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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

WEDNESDAY, 25 MAY 2005

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Wednesday, 25 May 2005

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

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

Committee met at 9.03 am

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

In Attendance

Senator Amanda 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

Human Resource Services, Internal Investigations and Property

Mr John Moorhouse, First Assistant Secretary, Corporate Governance Division
Ms Christine McPaul, Acting Assistant Secretary, Human Resource Management Branch

Parliamentary and Legal Services

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division
Mr Doug Walker, Assistant Secretary, Visa Framework Branch

Information Technology and Office Services

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

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
Ms Arja Keski-Nummi, Assistant Secretary, Temporary Entry Branch
Ms Julie Campbell, Acting Assistant Secretary, Business Branch
Ms Jacki Hickman, Acting Assistant Secretary, Delivery Innovation Branch

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 Karen Visser, Acting 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 Matt Moroney, Acting Assistant Secretary, Detention Policy and Coordination Branch

Mr Vincent McMahan 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 Haughton, Assistant Secretary, Identity Fraud and Biometrics Branch

Mr Stephen Allen, 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 Vincent McMahan 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 Gabriela Samcewicz, Acting Assistant Secretary, Settlement Branch

Output 2.2—Translating and interpreting services

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

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

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**

Ms Helen Hambling, General Manager, Policy Group,

Ms Dianne Hawgood, General Manager, Partnership and Shared Responsibility Group

Ms Kate Gumley, Manager, SRA Strategy Branch

Ms Jennifer Bryant, General Manager, Performance, Single Budget and Streamlining Group

Mr Bryan Palmer, Manager, Performance and Single Budget Branch,

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

Mr Brian McMillan, Manager, Investigations Unit,

Ms Ros Kenway, Manager, Legal Unit,

Mr Paul Omaji, Manager, Resources, Reconciliation and Repatriation Branch

Mr Greg Roche, Manager, Land Rights Services 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 Michael 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

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

Mr David Mawson, Chief Executive Officer, 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

Torres Strait Regional Authority

Mr Wayne See Kee, Acting General Manager

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee will today begin its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding generally according to the order on the circulated agenda. The committee will begin with general questions to the department executive. Today's hearing will be suspended for a lunch break from 1 pm to 2 pm and for a dinner break from 6.30 to 7.30 pm. These breaks will be taken as close to the scheduled times as possible. 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 15 July 2005 for receipt of answers to questions taken on notice and additional information.

I welcome Senator the Hon. Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs, Mr Bill Farmer, secretary of the department, and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 110, which states in part:

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

I also draw attention to resolution 116, which 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. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. For the record, I note that as of this morning there are no outstanding answers to questions on notice from the additional estimates round of February 2005. However, I would also note that a substantial number of questions, numbering in the tens, were received as late as 7.45 last night. I understand the department has had a great deal happening and the

committee is well cognisant of that, but the delivery of answers to questions which are relevant to this hearing, as far as senators are concerned, as late as 7.45 last night does not assist senators in the preparation for this hearing and does not assist the committee in ensuring that we do the job that we are here to do. Minister or Mr Farmer, do you wish to make an opening statement?

Senator Vanstone—Yes, thanks, Madam Chair, I would care to make a statement, which I will distribute later. I think it is appropriate given that, as you have indicated, the department has been subject to quite considerable range of comment and discussion since the discovery of Ms Cornelia Rau's circumstances. There has been considerable public comment and debate surrounding that case as well as the one of Ms Alvarez Solon. I want to make it clear that the government is absolutely committed to determining the facts of each case and taking all the appropriate steps that might flow from what they turn out to be.

In February I appointed Mick Palmer, the former Commissioner of the Australian Federal Police, to conduct an inquiry into the circumstances of Ms Rau's detention. Mr Palmer will report and he will determine independently the facts and recommend measures to address the lessons that need to be learned. Following consultation with Mr Palmer and in the light of his assessment of the scale of inquiries required, I extended Mr Palmer's reporting date from the end of March and provided significant augmentation of resources with the appointment of Mr Neil Comrie, former Victorian Chief Commissioner of Police.

During my absence overseas in May, Mr McGauran, the acting minister, asked Mr Palmer to add to his inquiry the case of Ms Alvarez Solon. Mr Palmer made clear last week in a press release his desire to report at the earliest opportunity, and I welcome that. Until his report on Ms Rau is concluded, which we now know will be before the end of June, it is not possible to speak with absolute authority on that case. The other cases which have been referred to the Palmer inquiry will be the subject of later report. Despite pressure and speculation from the media, I am of the firm belief that it is better to avoid, as far as possible, public airing of gossip, innuendo or comments, the veracity of which can only be confirmed by a full examination of all of the information available. Nonetheless, without pre-empting the findings of Mr Palmer, there are some improvements that can be made now.

Following the Rau case—that is, after its discovery—I asked the department to consider changes that could be put into place forthwith to make improvements. As a consequence, in February this year I announced a number of changes, including a 28-day limit, in all but exceptional circumstances, on the time immigration detainees could spend in state facilities. I have my notes in this respect. Exceptional circumstances might be that they have family and friends in that area and do not want to go to a detention facility; they would rather stay in that area. Fingerprinting of people detained—following regulatory changes we can now do that and that is already proving to be successful. Further advice was given to staff, clarifying and strengthening procedures that should be followed to try and establish a person's identity. The very complex circumstances surrounding Ms Rau's case highlighted the need for clearer and more precise guidance for staff. In relation to access to databases, I wrote then to the justice minister, asking him to formally pursue the issue of access to databases with relevant Commonwealth and state law enforcement agencies, and I have asked the secretary of the department to pursue the same issue with the Heads of Commonwealth Operational Law

Enforcement Agencies, HOCOLEA, and that has already started. There is also referral of complex cases to Canberra for guidance.

Today I am announcing further changes which have either already been implemented or are in the process of being implemented. This is a result of the department acknowledging the government's desire for continuous improvement. Firstly there is the establishment of a national identity verification and advice unit in DIMIA head office in Canberra. This was established at the beginning of this month. That unit will ensure that complex cases are identified as early as possible and are rigorously, consistently and quickly dealt with. It will provide advice to state and territory case officers about how to go about identity checking and be a point of referral for more difficult cases. It will manage an early warning mechanism whereby cases involving complex issues are systematically referred to it for advice. It will analyse complex cases to help ongoing development and review of policy on establishing identity. It will be staffed by experienced officers with legal and/or systems experience, and a manager has already been appointed.

Secondly, there is the appointment of immigration detention review managers in each state and territory where people are detained. This will happen by the end of this month. The managers in each state and territory will review cases where the person's identity and status are not quickly confirmed and ensure compliance with standard procedures. Those officers will stand apart from the daily compliance activities of my department—in other words, they will be separate. They will ensure that decisions to detain are soundly based and regularly reviewed and will keep detention arrangements for individuals under constant review.

Thirdly, there will be enhancement of health services in immigration detention centres. A psychiatrist will now visit Baxter Immigration Detention Facility every two weeks or more frequently as required—obviously, when they are called. That will begin by 28 May 2005. That is compared to the previous arrangement, which was every six weeks or as required. Commencing next week there will be a progressive implementation of two new psychiatric nursing positions which will achieve seven-day coverage at Baxter, including on-call arrangements at night. The department has already started working on implementing procedural changes identified in a recent Federal Court judgement about detention health services and it is working to improve access to care outside detention facilities for detainees.

Lastly, in relation to improvement in case related information management processes, records will be centralised within the portfolio and across other agencies or service providers that relate to individual detainees. The integration of departmental information and detention services provider information is important for progressing cases and meeting detainees' individual needs. Obviously all of that will be done bearing privacy issues in mind.

Mental health issues have clearly played a part in a number of cases. This includes: circumstances where an individual comes to the attention of DIMIA with a pre-existing mental health issue; the provision of appropriate mental health services in detention facilities; and access to state mental health services. So there are three issues: people arrive with a pre-existing condition, the provision of appropriate mental health services in detention and then access to mental health services outside. I anticipate that Mr Palmer will have a number of recommendations in this regard, including the management of people who present to Immigration with pre-existing mental health issues. As interaction between mental health

agencies and law enforcement agencies is a broad issue with which Mr Palmer is familiar, I, the government and the department will be particularly interested in what he recommends in that area.

People with pre-existing mental health issues can clearly exacerbate complexities in establishing their identity. In view of the relevance of identity issues, I have also asked my department to look at any further options for the use of biometrics. I am fully aware of the importance of proof of identity. It has been an important issue in two of my previous portfolios; this is the third where that is relevant. I am aware that the prospect of biometric technology raises very complex issues of policy and implementation. There are privacy issues. The merits of the various technical options that are open to us and the need to maintain the speed and efficiency of Australia's current entry procedures are critical to the business and tourism sector. Nonetheless, it never hurts to have a look at what else you could do. I have already indicated that I consider there may be a need to look at the Migration Act to identify any areas where greater flexibility could assist the department to be more responsive to individual circumstances.

I want to make it clear that you can make changes to policy, processes and legislation, but these will be of little benefit without cultural change. In DIMIA, I envisage this cultural change will include greater customer focus, timeliness, openness to complaints and appropriate mechanisms to identify problem areas. To achieve this, the culture of the department must recognise that complaints are an opportunity to review, change, improve performance and do things better. We must look at complaints as an opportunity.

The Department of Immigration and Multicultural and Indigenous Affairs is, in so many respects, a can-do department. That is how it describes itself to me. It manages a highly successful and rapidly growing skilled migration program—one of the best in the world. It delivers the world's third-highest refugee and humanitarian intake on a planned basis, which is in itself backed by the delivery of world-class settlement services for new arrivals. That is not in dispute. 'World class' is not something we claim for ourselves; it is an accolade given to us by refugee advocacy groups.

In the extremely difficult area of unauthorised boat arrivals and offshore processing, the department has demonstrated an excellent ability to meet the government's policy requirements, despite being faced with the demands of more than 3,000 unauthorised boat arrivals per year for a number of years. As I said, the department of immigration is a can-do department; nonetheless, the government now wants the department to be a can-do department in terms of changing its own culture to be one that is user friendly and has an open culture of continuous improvement.

I have asked the secretary to position the department to be able to rapidly respond to whatever changes are required as a consequence of the Palmer report. I have also asked him to identify people suitable to be directly involved in driving and playing a lead role in the implementation of identified or necessary changes. I recognise that that may involve some external expertise.

To move ahead, however, it is important to have a clean slate. It is important for those outside the department—and this is critical—to understand the nature of cases that are being

examined. The category of ‘released not unlawful’ is not a category of people who were wrongly detained. It is critical, if people want to be a part of this debate and contribute to improvements, to understand the issues and get it right. ‘Released not unlawful’ is not a synonym for ‘wrongly detained’. It is not necessarily an indication of wrongful detention at all. Consequently, not all the cases that we have referred off will be cases of concern.

I am advised by my department that the range of circumstances encompassed by ‘released not unlawful’ is very broad. For example, someone might be detained for very short period of time—a matter of hours—while their identity and legal status are determined. They might allege that they have a visa, and that has to be checked. People’s status may change while they are in detention. For example, someone might get a visa while they are in detention; they become not unlawful, so they are released. Children who attain citizenship after 10 years here would then become lawful. There could be a wide range of reasons—I will not go into all of them here—but I think those two categories give a clear indication to the committee of why the category ‘released not unlawful’ is not an indication at all of wrongful detention. It just is not.

Minister McGauran added a term of reference to the Palmer inquiry to enable us to pass over to the inquiry any of these cases. I have asked the department to go back as far as the records allow us to go, to take out each case that is ‘released not unlawful’, and all of them will go to the Palmer inquiry—every single one of them. I do not care, and the department does not care, incidentally: if a case is clear on the face of it, there is no problem. Every single case will be looked at separately, because the department is determined to recognise what problems it may have and to change—and I am not going to let it be in that position and engage in that work and then have further problems arise later. It must start with a clean slate. But, even more importantly than that, if there are any cases in that number that have a problem, then they have to be dealt with as of right for the person involved. Every one of them will be gone over.

We have done the search. We have gone back as far as these records are held and we are referring just over 200 cases. This will take quite a bit of time to look at but I am determined that it is done, that Australians can have confidence that every possible error that has been made, however small, will get looked at, including the cases where we do not think there is one. It is interesting to note, however, why we have this capacity. It is because the department has been continually improving its records and in 2000 instituted an identifier where you would be able to go back and say who was released because they later became lawful. We are not able to do it before that and certainly the previous government were not able to do it.

As Mr Palmer indicated in his statement of 20 May, he discussed with me the future conduct of the inquiry and his desire to finish his report before the end of June. I agreed with his proposals, namely that he would complete the Rau inquiry and that Mr Palmer would make recommendations for handling the completion of the remainder of the cases. Mr Comrie has had the major conduct of the Alvarez and other cases while Mr Palmer has been working on finalising the Rau work. Given Mr Palmer’s statement last Friday that investigations to date into the Alvarez case confirm some key issues of concern that will be reflected in the findings and recommendations of his report to be completed shortly, I am confident that

Palmer's report will provide a strong basis for the department to start immediately moving forward.

CHAIR—Thank you, Minister. That is a very long statement—

Senator Vanstone—It is, but these are serious issues.

CHAIR—It was not a comment on the length; it was simply to say that it would be of great benefit to the committee to have a copy sooner rather than later. It would take a long time to get it off the *Hansard*, as you know.

Senator Vanstone—I will get copies done for you—

CHAIR—We can get the copies done if you give us the original.

Senator Vanstone—but I did not read it exactly as on the page. The differences are grammatical; it is no big deal.

CHAIR—Thank you. It would be helpful if a member of your staff could provide us with a copy. Let me determine the arrangements for this morning. Before I do that, Mr Farmer has an opening statement.

Mr Farmer—Thank you. I too would like to make a statement about matters that flow from the cases of Ms Rau, Ms Alvarez Solon and others which have been referred to Mr Palmer's inquiry. I want to start by making two things clear. First, we profoundly regret what has happened in some cases. We are intensely conscious that our day-to-day business affects people, it affects their lives, and it is distressing and unacceptable that our actions have in respects fallen so short of what we would want and what we understand the Australian people expect. We are deeply sorry about that. That sentiment I know is widely shared by my colleagues in the department. This is a group of men and women who work in a department which combines a range of nation-building tasks with some responsibilities which must be among the most difficult borne by any Australian public servant. As the minister said, they deliver outstanding results in many areas, including migration management, settlement services and entry systems and border control. I know that they will want me to say to the committee that they share a desire to do whatever is necessary to avoid a recurrence of circumstances like those of current concern.

That leads to a second point. The department has made mistakes. If these mistakes are the results of systems or processes or attitudes, these will be changed. If appropriate, there are also processes under the Public Service Act which I would ensure are applied scrupulously and fairly. But we must all learn from the mistakes. We are already drawing some conclusions ourselves about these matters and taking action to fix things which have not worked properly. We expect, of course, that Mr Palmer will present findings and recommendations about issues which need to be addressed and we will work earnestly to act on his recommendations. We are working to understand why processes which work effectively for many have failed in some cases, and then to change what needs to be changed. This is not going to happen with change only in the department's operations and approaches. It will clearly require attention beyond the department in other areas, including national approaches to issues like mental health and identity. In some respects, including the Senate inquiry into mental health issues in

Australia, that is already happening. But in others, particularly the issue of identity, there is a need for concerted action between all jurisdictions.

I do not excuse any shortcomings by us in saying that some of the cases under discussion throw into stark relief the broader disadvantages of not having, for example, a single or coordinated national system for registering missing persons. They also, to my mind, illustrate the difficulties which numbers of agencies have because of identity issues, which were core issues in the cases of Ms Rau and Ms Alvarez Solon. There is certainly, as the minister has indicated, a question of whether more regular and broader use of biometrics should be contemplated, especially to assist in dealing with complex identification cases. We will look to any recommendations Mr Palmer may make in these and other crucial areas.

Madam Chair, I would like to give the committee some elaboration on remarks by the minister on the actions which we have taken and are taking to deal with issues which have been highlighted by these cases. A first set of issues relates to identity—in particular, the need to establish identity quickly and accurately. In light of the difficulties, exacerbated in some cases by cross-jurisdictional factors, in determining identity in some cases we have now established in our Canberra office the national identity verification and advice unit that the minister referred to. This will be a mandatory referral point for any case where our officers in the states have not been able to quickly determine an individual's identity and will enable us to develop expertise in and sharp focus on issues relating to identity. It will be responsible for developing and overseeing new procedures for handling missing persons inquiries to and from police. It will additionally enable us to escalate cases where there is any suggestion or claim of permanent residence or citizenship status, and we will be issuing revised instructions to that end.

We have also issued revised instructions on other identity issues, including analysis and interrogation of data. We have taken a number of steps, as outlined by the minister, to extend our access to databases. This issue has been raised with Commonwealth law enforcement agencies and in my view will need, in some way, to also be extended to the states. We now have in place the necessary approvals to fingerprint people detained, without consent if necessary, and this process has begun. That set of approvals was not in place earlier this year.

To illustrate what that enables us to do now, we have had a recent case where a newly detained person claimed to be someone who did not feature in our records but whose identity was determined comparatively quickly. This was done because of new arrangements instituted following Ms Rau's case. The detainee was fingerprinted, the prints were given to the Australian Federal Police and this led to identification of the person by the Victoria Police. The person was determined to be lawfully in Australia and was released from immigration detention. We want our other new measures to have a similar impact in helping us to do our job better. We are actively examining other identity related issues like the development of more accessible checklists for compliance officers.

Among other issues are policy concerns, including what appear to be reform needs in the bridging visa regime. Such policy issues are not of course matters which I can appropriately discuss here, but I will comment that in some respects our prescriptive legislative and regulatory regime does not have some of the flexibilities which our officers on the ground feel the need of—for example, when dealing with unusual cases or events. We are examining the

bridging visa regime to see whether it could be made more flexible in the sense of enabling officers to exercise further options other than detention of people in the first instance. We are preparing advice for the minister on these issues.

I say ‘exercise further options’—other than the detention of people in the first instance—because in the matter of people located in compliance operations we do not detain everyone. We detain about 27 per cent of men, about 18 per cent of women and about seven per cent of children. We look actively for alternatives to detention. We think that the bridging visa regime could be looked at to enable us to take that process further.

Another set of issues relates to record keeping. It is unacceptable that individuals should be disadvantaged by shortcomings in the entering of records or by systems which do not have adequate linkages. We have over the past year strongly reinforced with our officers the importance of improving our records, and our state directors have been charged with driving improvement in this area. In terms of our IT systems, we have set in train processes to integrate the detention records of the department and our detention services provider, with the aim of having a single client record for detainees, and to link DIMIA and review tribunal systems to ensure that data about a person’s status are up to date.

We have also taken action on issues relating to our duty of care. The minister has outlined actions that we have taken relating to detainees in prisons and the extension of further psychiatric care to detainees at the immigration detention centre at Baxter. In addition to those duty-of-care issues, we have issued further instructions about the care of dependants who may be left in the community as a result of compliance raids. As the minister has noted, we have asked that detention review officers be established in each state and territory office to play a crucial quality assurance role, and these officers will be independent of our compliance units. Beyond these areas, we have identified other training and quality assurance issues, which we are addressing.

These challenges reflect the complexity of our legislative framework and operating environment, as well as the difficult human dynamics we deal with in our compliance and detention functions. The minister and I have discussed these matters, in particular the need to position the department to respond rapidly to Mr Palmer’s findings. We are turning our minds very assiduously to the identification of people who might play a leading role in driving the implementation process necessary to produce the outcomes which the government expects of the department across the whole range of our activities.

Over the past year we have begun an examination of some of the requirements to make our services more user-friendly—for example, in the presentation of public material about the highly complex legislation we administer and through a possible simplification of the visa regime. We will need to develop further an organisational culture, or a set of attitudes, values and approaches, which gives us greater assurance that we are securing outcomes which are lawful and commonsense and which will be found to be appropriate under the light of scrutiny. I have emphasised to our senior managers that this will require leadership across the department, as it involves in some respects the way we approach our whole job.

We are, we know, the subject of criticism because of some of our actions in cases of current interest. We have set out deliberately and energetically to make our own assessment of things

that need change both within the department and on issues like mental health and identity more broadly in Australia, and to put changes into practice in our own operations. We expect that further issues and recommendations will flow from Mr Palmer's recommendations, and we will approach them with the same determination. Finally, I have been asked to table for the committee a letter which has already been sent to you about a corrigendum to the portfolio budget statements. I seek leave to table that.

CHAIR—Thank you, Mr Farmer—and a copy of your statement?

Mr Farmer—I can arrange that, yes.

CHAIR—Thank you very much. Just in terms of determining the process from here, as I indicated at the beginning, we will start with general questions to the department executive but the program itself refers to questions in relation to matters of internal product. It is my understanding, as far as members of the committee are concerned, that there are not a significant number of questions first up this morning; nor will there be, I expect, for some time today in relation to matters of internal product that would normally be considered in this area, fascinating though they may be. In relation to your officers, Mr Farmer, I would suggest that those who are specifically concerned with the minutiae in that area will not be required for some time. I understand Mr Storer was seeking that clarification.

Mr Farmer—Thank you very much.

CHAIR—Now we will go to general questions. We will start with Senator Ludwig then go to the other end of the table. We will move amongst members of the committee as matters develop.

Senator LUDWIG—There is your statement and attachments to the ministerial statement to the Senate estimates committee that we have not got as yet. I will start with another area first, but it is of a general nature, which might assist. The *Australian Financial Review* on page 69 had a story about the high cost of detention, but there was also a story about Virginia Leong. Could you outline what the circumstances of her release were?

