the rights of prisoners but that this is not available in detention centres. Does the government accept that there are few rights for people in Immigration's detention centres with regard to appeal on such questions as reasonableness?

**Senator Vanstone**—I think the officers can give you some detail as to the degree to which appeals after appeals after appeals are available in relation to a range of immigration areas.

**Senator ALLISON**—So with regard to Ms Rau's capacity to appeal against her incarceration, what exactly are the rules?

**Ms Godwin**—Perhaps I could make a few comments. For a start, people have the right to go to the Ombudsman or the Human Rights and Equal Opportunity Commission and that information is widely displayed in detention centres. In addition, the act makes it clear that if someone asks to see a lawyer in relation to an application or their detention, that must be facilitated, and we have very clear procedures for doing that. It is clear that people have the right of appeal to the courts about the lawfulness of their detention and numbers of people have so appealed. So there are a variety of administrative and legal appeal mechanisms open.

**Senator ALLISON**—So you do not accept that there is a big difference between the rights of those in prison vis-a-vis immigration detention?

**Senator Vanstone**—I will answer that because that is another situation, Madam Chair, where I think it is reasonable to ask the committee to protect witnesses from this sort of questioning. It is reasonable to ask officers a question about matters within their knowledge—namely, in this case, the Migration Act and their administration thereof. If the senator wants to put the proposition that other people have put views about prisons, which are not the function of DIMIA, she is quite welcome, of course, to put those views before the committee. But it is not appropriate then, because an officer has answered a question about the range of appeal mechanisms that are available to someone who happens to be in immigration detention, to commence the next question with the assertion, 'So you do not agree?' with a contrasting proposition that to the best of my knowledge the record would show was not put to the officer. In any event, if it was I would have said it was an inappropriate proposition to put.

**CHAIR**—As you know, Minister, I make it some might say tediously clear at the beginning of the estimates proceedings that officers are not expected to give an opinion on a matter of policy or to provide an opinion per se in any way but to answer questions put to them on the facts as they are able to respond. If it is your view or the officer's view that Senator Allison has asked for an opinion in that way then the officer is able to say that they are not able to answer that and I will bear that in mind.

**Senator ALLISON**—I do not want to press that. I just thought it might be an opportunity to put something on the record. The stories are running out there and I thought it might have been something that you would find useful to do, but obviously not. I have a question in terms of the various events. Was the evidence of Ms Rau's state of mental health as was noticed by the Aboriginal community, which, as I understand, first brought her in to an authority's attention, relayed to subsequent psychiatrists or psychologists who might have seen her in a different state and determined that she was not mentally ill?

**Ms Godwin**—I know it has been widely reported that that was the case. I do not think we have any information to that effect. The first contact with the department of immigration in relation to Ms Brotmeyer, now known to be Ms Rau, was in fact the Queensland police. Our understanding is that someone at a roadhouse drew her to the police's attention and I have no information beyond that about the involvement of local Aboriginal communities.

**Senator ALLISON**—The reason I ask is that this case seems to be a series of opinions by people about her mental state which go on to be refuted or played down or however you describe it by subsequent professionals. This may or may not be usual in the case of someone with schizophrenia. Would you agree with the proposition that there seems to have been lots of evidence along the way and then a presentation which suggests that there was not a problem in between those incidents?

**Mr Farmer**—It is very difficult for a layperson to offer an opinion on a matter on which medical professionals have uttered. Speaking personally, I would not attempt to second-guess the opinions of legally qualified medical practitioners.

**Senator ALLISON**—Nonetheless, the minister says that the evidence of detainees at Baxter will be accepted as part of the inquiry should they choose to provide it.

**Senator Vanstone**—It will be heard—it may not be accepted; it may be accepted. But it will be heard.

**Senator ALLISON**—Heard, accepted.

**CHAIR**—Senator Allison, it is a very difficult question for the officer to answer.

**Senator ALLISON**—I accept that. It is nonetheless an observation and I am not the only one to have made it.

**Senator Vanstone**—To the extent that the observation seems to be the most simplistic characterisation that you can get of it, I agree with that. If by that you mean to infer that there are lots of people making lots of comments about this, not all of whom know the facts or are medically qualified to comment in relation to her mental health, I would agree.

**Senator ALLISON**—What is the contractual arrangement between the department and the psychologists who were used to provide services in this case?

**Mr Davis**—The psychologist services at Baxter are employees of one of the subcontractors to GSL. Our contract is with GSL and they have subcontracted elements of their service delivery to us to subcontractors.

**Senator ALLISON**—Would the psychologists be exclusively employed in department of immigration work?

**Mr Davis**—Yes, the psychologists are full time at the Baxter facility.

**Senator ALLISON**—And the psychiatrist?

**Mr Davis**—A number of psychiatrists have been involved in this case. I have no details about the Queensland psychiatrist's employment arrangements. The visiting psychiatrist, the specialist who attended Baxter and assessed Ms Rau on 6 November, is contracted to the health services subcontractor. The psychiatrist involved in the case from Glenside is obviously part of the South Australian mental health establishment.

**Senator ALLISON**—Apart from at Glenside, those other health professionals are contracted to the department and pretty much work only for the department?

**Mr Davis**—I understand that the visiting psychiatrist also has a private practice. He is contracted by the health subcontractor. The exact arrangements and details of that I do not know but I understand that he also has a private practice separate from the work he does for the health subcontractor.

**Senator ALLISON**—Do these people need to have any particular experience or training with people in detention? I imagine they have experienced it if they are the ones who do it most of the time.

**Mr Davis**—All of the medical staff, including nurses, and, indeed, all of the detention services officers working under this contract, have received cultural awareness and other training in both preparation for and working within the facilities. A range of officers who work both for the contractor and for subcontractors have worked in detention centres with the previous detention service provider. So there would be experienced people there, as well as people who have never worked there before. A range of training has been made available to facilitate their provision of service in a culturally sensitive and appropriate way.

**Senator ALLISON**—How is that training provided? Is that a short training course and who gives it?

**Mr Davis**—The detention officers have a formal training program. DIMIA presents some material as part of that course. I do not have the details of that here. The subcontractors, because of the specialist nature of the health services, have their own training courses. Perhaps it is better if I provide on notice details of the training to help the committee.

**Senator ALLISON**—Were the psychiatrists or the psychologists consulted about the isolation of Ms Rau? As I understand it, she was for some period of time in locked isolation.

**Mr Davis**—She spent some time in the management support unit on two occasions, as we have previously indicated, and for the periods that I have previously indicated. Psychologists visited her there. In terms of isolation, she was not in a room for 24 hours a day. She was in and out of a room for periods, and for different periods at different times. Nursing staff and

psychologists visited her while she was both in the management support unit for the short period she was there and while she was in the other compounds of the facility.

**Senator ALLISON**—But that was not my question. I did not ask whether she was visited; I asked whether they were consulted about the decision to place her in isolation.

**Mr Davis**—My understanding is that they were but I will correct that if that is not accurate.

**Senator ALLISON**—The reason I raise it is that her sister suggested that this was probably the worst kind of treatment for her given her understanding of her condition.

**Mr Davis**—My understanding of the records I have read is that they were well aware of her placement into the management unit. As I said, they visited her while she was in there and were well aware of her moves back out of the management unit, as well as the compound moves that were made, and were involved in the decision-making processes associated with those.

**Senator ALLISON**—But you fall short of saying they approved of it, suggested it or were part of the decision.

**Mr Davis**—I think I need to be careful. From reading the records they were obviously involved. I cannot tell you, based on the records that I have read and seen, whether they suggested it or it was suggested to them. I do not know that level of detail.

**Senator ALLISON**—Do the psychologists or psychiatrists who work in this arrangement ever make a recommendation that a person is in such a state that they ought to be released?

**Mr Davis**—They can.

**Senator ALLISON**—And do they? Have they?

**Mr Davis**—I would have to take that on notice. I do not know.

**Senator ALLISON**—Minister, I think you said earlier that it was expected that within a couple of weeks the memorandum of understanding for health services would be signed. Can you explain, firstly, why it has taken 12 months and, secondly, what difference it will make once the memorandum of understanding is signed. Is there any difference in the service provided? What are you waiting on?

**Senator Vanstone**—I do not recall saying I thought it would take a couple of weeks. Steve Davis answered that question completely earlier. He may be able to repeat it now for you.

**Senator ALLISON**—About what difference it makes to the services?

**Senator Vanstone**—There was quite an extensive answer given.

**Senator ALLISON**—I apologise if I was not here for that.

**Mr Davis**—In terms of signing the agreement, I am ready to sign the agreement and I usually sign these memoranda of understanding. If it was signed by the South Australians, I would sign it. I think I said earlier that if they signed today, I would sign today.

It was provided to the South Australians in a form that I was satisfied with in July, as I recall. We have not had a response. We have followed that up fairly recently and my understanding is that it could be signed within weeks, but obviously it takes two parties to

sign such an agreement. In terms of the services provided to Ms Rau, I expressed an opinion earlier that I did not think it would make any difference because the mental health service protocols which are part of the MOU, which covers a broader range of health services than just mental health, are already agreed. There is some finetuning or refinement on some aspects of that, but the processes that we used for Ms Rau are agreed processes. Whether the document was signed or not, in my view, would not have made any difference in this case.

**Senator ALLISON**—So what is the area of difference between what the Commonwealth finds acceptable and what South Australia does? Where is the argument?

**Senator Vanstone**—It is certainly not in relation to the appropriate place or contact point for us where we have concerns, the appropriate pathway into South Australian mental health. I do not think that there is any disagreement about that—is there, Mr Davis?

**Mr Davis**—Advice from one of my officers who is involved in this is that the only point of contention in the MOU at the moment is who bears the costs of training in various aspects of the MOU.

**Senator ALLISON**—So it comes down to cost—that is usually the case, isn't not? Minister, I am wondering if you are aware that academics at RMIT in Melbourne are conducting their own Rau inquiry. Will you make a submission?

**Senator Vanstone**—I did see that academics are conducting their own inquiry. I am not sure of the nature of that inquiry, whether they are going to go around and speak to a few people they wish to speak to or whether they are going to invite the public to put their views. It does strike me that that inquiry will face some difficulties in relation to Ms Rau if in order to ascertain what happened they want to access her health records.

**Senator ALLISON**—So you would not release those health records?

**Senator Vanstone**—I cannot see any reason why you would.

**Senator ALLISON**—And presumably they will not have access to witnesses at Baxter?

**Senator Vanstone**—I cannot see at this point that that would be appropriate. We have got an appropriate inquiry being conducted. As I understand it, if the social work academics hold their own inquiry, it will by practice necessarily be limited.

**Senator ALLISON**—So you will not be making a submission? That was really my question.

**Senator Vanstone**—I will give thought to it; there might be a lot of things that I would like to say.

**Ms Godwin**—I would like to add one thing to the group of questions you were asking about the involvement of the psychologist. Mr Davis has said that the psychologist would have been actively involved in placement processes and so forth within the facility, and in my reading of the record that is an accurate view. There are case management meetings that various people participate in. I think there was a point at which the psychologist wondered about whether the management support unit was the appropriate accommodation option within the centre—I do not know at which precise point—but I also recall that there were

discussions at various points about Ms Rau's willingness to, in a sense, move back to a less restrictive environment.

The view was taken, given that it was an opportunity to go to a less restrictive environment, that it was inconsistent with that to, in a sense, require her to move against her will. The focus was on counselling and encouraging her to move. That included moving between the Red One compound and the Blue One compound. I also think that at one point there was a similar issue in relation to the management support unit. I thought that for completeness I should mention that there was a reference where the psychologist raised that issue of appropriateness and that was being worked through. But there was certainly active consideration of her placement within the centre and involvement of a range of parties in all those processes.

**Senator ALLISON**—I am sorry, I did not catch the date on which this decision was made.

**Ms Godwin**—I do not have the date. I am just saying that I recall from reading various parts of the record that there was certainly a question raised at one point by the psychologist on that point.

**Senator ALLISON**—And the date of her detention in the management unit?

**Ms Godwin**—That was provided earlier.

**Senator ALLISON**—Yes, I realise that. You do not remember it.

**Mr Davis**—I indicated the first placement in the management unit was for four days in the first half of November and the second period in the management support unit was for eight days in the latter parts of November.

**Senator NETTLE**—Minister, at one point when you were out of the room we were discussing the visit to Baxter detention centre by the Immigration Detention Advisory Group—

**Senator Vanstone**—In December.

**Senator NETTLE**—on 16 December and discussions that occurred with a Catholic priest from the local community who did regular visits to Baxter. He raised the issue of a mentally unstable female in Red One compound who was causing concern to other Red One detainees. We had some discussion about that, but was your office or were you informed of that issue at that time?

**Senator Vanstone**—No, not to the best of my belief, knowledge and understanding. I have checked and I have the same answer from the adviser who, if anyone was advised, presumably would have been the person. I cannot recall the reason that he was not with the IDAG up in Baxter. He would not necessarily be with the Immigration Detention Advisory Group at all of their meetings. We did, however, meet with them the day after, I think, in Adelaide, and this specific case was not raised. I think it is correct to say that the group did, as a consequence of somebody—and it may be this person to whom you refer—raising it with them, ask for some information when they were in Baxter, a briefing if you like—

**Senator NETTLE**—Yes, we talked about that earlier.

**Senator Vanstone**—and that was given. Officers who were there can say what happened and what level of satisfaction was given. At the Immigration Detention Advisory Group meeting that I attended the next day, which was down in Adelaide—I am not going to make it a practice of discussing what happens at those—it is fair to note that the issue of the mental health of people in detention was raised. It is often discussed, and I indicated then that I was turning my mind to the appropriateness and how, if it were possible, you would get some very reliable research done in relation to that matter—and I am still turning my mind to that. No doubt at the next Immigration Detention Advisory Group meeting I attend that matter will be raised again to ask what I have done about it since I last discussed it with them. But that is the only context to the best of my recollection in which mental health issues were raised.

**Senator NETTLE**—You may also have seen comments in public about Pamela Curr calling your office on 19 December. I am wondering whether you have any record of that phone call.

**Senator Vanstone**—No. I did indicate I think in an answer to Senator Ludwig that I would not assert that someone had not rung my office raising this matter. Lots of people ring my office about lots of people. In particular there are some lobby groups that have an organised process of encouraging their supporters to ring and express views, some of which, it appears, have such a thread of commonality about the issue raised and the words used that it occurs to me that the email facility is very helpful to lobby groups. I do not complain about that—they are entitled to use that. But, if someone who rings up and asks about a particular person is not representing that person, they would be told that we are not at liberty to discuss individual cases, because that is the fact of the matter.

Ms Curr may have rung on the date which she nominates. I do not want to create a doubt; it is just that we do not have a recollection of it. I do not know that you could say that the adviser to whom she asserts she spoke knows her well, but he believes he would remember if he had spoken to her. But it was a very busy time and a lot of things were happening. It is possible that she raised a case where she was not a representative and was told that it could not be discussed with her. I will give you the first date on which Ms Curr chose to put her concerns in writing to me, because I think it distinguishes it from, not a flood of calls, but a constant range of calls from Circle of Friends and groups like that raising issues about people who they as individuals do not represent.