Mr Williams—Ms Leong's case was a very complex one. The issue really was around eligibility for a visa. The sorts of visa that would normally be available to somebody in this position, when you cut out the various options that are not really relevant, are if the person has a substantive visa application on foot—so an application for some sort of permanent visa or temporary visa but not a bridging visa—or if the person is making suitable arrangements to depart. For quite some time, neither of those factors were in evidence. In terms of arrangements to depart, arrangements would be possible if Ms Leong were to register the child with Malaysian authorities, but she is not willing to do so. As of I think Monday, both Ms Leong and her child became applicants for a permanent visa. As a consequence of that, we were able to then trigger an eligibility for a bridging visa, and that visa was granted.

Senator LUDWIG—How did she come to be an applicant for, is it a permanent visa?

Mr Williams—Yes. I believe that the child applied for a protection visa. The mother has a review option outstanding in relation to an earlier visa application. One of the many complicating factors in this case is that the mother and child have quite different statuses because—

Senator LUDWIG—Perhaps you could just explain that. It might be helpful to understand the process. I was going to come back and then get an understanding of how long this person and the child have been in detention.

Mr Williams—I do not have all the detail about the time they have been in detention but the reason for the different status is largely because the child was born in Australia after other applications I think the mother pursued had been resolved. So, when the child was born, the child had different eligibilities, and they were not pursued until now. But the mother had some court cases going on. She was in a Family Court matter that at one stage had—

Senator LUDWIG—Perhaps we can just slow down a little bit. Where was the child born? In detention?

Mr Williams—The child was born in Australia, as I understand it, and I think born in detention, yes.

Senator LUDWIG—What applications were on foot by the mother prior to the birth of the child?

Mr Williams—By the mother?

Senator LUDWIG—Yes, by the mother, by Ms Leong, prior to the birth of the child.

Mr Williams—She applied for a substantive visa in 1996 after she entered Australia as a tourist. There were review processes under way over time on that. As I think I understand it, she left Australia and returned at one stage. The child, Naomi, was born in May 2002.

Senator LUDWIG—When was Ms Leong first detained?

Mr Williams—October 2001.

Senator LUDWIG—When was the child born?

Mr Williams—In May 2002.

Senator LUDWIG—What application was made by Ms Leong prior to that?

Mr Williams—Prior to that she had made some applications for substantive visas and they were in process with review and other eligibilities that had been flowing. At the time she was detained there did not appear to be anything on foot, I think.

Senator LUDWIG—Was she detained as an unlawful noncitizen?

Mr Williams—Yes, as an unlawful noncitizen in the community without a visa.

Senator LUDWIG—Could we get the time line subsequent to that? A child was born. Did that change the status of the applications or were there applications in place before the child was born?

Mr Williams—The child had different status to the mother because the mother had pursued some applications and that has an impact on further applications that are available for her to apply for. The child had not applied for anything until a couple of days ago. In the meantime there was some other litigation as well that complicated things.

Senator LUDWIG—What were they?

Mr Williams—There were a couple of Family Court matters. At one stage, the Family Court had issued an injunction preventing departure of the family. That has since been resolved, although I understand there is a further Family Court matter in relation to another person.

Senator LUDWIG—What was the injunction issued for?

Mr Williams—That is a matter for the court. I believe they wished to prevent departure so that the matters before it could be fully heard.

Senator LUDWIG—Did the department defend that? Who defended that action?

Mr Williams—I am not sure the department was a party to the action. The department was simply an agency with, I suppose, a legislative obligation to remove and the court at one stage saw fit to prevent that happening so that the court process could go through.

Senator LUDWIG—The court sought an injunction from the department.

Mr Williams—The court issued an injunction against the department.

Senator LUDWIG—Did the department agree with the injunction?

Mr Williams—The department has to comply with court orders.

Senator LUDWIG—Did it set a date of hearing for that?

Mr Williams—I do not know the timetable for that court matter, other than the Family Court's powers in that area were ultimately found not to apply by the High Court. Therefore that injunction, as I understand it, was dissolved following that.

Senator LUDWIG—Who defended the matter in the High Court?

Mr Williams—That would have been the department.

Senator LUDWIG—Did the department defend the injunction or not?

Mr Williams—I do not recall whether we were represented or whether we sought to influence the outcome. I just do not know.

Senator LUDWIG—Perhaps you could take that on notice and provide the detail in respect of that. It was subsequently heard in the High Court and the Family Court was then unsuccessful—is that right?

Mr Williams—The Family Court was found not to have jurisdiction in the area that it sought jurisdiction or had asserted jurisdiction.

Senator LUDWIG—What was the next milestone that occurred?

Mr Williams—The next milestone that occurred was ongoing discussions with Ms Leong about departure. The fact is that we did not have a lot of other options at that stage. We were in discussions with her about returning to her country of origin. That required some actions to be taken on her part.

Senator LUDWIG—What were they?

Mr Williams—The child was unregistered. The child needs to be registered as a citizen born abroad of the country where the parent was from.

Senator LUDWIG—What country was that?

Mr Williams—Malaysia, as I understand it.

Senator LUDWIG—Have DIMIA spoken to the Malaysian authorities about this?

Mr Williams—I believe we have from time to time, but I do not have the detail.

Senator LUDWIG—Perhaps you could take that on notice to establish the series of events that led up to the point where you required the Malaysian authorities to register the child. I understand that that was unsuccessful—is that right?

Mr Williams—It was ongoing. In the absence of a substantive visa application, arranging the removal is really the department's only option in that situation.

Senator LUDWIG—Yes. What happened next?

Mr Williams—Next, very recently both the mother and the child became applicants for a substantive visa. That gave us an option to consider a bridging visa and a bridging visa was granted so that they can pursue those applications in the community.

Senator LUDWIG—So were you provided with a reason for these applications for a substantive visa?

Mr Williams—That is a matter for them. I am not sure what the merits of those applications are and it is not my role to decide those. They will just go into the system and be decided in due course.

Senator LUDWIG—All right. So they will be decided on at some point. Do you know the dates that they were made?

Mr Williams—I know that in relation to the child it was only early this week.

Senator LUDWIG—So the mother and the child applied on different dates?

Mr Williams—Yes. They still have different situations in relation to their substantive visa processing. But at least they now both have a substantive visa application.

Senator LUDWIG—Were they different visa applications?

Mr Williams—I believe so, yes.

Senator LUDWIG—Do you have there what they were?

Mr Williams—It is a matter of review for the mother, so it is at tribunal level. In relation to the child it is a protection visa application, as I understand it.

Senator LUDWIG—So that protection visa application is what allows the applicant to make a request for a bridging visa?

Mr Williams—That is right.

Senator LUDWIG—What bridging visa was issued in respect of the child?

Mr Williams—I think it was a bridging visa 051.

Senator LUDWIG—What does that mean?

Mr Williams—It is a class of the many classes of bridging visas available. It is one that can be issued to people in detention who did not have a substantive visa at the time they came to the department's notice but have now applied for one, as I understand it.

Ms Godwin—If I could clarify, one of the challenges around the bridging visa set of arrangements that Mr Farmer was alluding to is that there are different provisions that apply depending on whether someone has been immigration cleared or not immigration cleared. In this instance, the mother had at one point been immigration cleared but the child is not immigration cleared and therefore they have access to different bridging visa arrangements. The 051 is one that is available to someone in detention who has not been bridging visa cleared but who does have a substantive visa application. It is one of the many complications of this particular set of circumstances.

Senator LUDWIG—All right. Does both of them having applied for a type of visa allow the department to release them or is there a decision made about that separately?

Mr Williams—There is a decision that has to be made.

Senator LUDWIG—And what decision is that?

Mr Williams—It is really a question of whether or not the factual situation applies—that there is a visa application and that compliance with the visa is likely to occur, so there is no great risk of absconding or whatever.

Senator KIRK—From what you are saying, these applications for substantial visas were only made quite recently.

Mr Williams—For the child, yes.

Senator KIRK—Had the protection visa application been made, say, 12 months ago with respect to the child would we be looking at the situation we are in now—that is, if both the mother and the child had been released into the community, the child on a bridging visa? Is it just a matter of timing?

Mr Williams—Potentially; theoretically. Going back 12 months, I am just not sure what the situation was in relation to the court action I referred to earlier. This case has been quite tangled over the last couple of years. But in theory it is possible.

Senator KIRK—The two cases are separate cases, aren't they, in the sense that the child's circumstances are quite different?

Mr Williams—Yes.

Senator KIRK—What would occur in that situation? Let us say it had occurred 12 months ago and the child had been entitled to a bridging visa and released into the community. What would DIMIA do in that situation? Obviously, that is very difficult. You have a two-year-old child, as she would have been at that time, without care. Is that going to have some influence on your decision as to whether or not to issue a bridging visa to the child?

Mr Williams—Yes, it would. The underlying principle that we try to apply is not to split up families. Our preference, particularly with very small children, would be for them to be with their parent. If we were faced with a situation, hypothetically, where the parent had a different status to the child and there was an eligibility for release, that would be a factor we

would have to take into account. What suitable arrangements could be put in place? Are there other family members who are available? Is there an NGO or somebody that is able to help? What is the attitude of the state child welfare authority? All those factors would be taken into account. In the case of the particular bridging visa that we have recently issued, another criterion of that visa is that there has to be a suitable care plan in place, which means that somebody is able to look after the person, that there is funding for that and that generally there are suitable arrangements.

Senator KIRK—In a case such as that of the young child we are talking about here, do such children have access to legal advice, especially in circumstances where their case is quite different to that of their parents?

Mr Williams—Legal advice is available but it is probably more a matter for the legal aid authorities as to what their criteria would be.

Senator KIRK—My question to you is: how does the child request the legal advice? Is it not the case that DIMIA has some responsibility, or duty of care at least, to suggest or make a recommendation as to who a lawyer may be?

Mr Farmer—Senator, I would like to get one of our legal officers to comment on this point. My understanding is that if any person in detention requests access to legal aid, we have an obligation to provide that. There is a particular section that sets that out. This matter has been tested a number of times and the general finding has been that the department does not have the sort of obligation that you were asking about—namely, to take steps to make legal representation available to people if they do not ask for it. But I would like to make sure that we are giving you well-based advice on what is obviously a point of some legal complexity.

Senator KIRK—Yes, I accept that, but the situation I am talking about is that of a child who is one or two years of age and clearly not in a position at that age to even be able to comprehend what legal advice is, let alone request it for herself.

Senator Vanstone—Senator Kirk, we will get you the advice but bear in mind that you are not asking about a child without a parent or a guardian there.

Senator KIRK—Actually, I am interested in that—whether or not you then go to the child's mother or father, as the case may be, and ask them whether or not the child would appreciate separate legal advice or whether or not, in circumstances where a child cannot ask for their own legal advice, you would take the word of the mother or father in those circumstances. This is especially so where you have two separate cases; the cases are quite different here.

Senator Vanstone—We will get you that advice. I see the point you are making but I am just clarifying that it is not the case of a child with nobody and the department saying to a two-year-old child, 'Well, you haven't asked for legal advice.' That would plainly be a hazardous situation. This is a case where the child was with the mother and, because the child was born in detention, did not have the same sort of claims. That is why they are different claims—as a function of timing, not because they are different issues.

Senator LUDWIG—So the position we are now at, Mr Williams, is that the application has been made and the child and the mother have been released. What are the terms of that visa?

Mr Williams—I am not sure of the exact terms. Usually it requires that there be some sort of a care plan in place, that we are aware of where they are and that they keep in contact with us—those sorts of things.

Senator LUDWIG—How long does the visa run for the mother and the child?

Mr Williams—It will depend on the processing of the substantive visa application.

Senator LUDWIG—Could you outline for the committee what that is in terms of the mother. Is it an application that goes before a tribunal, and how is it determined from there?

Mr Williams—As I understand it, she has an option to appeal to a review tribunal, so she is in a window between a primary decision and a tribunal decision and she is in a period where she has an option to apply.

Senator LUDWIG—What was the primary decision?

Mr Williams—I think the primary decision was a protection visa.

Senator LUDWIG—No, it would have been a decision by the department.

Mr Williams—That is right—a decision by the department, so she can appeal that to a tribunal.

Senator LUDWIG—So there was a refusal of a protection visa.

Mr Williams—That is right.

Senator LUDWIG—When was that made?

Mr Williams—I am not sure.

Ms Godwin—Perhaps I could make a couple of points. As I understand it, this was an application made some time ago which was appealed at the time. She then departed the country and returned. There was a question of what her status therefore was in relation to that whole group of applications. I think the legal advice we had was that it was a question of whether there could be a renotification in relation to the review. That has happened and that, in a sense, reactivates her opportunity to seek a review, which she had in fact sought some years ago. As to whether there was in fact another opportunity for review, there was legal advice on that. So she now has the opportunity to seek review. It is entirely up to her whether she does. The child has made an application, and that application will be considered in the normal way.

I would like to make a couple of additional points, one going to the issue about the mother and so forth. Our understanding is that the mother had access to legal advice. There was no question of that. She had a legal adviser. Secondly, when a child is in detention with a custodial parent, as this child is, we are not the guardians of the child; the parent is the formal guardian. The child is not formally covered by the Immigration (Guardianship of Children) Act, which applies if a child is not accompanied by a custodial parent. In that situation—and

for a whole variety of circumstances, not just this situation—we obviously do need to rely on the views and advice of the custodial parent.

The third point to make is that we have been trying to think about how to assist this family for a considerable period of time. We have looked at issues like alternative detention. There were earlier discussions about access to child care. Those discussions had been ongoing for at least a couple of months before we were able to put that into place. So there has been an ongoing determination to try to find some appropriate way to assist this family, notwithstanding the complexities. Some of those complexities include the fact that there has been a series of intersecting pieces of litigation, not all of which are specifically related to the family but to which they have been attached at various points. I cannot point to all of those. You have asked for advice on notice on that. We will try to put together a detailed chronology. But it is particularly complicated because it also related to actions in the Family Court involving another family, questions of whether the Family Court had jurisdiction and, if they did have jurisdiction, what is the jurisdiction that relates in these situations. As I said, we have had this case under review for a considerable period of time, looking at different ways of trying to come to a resolution.

On Monday, one of the things that happened, when we started to have a view about how we might be able to bring this to resolution, was that we approached the mother and put to her some of the points that we thought would be a way of resolving things. At that point, she indicated that she had not made an application for a visa before. We said that she had, and she said that she had no knowledge of it. We had to work that through with her. She did not want to make an application at that point for the child, even though we had indicated that might be an option and a way of helping to resolve the situation. There were discussions and her legal adviser, who had not been able to attend earlier because of court, came to the detention centre and a further series of discussions were undertaken.

So this has been a case where we have been looking at how to resolve it. It is hard to imagine the number of different complexities that have arisen, but it has been one of the most complex family issues we have had, certainly in my experience in recent times. We have been looking for ways to try to resolve it. We put that to the mother on Monday. She was reluctant to proceed. We spoke to her legal adviser. The legal adviser agreed to come and participate in discussions. That happened and, as we know, the series of processes that were then able to be put in place happened, and they have both been granted bridging visas.

Senator LUDWIG—In summary form, the object was to put to her a number of ways she could obtain a bridging visa or a visa so that she could be released from the detention centre and that was put in train on Monday at the instigation of the officials.

Ms Godwin—We certainly raised it with her, not the other way round. It all came together on Monday but it has been a process of looking at this case over a period of time. Mr Williams mentioned the removal options. We have been pursuing those. We were pursuing alternative detention. We were looking at whether there were any other options and, as I say, that came together on Monday and we put it to the family.

Senator LUDWIG—Going back to the original question I asked Mr Williams: when was the primary decision refused?

Mr Williams—I might have to take it on notice.

Senator LUDWIG—Some time ago or more recently?

Mr Williams—I believe it was some time ago.

Senator LUDWIG—Is that before or after she had left and returned to Australia?

Mr Williams—Again, I do not have the detail here.

Ms Godwin—We will take all of that on notice and try and get it to you. I might ask, however, given that there is some interest in the legal points if Mr Walker could add to anything that I have said.

Mr Walker—Broadly, Ms Godwin has advised precisely what the circumstance is—that, as with anyone in the community, a parenting and guardian is responsible for a child and takes actions on behalf of their child or the child in their care. The Immigration (Guardianship of Children) Act solely applies for the minister being the guardian of a child who enters the country without a parent or guardian and who intends to remain permanently in Australia. That is where the guardianship obligation comes up.

On a couple of other provisions that we have, in the circumstances of Ms Leong, she would have been advised of the provisions of sections 194 and 195. Section 194 is that the person detained is advised of the consequences of their detention, and 195 is that they do have a right to apply for visas within fairly strict time limits—either two working days or five working days. I do not think I need to go into that detail. The other provision that is probably relevant to a detainee is section 256, which provides that, where the person requests either visa application forms or facilities to access legal advice, we are required to facilitate that access. The obligation is not on us to advise somebody where they can obtain legal advice but rather it is the reverse: where they ask us to facilitate them, we have an obligation to facilitate them obtaining advice.

Senator KIRK—I understand, but in these circumstances I wonder how you deal with the fact that most of the people who are going to be in immigration detention probably do not have a copy of the Migration Act to look up. I am wondering practically how people are to be made aware of the fact that they have these options unless DIMIA does provide them with the information. Is there any kind of shortened version of the act or something that is provided to them so that they are aware of their rights and then realise that perhaps they are going to have to seek independent legal advice?

Mr Walker—In most cases the people who have been in the community and have been detained have made visa applications in the past and used agents. As I think Ms Godwin mentioned, Ms Leong did have a legal adviser. That is the backdrop to that situation.

CHAIR—We are going to come back to Mr Williams about Ms Leong.

Senator LUDWIG—Ms Leong then re-entered the country. On what type of visa did she re-enter? You indicated that she had departed and returned. She had been detained. She had originally entered on a tourist visa, as I recall from your evidence, and then departed. I assume she had an expired tourist visa the first time she departed?

Mr Williams—Yes, I think that assumption is probably correct. As I understand it, she—

Senator LUDWIG—Anyway, we will verify that in due course. What visa did she return on?

Mr Williams—As I understand it, after her second entry into Australia we found that she had entered on a passport that was not her own.

Senator LUDWIG—What happened from there?

Mr Williams—Some time after that, she was located again by the department and that is when this chain of events started again.

Senator LUDWIG—That evidence was not made known to the officials at the time?

Mr Williams—That evidence?

Senator LUDWIG—The passport issue.

Mr Williams—Not at the time she entered, no. It was subsequently determined—after she was located some time later.

Senator LUDWIG—Sorry?

Mr Williams—As I understand it, it was not detected on arrival. It was picked up after.

Senator LUDWIG—It was not detected on arrival.

Mr Williams—I will correct that on notice if that was not the case.

Senator LUDWIG—That is fine. It is perhaps best if you do. At what stage is the case of the child now—what visa?

Mr Williams—She is an applicant for a visa.

Senator LUDWIG—Which class of visa is that?

Mr Williams—It is the protection visa she is an applicant for.

Senator LUDWIG—How long does that run for?

Mr Williams—It just depends on how long it takes to process. The department usually decides those cases within a relatively short time frame, a matter of months. Then there are options for review by an independent tribunal and, following the tribunal, there is court—that is if the application is refused, of course.

Senator LUDWIG—So the department has primary responsibility for reviewing that protection visa—

Mr Williams—That is right.

Senator LUDWIG—and make a decision, and that is under way now.

Mr Williams—That is occurring now.

Senator LUDWIG—So when will the outcome be known?

Mr Williams—I would say a matter of months.

Senator LUDWIG—Is that the usual time frame for the department to make a decision about a protection visa for a child who has been in detention?

Mr Williams—I am not an expert on protection visa processing.

Ms Godwin—We can get someone to the table who can talk about that, Senator, but it will depend on the complexity of the case. Cases can be decided in a matter of days or weeks if all of the information is available and if it is not a complex case. It will depend on the nature of the claims that are made and the material that is put before the decision maker.

Senator LUDWIG—If that visa is refused, the usual review mechanisms are available to the applicant from there?

Mr Williams—That is right.

Senator LUDWIG—At that point, do they remain out of detention—what happens?

Mr Williams—It is open to the department to continue issuing bridging visas, as long as there is a protection visa application or some sort of visa application afoot—and that includes periods of review through tribunals and courts.

Senator LUDWIG—What about the mother's release; is she on a protection visa as well?

Mr Williams—She is in a position where she is able to apply for one. She is within the time limit for applying for one.

Senator LUDWIG—What is the time limit?

Mr Williams—I think she has got 28 days or something like that.

Senator LUDWIG—What happens if she applies for a protection visa in those 28 days?

Mr Williams—The same thing—the decision would be made at the tribunal level, which is where I understand her case is at, and again there are appeal options after that if it is negative.

Senator LUDWIG—So the department is still the primary decision maker in respect of both Ms Leong and her child?

Mr Williams—There is a primary decision that has been made, as I understand it, in relation to the mother—

Senator LUDWIG—That was the part I got a bit confused about.

Mr Williams—yes—but in relation to the child the department is yet to make a primary decision.

Senator LUDWIG—When did Ms Leong's 28 days start?

Mr Williams—We recently renotified her because of the complexities that the deputy secretary referred to, so I am not sure. She has got 28 days probably from Monday.

Senator LUDWIG—That is the notification?

Mr Williams—Of the original decision to refuse, yes.

Senator LUDWIG—If that expires without an application for a protection visa being made, what happens then?

Mr Williams—Again she would be subject to detention, and we would have to look at that at the time.

Senator LUDWIG—What would happen to the child in that instance?

Mr Williams—That is where it gets complicated—

Mr Farmer—I think we are going a long way down a path where the bricks have not been delivered for the making, if you know what I mean.

Senator LUDWIG—I appreciate that. It is just a question of trying to understand what the process is, because for the person who has been released from detention on Monday there are certain course of action available and I think it is reasonable to try and understand what they are in respect of her circumstances. We have covered most of them, I assume—or are there other circumstances available to her?

Senator CHRIS EVANS—Mr Farmer, I take your point, but as a layperson joining this lawyers' picnic I am totally confused. With all due respect to Ms Godwin's explanation, I was none the wiser at the end of it. I guess what I would like is a layman's explanation. I appreciate the complexity of the act, but why was this woman let out and is there a chance you will take her back into detention?

Mr Farmer—On the second point, her case is under processing in accordance with the law. I suppose what I am saying is that I do not really want us to be saying things in relation to her case that presume a particular outcome one way or the other.

Senator CHRIS EVANS—It is a simple question: is she at risk of being redetained if things do not go her way?

Mr Farmer—The law will take its course. We will have to examine her case. She then has a variety of processes available to her, review processes—

Senator CHRIS EVANS—She is out on parole, basically. She has not been released, she is out on parole.

Mr Farmer—Absolutely not. We do not have that concept. She is now the holder of a visa while she is pursuing an application for a substantive—

Senator CHRIS EVANS—But ultimately if those applications are unsuccessful she will go back into detention.

Mr Farmer—There are a variety of things can happen if applications are unsuccessful. People might decide to leave the country. Her circumstances might change.

Senator Vanstone—Apply for ministerial discretion.

Mr Farmer—Yes. She might be able to go through a variety of processes, including, as the minister commented, the process of seeking ministerial discretion.

Senator Vanstone—Perhaps I could give an example that highlights the very good reasons that Mr Farmer and the others have given the answer they have given. I raise the example of Mrs Hu, the old lady in Melbourne who is about 104—

Senator LUDWIG—Elderly, perhaps.

Senator Vanstone—When I turned 50, someone put a seniors magazine on my desk which said 'for anyone over 50'.

Senator CHRIS EVANS—I do not know about you, Senator, but my attitude towards these things changes as I get older. I used to think 47 was elderly.

Senator Vanstone—I believe 70 is the new 50. I also know what I thought of 52-year-olds when I was 17. Unfortunately I do remember. Anyway, back to Mrs Hu, the elderly Chinese woman in Melbourne. She came to our attention, I do not know whether it was in compliance or how, but in any event when she was about 100. She had at that point been staying unlawfully in Australia for five years. It was not that her visa ran out, she tried to get on a plane, they would not take her, shock horror; she had stayed unlawfully for five years. The department rightfully took one look and thought, ‘This is just terrible. This is a 100-year-old lady. What can we do? There is no way, because she has been here unlawfully for five years, that she is going to get a visa. But there is equally no way that anyone wants to put a 100-year-old woman on a plane.’ So they looked at the act and said, ‘How could we do this?’ I know some journalists have been critical of this and said, ‘Why did they set up such a system?’ They set up such a system because it is really the only option the act allowed them. They said to her, ‘Put in an application for a visa. While we are considering your visa you will have a bridging visa so you will be lawfully in Australia.’ I do not know how long they thought Mrs Hu would live but, given that she has made it to 104, I would not now make any expectations that she will not be here when I am 57. She may well be. It was very clear in the beginning and in a series of correspondence between the department and Mrs Hu that that was the arrangement and that if she insisted on an answer she would get a no, but that that answer would enable her to go to the Migration Review Tribunal, where she would, according to law, in all probability get a no, but that would then enable her to go to the minister.

That was clearly understood: that, if she asked for a resolution on the matter, insisted on it—because you are entitled to insist on an answer at some point and say, ‘Look, I want this answered’—she would get a no. Because, I assume, some media people do not understand, as opposed to bad faith—let us just be a bit magnanimous here and assume it is because they do not understand the department—in fact Australia got terrible coverage around the world that we were wanting to deport a 104-year-old woman, when the correspondence clearly indicates that we were not wanting to do that; we were trying to find ways to help. And the reason she got a no was that she had insisted on getting an answer, and it is very clear that that insistence was to go to the MRT, to come to the minister—because frankly I think the Medicare access has been of tremendous help to the family.

That is the risk in jumping to conclusions that people will have to go, that the department want to detain people or they want to deport people. This department works very, very carefully on every case. Sure, there are mistakes. There is no doubt about that. I make them every day. Undoubtedly you make them occasionally. Everybody makes them. What we are looking at is how we can improve across the board, but we do not make assumptions about the outcome of cases. The Hu case—and in fact this one—is an example of where the woman, as I am advised, first up did not welcome it, did not give a positive, and the department then said, ‘We will have to get your lawyer in because this is an opportunity for you.’ They did not have to do that.

Senator CHRIS EVANS—I understand all that very well and that was always clear to me from the outset through that case—that there was no way an immigration minister was going to deport a 104-year-old woman. I am sure the department were working to ensure that case.

Senator Vanstone—Can I just stop you there. It might have been clear to you, but it was not clear to all Australians and, in particular, from Australia's image internationally it was not clear that Australia did not want to deport. I am grateful for your acknowledgment there was no way a minister would deport a 104-year-old woman, but what I am keen to get—

Senator CHRIS EVANS—Because you would have been on the next plane out, because Australians would have sent you after her.

Senator Vanstone—I would have been thrown tomatoes by people in the street, probably spat at or something, and rightly so, but my point is not about what decision I would make but that, from the very beginning, departmental officials were of that view and were using the Migration Act to allow a woman, who otherwise would have had to go, to stay here lawfully. My point is not about me; it is that the departmental officials all along never, ever, ever had the intention that was repeatedly printed in the papers and was on radio and television around the world.

Senator CHRIS EVANS—For what it is worth, I am happy to concede that. I always thought that was the case. But what I do not know and what the Comcar driver asked me this morning and I couldn't answer the question is: why did you let Ms Leong out on Monday; why did you let her child out on Monday; why did you keep them for three years and then suddenly change your mind and let them out; and is there a risk of them going back into detention? They are quite simple questions about a highly public case and, quite frankly, I have not understood any of the answers this morning that attempted to answer that key question: why were they let out and are they at risk of being redetained?

Ms Godwin—Senator, the answer to why they were let out is: because we were able to find a way to grant them visas. Once you can grant someone a visa, you can let them—

Senator CHRIS EVANS—What changed? What changed over the last three years?

Ms Godwin—For a start, the application from the child changed.

Senator CHRIS EVANS—The application from the child changed?

Ms Godwin—Well, there was no application from the child prior to the lodging of the application on Monday.

Senator CHRIS EVANS—So the child suddenly woke up on Monday and had knowledge of the legal system? This is what Senator Kirk asked you about before.

Senator Vanstone—With respect, I do not think that paraphrasing helps. There is no suggestion of that.

Senator CHRIS EVANS—No, but it went to Senator Kirk's question, which was: who acts for the child? We have discussed in recent times the large number of people with mental health issues who the department has struggled with—and I think for good reason; they are often very difficult cases. But who acts for the child if the parent, say, has a mental health issue? The answer was, 'Oh, we don't have any obligation.' What I want to know is why it took some application, allegedly from the child—obviously on behalf of the child—to suddenly get this child out after three years.

CHAIR—Senator Evans, Ms Godwin was trying to explain that. She did go through a number of those issues with Senator Kirk before, and Mr Williams commenced in that explanation. Shall we endeavour to ask Ms Godwin to go over those issues again, let her finish that and then, if you have further questions, we will come back to further questions.

Senator CHRIS EVANS—Madam Chair, I did not wish to be rude but, quite frankly, I did not understand it.

CHAIR—I was not suggesting you were rude.

Senator CHRIS EVANS—I am really trying to get a simple answer so that all of us can understand what happened. It is not at all clear to me.

Mr Farmer—Before going into the details, Senator, I appreciate your difficulty. It is the mirror image to what we have faced in dealing with this case—and with others. As Ms Godwin said, the mother was the subject of a variety of legal processes which changed over time. Those processes can affect the capacity of people to be considered for various remedies, and that consideration must change over time as the legal situation relating to the particular detainee changes. That is one of the most complex sentences I have ever uttered.

Senator CHRIS EVANS—I was going to send the *Hansard* to you—and then I was going to show you the *Yes, Minister* series and say, ‘Have a look.’ It does not make any sense.

Senator Vanstone—Senator, I think what Mr Farmer is indicating—with words which may not jell with you or which may jell particularly with the *Yes, Minister* program—is that the image of this woman sitting there with her child, and no-one speaking to her about anything for three years, and then suddenly someone saying on Monday, ‘Oh, gee, what about this?’ is so far from the reality. There were a wide range of things happening during that time. It is a mistake to look simply at the time someone is there, look at the resolution and ask, ‘Oh, gee, why couldn’t that happen from day one?’ The answer is: because there was a range of intervening things going on during that time.

Senator CHRIS EVANS—It is a good question, though, isn’t it? We have got a child locked up for three years and it is a good question to ask: why can’t we get the child out earlier? That is what people want to know.

Senator Vanstone—Yes, I understand that, and I am simply indicating that the suggestion that is contained in your question is that there was nothing happening over a period of time—

Senator CHRIS EVANS—No—

Senator Vanstone—I did not say you said it. It is just an inference that people who had not been through the whole committee hearing might draw, and it is a mistake, because there were a wide range of things happening. That is what was being explained earlier by the two officers. They can perhaps say a bit more for you.

Senator KIRK—Could the child have made an application for a protection visa before Monday? Could she have made an application any time during the last three years?

Mr Williams—Yes, I think so.

Senator KIRK—From what you said, the mother was receiving legal advice—and the child as well?

Mr Williams—The child is three, but the mother was receiving legal advice, yes.

Senator CHRIS EVANS—I do not want to get the question about the rights of the child confused with this particular case. I assume Senator Kirk was following a hypothetical case. I want to make it clear that I am not talking about Ms Leong at this stage. There has been a range of cases you have been dealing with—quite difficult cases where people have mental health issues. What we were asking, and what Senator Kirk was concentrating on, was: what are the rights of the child, and what are your obligations to the child if the child may not be getting rational, proper advice or guardianship from the parent and is not necessarily employing the best lawyer in town? Does the child rot in detention because of that failure, and whose obligation is that? This is separate from Ms Leong's case. I want to make it clear that I am not talking about that, because I do not know enough about it.

Senator Vanstone—We have indicated to Senator Kirk that we will get her some advice, as crystal clear as we can, with respect to that. I am not aware of a situation, but that does not mean it does not exist, where a guardian has been assessed to not have capacity to advise what should happen with respect to their child. This general issue has arisen in a number of circumstances: at what point should Immigration decide that someone has lost the rights that they have if they are not in immigration detention? That is, in effect, what your question goes to. It is a very interesting question. It is not one that is easily answered.

Senator CHRIS EVANS—But you have made the point yourself, Senator. A number of times I have heard you make rhetorical points about people bringing children with them illegally and entering the country—using them, if you like. Your suggestion was that they might have used them as a means of getting a better run out of the immigration procedures.

Senator Vanstone—I do not think parents would do that, but I do believe people smugglers would be keen to do that.

Senator CHRIS EVANS—It is a live issue that you yourself have raised.

Senator Vanstone—The issue that I have raised is not that one; it is this issue: at what point does anybody—Australia, any of you or the government—expect the immigration department to deal with an individual as though they no longer have the rights that a citizen who was not in immigration detention would have? For example, if you are not in immigration detention, you have the right to refuse treatment; you have the right to refuse a psychiatric assessment; you have the right to refuse to see a GP who has the power, around Australia, I think, in every state and territory, to section you or commit you—I think that is the term—to a mental institution. You have the right to say no. At what point does the immigration department have the right to say, 'You no longer have that right'?

Equally, that general issue—at what point do we expect an immigration officer or department to override rights you would have if you were outside?—goes to the legal advice that you seek for your children. We will get some advice and it will cover what the responsibilities are of a lawyer acting for a guardian and at what point the lawyer might have an obligation—I do not know, but we will check this—to say, 'I can't act for both of these people.' I think that might be where it happens. In relation to whether the lawyer has an obligation to say, 'I can't do this for both; I've got advice from the mother,' and can say back to the mother, 'I can't do this; I can't act for both—your child has interests that are different

from yours,' certainly does exist in some areas of law, but I am not sure if there have been rulings on it in relation to this area.

The last question you asked is about what happens if the lawyer is hopeless. I can answer that. I think, with respect, it is very hard to assume that the immigration department should be second-guessing clients' lawyers and then having some system of saying, 'Your lawyer says that, but we've decided we don't believe your lawyer.' Help me, Senator Evans! In the context of criticisms of the department at this point, for the department to be saying to people, 'We don't think your lawyer is any good; we know better,' seems to me that you are suggesting a path fraught with difficulty.

Senator CHRIS EVANS—I think you are overreaching on the point I was making. I was really going to the question about obligation to the child. If the child's rights are not being asserted by anyone—and the incompetence or otherwise of the lawyer was not the key point; the key point is whether the interests of the child were being protected by somebody—who is the advocate for the child?

Senator Vanstone—I understand that. I have a very strong interest in the point that you make, if the interests of the child are not being looked after. That is the issue that bureaucrats well outside of immigration face every day. At what point do you say to a parent, 'We have decided your decisions in relation to your child are no good and we are going to make different decisions'? That is faced by family and community services departments all around Australia every day.

Senator CHRIS EVANS—That is why Senator Kirk asked the question—because she knows that.

Senator Vanstone—It is a very, very difficult issue.

Senator CHRIS EVANS—That is why I think we were after the answer to that question.

Senator Vanstone—That is the point I make. At what point do we expect the department to say, 'You no longer have the rights that you would have if you were outside detention; we'—the immigration department—'are going to overtake those rights'?

Senator CHRIS EVANS—What is the answer?

Senator Vanstone—We will get you some advice on that. I think that conceptual issue we are now on, which was raised by Senator Kirk's question, is broader. We will get you some advice on that.

CHAIR—In my earnest efforts to place some structure around the process this morning, I do want to conclude the specific questions on Ms Leong. I understand that Senator Nettle has some specific questions in that area. I do not know if there are any other specific questions on Ms Leong. The committee is going to adjourn at 10.30 for a private meeting and that adjournment will go from 10.30 to 10.40. Senator Nettle, why don't you begin your questions on Ms Leong.

Senator NETTLE—Mr Williams, you explained that Virginia was in detention because she was a visa overstayer, but I have not yet heard an explanation about why Naomi was in detention.

Ms Godwin—A child of an unlawful noncitizen assumes the status of the parent. Any child born to an unlawful noncitizen, regardless of whether or not they are in detention, has that status as an unlawful noncitizen. Given that the mother was an unlawful noncitizen and was in detention, the child had that status and was with the mother.

Senator NETTLE—In the explanations you were giving before about the legal cases you were saying that Virginia and her daughter had different circumstances, which is why they were dealt with in different ways. I am wondering how that fits with your explanation now that they had the same status.

Ms Godwin—I understand that this is very complex. Having a clear, but complex, chronology on this may assist. You can have the status of an unlawful noncitizen but have different access to procedures under the act. This was my point before about some unlawful noncitizens who have access to some forms of bridging visas and other unlawful noncitizens who have access to other forms of bridging visas. It depends not only on your status as an unlawful noncitizen but also on whether or not you are regarded as having been immigration cleared. The concept of immigration clearance gives you access to certain capacities under the act. If you are not immigration cleared, you have access to other capacities under the act.

In this situation we had two unlawful noncitizens with different access to provisions under the act. Therefore they did not have the same, in a sense, processing status. They may well have had the same unlawful noncitizen status but not the same processing status. A final point to make—and this is one of the other issues in this—is that there are various points at which a child can be added to an application, but not once it passes the primary decision point. So, because the mother did not have a primary application afoot, the child could not be added to her application; the child had to make application in its own right. That is one of the myriad complexities around this case.

CHAIR—The committee will now take a 10-minute break for a private meeting. I am sorry to interrupt your questioning, Senator Nettle, but we will resume immediately at the conclusion of that meeting with those questions to Ms Godwin.

Proceedings suspended from 10.32 am to 10.43 am

CHAIR—We will resume with questions from Senator Nettle in the area concerning Ms Leong.

Senator NETTLE—Ms Godwin, before the break you were explaining about ‘immigration cleared’. Could you explain what that means. You explained before that Virginia was immigration cleared and Naomi was not. If you are born in detention, my understanding is that that would increase your likelihood of being immigration cleared because you have not been able to do anything that means you are not cleared. Obviously, I do not have the understanding of what ‘immigration cleared’ means. If you could explain it, that would be great.

Mr Farmer—By way of an introductory point, the Migration Act is a heaven with many mansions. It has a very, very complicated set of interlocking provisions. Your finding the operation of the act not incredibly obvious at first glance is very understandable. It is one of the issues that we deal with because we are charged with administering the act. I am glad I am

not the tax commissioner; I think their act is possibly more complicated than ours. But we are up there in the finalists. Ms Godwin will answer your specific question.

Ms Godwin—I think it would be helpful if one of the legal officers came to the table. You can enter Australia—for instance, an unauthorised boat arrival—and not be immigration cleared. As I understand it, a child born to an unlawful non-citizen is taken to have entered Australia but not be immigration cleared. That is just the status that the act assigns in that situation.

Senator NETTLE—Do you want me to keep asking about this?

Ms Godwin—I know it is complicated.

Mr Eyers—In order to be immigration cleared under the Migration Act, a person is required to show particulars of identity and also a visa that is in effect. So the child not having a visa would have precluded the child from being immigration cleared.

Senator NETTLE—That makes sense. Ms Godwin, you were talking before about discussions having gone on in relation to alternative detention and child care for months around the cases of Virginia and Naomi. What prompted those discussions to occur? They had been there for years. The phrase that you used when you were describing it was that those discussions had been going on for months. Was it years? Was it months? Why only months? What prompted that?

Mr Farmer—Again, a general point: with children in detention we really try proactively to look at cases on an ongoing basis because of the expectation that we will have as few children in detention as possible under the act. That is the essence of what we do with all children in detention. We keep reviewing their situation.

Ms Godwin—That in a sense is the nub of the answer. There are essentially two ways for people to be released from detention: either through the grant of a visa or, if they are not eligible for a visa and they are available for removal, by being removed. The early efforts, as I understand it, with this family were in the context of removal. The mother's eligibility to return to her country seemed clear. As I understand it, that country was willing to assist with the provision of relevant documents and so forth. Then the question arose about the child. That was being pursued. Then, as I mentioned, there were a variety of legal actions, which may or may not have resulted in an outcome for that family which would have resulted in their release from detention. So obviously they all had to be pursued.

All of that was obviously carrying on for a considerable period. The mother would not register the child, which meant we could not get a travel document for the child. Clearly we were trying to say, 'How are we going to resolve this family? We can't just leave it unresolved.' We attempt with all cases to find a way to resolve them one way or the other. In this situation, when the removal was not coming together for a variety of reasons and when there was a continuing process of a variety of court actions, we were ourselves looking at how else we could assist this family in a sensible way.

Before it looked as though there was a prospect of granting them visas, the reason for looking at alternative detention was to say, 'Okay, if we can't grant them visas and we can't remove them, is there a different way to manage the detention so that they don't have to be in

the detention centre?’ These are all questions that we go through, as Mr Farmer says, on a regular basis. We look at families or individuals and see where they are up to and say, ‘It looks as though they’ll be resolved in this way.’ If that does not happen, we have to ask ourselves how else we can resolve it.

There has been a process of looking at this family over a period of time. As I say, the factors that we have had to take into account have changed throughout that period because of the variety of different events that have taken place. It has just been a process of continually looking at the case to see whether there was a way of resolving it. We asked for legal advice. We asked whether there was some other thing we could think about in that context. There was a question about whether she could be renotified. That seemed to be a way forward, so we instigated that renotification. That enabled her to be given the prospect of a bridging visa. We then had to think about what we would do with the child, because the child had not previously made an application, and we have described all of that process to you. It has just been a process, over a period of time, of looking at a way of trying to resolve the issues for this family, given all the complexities.

Senator NETTLE—I suppose you can understand that people who are not aware of the legal processes that are going on that you are describing look at the circumstances of this family and see the public pressure and the media profile that is raised in relation to this issue. They then see a decision. They put two and two together and say, ‘We think that’s why there’s been a release.’ Are you saying that that is not the case?

Ms Godwin—I am saying that that is not the case. We have not been making decisions about this family based on media coverage. We have been making decisions about the family based on what we believe our legal obligations are under the act, and trying to find options within that legal framework which enable us to make lawful decisions which are nonetheless sensible and helpful to the family.

Senator NETTLE—Can you understand how it is difficult for people to take that at face value? For example, the last time that we were here for estimates, we were talking about the issue of Cornelia Rau—when the decision was made to transfer her to Glenside and when she was found to be an Australian citizen. It was coincidental, it was put to us, that that happened to occur on the same day. Your argument today is that it is coincidental that the pressure from community groups and the release of Ms Leong also occurred on the same day. There are a number of instances when it is being put to the community, ‘It’s coincidental that these were happening at the same time.’ That makes people question whether or not it is a coincidence that they are occurring at the same time.