**Senator NETTLE**—I imagine there would be phone calls from people asking about individuals, not for facts about those individuals or as representatives for them.

**Senator Vanstone**—‘What are you doing about so-and-so?’ is a question that relates to what is happening on their file, and it is not always easy to distinguish that.

**Mr Davis**—In the records I have here, we have a record of a letter from Pamela Curr on 25 January to the minister and also a record of a letter to the IDAG on 20 January.

**Senator NETTLE**—Thanks.

**Senator Vanstone**—If I may, I will say something before you start, so that I am not accused of interrupting you. Some people would have the impression as a consequence of media reports—and I am not suggesting that Ms Curr has misled the media; I do not know

who has misled whom—that Ms Curr was waging a battle royal from early in December. If she was, it was not apparent to the department.

**Senator NETTLE**—I am not going to enter into that one.

**Senator Vanstone**—I am not asking you to.

**Senator NETTLE**—I was talking earlier with the departmental officials about Ms Rau being in Red One. There was some comment that on occasions people sought to move her from Red One back to the family section. There was some discussion about there being families and women in the family section. I noted specifically the comment that you, Mr Davis, made that there were women in that section and you were seeking to move her to that section. I wondered whether there was anything about what facilities are available for women in Red One that related to why you were seeking to move a woman from Red One into the family section.

**Mr Davis**—I do not believe it relates to facilities; it relates more to the composition of the compound occupants—that is, all other women in the facility were in the family compound. I guess the view of the department, the contractors and the people caring for Ms Rau was that a move back to the family compound was desirable. That was the basis on which I was making the comment. It did not relate to facilities, services or other aspects of the provision of her range of care needs.

**Senator NETTLE**—We spoke earlier about referrals of detainees to Glenside and there having been a number of those. I wonder if you would take on notice the number of referrals that there have been of detainees to Glenside for psychiatric assessment, or to other psychiatric facilities when they are detainees from other detention centres.

**Senator Vanstone**—Over what period of time?

**Senator NETTLE**—How many per year is what we were talking about last time—perhaps since 1998.

**Senator Vanstone**—That might take a while.

**Senator NETTLE**—We do not want the information, just the number.

**Senator Vanstone**—If it were humanly possible, Ms Godwin might be able to give you some detail.

**Ms Godwin**—I will just issue a note of caution. As we have done in the past on these sorts of things, we will make our best endeavours to provide some information that will be useful to you. But, as a general proposition, it is always difficult with these sorts of questions because, generally, that information is kept on the individual medical file and, in order to collate the information, we would have to go back through those individual medical files. It is possible that, over the last few months, 12 months or a slightly longer period, we will be able to construct that from records of meetings and things like that, but whether we would be able to construct an accurate record going back over a long period we would simply have to take on notice and try to provide you with whatever we can that is helpful.

**Senator NETTLE**—That is fine.

**Senator Vanstone**—We have said that there have been four cases in the time that Ms Rau was in detention, give or take a day or two just in case there is someone on the edge. I do not suggest from that that you could multiply that out and say that means there are X per year, but that would give you some indication.

**Senator NETTLE**—I was happy with what Ms Godwin said about seeing what period of time there was that information for.

**Senator Vanstone**—Ms Godwin, does that mean you have to go through every file?

**Ms Godwin**—I am saying that it would require that, and we would obviously not be able to do that—

**Senator Vanstone**—That is for people who have had no reference to mental health, but we would still have to go through the file page by page to see if they did have. It is a huge request.

**Senator NETTLE**—Ms Godwin had said—and correct me if I am wrong—that you thought that may be information that would be available for 12 months or perhaps a bit longer.

**Ms Godwin**—I said we would be able to look at that 12 months or a bit longer because, for that period, we would have other records that might be relevant—case management records or something of that sort.

**Senator NETTLE**—I was happy with that.

**Senator Vanstone**—I agree with what Ms Godwin says. We will do our best. All I am asking for is the opportunity to come back to you if the task seems way beyond what I imagine you would expect to be put into it to get the detail of the answer.

**Senator NETTLE**—I am sure you will come back to me, Minister. If somebody requests an independent psychiatric assessment, what is the process for that? This is something we were talking about earlier as well.

**Mr Davis**—Could I take that on notice to provide further detail. Generally speaking, if someone seeks independent psychiatric assessment, that has occurred through legal processes where the detainee's representative has sought some sort of direction from a court or whatever. The key issue for us is that the treating doctors—particularly the GPs, the psychologists and the people who are involved with detainees—are involved in that process. The department has a policy that people can seek second opinions for basically anything medically related but, like you and I in the community, if we were seeking a second opinion, we would usually go and talk to our GP first before we were referred on to a different specialist or whatever else. That is a key part of what we would be seeking in detainees seeking access to alternative treatment or assessment.

**Senator NETTLE**—You mentioned taking it to court. I suppose the example we were talking about before, with eight court cases before that psychiatric assessment, does not seem to me like a very efficient process to follow, and I would imagine it is quite an expensive process to follow for the department if the process is to do it through the courts.

**Mr Davis**—I need to be careful about what I say in relation to court cases because there are currently some court cases going on. The view we have is that we have medical professionals available in the facility. We have access to specialist medical services and, clearly, we are guided by their advice.

In some court cases we have seen attempts to have diagnoses or assessments made without any consultation with our medical professionals, or through talking with a GP, a treating doctor or whatever, who may know the history and the details. The fundamental bottom line for us is that we are guided by the medical advice we receive. We have our own medical assessments. If people wish to get a second opinion then they have that right. They may have to pay for it but they have that right. The involvement of the treating doctors, in our view, is appropriate if that is to occur.

**Senator NETTLE**—Do you know whether anyone asked Cornelia Rau why she came to Australia illegally? We have heard the comments that she said she came to Australia illegally; do we know whether anybody asked her why? I would anticipate that it would be reasonably uncommon for a German citizen to come to Australia illegally. I am sure there are examples of German overstayers but for a German citizen to come to Australia illegally seems to me to be rare. Do you know whether she was asked that at any point?

**Senator Vanstone**—The advice I have been given is that she explained to Immigration officers how she filled out her visa; that she came and had a three-month visa. She may have at one point given other stories to another person. I think that was the proposition you were putting earlier today. That proposition about having walked through China I think is new to me. I suspect I would have noticed it if I had seen it. That is the advice that I have been given.

**Senator NETTLE**—It was in the *Sydney Morning Herald*.

**Senator Vanstone**—Officers might want to add something.

**Ms Godwin**—I am not aware that that precise question was asked. I mentioned earlier that there may have been reference at some point to her having arrived by boat from China. I do not recall any other reference to walking through China or anything of that sort. As I have also said, it has happened previously that people have claimed to have arrived by boat and, generally speaking, they say that because they do not want us to be able to establish their precise date and time of arrival. Given that she then went on to talk about how she had applied for a visa and so forth, I am just not sure that the specific issue arose. The only way we would be able to check that would be by looking at the records or asking officers who interviewed her whether that was ever put to her. I am not aware that it was.

**Senator NETTLE**—The last question I have on Cornelia Rau is this: the section of the act which gives the power to detain says that officers must detain when they have a reasonable suspicion that the person is an unlawful citizen. Is it reasonable for DIMIA to continue to believe Ms Rau's story because the only evidence they had to support their suspicion was her statements that she was an unlawful noncitizen?