Mr Farmer—Senator, we have given you the account of a process and actions by the department that have been going on for some time. I guess the answer to your question is: if people understand that then they would not arrive at the conclusion that you have suggested some people have arrived at.

Senator NETTLE—You described that process of looking for alternative detention and child care occurring for months, and that is why my question before was: what prompted that process occurring over months rather than the years during which they were in detention?

Ms Godwin—You should not draw from that a conclusion that we have not been looking at how to resolve the issues for this family over the period of their detention. As I mentioned to you, initially the focus was on the fact that the mother was available for removal but that she had a child: ‘How do we achieve that?’ So we focused on that.

Then there were a series of court cases and legal actions—not all of which, I made the point, she was directly involved in, but some of which she was attached to and which would have changed the outcome for her depending on the outcome of the court case. Throughout that process we have to take into consideration not just what is happening to this individual but also what might have an impact. So we are obliged to continue to review and we do continue to review and we want to continue to review each of these cases to try to find a way to resolve them.

If I could make a general point: we do not have people in detention for the sake of having them in detention. We have them in detention so that they are available for us to be able to process them and resolve their unlawful situation in Australia, and that process is ongoing. The focus has changed at various points in that process because of the different circumstances that have applied. In recent months, when it became clear that all of those processes simply could not be resolved, we have had to ask ourselves, ‘How do we continue to manage this family in a sensible and reasonable fashion?’ That obviously gives rise to questions of alternative detention. We use alternative detention quite regularly these days. We are in the process of developing a residential housing project in Sydney in order to give us more options to assist families who find themselves taken into detention.

So we have been looking at this family throughout the period of their detention. The focus of that examination has clearly had different elements to it at different points. As I said, we have been looking at the detention arrangements in recent months. When we were doing that, we wondered, ‘If the lawyers look at it and have a different view, is there something else we can do?’ and that was just another part of that ongoing process.

Senator NETTLE—Was any direction given to the department by the minister’s office at any time—for example, to sort out the Leong family case?

Ms Godwin—I am not personally aware of any such direction. I am aware of our obligations under the act to continue to look at how to resolve the cases of families and individuals.

Mr Farmer—I will say that, on an ongoing basis, the government has made it very clear that it wants us to be quite proactive in looking at cases involving children in detention. There are a number of cases where the processes have been gone through and we have authorised, or the minister has authorised, alternative detention or other arrangements for children, including in some cases putting them with their families who are in detention. So this is not an isolated case of a child and her family being released from detention.

Senator NETTLE—I am aware of that. Thanks. One of the issues you said you were looking at was child-care options. With regard to the decision that was made to put Naomi Leong into an outside child-care facility for three hours a week, when did DIMIA first receive a request for that? And did DIMIA seek any advice about her direct interaction with other

families—did that prompt the decision to look at that issue, or was it due to outside comments?

Mr Davis—Access to child care, school and other things like that outside the detention facility is again part of an ongoing process with our service provider to enhance the services delivered. I do not have the detail here, I am sorry, but we can take it on notice to provide you with detail of the time frames associated with particular child-care arrangements. But I would also say that access to those child-care arrangements was not just for this child; the establishment of an arrangement with the local child-care centre was to enable all children of an appropriate age from families who may be in detention—Mr Farmer went through some of the statistics on that before—to have that outside access.

I would also add that it is a requirement under the contract that facilities are provided—and indeed are provided—inside the facilities for children of that sort of age. It is obviously desirable, and over the years we have worked for school-age children to increase the access to external schooling. That has been a progressive process. Different states have come onstream at different times because of the liaison and other things required. Similarly in this area is a further advancement of seeking access to outside services and facilities to enhance the services available to detainees. It is really just part of the process of ongoing review of what we do and enhancing our services where we can. We see the benefits of accessing external facilities, and that is an ongoing dialogue. But to go to the specifics of this case and the time frames, I will have to take that on notice, if I can.

Senator CHRIS EVANS—Mr Davis, would it possible for you after lunch to be able to answer specific questions on this case? I find it surprising that the department would not be prepared to answer questions on this particular case. Questions about psychiatric advice and other concerns about this woman and her child have been raised with me publicly. You are saying you will take it on notice. I am just wondering if we can facilitate Senator Nettle's, other senators' and my concern about the particular case by having that information today rather than on notice. I think Senator Nettle was going to the questions about the welfare of the child and advice you had about that. Those are issues we would like to explore. I am just trying to understand what the problem is—is it that we need a particular officer here? I take what you say generally, but I think we are interested in the specifics of what happened with this particular family.

Ms Godwin—We can undertake to see what detail we can get. Inevitably with these things we are working from summaries of cases. It means going back and looking at the specific records, but we can make some calls and see what we can find.

Senator CHRIS EVANS—I am particularly interested in whether or not you have had any formal psychiatric advice regarding Ms Leong or her child about whether or not they ought to be detained and whether or not there was a medical case for their release.

Ms Godwin—Okay.

Senator CHRIS EVANS—I do not want to discuss in general the practice. I want to ask particularly about that. Obviously Senator Nettle has questions about the child care and child-care needs.

Mr Davis—Senator, I will seek to pursue information to assist. My concern is that I may have to go to our service provider and their medical providers to seek some of the answers to your questions, and in the time available I am not sure how much I can get. I am not trying to be unhelpful—

CHAIR—No, I understand that.

Mr Davis—but I will see what I can do.

CHAIR—We would be grateful for your best endeavours. Thank you.

Mr Davis—It may be difficult to get the full range of information.

Senator CHRIS EVANS—I appreciate that, but are you saying to me that information related to the medical condition of detainees is not held by the department but by a private provider?

Mr Davis—Under the detention services contract the medical services for detainees are provided by a contracted supplier. There are two subcontracts under GSL related to medical records et cetera. Those medical records are held day to day by the medical professionals because they are the people who need to treat detainees day to day. They are Commonwealth records and they are available to us on a needs basis. There are some protocols associated with that. Indeed in questions on notice some of the detail of access has been provided. All I am saying is there is a logistical issue of me seeking that access and seeking the information you are after.

Senator CHRIS EVANS—I appreciate that, but it is also the case that you released her from detention on Monday. I suspect there is a current file in the department on this particular case.

Senator Vanstone—It is a mistake, Senator, to assume—because I made that mistake when I first arrived in this department—that you could ring up and ask about a particular individual and that all the information in relation to that individual would be either in one paper file or on one computer record. That is not the case. It is an intense frustration in terms of being able to draw material out, because it is not held all in one place. That is one of the things I referred to in the statement that you have got about centralising records. So the officer is not obfuscating. There are difficulties in bringing information together quickly with respect to any individual case. It is all there and it is all accessible, but it is not a case of saying: ‘Bring me that file.’

Senator CHRIS EVANS—I appreciate that but I also say that someone made the decision on Monday to release this woman after holding her and her child in detention for three years. I would be incredulous if that person who made that decision did not have in making that decision access to her files, her medical records and advice about her or her child’s mental health and medical conditions. If I am wrong, I would be interested in—

Senator Vanstone—I have to tell you I would not be. I can foresee easily circumstances where the health records may not be accessed in relation to the department finding a way within the law, as I say the department has indicated, to get another child out of detention. The health may not be a related issue. You assume that it is. If it was then you may be right. But if it is not a related issue to that then there would not be the need to have that file there.

Senator CHRIS EVANS—As I say, I would be incredulous if the medical condition of the child was not a factor considered before they were released from detention. If, for instance, they had ongoing medical care needs, surely that would be a consideration. I am not saying there is in this case but I cannot believe that you have had this child since birth.

Ms Godwin—What you are referring to is the need for someone to have access to their own medical records when they move out into the community. Like a lot of the things we are dealing with, this is a very complex area. There are views about whether or not as a matter of course people managing the detention of a person should also have access to their medical records. We try to be extremely careful about that because there is a view that there should not be generalised access to people's medical records. Making sure that the medical records are maintained in a proper fashion but separate from their general detention and immigration records is something that we are very careful about.

As Mr Davis has said, that does not mean we do not have access to them when we need to know something, but we do not have generalised access to people's medical records. To a significant extent, even in detention, much of that is a private matter between the person and their treating doctor. Just because they are in detention does not mean that we can have access to all of what transpires between a doctor and a patient. We keep the records, the medical records in particular, separately and we try to make sure that they are not accessed except where there is an appropriate reason to access them. As the minister has said, you may well be right, there may even have been a need to access them in this situation. That is what we will have to check. It is certainly not the case that we just keep people's medical records available to us as a general thing.

Senator NETTLE—In this case do you know whether health was a consideration in making the decision for release?

Mr Williams—It was not. Effectively, as I explained before, the trigger for release was the lodgement of the application. That was the primary consideration earlier this week.

Senator NETTLE—On the public record there is the psychiatric advice of Professor Michael Dudley from Sydney Children's Hospital. Can you say whether that advice was sought by the department or independently of the department?

Mr Williams—From recollection that was provided by the doctor concerned on his own initiative.

Senator NETTLE—Did the department seek any psychiatric assessment?

Mr Williams—We will have to check on what psychiatric assessments have been sought and done in relation to the mother and the child. I do not know offhand.

Senator NETTLE—I acknowledge what you are saying about looking at child care for people in there. Were the specifics of access to child care in this case prompted as a result of psychiatric assessment either provided internally or externally, or were they prompted for another reason?

Ms Godwin—Senator, I think we will have to take that on notice. You have asked a series of detailed questions about the interrelationship of the medical advice and the steps that we have taken. We will see what we can get about how those things come together.

Senator NETTLE—This is more about the decision for access to three hours a week child care. Was that decision made on a medical basis or something else—not what the medical basis was, but if it was a medical consideration or some other consideration?

Ms Godwin—I do not think we have that information at the moment. We will make inquiries about it.

Senator Vanstone—Were you just asking that about the child care?

Senator NETTLE—Yes.

Senator Vanstone—I refer you back to the answer that Mr Davis gave you on that question when you asked it about 30 minutes ago. I think his answer stands.

Senator NETTLE—I agree that the answer stands, generally; I was asking about the case. Generally, in your answer before, Mr Davis, you mentioned there was access to facilities for children to have interaction. I visited Naomi and Virginia on many occasions in Villawood, so I am aware of the playground equipment that can be used in the visitors centre. Can you tell us what other equipment or activities for children of that age are available in Villawood, aside from what is accessed in the visitors centre?

Mr Davis—There are a range of activities but I do not believe I have the detail of that here. Could I take that on notice?

Senator NETTLE—Yes. In understanding this case as it has been described, there is a requirement for going through the processes of a protection visa through—I do not know which—the Refugee Review Tribunal or the Migration Review Tribunal. At the end of a refusal, an appeal, there is then an opportunity for ministerial intervention. That sounds like a very complicated and over-the-top bureaucratic process, to have to go through all of those stages and get a refusal at each point before there is an opportunity to apply for ministerial intervention. If people are not deemed to be asylum seekers on the basis of the strict criteria of the convention—I understand that the UNHCR says that less than half of the refugees in the world fit within the particular definition of the convention—is the only option open, in this circumstance and generally, to go through each of those processes before a knock-back and then ministerial intervention when, for the first time in the process, the issues directly relevant to that case can be looked at?

Mr Farmer—It is not a process designed by bureaucrats; it is the law of Australia that sets out the process. We administer the law. That is the first thing to say. The second thing is that an application for a protection visa is assessed in the first instance by the department on the circumstances of the case. So it is at the first point that a departmental decision maker will look at the claims made by the individual against the criteria set out in the act for seeking refugee status. If that decision maker's decision is negative and there is an appeal to the Refugee Review Tribunal, again, the tribunal will look at the circumstances of the case. Then there are additional capacities for litigation, and different elements will be looked at by the courts. As you said, you also have the capacity for ministerial intervention when the minister herself looks at a number of cases and decides whether she will intervene. But the focus on the individual begins at the first step.

Senator NETTLE—Is each of those first two determinations, the primary determination by the department and then the Refugee Review Tribunal, based solely on the definition of refugee in the convention as stipulated in the act and not on any complementary protection that might need to be provided for the individual that falls outside of the definition in that act?

Mr Farmer—I would like to get an expert to comment on that.

Mr Illingworth—The process for protection visa decision making involves assessment against the refugee convention definitions. The key criterion we look at is whether or not the person is owed protection obligations in Australia in relation to those conventions.

Senator NETTLE—So both the first two determinations are based on what I would describe as the narrow definition that exists within the convention. The convention also allows for complementary protection—

Mr Illingworth—No, it does not.

Senator NETTLE—Countries do it differently. The process by which people here who are seeking protection outside of that definition is ministerial intervention. Is that correct?

Ms Godwin—What other countries choose to do in terms of how they administer the refugees convention is a matter for them. The refugee convention per se does not incorporate complementary protection.

Senator NETTLE—So in Australia the only way that complementary protection can be accessed is through ministerial intervention?

Mr Illingworth—There is no uniform understanding even of what the term ‘complementary protection’ means. In some countries there are various avenues which those countries have put in place to provide lawful status to people. In some cases they have avenues which are called, in some circles, complementary protection. The refugees convention does not require or contemplate that term or the provision of that sort of status.

Senator NETTLE—That term is used often to describe protection outside of what is defined as a primary source within the convention. We have the capacity in Australia—correct me if I am wrong—to grant visas which fall outside of the definition in the convention. So regardless of whether we use the term ‘complementary protection’ or not, we are talking about the same thing—outside of the convention. We have the capacity to do that in Australia. Is it correct that the only way that that can be done in Australia is through ministerial intervention?

Mr Illingworth—If you are referring to protection and, as a consequence of that, obligations under other international conventions such as the convention against torture then ministerial intervention, in relation to any of the review tribunal decisions in relation to an unsuccessful visa application of any sort would be the avenue.

Senator NETTLE—What is your view of the efficiency of the process by which you are required—

CHAIR—Mr Illingworth’s view is not a matter to which the estimates goes. As you know, we are very clear about what officers can be asked, and that is not something they can be asked.

Senator NETTLE—Has the department ever been asked to look at alternative methods by which protection can be granted outside of what is defined in the convention but fitting within other international conventions that might involve a process that is different to the current one, which requires two determinations before a ministerial intervention, where those issues of concern—for example, our obligations under the convention against torture—can be considered?

Mr Farmer—You talked about the two processes before ministerial intervention. The requirements under the convention are less onerous than the ones that we apply. So the two-stage process then, with litigation and ministerial intervention, is one which, if you like, builds in more safeguards and broader safeguards than would normally apply. When the UNHCR, for example, takes refugee status determination decisions it will have a decision-maker from UNHCR take a decision. My understanding is that if that is reviewed again then it is reviewed by another decision maker from UNHCR and that is the end of the matter.

Senator NETTLE—I might ask another question in relation to this matter. Ms Godwin was talking before about the government having put a view to the department of the need to regularly review cases which relate to children in detention. I wondered how the circumstances of this case relate to recommendations that were provided in the HREOC report about the detention of children—whether there were any recommendations in the HREOC report that, if implemented, would have had an impact on this case. Perhaps at the same time you could give us an update about the implementation of any of the recommendations from the HREOC report.

Mr Farmer—The first thing to say is that the government made a statement about the HREOC report after it was released. I do not have the details of that statement here. The second point is that, as you have said, we have already told the committee that for some time the department has been charged by the minister and the government with paying particular attention to the circumstances of children in detention. I mentioned to you that, in terms of children who are located through our compliance operations, I think the current statistics are in the order of only seven per cent of children being detained. In other words, our general operating approach is that detention of children is really an option of last resort when we do not have another resort, when the law and the individual circumstances do not give us an option. When people are in detention our approach is to revisit their cases to see whether the circumstances change—and in this case the child's circumstances were very much caught up with her mother's circumstances, for very understandable reasons—or there is some other event which will enable us to approach the case differently.

Senator NETTLE—You talk about the directions that the department has been given by the minister to be concerned about those issues. Are you aware of any of those directions being identical to or influenced by the recommendations in the HREOC report?

Mr Farmer—The sorts of directions that we have had from ministers include directions from Mr Ruddock, and they predate the findings of the HREOC report.

Senator NETTLE—Subsequent to the HREOC report have you received any additional directions in relation to the treatment of children in detention?

Mr Farmer—I would not want you to think post hoc, ergo propter hoc—it is not a logical conclusion—but, with that important caveat, I will say that we are under continuing instruction from the minister to refer cases to her that seem to be exceptional and seem to warrant review. We are under continuous instruction to do what we have been talking about, which is to revisit the circumstances of children in detention.

Senator Vanstone—The visa that we announced a month or so ago and which was gazetted about a fortnight ago is designed again to put more flexibility in the system for people who have been there in the longer term and who have been cooperating but who, for one reason or another, we cannot return. That is an example of the government's commitment to try and find ways to maintain strong border protection. We are not changing those policies; we think they have been very, very successful. It is three years, some time this year, since a boat has arrived on the Australian mainland. The policies have been effective, and we intend to maintain them for that reason. Nonetheless, we do not want people to be in detention for any longer than they need be. That is why we introduced this additional visa.

The department has provided me with some information—not full files—on 21 cases. When I can get out of attendance at estimates I will give consideration to them. That is not to say that each of those people will be offered this visa but it is a good sign that we are looking to see what we can do. It not only relates to children; it relates to everybody. We want to maintain, and we will maintain, strong border protection, but we are constantly looking to see what we can do to improve that policy as it impacts on individuals where difficult circumstances arise—for example, if for one reason or another they cannot be returned.

Senator NETTLE—I have plenty of questions that I could ask about that visa but I thought that as we were going through issues I should stick to the Leong case and the HREOC implications.

Senator Vanstone—That is fine. The secretary was making the point about children; I just wanted to highlight that it is not only with respect to children. I think the department, having had the request from the government to put together a visa that would cater for those circumstances, did that very quickly, and has gone through the caseload and picked out what is only the first batch very quickly. It is an ongoing visa, and there will be more.

Senator NETTLE—Having regard to your answer before, Mr Farmer, would it be correct to say that the department has received no specific group of changes, such as changes to guidelines, which relate to the treatment of children post HREOC?

Mr Farmer—Could you repeat the question, Senator?

Senator NETTLE—I asked the question before about what directions you had received from the department post the HREOC report into children in detention. You commented that you have had a regular and ongoing direction that you review the cases that relate to children. Would it therefore be fair to characterise your answer as being that you have had no specific directions or changes to guidelines that may result from the recommendations of the HREOC report?

Mr Farmer—I think it is true to say that we have had no specific directions from the minister about the HREOC report. However, it is also true to say that, in looking at our operations, we are looking to improve the way we manage detention for everyone all the time.

In terms of the department's approach, did we learn lessons from the HREOC report? Yes, we did. We have also learnt lessons from our own operations. If there is an idea that we think should be implemented, we will look at that seriously and do what we can to implement it.

Senator NETTLE—Could you give examples of changes that you have made in relation to the detention of children post HREOC. Whether or not they were related to that, my purpose in asking the question is to see whether they do in fact relate to the HREOC recommendations, but you have said you have not had any directions that relate to it. Regardless of whether or not they relate to it, can you give examples of the changes that you have made that relate to children in detention that have occurred post HREOC.

Mr Farmer—I do not know whether my colleagues will be able to because of the particular time frame that you have set. Give us a moment, Senator, and we will see.

Ms Godwin—Senator, we just need to check the time frame. I cannot remember the date on which the HREOC report came down. We will look at that date and at what has happened subsequently.

Senator NETTLE—Has the department prepared any internal response to the HREOC report?

Mr Farmer—We prepared an external response to the HREOC report and I believe it was included in the printed version of the report. It referred, among other things, to our own view about the unsatisfactory nature of some of the ways in which the inquiry was conducted, the information used and the report collated. I do not have an interest in going into that detail here and I do not have a copy of the report here to amplify those remarks. But I think if you look at the report you will find some comments by the department there.

Senator NETTLE—It might assist in answering the previous question that the HREOC report came down in April 2004.

Senator BARTLETT—Can I clarify the situation broadly with children in detention, using the example we have been focusing on for the last two hours. You are basically saying that until the protection visa application was made by the three-year-old girl it would have been unlawful to release the child from detention. Is that right?

Mr Davis—That is correct.

Senator BARTLETT—So people who are concerned about how long the child has been in detention by definition want to support a change in the law to avoid that situation.

Mr Farmer—Possibly, Senator. The complicating factor in that equation would also be the fact that the child was caught up with the mother and their circumstances were different.

Senator BARTLETT—But, broadly speaking, the only way to avoid some cases of long-term detention under the current law is to change it rather than continue to complain about it.

Mr Farmer—No, there would be different ways of arranging detention, for example alternative detention arrangements or use of a residential housing project where that was available and acceptable to the person. So there are, if you like, available ways of varying the detention circumstances.

Senator BARTLETT—Some of those ways that have been used in other cases, including I think some families, have involved what is euphemistically called early release from detention for medical or psychological reasons. I know through groups like the Hotham Mission in Melbourne, for example, that they provide mechanisms for you to release people from detention, including children, if you so wish under the existing law.