**Mr Farmer**—Absolutely, Senator. At no stage did we have any basis on which to conclude that Ms Brotmeyer, as we knew her then, had a lawful basis to be in Australia. In the absence of that determination, the officers continued, rightly, to have a reasonable suspicion that she was an unlawful noncitizen. That suspicion continued past the point where we were making

inquiries only of the German authorities. We were making inquiries about others, too, because of continuing doubts about her background and origin.

**CHAIR**—Are there any further questions at this point in relation to Cornelia Rau?

**Senator NETTLE**—No. I have general questions.

**CHAIR**—I am going to ask Senator Nettle to raise the line of general questioning that she wishes to pursue so that we can see whether it fits within an output.

**Senator NETTLE**—It relates to Dr Samuell's research. To me, there was not an obvious outcome under which that fit so I thought it was a general question, but—

**CHAIR**—No, not having been given the information before, that was what I was seeking to do in terms of getting some direction. So do you want to put those questions?

**Mr Farmer**—I believe the officers who are able to talk about that matter will be answering questions under output 1.2.

**Senator NETTLE**—I am happy to do it at that time. That is fine.

**CHAIR**—It may be ambitious—I am all in favour of ambition—to assume that we are going to progress any significant distance through the outputs. But perhaps I can ask Senator Kirk, as the only other person left standing, to indicate what she has in relation to 1.1.

**Senator KIRK**—I still have some internal product matters—

**CHAIR**—We sent internal product home.

**Senator KIRK**—Really?

**CHAIR**—Yes, it seemed best at the time. We obviously still have a number of senior officers here, but we did send a number of officers home at the dinner break—after consultation across the committee. We are happy to put things on notice.

**Senator KIRK**—I am happy to go to 1.1 then, if that is the case.

[9.57 a.m.]

**CHAIR**—Okay. Let us start there and see how we go. Under outcome 1, Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people, we are dealing with output 1.1, Non-humanitarian entry and stay.

**Senator KIRK**—I have some questions in relation to subclass 457, temporary business visas. My first question relates to the number of these visas that have been issued in 2003-04 and 2004-05 to date.

**Mr Rizvi**—In 2003-04 there were 40,126 subclass 457 visas issued. In the year to date, to the end of December, there were 22,594.

**Senator KIRK**—Thank you. When these visas are issued, do you keep a breakdown of the industries or the areas to which they have been granted?

**Mr Waters**—We do keep information on occupational group, and we have some information on industry by the nomination put in by the employer. The nominations are not exactly timed to fit the visas, because the nominations are lodged before the visa is granted, quite obviously. I have got a list of the top 50 occupations, if that is of use to you.

**Senator KIRK**—It might be useful if you tabled that. I was interested in particular in how many may have been issued to employees of technology companies in particular. I do not know if you have that breakdown.

**Mr Waters**—We would not have that information in that form.

**Senator KIRK**—Are you able to take that on notice? Do you have that information amongst your records?

**Mr Waters**—We do not have that information in that exact form. We can certainly provide some information on what we could assess to be technology occupations, such as the various IT occupations, and provide you with a list of those.

**Senator KIRK**—That would be helpful. I am also interested in the breakdown of labour hire firms as well, but again, from what you are saying, it is not as such an occupation. The persons they employ do all sorts of labour, I imagine.

**Mr Waters**—We do have some information on the actual sponsors. Looking at our list of sponsors—quite a number of the labour hire firms are large sponsors—could give you some information in that direction.

**Senator KIRK**—Will you need to take that on notice?

**Mr Waters**—Yes, I will need to take that on notice.

**Senator KIRK**—If you could also look for technology companies or companies who would be likely to employ IT specialists and the like, that would be helpful as well.

**Mr Waters**—Companies such as Satyam and the like?

**Senator KIRK**—Yes, the big companies like that. Do you have figures on how many persons were found to be in breach of the conditions of entry on these subclass 457 visas?

**Mr Waters**—We do have such information, but I will need to take that on notice.

**Senator KIRK**—I have the 2003-04 figures on the number of cancellations of these visas, but I wonder if you could update us on the 2004-05 figures in relation to that—that is, visas being cancelled due to breach of visa conditions.

**Mr Waters**—I will need to take that on notice as well.

**Senator KIRK**—From the 2003-04 figures I understand there were some 4½ thousand cancellations of visas. That seems to me to be quite a substantial number. I wonder if there is anything that you may have done to try to stem this problem. Clearly it is a reasonable number.

**Mr Waters**—The vast majority of visa cancellations occur when an individual temporary resident leaves Australia and wants to recover their superannuation contributions. Their visas need to have ceased for them to be able to access the superannuation payments they have put in while employed in Australia. For example, say there was a person who had been sent to Australia and worked for a company for two years in Australia, they might in fact have a three- or four-year visa because the length of the contract was uncertain at the time; they left Australia; they want to recover their superannuation payments; their visa would need to be

cancelled. And that is in fact the major contributor to the large number of cancellations. So it is not for breach.

**Senator KIRK**—And do you have a breakdown between the persons that you have just described—those who are seeking their superannuation to be returned—and those who have—

**Mr Waters**—We have a breakdown of cancellations by the section of the act under which the cancellation occurred. The section of the act will give a very clear picture as to whether there was a breach or not.

**Senator KIRK**—Could you take that on notice for us and provide us with that information.

**Mr Waters**—Yes.

**Senator KIRK**—Are there any minimum wage conditions attached to the issuance of these visas?

**Mr Waters**—The employers of holders of subclass 457 long stay business visas are required to pay in accordance with Australia's minimum salary and wage conditions and provide conditions in accordance with occupational health and safety. In addition, for approval of a proposal to bring someone in, an employer undertakes to pay an amount equal to or greater than a gazetted minimum salary. For the majority of occupations at the current time, that is \$37,720 per annum. For IT occupations it is \$46,620, from memory.

**Senator KIRK**—Did you mention IT just because I have been interested in that or does that stand alone as having a higher salary?

**Mr Waters**—That stands alone as having a higher minimum salary, on the recommendation of the Minister for Employment and Workplace Relations.

**Senator KIRK**—Is there a maximum quota for the number of IT workers who are granted these visas?

**Mr Waters**—There are no quotas with regard to this visa subclass.

**Senator KIRK**—Are there any conditions attached to the issuance of these visas to prevent IT contract hire firms or recruiters from hiring foreign workers and then profiting by hiring these workers out to other companies at a higher hourly rate? Is there any information about that?

**Mr Waters**—Employers or sponsors of these people must be the employer. In practice labour hire firms, provided they are the direct employer, can hire them out to an end user, but that is the extent of that chain.

**Senator KIRK**—So there are really no conditions to prevent what I have just described?

**Mr Waters**—What it comes down to is that there are a very large number of firms in Australia providing services to small companies and, for that matter, large companies that send their consultants to work in a firm for a period. There are companies—whether they be management firms such as KPMG or the like—that operate in that way.

**Senator KIRK**—So there is really nothing in place to monitor or regulate this? It is a free-for-all essentially.

**Mr Waters**—Every sponsor is in fact monitored when they bring in a person under this visa program. They complete a monitoring survey form 12 months after the visa is issued, and we conduct a series of site visits to the person's place of employment in 25 per cent of cases. So that does provide some assurance of the type that you are looking for.

**Senator KIRK**—In 25 per cent of cases there are site visits—is that what you are saying?

**Mr Waters**—Yes.

**Senator KIRK**—How are those 25 per cent chosen—just at random?

**Mr Waters**—It is not a random sample; it is a selected arrangement which looks at the history of the industry involved—whether there is an overreliance or a possible overreliance on overseas workers and whether there have been any allegations with regard to either the company or the visa holder. Obviously if there is an allegation, you can expect that there will certainly be a site visit. But others are selected a random.

**Senator KIRK**—When these audits, for want of a better word, are conducted, generally speaking—or perhaps I should not say 'generally speaking'—is data collected in relation to the number of firms visited that are breaching conditions?

**Mr Waters**—There is information collected. If there are breaches of immigration law or sponsorship undertakings, that matter will be pursued directly by the department. If there are possible breaches of occupational health and safety law or other laws, those matters will be referred to the relevant Commonwealth or state agency involved.

**Senator KIRK**—Are you able to provide us with some figures as to the site visits you have embarked upon and the extent to which you have found conditions being complied with or otherwise?

**Mr Waters**—I can give you a general indication now. In terms of exact numbers I would need to take that on notice. The number of breaches found is very small indeed.

**Senator KIRK**—What sort of percentage?

**Mr Waters**—We would be talking in terms of 10 or tens per year.

**Senator KIRK**—Not per cent?

**Mr Waters**—Under one per cent.

**Senator KIRK**—My next lot of questions relate to long-stay business visas. I am not sure who is responsible for that. It is the same visa?

**Mr Rizvi**—Long stay business visa is the subclass 457, I think.

**Senator KIRK**—I had temporary business visa here, so that is obviously my mistake. I want to raise a particular organisation, Teys Bros in Rockhampton. Are you able to inform the committee how many visas have been issued at the request of this company?

**Senator Vanstone**—While the officer is checking what information he has got available for you, we are engaged at the moment in a process of consultations on what we are quite inappropriately calling the non-humanitarian program. It really means all programs other than

the humanitarian program, not that they themselves lack humanity. It is the skilled, family, temporary visit—the whole box and dice—but it tends to settle on the skilled intake. The Teys group had a number of people there and were very helpful in the practical responses they offered up when given the opportunity to have a say.

**Mr Rizvi**—The information we have here is that at 21 September last year 16 visas had been issued, but we would need to update that for any further visas that have been issued since that time. That is the latest information we have.

**Senator KIRK**—It is not very up to date, is it? That is some six months out of date. Never mind. Perhaps you can give me a breakdown as to the country or countries of origin of the 16 applicants.

**Mr Waters**—Those 16 were from Brazil.

**Senator KIRK**—What was the skills classification that Teys gave in respect of these Brazilian workers?

**Mr Rizvi**—They were assessed as being skilled. However, we do not have the specific occupational classification with us. If we could take that on notice we can provide the specific categorisation from the ASCO dictionary.

**Senator KIRK**—What sort of examination of the skills or potential skills of workers does the department undertake when a company such as Teys says that they wish to take these people in and they are meatworkers, as I believe the case is? Is there an examination conducted by the department or an independent assessment made?

**Mr Rizvi**—The level of the checking we do and whether we make a reference to an independent skills assessing body will vary from case to case. In the first instance we seek information in regard to the training level or qualifications achieved by the applicants. Secondly, we would look at what experience in that particular occupation they may have. Having considered that and if that satisfies our needs, we will leave it at that and proceed. The key protection we would be looking for is of course that the employer demonstrates that the people can do the job and will be paid at a salary which reflects a skilled occupation. Where we have concerns that the information provided to us is not genuine or does not meet our requirements, we will undertake further checks, often with the education providers involved or with the employers involved in the particular locality.

**Senator KIRK**—That could take some time. Trying to investigate what training an individual has received or what experience they have would be very time consuming, I would have thought.

**Mr Rizvi**—In those cases where we have those sorts of suspicions it does take time, and that will sometimes result in delay of the visa processing, yes.

**Senator KIRK**—What sort of examination does the department make of the particular labour market which these individuals are going to enter? Is there any assessment made as to whether or not there is sufficient local labour available to do the same job?

**Mr Rizvi**—This visa class was changed four or five years ago. We shifted from an arrangement whereby we undertook what was called labour market testing. The government abolished labour market testing in favour of a focus on skill levels and minimum salaries.

There are three main reasons that was done. The first is that we found labour market testing was not a very effective tool. What we found was that where genuine employers were involved the labour market testing usually resulted in cost and time penalties for the employer but very little benefit in terms of the overall visa processing. Where the employer is not particularly genuine about the matter, it is always possible to find a way of manipulating the job advertisements arrangements to get specifically the outcome you are after—that is, ‘I could not find a person with this specific skill.’ If you describe the skill in a sufficiently specific manner you will get no-one applying. That was our first problem, that labour market testing was not very effective.

The second point we looked at was the highly polarised nature of the Australian labour market. We have a situation where unemployment rates for highly skilled people are extraordinarily low—below two per cent—whereas for unskilled people they are up around eight and nine per cent. Clearly, labour market testing for highly skilled occupations would merely tell us what we already know—that is, that there are shortages. The third reason we moved down this path is essentially to ensure that Australian industry and companies are competitive in accessing highly skilled workers. There is a global competition for highly skilled workers and it is important that we make sure our visa processing supports Australian industry.

**Senator KIRK**—From what you have told me, in the case of Rockhampton there would not have been any independent assessment done as to whether or not there was in fact a skills shortage in the area—in other words, whether or not there were local employees available.

**Mr Rizvi**—We did not undertake labour market testing as that is not part of this particular visa.

**Senator KIRK**—You said since four years ago or thereabouts.

**Mr Rizvi**—I would have to take on notice precisely when we made that change. My recollection is about four years ago.

**CHAIR**—Senator Kirk, I do want to give other senators an opportunity given we have such limited time.

**Senator KIRK**—I have finished with those questions, so I am happy to defer to Senator Nettle.

**CHAIR**—Thank you. Anything else in 1.1? Senator Bartlett.

**Senator BARTLETT**—I have a few things. I will try and zip through these extraordinarily quickly. The set aside rate detailed in the most recently tabled annual report of the Migration Review Tribunal is an over 60 per cent set aside rate—I helpfully took it back to my office—in a couple of categories. I think one of them was the visitor visa and the other was a spouse partner visa. That has been consistent for a few years now and it does not strike me as terribly desirable. Are there any actions being taken to try and reduce the incorrect decisions in the first place perhaps rather than reducing the ability of the tribunal to set these things aside?

**Mr Rizvi**—I think I need to place some of that issue into context. I will take the visitor stuff first and then I will deal with the spouses. In respect of the visitor visa program, we have been pursuing over the last few years a strategy of looking for ways of increasing the approval

rate whilst seeking to reduce the overstay and non-return rates. We have been highly successful in that in that the approval rate for non-ETA visitors is now around 92 per cent. It was around 88 per cent four years ago. At the same time, the non-return and overstay rates have fallen very significantly. What that has led to is that the number of visitors, both in aggregate numbers and as a rate, actually appealing their decisions has been declining. There has been a fall in the number of visitors appealing to the MRT. In that regard, I think we have made very good progress. The fact that the rate of set aside is still high is of concern to us, but the good news is that it is a percentage of a much smaller number and a number that is falling as we get our approval rates up.

There are two key strategies we are pursuing to try to further improve that. Firstly, we are looking at repatriating the family sponsored visitor category to Australia to work more closely with the Australian sponsor, and through that, find a way of further increasing the approval rate, which will have a flow-on impact for the MRT. Secondly, by having the decision makers in Australia, we believe we will be able to provide more effective training to them and that I think will also lead to better decision making. Having said all that, as has been stated a number of times tonight, the MRT makes a de novo decision and a visitor decision does involve judgment. At the end of the day, it is one person's judgment compared to another person's judgment in regard to whether a genuine visit is intended. For that reason I think there will always be a degree of set aside in this area.

**Senator BARTLETT**—You were going to mention the partner or spouse. I think it was about 30 per cent, or fairly close to that, of the total number of appeals that were partner ones.