Ms Godwin—Yes, but it goes to the point I was making before about not the law per se but the way the bridging visa arrangements are structured. Mr Farmer has already mentioned that we ourselves have been looking at that and preparing advice for the minister about that. But the fact is that, yes, there are a variety of bridging visas that people can be considered for and granted, but it depends on a variety of issues, including this complex question of whether the person is immigration cleared and whether they have got an application before the department et cetera. There are some bridging visas that can be granted only when the person is immigration cleared. There are some bridging visas that can be granted only when the person has an application before the department or a related ongoing process—so a review application or something of that sort. If your question is whether until Monday could we grant this family bridging visas, that is the case. But before Monday we could and were looking at, as Mr Farmer says, whether there were any other ways of managing their detention, including the potential question of whether transferring to the residential housing project in Port Augusta would have been an option. I just asked for that detail to be checked as part of the group of issues that we said we would look at and try and provide you with information on as quickly as we can. Depending on the attitude of the family and whether or not they wanted to accept those sorts of options, there would have been a variety of things we could have considered and were considering.

Senator BARTLETT—With the phrase or the term ‘greater flexibility’ that has been used in a few contexts recently, including in this context this morning, it seems there are already quite a lot of different options that can be explored. I hesitate to use the word ‘arbitrary’ because it is not the right one, but there is already a lot of flexibility and there are already a lot of options, such as some you have outlined, that seem to take a long time, seem to be different in each individual case, and that seem—for people that engage with the system pretty regularly, let alone the individuals caught up with it—to be hard to figure out. Why would something happen in one case and not another? If you are talking about putting more flexibility in, isn’t that just going to add to the confusion?

Mr Farmer—Imagine that you are an immigration officer charged with administering the law. You have the act and the regulations which prescribe criteria for the grant of a visa. The bridging visa regime, as we have said, contains a number of options there, each with their own criteria. They, in some cases, present the officers with a dead end because the officer, if you will forgive the use of the term, in a commonsense way is saying, ‘This seems to be a person who, other things being equal, I think should not go into detention because of the particular circumstances, but, in terms of the criteria for a visa, I cannot grant the visa.’ I might ask our colleagues Mr Killesteyn and Mr McMahon, who have been looking at this question of bridging visa issues, to give you, if you like, a more pointed illustration of the sort of the issue that we are trying to identify. As I said before, we are preparing advice for the minister on this, so there will be real limits as to what we will be able to say, but, in terms of

the issue that we are trying to address, I think that is something we could share with the committee.

Mr McMahon—There are quite a range of circumstances that we encounter which basically, I guess, stretch our capacities to respond. There are a number of cases, for example, where specific events arise in which it seems inappropriate to follow the structure and the conditions imposed by the bridging visa regime. A very good example recently was the tsunami, after which we used every bit of flexibility and ambiguity within the bridging visa regime and I think we got ourselves through that event to our satisfaction. But our capacity, for example, not to be able to issue what might have been, for example, a stay on the issuing of bridging visas for a period of time to resolve the issue was actually outside of the legal framework of the act.

There have been other occasions where we have made choices not to detain people in view of the circumstances, on the basis that the person is arranging departure. That, in many cases, has actually required us to take the most liberal view of what departure might be. However, in some cases the person might say directly to the decision maker, despite the fact that the decision maker is trying to set up a framework to provide some flexibility for the person, 'I will not be departing.' Being confronted with a clear statement contrary to the powers exercised under that part of the bridging visa regime, the decision maker may have no choice but to take the person into detention.

We had another recent case that caused us some introspection within the department. A protection visa applicant was issued with a bridging visa but, because of the nature of the bridging visa regime—it does differentiate after a time period as to whether a person does or does not have work rights—and because in this particular case the person was working when found, which was a clear breach of the bridging visa regime and the conditions that had been specified, the decision maker had no choice, due to the breach in the conditions, but to take the person into detention. But at the same time, from a more pragmatic point of view and from a departmental point of view, we would have wished not to have taken the person into detention.

More broadly, there is a lack of capacity to impose conditions within the bridging visa regime in a way that would give confidence to a decision maker that the person is going to abide by them or be available in the way that has been specified. For example, if we had more effective monitoring arrangements, including possibly taking biometrics in some cases, and if we had more flexibility around the bonding arrangements then it may well be that we could get over the problem that some compliance officers face where they do not have confidence that the person is going to return or make themselves available when they are required. This is particularly the case where somebody has broken faith a couple of times in the past. It is very hard to come to the view that the person is not going to do it again. If we could extend the powers in that way then I think we would have greater confidence that the person would be available and therefore a capacity to keep the person out of detention. So that is a very quick overview.

Senator BARTLETT—So you are saying that, if you were able to get more flexibility and discretion in the terms you attach to bridging visas, there may be more scope to either keep people out of detention or possibly find ways to get them out via early release and so on?

Mr McMahon—That is the intention of the review.

Senator BARTLETT—Flexibility and ambiguity can be good or bad obviously, depending on the beholder and the circumstance. It is good to see flexibility being applied and even liberal views—depending on how you determine the word ‘liberal’. The concern I raise—and I would ask if it has been taken into account in considering all of this further flexibility—is that you already have the opportunity with bridging visas to attach some conditions, as I understand it, and there are a range of different bridging visas. I am not quite sure how many there are now, but there seem to be a few, with different conditions attached. The flip side of the concern I have with greater flexibility and ambiguity, to use your term—and that will always be there—is whether that will just mean more confusion and more scope for individual decision makers to make widely varying decisions and basically give them more power in circumstances where people are concerned about how wisely, efficiently or appropriately existing powers are being used.

Mr Farmer—I just make the general point that the range of visa classes is very broad and the criteria and so on are agreed together. They present a pretty formidable array of material for anyone to condense. Over the last year or so, we have looked at ways in which we can set about simplifying our visa regime. We have recently taken decisions within the portfolio on the rationalisation of some visa classes. That flows from much the same impulse that you are talking about. It is a regime which could be simplified. In our review of the bridging visa regime, that process of simplification is certainly an issue we will look at. It is not just adding more into the mixture; it is seeing whether the mixture needs to be changed in its present form as well.

Mr McMahon—Senator, could I clarify my earlier comments. In trying to simplify the bridging visa regime, it is not the intent to put more ambiguity in there. The intent is to specify a range of circumstances where there would be greater clarity for an application to be made. In some areas, there would be more flexibility if the proposal were to proceed, as we are formulating it, to impose additional conditions which would then allow more confidence about reporting taking place.

Senator BARTLETT—My final question on this goes to what seems to me to be the ultimate flexibility that already exists in the act, which is the area of ministerial discretion. I recognise that the notion of that was originally meant to be exceptional circumstances rather than day to day, but just to clarify the way it stands, ministerial discretion does mean any sort of visa can be granted in a circumstance, doesn’t it? It does not have to be a protection visa or a permanent visa; it can be any sort of temporary interim visa.

Ms Godwin—It can be, but to clarify: it cannot be granted to everybody, because the minister can only intervene in prescribed circumstances. So, for example, people who do not fall into those prescribed circumstances cannot have access to ministerial intervention.

Senator BARTLETT—And the circumstances are prescribed by—

Ms Godwin—The act.

Senator BARTLETT—Public interest.

Ms Godwin—No. You can be considered by the minister only if you have had a primary decision refused and a decision of a review tribunal. For example, people who have had a primary application but have not sought review, or people who have not made a primary application and do not intend to, are not able to draw themselves to the minister's attention.

Senator LUDWIG—Just finalising with relation to the issue of Ms Leong: the release date was Monday, and from there it runs 28 days to make an application. If no application is made in 28 days, do you lock her back up again?

Mr Farmer—Again, I think that is leading us down a path in relation to Ms Leong that will invite speculation of the sort I am sure you are not trying to generate. If you would like us to cover, in general, the principle of what would happen, that would be an entirely different thing.

Senator LUDWIG—It just makes more sense in relation to Ms Leong to understand what is going to happen to her—or will it happen that, in 27 days and 11 hours, you will check if there has been an application, and, if there is no application, someone will go and get her and lock her up again? Surely you would consider what you are going to do in relation to Ms Leong at this point in time.

Mr Farmer—If you are asking about the case, I would imagine that we will get an application. That is what I imagine will happen.

Senator LUDWIG—And that would be an application for a protection visa—is that right?

Ms Godwin—She has the opportunity to seek review. If she makes another application that will be considered, but she also has the opportunity to seek review.

Senator LUDWIG—But I thought we were talking, in this instance, about the fact she has been notified of the primary decision made. Once that notification runs—it runs for 28 days—she has got an entitlement to seek a review of that decision, which is, in this instance, before the RRT.

Ms Godwin—I think we should not speculate. I am not sure precisely what the application was—

Senator LUDWIG—Or is it the MRT?

Ms Godwin—I do not know. I do not think we have the precise information about the nature of the application she previously made. We have said we will get that, and that would indicate which tribunal she would go to.

Senator LUDWIG—If no application is made, what is her status in 28 days?

Ms Godwin—She will be, as many other people in the community are, a person who has no applications before the department or the review tribunal and will again become an unlawful noncitizen as a person not holding a visa.

Senator LUDWIG—What would the legislation require you to do then?

Ms Godwin—The legislation would require us to sit down with her, as we have done in the past, and consider her options.

Senator LUDWIG—What happens in respect of the child?

Ms Godwin—The child's application would continue to be ongoing if it had not been resolved at that point.

Senator LUDWIG—Does the child get locked back up again?

Mr Farmer—You are asking us hypothetical questions.

Senator LUDWIG—I am only going as far as people would if they saw you jumping into a taxi and asked you what is going on and what will happen. What will happen? It is a reasonable question.

Senator Vanstone—With respect, the assumption you are making is that this woman does not want to stay in Australia and will not take the opportunity that she now has to make the appropriate claims to allow her to stay. If she makes a rational decision that she does not want to do that, that is a matter for her. I do not make the assumption that she will make the decision you think she will make.

Senator LUDWIG—I have not made any assumption. I am asking about one scenario and then I will ask about a subsequent one.

CHAIR—I think that is the problem with the conversation—you are dealing in hypothetical questions.

Senator Vanstone—You are asking to go down a certain track, and we do not know what someone is going to do. I think we just have to wait and see what claims she chooses to make.

Senator LUDWIG—Generally, then, if a person does not make an application they become an unlawful noncitizen.

Mr Farmer—Not necessarily, because they might, for example, decide to leave the country.

Senator LUDWIG—We will go through the various options. They could return—they could decide to depart—or they could become an unlawful noncitizen and be subject to detention. Are those the two options available or is there a third?

Mr Farmer—This is a rich human tapestry. It depends on the individual concerned. A person may have been pursuing a variety of options but then developed different personal circumstances. I am not saying this applies in this case, but you are talking about hypothetical options. A person may pursue a certain course and then at some stage say, 'I have now pursued a relationship with an Australian citizen for a period of time, which makes me confident that I can apply for a spouse or fiancée visa.' The possibilities in these circumstances are pretty broad, reflecting the broad nature of the human circumstances we are talking about.

Senator CHRIS EVANS—With respect, it is not that hard a question, and I think it is an important question. We have locked this woman and her child up for three years. We have now let her out on what seems to be a technicality, and a very convoluted argument about the child suddenly having made an application—which I accept you have explained in great detail, but I think most people struggle to understand how it works. I accept that is because of the complexity of the act. We have locked a woman up and we have locked a child up since

birth for three years. The simple question is: is this woman at risk of going back into prison and is the child at risk of going back into detention? What is answer to that? Yes or no?

Senator Vanstone—The simple answer is that that very much lies in the hands of the woman and the choices she makes.

Senator CHRIS EVANS—So if she chooses to live freely in Australia for the rest of her life you will not bother her.

Senator Vanstone—No. Life is not that simple. She has choices open to her. We do not know what choices she is going to make, but, whatever choices she makes, we will consider her applications fairly.

Senator CHRIS EVANS—But if you reject her application—

Senator Vanstone—You are asking hypothetical questions. I do not know any circumstances where that would be required to be answered.

Senator CHRIS EVANS—I think the answer is that she is at risk of going back into detention, isn't it?

Senator Vanstone—You have put this proposition before, and I think Senator Ludwig has as well. We have indicated that this woman can make a number of applications and we will deal with them fairly at the time. She may choose to leave the country.

Senator CHRIS EVANS—Is there any risk of the child going back into detention?

Senator Vanstone—As I say, the child is with the mother. The mother is the guardian and the mother will make a range of decisions.

Senator CHRIS EVANS—If the mother is taken back into detention, does that mean the child goes back into detention?

Senator Vanstone—No, it does not necessarily mean that.

Senator CHRIS EVANS—What happens to the child?

Senator Vanstone—It might involve a discussion with the mother about what the mother thinks. There have been circumstances—and there may be some now, for example, that the officers may know—where children are staying at detention centres not because we want them there but because the mother or the parents have been detained and they want the children with them. That is not unreasonable. A lot depends on what happens.

Senator CHRIS EVANS—I know it does. We have discussed those possibilities and at various stages we are happy to discuss hypotheticals and at other times we are not. I want to know: is there a risk of the child going back into detention?

Senator Vanstone—You are not asking a hypothetical; you are asking what happens to this particular family. We do not know what applications the woman is going to put in.

Senator CHRIS EVANS—You have let her out. You have made a decision to let her out.

Senator Vanstone—That is right.

Senator CHRIS EVANS—Why? You kept her for three years. What has changed? I still do not know what has changed.

Senator Vanstone—I just refer you to the *Hansard* and discussions we had this morning. We are starting to go back over the same ground.

Senator CHRIS EVANS—Because it is not clear I think to an outsider what has changed.

Senator Vanstone—I just refer you back to the *Hansard*. This has been asked a number of times. We have done it a number of different ways. It has been explained that this is not a situation where someone is sitting there and no attention is paid to them and someone suddenly says, ‘Gee, let’s see what we can do.’ There has been ongoing litigation that has affected this woman and a range of efforts have been made by the department to improve her circumstances which have resulted this week in us being able to release her and her daughter. I do not expect that there is a sentence or two sentences that enable officers to encapsulate in that short, punchy way exactly what has happened over a three-year period. I do not imagine it is possible to do that. If she had been left with no interest shown by the department and no effort made, it would be simple and you could say nothing has happened. Since quite a lot has happened, I think it is very difficult to put it into one or two sentences. That is the problem we have. You are asking for something that does have a lot of detail, has been going for a long period of time and involves a range of litigation and presumably therefore a range of lawyers. It has been going over a long period of time and you want to put it into one sentence and I just do not think that is possible.

Senator CHRIS EVANS—The bottom line is that this woman’s case has not been resolved. She is out temporarily, in a sense.

Senator Vanstone—The case is still in progress. She is like a lot of people who have a bridging visa.

Senator CHRIS EVANS—She has 28 days and at the end of that she may go back into detention.

Senator Vanstone—It all depends on what she does.

Senator CHRIS EVANS—I want to know what happens to the child if she goes back into detention.

Senator Vanstone—As I said, that might depend on what the mother chooses to do and what the mother wants.

Senator CHRIS EVANS—We know that the child has been in detention with the mother for the last three years. I want to know if she goes back into detention, does the child go back into detention?

Senator Vanstone—That depends on discussions with the mother.

Senator CHRIS EVANS—So the child may go back into detention.

Senator Vanstone—That may well depend entirely on the mother’s decisions about what she chooses to do.

Senator CHRIS EVANS—It may depend on you too, Minister, or the department and that is what I am trying to find out.

Senator Vanstone—You have been given a clear indication on a number of occasions this morning and in other places that the government does not want to see any more children in detention than need be.

Senator CHRIS EVANS—The indication I have today is that it is a bit of a wink and a nod case, like the Chinese lady thing. If she plays the game and does exactly as you want her to do, you might let her out. But she has to play the game and go through the hoops in the way that you want her to go through the hoops, because she creates a problem for you and the department.

Senator Vanstone—With respect, by those remarks you have revealed that perhaps you did not understand the situation with Mrs Hu. You say, ‘With a wink and nod if she does the right thing we might let her out.’ Quite the opposite. The department was at pains to give Mrs Hu—

Senator CHRIS EVANS—A wink and a nod not to apply.

Senator Vanstone—a lawful status in Australia. It is quite the opposite of what you have just paraphrased, yet when I explained it you seemed frustrated at the time it was taking and indicated you had understood that all along.

Senator CHRIS EVANS—I do.

Senator Vanstone—With respect, I think the remarks you just made indicate you did not.

Senator CHRIS EVANS—I think you were at pains to indicate you did not want an application because that was going to force you to act and the department was trying to keep her here. I appreciate that. I do not actually think the department officers are monsters and are not trying to do the right thing. I can see they are officers trying to do their best.

Senator Vanstone—You have again confirmed that you do not understand by what you have just said. Your last remark was that I was at pains to indicate that we did not want an application because they would have to get a no. That was not the case. We wanted an application so that she could get a bridging visa. It was made clear to her that if she insisted on it being resolved it would be a no but it was also clear to her that that path could lead to ministerial intervention, which may lead to a yes. So there was no application we did not want from her at all; none at all. By that remark, you have indicated you do not understand the Hu case.

Senator CHRIS EVANS—I think I do, and I do not think we are actually disagreeing.

Senator Vanstone—I understand you think you do.

Senator CHRIS EVANS—I do not understand all your explanations, that is true. I still have not got the answers to why this woman was let out on Monday, why her child was released after three years in detention and if there is any risk of them being put back into detention. We have not been able to get a straight answer. We have been at it for three hours and we still have not got a straight answer.

Senator Vanstone—I think you have been given a straight answer. We cannot say what will happen. It depends entirely upon what the woman chooses.

Senator KIRK—If she makes the choice not to put in an application and it turns out that she is returned to detention—this is the mother, Mrs Leong—Senator Evans has been asking about where that would leave the young child and whether or not she may go back into detention with her mother. You said that that could be something that the mother requests. If that does happen, on what legal basis or authority is the child then being held in detention?

Senator Vanstone—I just indicated in my answer to Senator Evans that there are circumstances where a parent or guardian might be taken into detention, they are the legal guardian of the child and they request the child be brought with them.

Senator KIRK—I understand that.

Senator Vanstone—Under those circumstances, the child is not held by us but the guardian asks for the child to be with them. I do not find that an unreasonable request.

Senator KIRK—Given the fact that the Australian government runs the detention centres and it is providing the child in those circumstances with shelter, food, medical services and the like, on what basis is it possible to justify that? I just think you would need to look for the lawful basis for that.

Senator Vanstone—I think the lawful basis is the guardian's rights over the child—

Senator KIRK—I wonder about that.

Senator Vanstone—which are not lost. They are not lost because the parent is in detention. Once someone is in detention, it does not mean that every right they have as an individual is suddenly lost and the immigration department subsumes all their persona. That just is not the case.

Senator KIRK—I am not suggesting that. I am just asking what the relationship is—

Senator Vanstone—I hope you are not suggesting that a parent who is taken into detention should not have the capacity to have their child with them.

Senator KIRK—Neither am I. I am just trying to understand what the lawful basis is for the government to be holding the child, effectively, in detention and using taxpayers' money to hold them there. I do not know the answer either. I was hoping you did.

Mr Farmer—On the first point, my understanding is that a child in those circumstances would not have the legal status of being in detention because in some circumstances the child would still have the visa that has been granted.

Senator KIRK—So they are just visiting permanently.

Ms Godwin—In effect, yes. Generally speaking in these sorts of situations—and it does not happen very often but very occasionally it does—we would discuss with the parent the appropriate arrangements. Sometimes the parent says, 'No, I don't want the child to be in detention'. We therefore have to look for other appropriate arrangements for the children and we do that in consultation with the child welfare authorities of the state where the child is.

If there is other family, the child may be able to stay with them. Occasionally the parent will say, 'No, I want the child to be here.' We usually get the parent in that situation to confirm in writing that that is their wish. We also make it clear both to the family and to the detention services provider that that child is able to come and go freely if there is an

appropriate way of doing that. For instance, if there is a visitor and the child wants to go with the visitor and that is acceptable to the parent then that can happen.

As I said, these are not common circumstances and we generally try to work with the family either to find a way not to have them in detention or, if they have to be in detention, to make some alternative arrangement for the child. But, in the small number of circumstances where the child is in detention with the family, then we try to put those arrangements in place in a very careful way. The other point to make is that my understanding is—and Mr Davis can confirm this—that we normally bring those arrangements to the attention of child welfare authorities so they know that is what is happening.

Mr Davis—Indeed, in each and every one of those circumstances, we bring them to the attention of child welfare authorities. We ensure that they are comfortable with the arrangements we are seeking to put in place. It is a very difficult issue all round and one where it is important that the child welfare authorities are comfortable with whatever arrangements we make.

Senator LUDWIG—In this case, what will happen at the end of the process if an application before a tribunal is refused and then litigation is completed? In this instance, that might in fact be some time hence. But if it all turns to nought, in respect of Ms Leong, does she get returned to detention and become an unlawful noncitizen again?

Senator Vanstone—She might put in an application for ministerial discretion.

Senator LUDWIG—And that can only be done after all of those legal avenues are exhausted.

Senator Vanstone—At least after there is an RRT or MRT decision, whichever it is.

Senator LUDWIG—So it is only at that endpoint after the process has been gone through, which can take—

Senator Vanstone—That is right. That was the situation Mrs Hu who was in. She could stay lawfully while the matter was being considered by the department but, if she wanted to access ministerial discretion, she had to go through two processes: firstly, a final decision by the department and, secondly, a review tribunal decision. And then she could come to me.

Senator LUDWIG—In respect of the child, is it the same process? Or is it a different process because of the different circumstance in that it was born in Australia?

Senator Vanstone—I think it is the same process. You have to have an initial decision and then a review tribunal decision before you can go to ministerial discretion.

Senator LUDWIG—The only material difference between the mother and the child is that the mother had a primary decision made and the child does not have a primary decision made at this point.

Senator Vanstone—Without seeing the whole file, I would not say that is necessarily the only material difference. You might then come back and say, ‘But you said that and I asked about the only material difference’—

Senator LUDWIG—And I would, I guess.

Senator Vanstone—and there might be others. So my answer to that is: not necessarily.

Senator LUDWIG—We could use the word ‘substantive’.

Senator Vanstone—The officers can answer that for you.

Mr Davis—That is a material difference, but whether there are other factors as well—

Senator LUDWIG—In terms of children in detention more broadly, I think Senator Nettle was looking for your media release of 13 May, Minister Vanstone. HREOC produced a report *A last resort? National inquiry into children in immigration detention*. Major finding No. 2 was:

Children in immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth’s failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention ...

The second paragraph of the minister’s response to that from 13 May 2004 reads, ‘The government rejects the major findings and recommendations contained in this report.’ I will not go on to the rest of the detail. I am sure the minister recalls the press release. The position then is that, since that time, there have been no changes to regulations, legislation or MSIs in respect of the detention of children. Is that correct?

Mr Farmer—I certainly cannot answer that off the top of my head, because you are going through things like MSIs which change quite a lot.

Senator LUDWIG—I have not seen that often.

Mr Farmer—The point I am making is that I do not want officers to necessarily think that we have to rush in with a complete list. If there are things we can say, well and good, but—

Senator LUDWIG—Are you running interference for the officers, Mr Farmer? I am sure they can answer for themselves.

Mr Farmer—That is one of my roles, Senator, but I am also making the point—

Senator CHRIS EVANS—That is why we pay you the big bucks!

Mr Farmer—That is right! I am also making the point that you have asked a question and I want to make sure that we give you a comprehensive answer to it. If there are things that we are able to provide now, well and good, but there may be some that we will have to provide later.

Senator LUDWIG—I always accept that from you, Mr Farmer.

Mr Davis—Off the top of my head I cannot recall any specific things that have changed in the regulations or the instructions around women and children, but there has been an ongoing process of reviewing MSIs and there may be aspects of MSIs in the broad which could impact on detention arrangements. Again, I cannot be absolutely confident, but in the broad the structure and policy around, particularly, moves to RHPs, alternative detention and unaccompanied minors was established in December 2002. That is an instruction which guides the assessment processes for offering RHP and other things. Beyond that, there are aspects of other instructions that will affect women and children, but I cannot be definitive as to whether any of those have changed over that period.

Senator Vanstone—What we will get for you, Senator—and I think this is available on the department's web site, but I might make sure it is broken down in a way that is crystal clear to you—is information from the previous government, because, as you know, under the previous government there was a period where there were hundreds and hundreds of children in detention. I will get that information for you, because I am sure it will put some perspective on this issue. But I will also get you the number of children in detention over, say, the last 18 months to two years, and you will be able to see what change there has been. So there has been a tremendous amount of effort in here. It is not true that parliamentarians necessarily change everything by spending more money on it or by passing a new regulation or a new bill. For example, there has been a law against murder for a long time but it does not seem to be terribly effective. Laws on their own or procedures on their own do not necessarily change things. If you are looking for substance, the thing to look at is the change in the numbers of kids in detention. My advice is that we do not have one child in detention centres on the mainland at the moment as a consequence of boat arrivals—not one.

Senator CHRIS EVANS—There was one born in Perth last night, wasn't there, under guard in King Edward Memorial Hospital?

Senator Vanstone—There is a woman who came to the mainland to have a child and who apparently gave birth last night. I have not had the opportunity to find out if it is a boy or a girl.

CHAIR—It is a boy.

Senator LUDWIG—Michael Andrew Tran.

Senator Vanstone—It is a fair bet it is a boy, then!

CHAIR—I picked up that up myself!

Senator Vanstone—So I will cease referring to him as 'the child' and refer to him as 'him'. But that, I think, is a clear indication of the government's commitment in this area. There are of course children in detention—some in alternative detention, and children of compliance cases who are there, generally speaking, for a much shorter period of time.

Senator LUDWIG—All right. In terms of the detention of children, when did the legislation or the policy change? You said that there had been a change.

Mr Davis—The former minister tabled new instructions in the parliament in early December 2002—that is my recollection—and those instructions were to establish criteria and regular assessment processes for offering women and children access to the residential housing project, as well as the consideration of things associated with alternative detention and a new instruction around unaccompanied minors which again focused on, to the maximum extent possible, unaccompanied minors being held in alternative detention arrangements as opposed to a detention facility. Indeed, since that time, overwhelmingly that has been the case, but I do not have the ready statistics over that whole period. But the instructions were tabled in parliament.

Senator LUDWIG—In respect of the new baby that has been born, Michael Tran, does that change the circumstances for the parents or the way they will continue to be detained—or

are they going to be returned to Christmas Island with Michael and then remain in detention as a consequence?

Mr Davis—The mother came to the mainland from Christmas Island to have the child. These particular people have the status of unauthorised boat arrivals. She came to the mainland predominantly because any pregnant woman on Christmas Island comes to the mainland to have their child. This is subject to confirmation, but it is my understanding that our intention is that the family return to Christmas Island to be with the rest of the family group of which they are a part.

Senator LUDWIG—Returned back to detention on Christmas Island; so you could then say there has been no child detained on the mainland?

Senator Vanstone—The officer indicated it was in order to be with the rest of the extended family.

Senator LUDWIG—What applications are available to that child?

Ms Godwin—The child would be able to make an application in its own right. The way that the protection visa arrangements work is that all members of a family unit are applicants in their own right. If a child, as I said before, cannot be joined to the family's application that has already been made—I need to check regarding this particular family's situation—the child would be able to make an application in its own right.

Senator LUDWIG—What application would be available?

Ms Godwin—The child would be able to make a protection visa application.

Senator LUDWIG—That is from Christmas Island?

Ms Godwin—Yes, as I understand it.

Senator LUDWIG—Are any other applications available?

Ms Godwin—I stand to be corrected by the lawyers but, as I understand the act, if you are an unauthorised boat arrival and have not been immigration cleared, that is the only application you are eligible to make.

Senator LUDWIG—And that is the same application that would have been available a year ago, two years ago or three years ago? There has been no change to the legislation that would affect the ability to make an application of any different type or under any other circumstance for Michael Andrew Tran? There is only the one application that is available and the department has indicated what that is; that has not changed in the last—

Ms Godwin—No, it has not changed.

Senator CHRIS EVANS—Would the child's status be different if he was on the mainland?

Mr Davis—In this particular case, no.

Senator CHRIS EVANS—Why is that?

Mr Davis—Because the group of which the family is a part have the status of unauthorised boat arrivals who have reached the migration zone.

Mr Killesteyn—Senator, it is simply part of Australia. Christmas Island is part of Australia.

Senator CHRIS EVANS—I know it used to be. I thought the government fixed that. I always regarded it as part of Australia; I agree with you.

Mr Killesteyn—You are referring to the excision provisions, which are about the ability to apply for a protection visa. In this particular case—

Senator CHRIS EVANS—That is why I was asking whether there was a different status.

Mr Killesteyn—of these Vietnamese, they did enter Australia and, as such, can apply for a protection visa. They entered the migration zone.

Senator CHRIS EVANS—That is what I was trying to check—whether or not the status was affected by the fact that this baby was to be returned to Christmas Island and whether the baby being detained on Christmas Island or in Perth made any difference to their legal rights or status.

Mr Davis—In this particular case, there is no difference.

Senator CHRIS EVANS—And the same is true of the parents?

Mr Davis—The parents entered the migration zone and essentially have the same legal rights on Christmas Island as if they were in Perth.

Senator CHRIS EVANS—So these were not people who landed on Christmas Island; these were people who landed inside the migration zone—

Senator Vanstone—That is right.

Mr Killesteyn—That is correct, Senator.

Senator CHRIS EVANS—which is a subset of Australia, and have since been detained on Christmas Island?

Mr Killesteyn—That is correct.

Senator Vanstone—Just while we are on the subject, Senator, I do understand how confusing these things can be because I for one, for example, have always been confused about a particular issue—that is, your own party's agreement with the excision of Christmas Island from the migration zone on the basis that it was close to Indonesia and might therefore be a ready target for people smugglers. As I understand it, your party is opposed to people smugglers as much as ours is. So I understood that argument, but I did not understand the refusal to agree to excise other islands which are in fact much closer to Indonesia than Christmas Island.

Senator CHRIS EVANS—Are you answering a question? I am happy to have a political debate with you, but I asked the officer a question. If you want to have a chat about the excision of Christmas Island—

Senator Vanstone—No, I do not particularly want to have a chat.

Senator CHRIS EVANS—I would have thought that the chair would have intervened to prevent that. But I am happy to engage any time.

Senator Vanstone—I am not seeking to engage you on this; I am just indicating some sympathy for, as you indicated, the point at which you did not understand something. What I was saying was that I understood your party's support for the excision of Christmas Island from the migration zone on the basis that it is close to Indonesia and presents a ready target in the form of Ashmore Reef for people smugglers. I was at a loss to understand, therefore, why your party would not agree to the excision of other islands which were in fact closer and why that rationale, the rationale upon which you agreed to excise Christmas Island and Ashmore Reef, did not apply. I am just trying to be sympathetic to the fact that there are lots of things that we do not understand in life.

Senator CHRIS EVANS—I do not understand why you fail to administer the department efficiently either, Minister, but I am happy to debate that as well.

Senator Vanstone—There are lots of things that we do not understand, Senator.

Senator CHRIS EVANS—I thought the point of today was to ask the officials questions. I want to know about a baby born under guard in King Edward Memorial Hospital last night, who is soon to return to Christmas Island, and what their legal rights are. I think people are interested in that.

Senator Vanstone—It is perfectly fair and appropriate that you ask those questions.

Senator CHRIS EVANS—We have now clarified that. If you want to have a debate about the administration of your department or the excision of Christmas Island, I am your man—any time—because I think your administration of the department is a disgrace. You have been a complete failure, and I think it is about time we got some accountability as to why we have not got on top of these issues.

Senator Vanstone—I appreciate that you would have a whole range of views, many of which I would not agree with. If you want to choose to have a debate about those issues, you can—but the estimates committee is here basically for the answering of questions. If you are so sensitive as to get touchy when someone simply says, 'Look, I understand there are things that are complex and we do not each understand,' and raises something that you would rather not have raised then you are a bit more sensitive than I thought.

Senator CHRIS EVANS—I am happy to debate any of those issues at any time. You are the one who is not wanting to debate these issues and who has hidden behind the Palmer inquiry for the last six months.

CHAIR—How about we move on and seek a response on the aspects of the question that Senator Evans asked.

Senator CHRIS EVANS—I think I got the answer. I also got an editorial from the minister.

Senator LUDWIG—There are unconfirmed reports that, firstly, the parents have been refused permission by the department to take photographs of Andrew Chan in the hospital and that, secondly, they have not been allowed visitors—and that that is an instruction from the department. Could you provide an answer about that so that we can sort it out? It is certainly an issue for the parents. It is an unconfirmed report, and I do not put it any higher than that, but it would be helpful if you could explain what the regime is when a child is born in a

hospital with two detainee parents. What are the usual procedures for those sorts of family issues?

Mr Williams—We will certainly find out about the individual circumstances of this case. Generally speaking in relation to photographs, we do have a broad concern about photographs, although in a case like this I would not think it would be a problem as they would really just be photographs for personal possession. We do have a concern about people being identified by photograph in a public forum—so the photographs becoming available and being published. But that would not be a major risk, I would have thought, in this case. There have been other cases involving a group on Christmas Island where photographs have been taken and we have not had objections. I will have to have a look at that. In relation to the visits, it would probably partly depend on logistics, how the hospital was set up for it and our ability to manage visitors in manageable numbers. I would not think it would be a problem for us.

Senator LUDWIG—Can you confirm what instructions were given to the hospital by DIMIA, whether that report is confirmed or unconfirmed and then what the department is going to do now?

Senator Vanstone—I can help you with the latter bit. If there was any instruction that a couple could not take photographs of their newborn baby, that instruction will be withdrawn—if that instruction has in fact been given. It is plainly ridiculous that parents who have given birth cannot have a photograph of their newly born child. It is completely insane, and if that is the case—

Senator LUDWIG—I did not want to put it any higher than that and make a side comment because I do not know whether it is confirmed or unconfirmed. I have just asked the department to confirm or unconfirm.

Senator Vanstone—I read a lot of stuff in the paper. I could write 24 novels of things in the paper that are not correct. That is not to say that this is not, because there is in some circumstances a concern about photographs. Someone could have been overzealous and got it wrong, but what I am clearly indicating to you is, if they have got it wrong, they will get it right, and pretty soon. I am sure someone in the department is monitoring these estimates and will be onto it forthwith.

Senator LUDWIG—I can hear them moving now, Minister.

Senator Vanstone—I think they have already moved.

CHAIR—Okay, good. We have dealt with that.

Senator LUDWIG—In terms of general application, none of those matters that you addressed today in that ministerial statement apply to children either, do they, as I understand them? In other words, the circumstances do not change the way the children currently detained will continue to be detained.

Senator Vanstone—These things are not specifically targeted at children. That is right.

Senator LUDWIG—And in respect of the 201 cases that have been now referred to the Palmer inquiry—

Senator Vanstone—If they have not all been given, certainly Mr Palmer knows the remainder are coming. What the department did was go back to 2002, then I asked them to go back as far as the records would allow them to go, and that is, I think, June 2000, isn't it?

Mr Davis—July 2000.

Senator Vanstone—July 2000, and that has been completed. Whether the papers have been formally passed over, I do not think that has happened yet.

Senator CHRIS EVANS—How does that relate to the earlier 33 that Mr McGauran announced? Are they a subset of the 201?

Ms Godwin—Yes, they are. The records that we are interrogating are those that go to people who have been detained. Since July 2000 we have had a much greater ability to record a variety of things about people in detention. There is a provision to record what is called the release code. The release code relates to the basis on which people are released, whether it has been the grant of a substantive visa, a temporary visa, a bridging visa or whatever else. There is a subset of that which is 'released: not unlawful'. That code is attached to a number of records. When we were asked a similar question last year I think the period we were asked for was the current period. I think that answer covered the period July 2003 to February 2004 and there were 33 records with that code. But if you go back to the beginning of July 2000 and come forward to I think the end of April, there are 201 records with that code. That is what the 201 is.

Senator CHRIS EVANS—And what do we take that code to mean?

Ms Godwin—It can mean a whole variety of things.

Senator Vanstone—With respect, Madam Chair, if I may, I think officers have been very patient here, and we do want to give the committee as much information as we can, but this matter was canvassed earlier—what that code means. I do not know whether Senator Evans was able to be here at the time. I do not think he was—he may not have been. The committee is always conscious of wanting more time, but we are now going over ground that is already on the record. I do not mind if the committee wants to do that, just so long as Senator Evans knows this was canvassed this morning and it is on the record.

CHAIR—It was, and I do not think Senator Evans was here at the time.

Senator CHRIS EVANS—No. I apologise if that is the case, Madam Chair. I do not want to delay the committee, so if we are clear on it, that is fine. It just was not clear to me from reading the minister's statement whether the 200 included the 33 originally referred to by Mr McGauran. I do not think there is any—

Senator Vanstone—With respect, you are making an assumption based on media reports, that the number available to the department to pass over to Mr Palmer at the time Mr McGauran made the reference was 33. That is not in fact the case. Mr McGauran passed over or instructed to be passed over as many as the department had available at the time, and further work was required to be done to go further back into the databases. The 33 is something that someone has picked out of an answer that Ms Godwin has referred to.

CHAIR—I understand that, but not having the benefit of this discussion, the committee is only dealing with the numbers that were in the public domain.

Senator Vanstone—Yes, but to automatically assume that that is the number is the error and I am just helping Senator Evans by pointing that out.

Senator CHRIS EVANS—But that is one of the beauties of estimates, that the department can now correct that. So what was the number passed over by Mr McGauran on that reference?

Senator Vanstone—There would have been 116 available to the department at that time.

Senator CHRIS EVANS—The media have been underselling it. This is one of their chances to fight back.

Senator Vanstone—If you had heard the explanation earlier this morning you would have heard me say, which you now invite me to repeat by the fact of what you just said indicating that you perhaps do not understand what that group is made up of, that it is every case that was released because at some point they either became lawful or were discovered to be lawful. It has got nothing to do with the question of whether they were lawfully detained at all. It is only an indicator of the basis on which they were released. That may be people who were held for a very short period of time while the assertion that they had a visa or whatever was checked. It may be people who were subsequently granted some sort of visa and therefore became lawful in the fashion. It is not to say that there is anything wrong with those cases. But, since we have that capacity to draw out all of those who were found lawful—there are the two groups: were lawful or later became lawful, or were later found to be lawful—I believe it is appropriate that all of them be reviewed, every single one of them. That indicator, because of the way records were kept in the early part of this government and under the previous government, was not available, but it is available to us and I indicated that we should go back and get every single file out and every one of them should be available for review.

Senator CHRIS EVANS—I appreciate that and it was in your statement and I did listen to your statement at the time. So 116 cases were identified and referred when Mr McGauran, the acting minister, referred those to the Palmer inquiry. Is that right?

Senator Vanstone—That is the answer I gave you, yes.

Senator CHRIS EVANS—On what date were they referred to Mr Palmer?

Senator Vanstone—It would be the date of Mr McGauran's press release.

Senator LUDWIG—So 30 April.

Senator Vanstone—I was not here but I am assuming it is the date of his press release.

Senator CHRIS EVANS—That is why I thought I would ask, because clearly I had wrong information about 33. This is our chance to get the record straight, Minister. You are keen to get it straight. Can the department tell us on what date and how many cases they referred to Mr Palmer? That way we will have the facts straight.

Mr Killesteyn—It was on or about 30 April. We had a personal meeting with Mr Palmer and Mr Comrie a day or two after Mr McGauran's press release and at that meeting we in a sense handed over the records of the cases. Of course the matter had been discussed with Mr Palmer prior to the date that we formally met with him and Mr Comrie.

Senator CHRIS EVANS—And did you warn him at that stage that there was more to come?

Mr Killesteyn—I think we indicated to him at that stage that it reflected the search of records for a particular period and that we had further research to do.

Senator CHRIS EVANS—So 116 were handed over to Mr Palmer on or around 30 April and the remaining 85 have now gone to him?

Mr Killesteyn—As the minister said, Mr Palmer has been notified of the further 85 cases and we are now preparing the material—in fact, I think it may have already been prepared and is ready to be handed over to him.

Senator CHRIS EVANS—So he will get that over the next few days?

Mr Killesteyn—If not today—it is just a matter of getting it to him.

Senator CHRIS EVANS—Sorry, I interrupted, Senator Ludwig. I wanted to be clear on what the numbers were.

Senator LUDWIG—Have you exhausted the search at this point in time—in other words, has the search stopped?

Ms Godwin—What we have done is extract from the system the records with that code.

Senator LUDWIG—Yes, I understand that.

Ms Godwin—That is the number with that code.

Mr Killesteyn—We cannot go back any further.

Senator LUDWIG—No, because that was the date, if I recollect correctly, that you started your new electronic computer system.

Mr Killesteyn—That was the date on which the facility to record that particular indicator was introduced into the system. Prior to that, there was no such facility.

Senator LUDWIG—Prior to that, you can still search in that sense but it would be more difficult because you would then have to examine each and every file.

Mr Killesteyn—That is right.

Senator LUDWIG—If they do not have that code, then they are not thrown up by the system as a consequence. In searching anything other than those codes—because there could still be persons who are being detained who would fit the category but have been not coded correctly—the system would only throw up those with the code.

Mr Farmer—Yes, but we are talking about people who have been released.

Senator LUDWIG—Yes.

Mr Farmer—Sorry, I thought—

Senator LUDWIG—Have subsequently been released. But if they do not have that code—for argument's sake, if there is a mistake in entering the data and the code is wrong or if the code is missing—then your search will not throw those up either.

Mr Farmer—Earlier than—

Senator LUDWIG—No, after the date.

Mr Farmer—That is a different question.

Senator LUDWIG—All I am trying to establish—it is a simple question—is whether you only search on the code in the computer system.

Mr Killesteyn—That is the only basis on which we can search, but as you quite correctly said, to take that further would require us to examine each and every paper file associated with a person who has been in detention and subsequently released. But there would be no reason to believe that the indicator was not a comprehensive record of those people who have been found to be released, not unlawful.

Senator CHRIS EVANS—Maybe I have missed the point, but that does not deal with people who are still in custody, does it?

Mr Killesteyn—No, because that is not the indicator. The indicator is released, not unlawful.

Senator CHRIS EVANS—Senator Ludwig was trying to get to the subset, though. You are trying to identify problems that might need examination and you have got one indicator. What we are asking is whether there are other indicators. The indicator you have used only includes those people who have already been released. So the obvious next question is: what about the people who are still there—what have you done to review their files? It just seems an obvious next question. What do we know about them?

Senator LUDWIG—You have searched on one code and that is the only code you have searched on. There are in the vicinity of another 6,196 in detention for 2003-04, if you look at the *Australian Financial Review*. I think that has come down a bit—there is another number in detention. Have they been checked?

Mr Farmer—Sorry, what figure did you give for people in detention?

Senator LUDWIG—It is just out of today's *Australian Financial Review*: year immigration detainees, 2003-04, number—it is either a five or a six, and then 196. I am not saying that is correct—that would obviously have changed. But there is a set of about that number or fewer—

CHAIR—I just happen to be looking at the same page by coincidence and underneath that, where it says 'at 18 May 2005', doesn't that give you a different total?