**Mr Rizvi**—In respect of partners, the set-aside rate, you are right, continues to be relatively high. That is something that we continuously examine. We have recently gone through an exercise with the MRT to examine some of the factors that might have been contributing to that. What we have found is that a significant portion of the cases that have been set aside were usually where the relationship was relatively new when the person applied to us, but by the time the MRT considered it the relationship had been in existence for much longer. We found that the evidence that was able to be provided to us at the primary stage was relatively little. That contributed to the refusal, whereas the decision made by the MRT had access to a far greater range of information about the relationship that led to a different view being taken.

**Senator BARTLETT**—Thank you for that. That will suffice on that one for now. I want to ask about the skilled sponsored visa category, I do not think this has been covered by Senator Kirk. We currently have a skilled occupation list that is used for that category, and I am aware that from September last year there was a new category called the Sydney and selected areas skilled shortage list, or SSASSL. My understanding is that that list for Sydney and selected areas, which I think includes Wollongong and Newcastle, was not done by regulation; it was just done within existing law. Is that the case? The department, I presume, is quite confident that that approach is legal.

**Mr Rizvi**—The mechanism for implementing that was something on which we sought advice from the Attorney-General's Department, and in particular the office of legislative drafting. The advice we received was that the best way of implementing that was via a *Gazette* notice. We proceeded to implement that using the *Gazette* notice approach.

Subsequently, a number of migration agents have raised with us a view that that particular approach may not be legally robust. That is something we are examining. In the meantime, we have advised the migration agents and our processing centre in Adelaide that, in respect of applications that are affected by the Sydney skills shortage list change, they should hold those cases for the time being whilst we seek further legal advice in respect of that particular mechanism.

**Senator BARTLETT**—Does that mean that any applications made since September last year are in pause mode, that they are not being processed one way or the other?

**Mr Rizvi**—That is correct. The alternative would be to refuse those cases and, given the current circumstances and the uncertainties regarding the law on this, we have had discussions with the migration agents institute and agreed that the best thing to do would be to not refuse the applications, but rather to wait for further legal advice before we make decisions on them.

**Senator BARTLETT**—Why don't you just put it into regulation? I can even almost say that I probably would not move to disallow it.

**Mr Rizvi**—That is certainly something on which we will be briefing the minister very soon.

**Senator BARTLETT**—Not that what I think in that regard will matter very much in a few months time anyway. So there has been no processing of anything under SSASSL since it was introduced?

**Mr Rizvi**—We have suspended all of the cases that are affected by the SSASSL because of the uncertainty regarding the legal advice.

**Senator BARTLETT**—There is no occupation listed on the SSASSL that is not on the broader SOL.

**Mr Rizvi**—If your occupation is on the SSASSL then you are fine.

**Senator BARTLETT**—There is nothing on there that is not on the broader skilled occupation list. It is a small subset.

**Mr Rizvi**—That is correct.

**Senator BARTLETT**—Can you, on notice, provide any updated figures on the uptake for the aged parent category—the contributory ones, the number of people in the pipeline and that sort of thing? I think we raise that at most estimates. Could you provide those figures to the committee rather than go through them, unless you have a brilliant good news story you want to tell.

**Mr Farmer**—We will do it on notice.

**Senator BARTLETT**—This question might be in output 1.1 or output 1.2. It relates to the regulation that was introduced last year to allow TPV holders to apply for other visas. I do not know whether that is in your sphere or humanitarian, but I guess because they are applying for non-humanitarian it is in yours. What is the take-up on that since it was introduced?

**Mr Rizvi**—At this stage the take-up is relatively small. Our understanding is that most people will seek to play out all of their opportunities in terms of the protection visa process before they seek to use this alternative route. The applications we have received in the non-

humanitarian side of this have related predominantly to persons who are either doctors or who are seeking entry on a spouse basis.

**Senator BARTLETT**—Can you give on notice the numbers of people who have taken that up?

**Mr Rizvi**—I will take it on notice, but it will be a relatively small number.

**Senator BARTLETT**—It is useful to know what small is on a relative scale. Do you have figures on how many people are potentially able to access this? I guess it would be the number of people on TPVs at the date of the regulation. Can that be provided by you, or is it the people in the next output?

**Mr Rizvi**—I think it might be best to ask that question of the next output group.

**Senator BARTLETT**—I am sure they will say yes.

**CHAIR**—That deals with output 1.1. We will now move to output 1.2, Refugee and humanitarian entry and stay. I encourage senators to be as brief as possible.

[10.27 p.m.]

**Senator NETTLE**—I will start with Dr Samuelli. On what date was Dr Samuelli contracted or otherwise entered into an arrangement with DIMIA in relation to his research?

**Mr Hughes**—Dr Samuelli approached the portfolio early in 2004 and was commissioned around that time to do some work. The report was completed in the July-August period and the contractual negotiations were also completed then.

**Senator NETTLE**—Has it been correctly reported that he was paid \$30,000 for that research?

**Mr Hughes**—The cost of the research was \$30,000 plus GST, which brought it to \$33,000.

**Senator NETTLE**—What was the brief for the project?

**Mr Hughes**—The initial proposal that Dr Samuelli put to the department was in the context of the amount of comment in the media from various medical professions about health issues amongst asylum seekers, including health issues amongst people who had temporary protection visas because of the temporary nature of their protection. The nature of the brief was to look into health issues amongst asylum seekers and to do a literature review of research that had already been done to assess the strengths and weaknesses of that research. In the event, his final report concentrated on asylum seekers in detention because that is where the pre-existing research had been done.

**Senator NETTLE**—Is the department aware that in the June 2003 edition of *Australasian Psychiatry* Dr Samuelli disclosed that he was an officer bearer of the Liberal Party and had run and participated in Liberal Party campaigns? He went on to state that he had listed the brief description of his career as a campaigner in order to illustrate his bias. Given this self-confessed bias and allegiances of Dr Samuelli, why did the department consider that Dr Samuelli was the best person to analyse the objectiveness of other people's reporting on this issue?

**Mr Hughes**—I do not believe the department was aware of any of those statements you made at the time the research project was commissioned.

**Senator NETTLE**—Was the department aware of Dr Samuell's views in relation to the detention of asylum seekers and his views of the research carried out by his colleagues?

**Mr Hughes**—At the time we were aware that he had somewhat critical views of the research that had been done to date.

**Senator NETTLE**—Did the department believe that he was the most appropriate and independent person to be able to do that research?

**Mr Hughes**—From time to time the portfolio is approached with proposals from various people to either undertake projects or research of topical interest. This was certainly one that our minister's office felt was worth pursuing, and we pursued it on that basis. Given that the nature of the job was a literature survey on the strengths and weaknesses of research methodology, it certainly appeared that Dr Samuell was an appropriate person to do that.

**Senator NETTLE**—What efforts did the department make to establish his suitability?

**Mr Hughes**—It was clear that he is a qualified psychiatrist and the director of a firm that provides medical assessments to government and also medical assessments to insurance companies and that he would be capable of undertaking a literature survey.

**Senator NETTLE**—Why was there no public tender for this project?

**Mr Hughes**—It is not really uncommon for research projects or other forms of projects to be commissioned without public tender if they are relatively small in scale and if an individual comes forward with a proposal that other people are not obviously proposing to do.

**Senator NETTLE**—Is it usual that such projects are assessed by the National Health and Medical Research Council or commissioned by a university?

**Mr Hughes**—I do not think there was any particular requirement in that case. This was not primary research into a medical issue as such; it was a literature survey of existing medical literature.