Ms Godwin—And they would not be the same individuals necessarily. In fact, in the vast majority of cases they are not.

CHAIR—Of 928, including 57 children—

Senator LUDWIG—So have they been checked?

CHAIR—I just happened to be looking at the same page.

Senator LUDWIG—Has any check been done in respect of those?

Mr Farmer—To try and clarify the first point, we are talking about cases that have been released with in effect an indicator that was suggestive. It was suggestive because it fitted the circumstances of Ms Rau—that is, released because not unlawful. Therefore, what other

people fell into that category? The codes break up the people that have been released into a variety of circumstances: released because they were not unlawful, removed from Australia—there is a variety of events which would lead to removal or release from detention. We did that, as I say, because the category fitted the Rau circumstances. It does not mean that those people featuring in the 201 necessarily duplicate the Rau circumstances. The minister said there are a variety of circumstances which could lead to someone being released because they are not unlawful. But we thought that it was important that Mr Palmer's inquiry look at those cases and examine the circumstances of each.

Senator Vanstone—I think I understand your point. What you are asking is: what about the existing detainee population?

Mr Farmer—We are going to review them.

Senator LUDWIG—And those that were also—

Senator Vanstone—They do not have a computer file that is going to have such an indicator on them.

Senator LUDWIG—That is right.

Senator Vanstone—Exactly. The situation with them is they are under constant review in any event. The search was done to go through to find this indicator of all the people who have now gone, because they are not under current review. The details of that are on file somewhere. The other cases where people are still in detention or alternative detention are ongoing files and are therefore operational and constantly under review.

Senator CHRIS EVANS—That begs the question. You talked about it being important to have a clean state to move ahead. That is your statement. I guess we are saying, 'All right.' You said one of the ways of doing that was to use this particular marker and go through the old files.

Senator Vanstone—Go back as far as you can—that is right.

Senator CHRIS EVANS—I have no problem with that. That makes sense. The next question is: what have you done to review those still in detention to ensure that you are confident that they have been handled properly and that there is no-one there who is being unlawfully detained?

Mr Farmer—There are a couple of answers to that. One is as part of a person's detention our obligation is to either remove that person as soon as practicable or release them on the basis of some other visa being granted. As part of that process, these cases are managed by our officers to determine whether they can use either of those options. But beyond that, the minister has already announced in her statement this morning that there are a range of new processes which will be instituted, including the national identity verification and advice unit and the detention review manager that are being put in place to ensure that those sorts of checks and balances that you are now looking for are indeed applied to ensure that people who are in detention are not inappropriately in detention. The department and the minister are already moving in relation to the particular issue that you are concerned about.

Senator CHRIS EVANS—All of that gives me some comfort, but you also told me the review officers do not start till the end of May. You have said: 'We've got the Palmer

inquiry’—that is the defence—‘If we’ve got any problems we are going to refer them to the Palmer inquiry. We can have a clean slate.’ You have got a subset which you identified. What have you done to review those currently in detention to see whether or not they ought to be referred to Mr Palmer?

Mr Farmer—There is a process of reviewing cases. I would like Ms Godwin to talk a bit about that.

Senator CHRIS EVANS—This would be same review system that would have been applied to Ms Rau?

Senator Vanstone—Perhaps you could let Ms Godwin speak.

Senator CHRIS EVANS—I am just trying to make the point. I am just asking what you have done to review the ones who are currently in detention.

Senator Vanstone—Ms Godwin is about to tell you.

Senator LUDWIG—And include those who have already been deported in that sense and that file. That is what we are trying to ascertain. You have said you have done it—I am sorry to repeat it—on that code. It gives me confidence that in terms of the computer it will spit up all those with that code and those files—216 and now 201 have gone to Mr Palmer, no doubt.

What I do not know is whether you have checked for mistakes in the entering of codes—whether you are 100 per cent confident that the computer codes are right; so there could be a small number there. A second question is whether the files of those currently in detention—like Ms Rau was and where she was discovered—have been checked to ensure that those people are lawfully in detention and if any of those cases have been referred to Mr Palmer and remedial action has been taken. I also do not know if the files of those people who have been deported have similarly been gone through and checked. There would still be quite a number of those cases which will not be under the code either, because their cases would have been finalised and they would have already been deported and not in your system as such. Are any of those people, who are now sitting in England, India, Japan or anywhere else for that matter, saying, ‘Well, they threw me out of the country, but I thought I was there lawfully’? Have you checked any of those cases to give them to Mr Palmer? This is so that you can then say to the committee that you have checked as much as you can, given the available resources and your computer system, and that no-one will come down the track in three years time and say, ‘I was unlawfully detained.’

Mr Farmer—Yes. Senator, I will just say something. In a couple of the cases that we are talking about, there were very unusual circumstances in the sense that there were identity issues; in some cases, as we know, it is not always the case that the person wants to make known to us their identity or their status. That was the case, it seems, with Ms Rau. It was the case with the detainee I referred to in my opening remarks who had an interest, for his own reasons, in not disclosing his name or the fact that he was lawfully in Australia. These are unusual cases. Our capacity for dealing with them has been enhanced, as evidenced by the Perth case, but they are not representative of the broad range of our clients, most of whom—very understandably—set out to make it very clear that they have or are asserting a right to be in Australia.

Ms Godwin—Can I make a couple of comments, Senator. With regard to the cases that do not have that code recorded, Mr Killesteyn has already made the point that the only way to check them is to individually examine each file to compare what the file says with what the system says. That would clearly be a massive task: there have been many thousands of individuals who have at one point or another had contact with us and been detained, even if only for an hour or two.

On the question of current detainees, there is a process of regular review. We do have review systems in place. The minister has already indicated that because of the issues arising from the cases of Ms Rau and Ms Solon we have looked at ways to enhance those review processes. But the review processes are there and have operated over a period of time and, as I say, what we are now seeking to do is enhance them. Those review processes are in a sense a process of escalation of cases whereby we look at the cases of people who have been detained for a period or where there are complexities about their case or where their case does not seem to be being resolved in a timely fashion. That includes looking at both their detention management issues and, if we are processing an application or they are in litigation, whether we can do anything to expedite that.

That process is ongoing. The fact is that from time to time individuals come to attention, and have done even over the last few months. The reason for taking the record up to the end of April is to see what that process is. Numbers of individuals are continuing to be recorded with this code. So there is an ongoing process of people who are taken into detention, who are currently there, to see whether or not there is anything about those individuals that needs to be further examined.

The numbers are small but I do not say that to try to minimise or trivialise it at all. The fact is that numbers of individuals from time to time present difficulties for us. Mr Farmer has already alluded to one of those individuals, and that was just in the last couple of months. As I say, there is an ongoing process of review of people who are currently in detention. The ones who have got that code belong to the group of cases that have been referred to Mr Palmer.

Senator LUDWIG—Of those in detention—which, at May 2005, is 928, including 57 children—have any of their files been referred to Mr Palmer's inquiry?

Ms Godwin—No, because, by definition, the people who are currently in detention have not been released. The ones whom we are looking at are the people who have been released because we have established that they are unlawful. I thought you were asking the question about whether—

Senator LUDWIG—No. This is a new question. I just thought I would tie the knot up so we clarified it all.

Senator CHRIS EVANS—This is about a clean slate and about Mr Palmer being given access to any areas of concern. The conclusion I am drawing from what you are saying—it may be wrong so if I am wrong please correct me—is that we have only looked at those we have already let out. We are not looking at those who are still in detention.

Senator Vanstone—That is not correct. The department is constantly reviewing people in detention. If any further cases come to light, they will be referred.

Senator CHRIS EVANS—What I want are some comments that they will come to light.

Mr Killesteyn—I will just make a point, which I think needs to be registered, about the initiatives that the minister announced this morning. I refer again to the National Identity Verification and Advice Unit and the detention review managers. There is nothing in the minister's statement that says that that only applies to new cases. It applies to all cases of people who are currently in detention.

Senator CHRIS EVANS—But they have not started.

Mr Killesteyn—You are asking about a process that we are seeking to put in place to ensure that these matters are kept under review. These are initiatives—

Senator CHRIS EVANS—No, that they refer to Mr Palmer.

Senator Vanstone—With respect, Chair, we do have some disagreements—that is clearly understood—but it is not enhanced if either side starts raising their voice at the other. In particular, since officers do not have the liberty of raising their voice back to senators and members, it would be more helpful if senators could desist from doing that to officers.

CHAIR—I understand. As you know, that is the way we operate this committee.

Senator Vanstone—You do?

CHAIR—All the time. I will ask Mr Killesteyn to complete his answer. Then if Senator Evans has further questions we will come to those. I had indicated to Senator Nettle, who has one further question about Ms Leong, that we would deal with that before one o'clock. So if we could facilitate that, I would be grateful.

Mr Killesteyn—The National Identity Verification and Advice Unit has started. It commenced at the beginning of this month. We are in the process, as you point out, of appointing the detention review managers. They will be in place by the end of the month. Once those two groups are in place then we will see an ongoing referral of the complex cases that have been outlined in the minister's statement to these alternative bodies. Through that process, we will start to see the further identification of any cases of people who are potentially improperly detained.

Senator CHRIS EVANS—But is it fair to say that there has been no extra review done of those people currently in detention of their cases with a view to referring those to Mr Palmer if there are any concerns about them?

Mr Killesteyn—We were looking to establish processes that would permanently deal with this particular issue, and that is what we have done.

Senator CHRIS EVANS—That is not the answer to the question I asked you. I accept that you have a system which you assure me will be better for the future.

Mr Killesteyn—And for existing cases.

Senator CHRIS EVANS—I am asking you what the department has done to reassure itself, the minister and the public that there is no-one currently in detention that should not be there, apart from the normal processes that applied to Ms Rau and others.

Mr Farmer—The identification verification unit has been set up specifically to deal with cases where there is an identity or other issue. To give what I hope will be a helpful bit of context, for the great generality of people who come to our notice through compliance or other actions, we can establish very quickly that they entered Australia on a particular date and we can match our entry records with the person who is claiming to be that person. That happens for the vast majority of people that we detain. They do not raise issues of the sort that we have been talking about in relation to these particular cases today. It is at one end of the spectrum when someone claims to be a person, our systems are silent on that person or they are inconsistent with the details that a person is giving us. It is in those cases where the national unit has been given the responsibility of looking at identity issues and resolving any anomalies. That process has begun; we have set up the unit. We are asking them to go through any cases of identity issues that cannot be resolved readily.

Senator CHRIS EVANS—But they are not being referred to Mr Palmer at this stage?

Mr Farmer—We do not know that there are any at this stage.

Senator CHRIS EVANS—Neither do I—that is why I am asking.

Mr Farmer—I am trying to give you the answers.

Senator CHRIS EVANS—I defer to Senator Nettle.

Senator NETTLE—I wanted to ask if you are aware of the comments by Ms Leong's lawyer that she was threatened by an Immigration official on behalf of her client and told that she should not speak in the media or a smear campaign would be used against her. I wondered if you wanted to make any comment on that—whether you know such remarks were made and whether in any circumstances such remarks could be seen to be appropriate.

Ms Godwin—We are aware of the comments made by the lawyer. Those were raised with us yesterday by a media outlet. We responded to them, and those comments were reflected in coverage of that issue last night. We indicated in those comments that an officer did make some remarks to Ms Leong and mentioned the possibility of media interest and that this can sometimes be difficult for people involved. We have asked the officer whether he raised those points and he confirmed that he did. But he also made the point that it was absolutely not his intention to convey the impression that Ms Leong's lawyers received. We also made the point in responding to the inquiry from the media yesterday that, if those comments have been misconstrued in that way, the department obviously regrets that impression because that was not the officer's intention.

Senator NETTLE—If that was not the officer's intention, what was the officer's intention in raising those issues?

Ms Godwin—The issue of media coverage is obviously always a complex one. Sometimes people find themselves in the media and then indicate that they have found that challenging, disruptive of their privacy and so forth. There are issues to do with the publication of details about individuals that might be relevant if they are making refugee status claims. I was not there and I have not personally spoken to the officer, so I cannot put words in his mouth, but I think if it was raised it would have been raised in the context that we have sometimes raised it with other people—that media coverage can sometimes go beyond what people intend and it

can be challenging or raise issues that they find difficult to deal with. As I say, the officer has said that he was not in any way intending to create the impression that Ms Leong's lawyer has drawn from his remarks and, as I said, if they have been misconstrued, that is obviously regretted.

Proceedings suspended from 1.00 pm to 2.07 pm

CHAIR—We will commence the afternoon session and continue with questions from Senator Ludwig.

Senator Vanstone—Just before we do, Madam Chair, I apologise for being late. I had an overseas guest and translation issues caused the delay. Sorry.

CHAIR—And Mr Farmer did have some additional information he wished to provide to the committee before we commence. And in fact Mr Williams appears to have it.

Mr Williams—Senator Ludwig asked some questions about a baby recently born in Western Australia and whether visits and photographs had been permitted. Visits have not been denied. There has been at least one visit since the baby was born. In relation to photographs, the only issue really was a news crew seeking to come into the hospital. The hospital consulted with DIMIA. Both agencies were of the view that the news crew should not be allowed in. As far as we know, that is the only issue to do with photographs.

Senator LUDWIG—You have checked with the parents?

Mr Williams—We have not checked with the parents. We checked with the staff on the ground in the hospital in relation to—

Senator Vanstone—But we will do, if you want us to check directly with the parents—

Senator LUDWIG—I just think it is an important event.

Senator Vanstone—I agree with you. You would have heard what I said this morning. If you are at all concerned that the hospital may not have given us the right information, we will this afternoon, posthaste, check with the parents.

Senator LUDWIG—That would be appreciated. Thank you.

Senator Vanstone—In fact, if they do not have a digital camera, we will not give them one but we will access the departmental digital camera and we will make sure that this afternoon if they do not already have a photograph that they have one. I cannot go any further than that.

Senator LUDWIG—That would be appreciated. Thank you.

CHAIR—Not from here anyway, Minister. Thank you. Anything further, Mr Davis?

Mr Davis—Yes. There were some questions earlier about Ms Leong and questions over the child-care proposal and psychologist and psychiatrist assessments of the child. The child-care proposal was initiated by the department requesting our service provider in October last year to explore the option of access to child-care facilities for younger aged children. There was an interim report in April and a final report in May which the department has agreed to. That access is being arranged flowing from that not only for this child but for other children of that age in the facility.

Senator CHRIS EVANS—In May of this year?

Mr Davis—Yes, in May this year. We initiated the process in October last year.

Senator CHRIS EVANS—But as the child is no longer in detention, it will not be applicable to her.

Mr Davis—No, but there are other children.

Senator CHRIS EVANS—They had not been accessing child care then?

Mr Farmer—Not outside the centre.

Senator CHRIS EVANS—The question was particularly, as I understood it, about that child and you said the report was in October and there was something else in April or May. The child was released on Monday, so I assume that means the child was not accessing child care.

Mr Davis—My understanding is that the child had commenced at least the registration process to attend the child-care centre.

Mr Williams—She had attended on a couple of occasions.

Mr Davis—I was going to say I was not sure of the detail of when she did.

Senator CHRIS EVANS—I am trying to get the sense of it. When you suddenly said April or May, I thought: hang on, we are in May now.

Mr Davis—It was early May. The date I have in front of me is 5 May and that was when we received the report. We agreed to it on 6 May. Processes of registration, provision of immunisation certificates and other things needed to go through for individual children, which then flowed after 6 May.

Senator CHRIS EVANS—This was a group of children who were in detention at Villawood?

Mr Davis—Yes, at Villawood.

Ms Godwin—If I could just clarify. I do not think it is in respect of a particular group of children. We asked for the service provider to set up arrangements so that any children who happened to be in the centre could have access to that service. We already had negotiated access to external schools for school-age children, if there are children of that age in the centre, and this was to extend that. It was a general request to the service provider to set up the capacity so that if there are any children—I do not know whether there were other children at that point—it was to set up the arrangement. This child was due to access that service. The question this morning I think was whether that had been instigated specifically in relation to this child and specifically in relation to comments about the child. The answer to that is no, we had asked the service provider to arrange access to that service for any children who happened to be the centre at any given time.

Senator NETTLE—Is that just for Villawood?

Ms Godwin—That is for Villawood.

Senator NETTLE—Were you just looking at child-care access for children in Villawood?

Mr Davis—This particular process was associated with Villawood, but access to these sorts of external activities is already available in Port Augusta.

Senator NETTLE—Only Villawood and Port Augusta have access to child-care facilities?

Mr Davis—Of this nature, yes. There are no children in the Perth facility, and I am not aware of any of this age at the moment in the Melbourne facility. I do not know; I would need to check what the ages of children have been over a period of time at Maribyrnong. The requirement is significant.

Senator NETTLE—When Ms Godwin spoke about it she said it did not relate to the children; it was making sure that access to child care was there, if there were children in that centre.

Mr Davis—That is right.

Senator NETTLE—I presume you are not making an assumption that there may not be the need in the future. It would be great if you were saying there will not be children of that age in any other facility so we only need it or require it for Villawood and—

Mr Davis—The focus on Villawood here was obviously because we had children who had this need. I am not aware that we have had children in recent times in Maribyrnong having this sort of need, but I can take that point up. I understand that point you are making.

Senator NETTLE—Ms Godwin was broadening it, so I was wanting you to tell us the answer broadly.

Mr Davis—There were also questions this morning about Dr Dudley. Dr Dudley did write a letter to the department in March this year which was replied to. Dr Dudley did not provide any clinical information in his letter to the department; he simply made representations for the child to be able to access this external service which we have arranged. That was all the letter was about. In terms of more recent medical assessments of the child: the child has had the support of nurses, doctors and psychologists within the facility but has also, more than once, seen a paediatrician. Recently, in the middle of May actually, a paediatrician saw the child. We have a report from that paediatrician which was provided to the general practitioner and that did not identify any concerns with the child's medical situation.

Senator CHRIS EVANS—That report is dated the middle of May, is it?

Mr Davis—It is dated 17 May.

Senator CHRIS EVANS—Last week.

Mr Davis—Yes. In terms of the residential housing project, which was also raised earlier, there was a discussion with a number of families in the Villawood facility in July last year, including Ms Leong. She was offered access to the residential housing project at that time and declined the offer of a transfer to the housing project in July last year.

CHAIR—Is there any further additional information to be placed on the record from this morning? Senator Evans.

Senator CHRIS EVANS—I want to be clear: who is Dr Dudley?

Mr Davis—Dr Dudley was a specialist—I do not have his qualifications here—

Senator NETTLE—He is a professor at the Sydney Children's Hospital—a psychiatrist.

CHAIR—It was in the discussion this morning, Senator.

Mr Davis—He is a senior lecturer in the school of psychiatry at the University of New South Wales, and a child and adolescent psychiatrist in Sydney Children's Hospital.

Senator CHRIS EVANS—And Dr Dudley's role in dealing with the child?

Mr Davis—None other than the letter of support that we received in March. He has not otherwise been involved in the health care of the child.

Senator CHRIS EVANS—Are you suggesting he has not had any access to the child?

Mr Davis—I am not suggesting that. He is not what we would call a treating medical person and we have no record of any referrals to him nor reports from him related to the child.

Senator CHRIS EVANS—So his letter was that of a private citizen to you regarding the child.

Mr Davis—Given his status—it is on his letterhead and so forth, and gives his title—he is simply writing to request that the child be able to access a child-care group outside the facility. That is the thrust of his letter, making representations on that.

Senator CHRIS EVANS—When did you get that letter?

Mr Davis—In the middle of March.

Senator Vanstone—I make the point that, because he is not on the record as a treating doctor having provided reports or whatever and visited in an official capacity, that is not to say he might not have visited in another capacity—that is, maybe not as a private citizen, though obviously he is a private citizen and not a treating doctor; he might have just come as a visitor.

Senator CHRIS EVANS—I do not know him so I was trying to establish what his relationship with the detainee and her child was, whether he was retained by the department or whatever.

Senator NETTLE—There were certainly media reports last night saying that he had had ongoing association with the child. I do not know about that. You are saying that, if that is the case, it is not through the department.

Mr Davis—Through the department or the service provider.

Senator CHRIS EVANS—So you received the letter in the middle of March, but your earlier evidence is that the child-care initiative was taken in October 2004 and his request had no bearing on your providing access to child care.

Mr Davis—That is right. We did reply to him and indicate that we were working with the service provider to seek access to these arrangements for children of that age in the facility.

Senator CHRIS EVANS—Why had that been initiated in October 2004, or how?

Mr Williams—It was just because we identified that as a need and a useful adjunct to the services being provided at the centre.

Senator CHRIS EVANS—It did not come out of an inquiry or report?

Mr Williams—I do not think so, no. It was just an initiative of the department. I have just been advised in relation to Senator Ludwig's question about whether the parents had been

asked in Perth about the photographs. We have been advised that the parents have not requested photographs from the department or made a request to have them taken or not taken. We are speaking with the family again later today with an interpreter and if there is any further clarification out of that we will let you know.

Senator Vanstone—And when we speak to the family we will be offering digital photographs to be taken of the baby.

Senator LUDWIG—I think we left off with the 101, and we went around the issue about what records had been checked and what codes had been used. What is the code's number, rather than keeping on calling it a code and then trying to specify which it is?

Ms Godwin—I do not think it has a number.

Senator LUDWIG—What is the nomenclature that is attached to it, then?

Senator Vanstone—The category, I would say.

Ms Godwin—Release reason: not unlawful.