**Senator NETTLE**—Was a decision made not to commission this research through either the NHMRC or a university?

**Mr Hughes**—It was a proposal that had been put to us and it was considered to be a proposal that was worth pursuing. There was not necessarily a question of doing anything through the National Health and Medical Research Council.

**Senator NETTLE**—This question is to the minister. Is it true that, in a meeting with your senior advisers Andrew Kirk and John Nation, Andrew Kirk told Dr Louise Newman that her research was bad, biased and to 'watch this space' as it would be proven to be shonky? Did the 'watch this space' comment refer to Dr Samuell's report? If not, what was the reference to 'watch this space' about?

**Senator Vanstone**—Mr Kirk, as I am advised by my chief of staff, who was at the same meeting, did say something to the effect of 'watch this space', but in the context of a passing remark at the end of a meeting, to the effect simply that we did have an interest, and we should have an interest, in the mental health of people in detention, and that includes an

interest in the robustness of research that is currently undertaken and, in fact, what research is out there that can be relied on—and nothing more than that.

As to the other remarks that you referred to, I have not heard that suggestion. I cannot remember what you said now, but I do recall a discussion about ‘watch this space’ but that is simply an indication—which I think I raised on another occasion or on that occasion—that we were interested in this issue, and I still am. That is why I had a discussion with IDAG about it.

**Senator NETTLE**—Has the department commissioned any primary research—

**Senator Vanstone**—That might put paid to some concerns that might have been put into people’s minds in respect of this. I think the proposition was put by one advocate that this project was undertaken with a view to attacking them. If that was the case, I invite someone to do a search of the *Hansard* and media statements I have made to see the extent to which that has happened since we have had this report. It just is not the case.

**Senator NETTLE**—Has the department commissioned any primary research into the mental health of people in detention?

**Senator Vanstone**—No, Senator, we have not commissioned it. I am sorry, it is quite late; I think it was you who was asking the question about IDAG .

**Senator NETTLE**—Yes.

**Senator Vanstone**—That discussion followed a concern that had been raised about the robustness of earlier research and we had a discussion about that. As I said, we discussed with them the thought I was giving to how you would get some very robust and reliable research done. I do not think it is any secret—I am not besmirching anybody by saying that some of the people who are doing research in this area do have very strong views in relation to the appropriateness of mandatory detention. They do not make any secret of that. They quite openly promote themselves as being strong advocates against the government in that area. So it is a serious question as to how you get a completely unbiased assessment, and it is one I am turning my mind to.

**Senator NETTLE**—And I suppose, in turning your mind to that, to my mind, would come the idea of commissioning primary research to evaluate others’ research, rather than a review of existing studies.

**Senator Vanstone**—Often a starting point in a lot of projects is to review what is already there rather than reinvent the wheel. As I indicated in a press conference recently, when someone approaches your office and it is explained to you that the person has concerns about the robustness of material on which some people are relying, it is a very brave minister’s office or government that says, ‘Well, I don’t care.’ The obvious thing is to say, ‘All right, let’s have a look at what the good and bad points are about what is already out there,’ and get someone to do that. But I invite you again, Senator, to go back over the record. The record will show whether this research has been used in any way by the government to pursue people—or be critical or whatever. There are, incidentally, a number of things I might want to say at one point in relation to some assessments that have been made, but I will not say them until I have got very considered advice on the views that I hold.

**Senator NETTLE**—That is probably wise. I have just got two other questions on this outcome. One is a question I am raising for constituents—I just want to put that on the record. I have received correspondence in relation to issues that people have raised with me from the minister's office to say that Minister McGauran is the person responsible for 417s. I note that the Migration Act says that the power under subsection (1) may only be exercised by the minister personally. But I also note that the Acts Interpretation Act allows the minister to delegate that power. So I have been asked to ask why the minister chose to delegate this particular task, on which many people's lives quite literally hang in the balance, to the junior minister.

**Senator Vanstone**—I trust that the implication from the person on whose behalf you are asking that question is not about Mr McGauran being somehow irresponsible in that context. I can explain the context. Mr McGauran expressed an interest in doing whatever could be done within the portfolio. I think it is clearly understood that people with the junior minister's task, as it is disparagingly referred to, are often keen to take on as much as they can and to understand the rest of the portfolio because they have to answer for it in the other place—if they come from the other place, as they usually do. So I gave consideration to what could be given to Mr McGauran and to a clear division between the ministerial interventions so that he could get some experience of having what you rightly describe as a very serious responsibility—I take it very seriously. The division is between the 351s, which are the appeals from visa applications, and the 417s, which are the others, so they neatly divide into two piles. I think saying, 'You do (a) to (b) and I'll do (c) to whatever,' is a ridiculous split. It is best to choose one or other of those two boxes.

**Senator NETTLE**—So you have no process in reviewing decisions of Mr McGauran in relation to 417s?

**Senator Vanstone**—I have given Mr McGauran the responsibility for doing 417s, except for those that relate to detention.

**Senator NETTLE**—Can you explain that.

**Senator Vanstone**—If someone is in detention now, their 417 would come to me.

**Senator NETTLE**—Thank you for making that clear.

**Senator BARTLETT**—Is there something administrative to say who does what?

**Senator Vanstone**—I do not think that would be in the administrative arrangements.

**Mr Farmer**—As I understand it, there is no need to do that because Mr McGauran is as much the minister for the purposes of the Migration Act as Senator Vanstone.

**Ms Godwin**—You used the word 'delegate' before, Senator Nettle. The minister has not delegated her powers to Mr McGauran; he has them as of right, as it were, because he is a portfolio minister. It is simply an allocation of responsibilities, as the minister has pointed out.

**Senator NETTLE**—Thank you for the correction. The last question I have in this area—

**Senator Vanstone**—Sorry, but sometimes the processes do not go as quickly as perhaps they could at this hour of the night: the other factor is that, given the government's policies of working in this respect—not that I was doing this from a magnanimous point of view; in fact,

if I thought about it more carefully I might have done the reverse—I have an anticipation that 417s will be declining in number whereas for 351s I do not expect there to be a particular decline. So that is a task which is not only discrete—because it involves 351s and 417s—but one that I would not expect to go on at the same level forever. Mr McGauran could therefore get a degree of experience in that and, if that turned out, we could then look to a further allocation of responsibilities within the portfolio. There is a decrease because the boats have pretty much stopped coming—so there is that issue—and because there was a very substantial workload with some East Timorese that were coming through the process at the time. Neither of those pools are feeding the 417 process anymore.

**Senator NETTLE**—So it is not a question of that excluding those pools. There may be a decrease, but the decrease is because of those pools being moved out.

**Senator Vanstone**—Yes, I think that is a fair description of it.

**Senator NETTLE**—The last question I had was about an announcement on people from tsunami-affected countries applying for visas. I cannot recall whether the announcement was for a blanket extension to their capacity to apply or whether it was that they could apply for an extension.

**Senator Vanstone**—They could apply on a case-by-case basis.

**Senator NETTLE**—Is there any indication, although it may be too early, about them doing that?

**Senator Vanstone**—The officers would have that advice.

**Mr Killesteyn**—We are getting quite a range of applications, both onshore and offshore, in relation to people from tsunami-affected areas seeking both visas to come to Australia and extensions to stay in Australia. I do not have the numbers with me at the moment, but I can take those on notice. The numbers are relatively small from Bangkok. The primary numbers offshore are coming from Sri Lanka. In relation to onshore, Colombo only—

**Senator NETTLE**—You can take it on notice.

**Mr Killesteyn**—I think it might be wise.

**Senator NETTLE**—Where and how was that announcement promoted that people have to apply for it rather than getting a blanket extension?

**Mr Killesteyn**—Apart from the general announcements that the minister made in relation to press inquiries, we established a number of processes through which people could get advised about the information. One was through a general hotline that we established several days after the tsunami. I think it was on 30 December. As well, information was posted to our web site.

**Senator BARTLETT**—I want to ask a little more precisely about the discretion powers. With Minister McGauran being a portfolio minister, you are saying it is not a delegation of power; there was no thing signed saying that he now does 417s.

**Senator Vanstone**—It is a division of responsibility.

**Senator BARTLETT**—It is just an understanding that he now does 417s except for people in detention centres, and you still do 351s, 48Bs, 98Ls and all those other ones.

**Senator Vanstone**—A whole range of things, yes.

**Senator BARTLETT**—From the list tabled last week the 417s are the thickest, so he is still doing a fair bit. But I guess a lot of those were back in your time. What was the date of the changeover of that? I can see from the ones tabled in the Senate that there is one 417 signed by you on 12 November and there is one signed by Minister McGauran on the 12th. Was that the changeover date?

**Senator Vanstone**—I would have to check the date. As I recall, we had some in the office which we would have continued with. I think you will find there is not a clear cut-off date.

**Senator BARTLETT**—Given that you still have the ability to do 417s from detention, do you still have the power to do 417s outside?

**Senator Vanstone**—Yes, it is just a division of responsibilities within the portfolio.

**Senator BARTLETT**—Technically you both have the legal power to do any of these.

**Senator Vanstone**—Yes.

**Senator BARTLETT**—Given that it is a matter of judgment, even though there are guidelines there—we have been through a whole Senate committee inquiry into this stuff—are you able to provide statistics to the committee, on notice, about the number of requests for 417s that have gone to Minister McGauran since he took on this role and the number that he has accepted and chose to exercise discretion on as opposed to those where he has not? They are the sorts of stats that were provided to the Senate select committee on ministerial discretion. Would they be able to be provided to the committee?

**Senator Vanstone**—It might not be tomorrow, because does that require—

**Senator BARTLETT**—No, it does take a bit of time. I appreciate that.

**Senator Vanstone**—a degree of work—going back over files—and I can understand that the bureaucracy cannot always anticipate in advance what people are going to want to know and therefore store information in that way. It often requires going back.

**Senator BARTLETT**—In terms of people seeking to have discretion exercised in a particular way, it does not matter that they have inadvertently addressed their letter to you or to Minister McGauran—it all gets shuffled around?

**Senator Vanstone**—That is right.

**Senator BARTLETT**—Thank you.

**Senator KIRK**—I hope this is in the right place. My question is in relation to the MOU that was entered into between the government and Iran. Is that under output 1.2?

**Mr Hughes**—Yes, it is, depending on the nature of the question, but it probably is.

**Senator KIRK**—As I understand it, Australia has met its side of the bargain in the agreement with the Iranian government, which was that we would provide a new class of work visa—that was our side. How many involuntary returns has Iran agreed to?

**Mr Hughes**—I think it is important to understand that the nature of the agreement is to encourage voluntary returns primarily, not so much to encourage involuntary returns. It might be good if I just take that on notice and give you both of those figures.

**Senator KIRK**—Have there been any involuntary returns?

**Mr Hughes**—There have been some, yes.

**Senator KIRK**—Approximately how many—less than 10?

**Mr Hughes**—Just a moment.

**Mr Davis**—Since March 2003, a total of 35 Iranian nationals have returned home: 28 voluntarily, and seven Iranian nationals have been returned involuntarily.

**Senator KIRK**—Has the department sought any advice either from DFAT or perhaps from the Attorney-General's Department about the enforceability or otherwise of this MOU? I am wondering what status it actually has.

**Mr Farmer**—It has, in practice, the status of an arrangement that is working.

**Senator KIRK**—A gentlemen's agreement?

**Mr Farmer**—No, it is an intergovernmental agreement.

**Senator KIRK**—Is it thought that it has the status of, say, a treaty between the two countries?

**Mr Farmer**—No, it is a memorandum of understanding.

**Senator KIRK**—That is probably about all I have for 1.2.

**Senator NETTLE**—Could I seek a clarification from Mr Davis. The Iranian returns were from what date?

**Mr Farmer**—March 2003, I heard.

**Senator NETTLE**—Thank you.

**Senator BARTLETT**—That is when the MOU came in.

**Mr Killesteyn**—12 March.

**Senator BARTLETT**—On notice, could you give us the latest stats on the number of people on TPVs and FPVs, and the country breakdown, if there has been any change since the last time you did that for the committee?

**Mr Farmer**—We can do that.

**Senator BARTLETT**—Thank you.

[10.55 p.m.]

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

**Senator BARTLETT**—We touched on this what seems a long time ago—the story about the Frenchman who was detained for a few days et cetera. There was a report that he had received some compensation—\$25,000 was the report. Is that accurate? What process was followed to determine that? Was it an act of grace or some legal process?

**Mr McMahon**—We do not disclose the amounts paid in compensation but the amount we paid was under legal advice.

**Senator BARTLETT**—So it was not necessarily court proceedings.

**Mr McMahon**—It was a settlement. As I said this afternoon, that compensation payment resulted because of a legal technicality, not because of the actions per se.

**CHAIR**—In fact I think it was discussed earlier. There may be some information in the *Hansard* already which is of assistance to you, Senator Bartlett.

**Senator BARTLETT**—Thank you. If it was not already discussed earlier, could you provide on notice to the committee not necessarily the amounts but any other occasions when payments have been made for similar reasons in the last 12 months?

**Mr McMahon**—That question basically is on notice.

**Senator BARTLETT**—Thank you. I also wanted to ask about some information I received that I want to check. It is about a conviction of an ACM guard—it was ACM—for an assault at Baxter. The assault occurred in April 2003 and I think the conviction was quite a fair bit of time after that. Can you confirm that that occurred? Going back to what we have talked about a few times about the desirability of accuracy in various statements, I like to check these things. The person was given a two-month suspended sentence in the Adelaide Magistrates Court. Are you aware of that at all?

**Mr Davis**—That has not been brought to my attention. I am not aware of it, I am sorry.

**Senator BARTLETT**—Perhaps rather than read out names and things, I will provide that to you and ask you to—

**Senator Vanstone**—Are you talking about an assault in a person's private life?

**Senator BARTLETT**—No, an assault on a detainee at Baxter. According to this piece of information, the person received a suspended sentence but I will send that to you and ask you if you can confirm it or otherwise. Also, a number of people have suggested that the Christmas Island detention centre—the current one, not the new thing—is going to be mothballed in the near future. Can you give me any information about that?

**Mr Davis**—The people within the detention facility on Christmas Island are obviously subject to due process. As I understand it, at the moment a number of those are in court processes as well as some other processes. If it came to fruition that there was no-one to detain there, we would look at mothballing, but at this stage it is not in my mind nor have I had any discussions at all on that.

**Senator BARTLETT**—Having been to Christmas Island, I think it is one of those places in which rumours tend to gather. But basically as long as those detainees are staying there you do not see any likely change to the situation.

**Mr Davis**—That is right.

**Senator BARTLETT**—Thank you.

**CHAIR**—Could I suggest, in light of the time, that further questions in the other outputs in outcome 1 are placed on notice. We would appreciate the assistance of, obviously, the department in dealing with that. We have discussed questions already today and we are always grateful for the department's assistance in that process. I thank you, Mr Farmer, and all your officers. It has not, perhaps, gone in the fashion to which we are accustomed but we have

covered a lot of material senators seemed to wish to cover so hopefully that has been useful on both sides. Minister, thank you and your entire department for your assistance.

**Committee adjourned at 11.00 p.m.**