Senator LUDWIG—We will call it the code then.

Ms Godwin—Or release reason, if you want.

Senator LUDWIG—In relation to the 201, are you able to provide a list of those to the committee, deidentified? I think you have indicated, Minister, that some of them are short-term—a couple of hours of detention. The list would then show the duration of the detention and other information which would not lead to identification of the persons concerned.

Senator Vanstone—Not at this point. The last of these files has been taken and accessed, in the sense of getting a general, simple description of the case so that what we hand over to the Palmer inquiry is not just a name and a number but a short description of the process of the file so they have got something to start with. That was only completed recently. That therefore has not allowed for a full analysis on our part, least of all on Mr Palmer's or Mr Comrie's part. We will, however, be doing that. The officers may have some information to hand—I suspect not. But we will get you some information that will show you the proportions or absolute numbers—because once you know the total, the proportions are the same thing—by a day, up to three days, up to 15 days or up to 20 days. We can get that information; we just do not, as I understand it, have that now.

Senator LUDWIG—How long will that take?

Senator Vanstone—I do not know.

Mr Farmer—We are trying to work on that quickly, but some of it involves going to the files—in fact, all of it does, because in each case, through the code, we have identified the case. Then we have to find which of a variety of categories it would fall into: for example, the children who become citizens on their 10th birthday in some circumstances—so those things where, through operation of law, someone's status changes—or where someone received a decision on a visa and became lawful. In other words, there are a number of categories we have to work through. But, to get that, we are having to go to the files.

Senator Vanstone—We will get you something like that. But I can assure you, in addition to that, with respect to Rau, Alvarez and the remaining cases, the facts of these cases—such as

are appropriate to put in the public arena because there may be, for example, some health issues where it may not be appropriate to say that, because you have become an example of where the department could have done better, you somehow have to have everything about you released for everybody to chew over, and I think in the last couple of days we have seen some good examples through the media of how people feel about that—saving and excepting that very limited exception, and any decisions made in relation to them will be made public. You know when your mother used to say, ‘If you rip the bandaid off quickly, it’s better’?

Senator LUDWIG—An ironclad guarantee, Minister?

Senator Vanstone—My grandmother always used to say, ‘Take the bandaid off quickly; it will always be better.’ I did not usually agree with that as a child—

Senator LUDWIG—I do not know whether I have heard that one.

Senator Vanstone—Well, it is true. If you are taking a bandaid off and you do it slowly, it hurts like hell.

Senator CHRIS EVANS—The experience of the last couple of months, is it, Minister?

Senator Vanstone—It is much better to clean something up. That is the process that we have been going through. With respect, Senator Evans, I understand your cynicism or political view—I am not sure which it is; it might be a combination—

Senator CHRIS EVANS—There seemed to be a change of view this morning. It was a very different attitude you expressed this morning from what has been the attitude in the last few moments.

Senator Vanstone—It might be a combination—if I may continue with what I was saying—on your part of both. What I wanted to do this morning was to make clear to you what we have been doing. It has been, for me and I think for officers involved, a very frustrating experience because, while we can see from the paper record what happened in these cases, it is not appropriate—and I agree with Mr Palmer in this respect—that we go back and speak to people and try, in a sense, to run a separate parallel departmental inquiry. It is the best way to get an independent person to look at the facts and come to a conclusion. But it does mean, necessarily, that you create a vacuum in that space, while the facts are being concluded; and, as we know, that vacuum can be filled by people with a particular purpose—I will leave it at that; it can be filled by anybody, really.

In the meantime, we have been doing a lot of work. I think that what I announced this morning—and repeated in some cases—made clear that we do recognise that there have been problems. We have been working on it, we are continuing to work on it, and we are positioning ourselves to be ready to implement whatever Mr Palmer says. To me, what I said this morning is no great news. But if it comes over that way, frankly, I would be very pleased if it clarifies the perception of the government, the department and our intentions.

Senator LUDWIG—We might be able to settle on a time or a date that the department can provide the table—

Senator Vanstone—It would be easy to give you a date that we could do it by, and we would choose one far enough away to make sure we could do it. With respect, I think you

would be better to ask us to give it to you as soon as we can, and we will commit to doing that.

Senator LUDWIG—Sometimes ‘as soon as you can’ can be, with all due respect, longer than I had contemplated; but I do seek it as soon as possible.

Senator Vanstone—But you understand my point. If you want me to lock to a date, I am going to pick one when I definitely know it can be done by, and it may be done before that.

Senator LUDWIG—I thought I was going to pick the date. But anyway, Minister—

CHAIR—We have the undertaking. We can pursue it as a committee if we need to, Senator Ludwig.

Senator Vanstone—We will do it for you as soon as we can.

CHAIR—Thank you.

Senator LUDWIG—That information will show the number, obviously, and then any further that have been thrown up through the system in the interim—together with any other searches that you institute as a consequence of these questions today, plus those which are identified on the basis of the time of detention. I would like the basic facts that provide an overview without identifying the individual.

Senator Vanstone—We will give what we can, and we will do it as soon as we can. And if you are not happy with that, we will have to go back and have another look.

Senator LUDWIG—And including the reason—for instance, you mentioned turning 10—or the circumstance that sometimes presents itself to the individual.

Senator Vanstone—My guess is that the number turning 10 is going to be smaller, because it is not generally the case that kids who have been in Australia and click over to the 10-year thing are in detention. If they have been here 10 years, it is usually because they have been out in the community. I can think of particular communities where that is more probable than not, but I would not say there would not be any.

Senator LUDWIG—I used that as just a way of identifying the circumstance. There would be other circumstances that might have that operation of law, and there would be other circumstances which I am unaware of, but there will certainly be a descriptor in that field that you can then complete.

Senator Vanstone—We will try and do the best we can.

Senator LUDWIG—If you are able to say now which are the longest that have been unlawfully detained—

Senator Vanstone—I am not prepared to say. That is one of the problems we face. People assume that, because you were released and because you were found to be lawful, your detention was unlawful. That is not the case, and I think you have asked me questions about this in the chamber.

Senator LUDWIG—We seem to have gone in a circular—

Senator Vanstone—You have asked me about this in the chamber, and the point is that if an officer has a reasonable suspicion that someone is not lawfully in Australia, then it is

unlawful detention. Mr Palmer may have some things to say about whether those decisions in the first instance were reasonably made; but I suspect that what he is more likely to have something to say about—what I see the nature of the inquiry being—is: having made that decision, did we then do everything we could to resolve the suspicion?

Senator LUDWIG—That is a matter for Mr Palmer, I suspect.

Senator Vanstone—Yes, it is. I say that without perhaps meaning that. You said ‘have been wrongly detained’ and if I do not correct those assumptions—

Senator LUDWIG—You are going to be all day because I am going to continue to use that phrase.

Senator Vanstone—With respect, you get quoted and, because I have remained mute, it appears as though I have agreed that that is the case. I am just making it clear to you that it is not. The issue is very much that, having made a lawful decision that someone be detained, was everything that should have been done done, and was it done as expeditiously as it should have been done?

Senator LUDWIG—I do not want to get into a debate about the law with you, but I have a different view. It can be the case, and a number of cases demonstrate this, that the original decision to detain was unlawful, as the cases then show. It is then altered *ab initio*—from the beginning—and so it was an unlawful detention. So there may be cases of unlawful detention and there may be cases where you have released on some other basis, but that will obviously be demonstrated by the records or by Mr Palmer’s inquiry.

Senator Vanstone—I have tried to be helpful. I am not trying to detain you; I was just making that point, that is all.

Senator LUDWIG—The amended terms of reference to the Palmer inquiry were produced by Mr McGauran. On which date were they then sent to the Palmer inquiry?

Senator Vanstone—I was not in the country at the time.

Senator LUDWIG—I am aware of that.

Senator Vanstone—I was advised of this while I was away. I think it would be best if the people involved were to give you the answer.

CHAIR—Did we talk about this before lunch?

Mr Killesteyn—Yes, we did.

Senator LUDWIG—I thought it was about 30 April.

Mr Killesteyn—Yes, it was on or about that time. We can get you the precise date. We will do that now.

Senator LUDWIG—Have they been further amended?

Senator Vanstone—No.

Senator LUDWIG—Have there been any requests from Mr Palmer for extended reporting dates for the terms of reference other than the one we are familiar with from the press?

Senator Vanstone—No. I think Mr Palmer’s press release might have been from the 20th. It indicates the plan he has for proceeding and indicates that I agree with that. I confirmed that again in my statement this morning—namely, that he said he will report within four weeks of the date of his release, which was Friday the 20th. It goes on to point out that his report will include recommendations for the handling and completion of these matters.

Senator CHRIS EVANS—Does that mean that Mr Palmer may not be the person—

Senator Vanstone—Mr Palmer may not; he has other duties. He took on the Rau case. We had no knowledge at the time that we would want to add to that. I think it has been good fortune that we did as we said we would and agreed to any requests he made for additional resources. I do not have the date but I put out a release earlier, which is on the public record, that we are appointing Mr Comrie, who is a former Victorian chief police commissioner, to work with Mr Palmer. As it turns out, while Mr Palmer was taking the lead in relation to the Rau matter, when Alvarez came up Mr Comrie has taken the lead on that matter.

Senator CHRIS EVANS—So Mr Palmer will make recommendations within a month now about how the remainder will be handled. But we have had evidence today that you, in the next couple of days, are going to refer to him another 85 files in addition to 116 that were referred some time ago. Clearly, they may not require as much work as the cases of Rau and Alvarez, nevertheless it is a substantial workload. I have read your statement today quite carefully. I am not quite sure what that means for the future of the inquiry. Does that mean that Mr Palmer will complete his work and maybe recommend that someone else deal with the rest of it? Or do you envisage Mr Palmer will continue working away on those other 201 cases?

Senator Vanstone—Mr Palmer’s press release has made it very clear that we have agreed with Mr Palmer that he will make recommendations as to how to complete the remaining cases, which will include Alvarez and the other cases. There are two things I want to say about that. You say, ‘Has anything changed because of what I have said this morning?’ That is, we have gone back as far back as we possibly could. Does that change? No, it does not. I had discussions with Mr Palmer yesterday. I am very conscious, and have been, in announcing any of these changes that we would not be cutting across what Mr Palmer might want to suggest needed to be done or in some way do something that, through his inquiries, he could already see was not appropriate. So we have had some liaison in that context.

Simply because he has been immersed in the facts and making assessments of what went wrong, it would be sensible to canvass those things with him. Not only sensible but I think courteous as he is conducting the inquiry. He is happy with the arrangements as they have been announced in his release of 20 May. Without putting words into his mouth, I think that is because with the addition of these cases is, just as you say, there may be some cases in there that require significant work. There may not. If you were a betting person you would say there would be some cases in there that will require more than a—

Senator CHRIS EVANS—cursory glance

Senator Vanstone—None of them will get a cursory glance.

Senator CHRIS EVANS—No.

Senator Vanstone—They will not be able to be dealt with as quickly as others. That would be a fair bet. But the government decided that we would just keep going and keep looking, which was from the very beginning. We said, ‘Let’s start looking and see if this could have happened elsewhere. What can we find out if we go back?’ When we came up with that number and then continued, obviously the nature of the work required, or the volume at least, has changed. We gave the cases we had at hand to Mr Palmer, which gave him the opportunity to get a look. I do not know if he has used some words here. I do not want to put words in his mouth.

Senator CHRIS EVANS—I am not clear if this report in four weeks will include Alvarez.

Senator Vanstone—No. His report will be on the Rau matter—

Senator CHRIS EVANS—Alone.

Senator Vanstone—which is what he was asked to do in the beginning. It will contain recommendations on how to deal with and finalise the remaining case load. In relation to Alvarez, that is another of the more substantial inquiries required. As I have indicated, Mr Comrie has been taking the lead on that. In relation to all of the others—where there may or may not be a problem, small or large—that is what Mr Palmer will recommend to us. Because of the volume of the work, there may be a different way to do it. Because he has been having a look at it, he is in a very good position to recommend how it should be finalised.

Senator CHRIS EVANS—Just so I am clear, his report, which will be released inside four weeks from Friday, 20 May, will only deal with Rau in terms of the individual cases. But the question of the Alvarez case will be the subject of a further report by Mr Comrie or under Mr Palmer’s name?

Senator Vanstone—I am not going to draw conclusions about what Mr Palmer might say. He will make the recommendations.

Senator CHRIS EVANS—But you will make the decisions.

Senator Vanstone—Yes. He will make the recommendations. Of course the government will make the decisions, but I am not going to make them until I have heard what his recommendation is—the government will not make them.

Senator CHRIS EVANS—I just want to be clear: you are not necessarily accepting his recommendation; you are going to see that and then the government will make a decision.

Senator Vanstone—That is right. Absolutely. But because he is going to conclude the Rau matter and Mr Comrie, as I said, has been taking the lead on the Alvarez matter and is continuing with that, you can be sure of this: whatever happens in the end will take into account the outcomes of both cases and all the other cases. The mechanism which Mr Palmer recommends and the mechanism the government accepts will of course be announced.

Senator CHRIS EVANS—So what we will get in terms of a resolved conclusion on individual cases from Mr Palmer in four weeks time will only be the Rau matter. It is not clear when the report on Alvarez will be available. Is that fair to say?

Senator Vanstone—I think that is fair to say at this point.

Senator CHRIS EVANS—And it is not clear when the others will be available.

Senator Vanstone—That is right, because Mr Palmer is going to recommend how they should be concluded. When I say he will deal with the Rau matter that is not to say that his report will make no reference to Alvarez. I have not asked to see the detail of what he is going to put in. He has obviously been involved, even though he has not taken the lead in the Alvarez case. He has made it clear to me—and in fact his release makes it clear—that some of the issues relating to Rau would be the same as those relating to Alvarez, and they may be some of the same issues that relate to all the other cases. So he is actually of the view that his report will be indicative of what we would find if we had already gone through all the other cases.

Senator CHRIS EVANS—I am a bit surprised by that, given that he has not seen 85 of the files yet. That seems to be a fairly brave assumption.

Senator Vanstone—As I said, I do not want to put words in his mouth, but I take you to his press release. If you go down to the fourth paragraph—if you have it in front of you—he says:

Investigations to date into the case concerning Ms Alvarez confirm key issues of concern and will be reflected in the findings and recommendations to be completed shortly.

In other words, while Mr Comrie has been taking the lead, Mr Palmer is fully aware of the issues that have become evident so far in that case. He thinks they mirror some of those in the Rau case and therefore the report coming out will be particularly useful.

Senator CHRIS EVANS—I have no problem with that; I just thought it was a bit of a long bow to then think he would somehow be able to have any firm conclusions about files he has not even seen yet.

Senator Vanstone—I did not suggest that he had any firm conclusions about files he has not seen—in fact, he has obviously seen the Alvarez file; it is just that Mr Comrie has taken the lead—or about the other cases—

Senator CHRIS EVANS—I accept he has some knowledge of Alvarez and they are working together—

Senator Vanstone—Yes, and you can look at the summary information that we have given, and Mr Comrie, as I understand it, has already started doing some work in that area. It is up to them to say—and I am sure in the report they will—whatever they want to say. I suppose that is obvious. But I can envisage a situation where someone doing a review looks at one case, concludes there were things that could have been done better or that should not have been done and then looks at another case and says, ‘There’s a similarity here; this problem was not attended to as quickly as it should have been’—or whatever. They then look at some other cases and start to say to themselves: ‘Yes, I can see there is a problem here that might affect a number of these cases, and therefore the report on my case that I am doing first up, in light of what knowledge we have thus far on Alvarez, will be particularly useful because it will indicate those problems that I can see not so much at a glance but with the knowledge I already have.’ That is all he is saying—nothing more or less than what he put in his press release of the 20th.

Senator CHRIS EVANS—That is fine, but what I am really trying to get is your view and the government’s position in relation to the report. You are obviously saying that you will

make a decision on that when you see Mr Palmer's report in some four weeks. It is clear that that will deal with the Rau inquiry and it might make some observations about Alvarez—

Senator Vanstone—More general observations.

Senator CHRIS EVANS—and recommendations—

Senator Vanstone—Or reference to other cases.

Senator CHRIS EVANS—Yes. But Alvarez will not be concluded at that point.

Senator Vanstone—That is right.

Senator CHRIS EVANS—And clearly we will not have a final report on the other 201 cases, because he has not even seen some of them yet. You say he will then talk about how the rest of the inquiry ought to be handled. That is therefore an open issue at the moment. I was keen to get a sense of whether Mr Palmer was to continue in that role or there was some sense of him finishing up with his report and handing on the work to others. There was some publicity the other day that he has other duties and commitments—

Senator Vanstone—He does have other duties, but Mr Palmer is not the sort to walk away from an issue he has taken on, despite the fact that, through no conduct of his own, something he agreed to do has turned out to go for much longer than the time period anyone would have reasonably expected.

Senator CHRIS EVANS—That is why I was trying to get a sense of whether the message in this is that Mr Palmer will be finishing his work in four weeks time and others will continue the inquiry or whether he will have an ongoing role.

Senator Vanstone—I do not think it is fair to say that Mr Palmer will not be finishing. I do not think that is a fair description. He will finish the full-on investigative work that he has been doing in relation to Rau. As I say, Mr Comrie has been taking the lead on the other matters. Whatever Mr Palmer recommends as to what happens from the date of his report, I am confident that he will put his stamp on whatever outcomes are there. In other words, he is not going to go off to his other duties and have no interest in what else happens. There will be a linking, if you like, between his report and whatever he recommends to happen in the future. There will be a link or cross-checking between what happens.

Senator CHRIS EVANS—So it is possible that his involvement may be less full on, as it were.

Senator Vanstone—That is clearly possible. He does have other duties.

Senator CHRIS EVANS—Today you announced measures which you want to implement, have implemented or are implementing in the department which I think it is fair to say in response to some of the concerns raised by these questions. I think you have made the point that you have not waited for the Palmer inquiry to make some of those changes.

Senator Vanstone—We would be silly to. For example, once you conclude—even though it might come out of different mechanisms—that it would be sensible to have additional nursing at Baxter, only a fool would say, 'We'll wait until the Palmer report comes out to do any of those things.'

Senator CHRIS EVANS—I am not arguing that at all. In fact, I have argued what you say from the start. My personal view was that, if you had glaring holes that you could fix, you ought to fix them as you went. I am interested in the remarks you made to the effect that you had briefed Mr Palmer on the initiatives that you detailed in your opening statement today. I want to get a sense of the status. Were you saying that Mr Palmer was in agreement with them and had ticked off on those, or that you just informed him?

Senator Vanstone—The secretary of the department had a discussion with Mr Palmer some time ago with regard to these matters. The secretary might like to canvass that. As I said, out of caution in one sense to cast an eye over what I wanted to say I did invite Mr Palmer to have a look at what I wanted to say, and equally out of courtesy. I think he has taken on a job which has ended up being far bigger than he and we initially—

Senator CHRIS EVANS—I am not objecting to it; I am just trying to be clear on the status. It would seem to be prudent to talk to him about it before you announced it just in case he said: ‘No. That would be a stupid thing to do.’ As you say, he might have found some other reason. All I am asking is: what is the status of Mr Palmer’s consideration of the announcements you made today?

Senator Vanstone—Nothing more than the fact that I chose to canvass them with him and make my own decision as to whether to make the announcement that I have made. The decision in relation to this announcement and the contents thereof rest with me, but I am entitled to speak to whomsoever I want to get advice and, in this case, out of what I think is a perfectly reasonable courtesy.

Senator CHRIS EVANS—As I said, I am not raising any objection to that. Is it fair to say that Mr Palmer has approved these changes, or is that thinking too highly?

Senator Vanstone—No. That is an unfair burden to put on Mr Palmer. As I have indicated to you, the responsibility rests with me. I am simply giving you some information as to the reason that I outlined to him last night what I intended to do.

Senator CHRIS EVANS—Mr Farmer, the minister indicated that you briefed Mr Palmer. Perhaps you could tell us the nature of that.

Mr Farmer—It was along the lines that the minister has also indicated. We have let Mr Palmer know the things that we have implemented on two occasions. As you know, the minister made an announcement at the end of February about a number of measures that we were introducing. I spoke to Mr Palmer again recently to say that we were thinking of a number of additional measures and that the minister was minded to announce them, so we were really doing him a courtesy of saying that our own examination was suggesting to us a number of measures that we needed to introduce and that the minister would be looking at those.

Senator CHRIS EVANS—Did Mr Palmer provide feedback to you on those initiatives?

Mr Farmer—Only in very general terms—in other words, we were not going through ticking off each thing. I was simply giving him a briefing on the sorts of things that we were thinking of putting to the minister.

Senator CHRIS EVANS—It would be better to characterise it that you briefed him on what the minister was intending to do rather than that you consulted him or sought feedback from him.

Mr Farmer—It was not a briefing where Mr Palmer was not saying things. I do not want to give you that impression, because he had comments. Some of the things relating to identity—for example, the identity verification unit that the minister announced this morning—seemed to us to be a means of getting over what we perceive to be a problem—namely, the lack of a national missing persons register or some way that our state and territory offices could deal on a national basis with individuals. We made the point that these were things that we were thinking of introducing but we were obviously looking to his report to make whatever findings and recommendations he wanted.

Senator CHRIS EVANS—In the preparation of these changes, were other departments consulted or briefed? I am thinking about Justice, Attorney-General's, PM&C.

Mr Farmer—We made the point this morning that in relation to some of the actions we have taken, we have consulted. The minister, I think, made the point that she had written to the Minister for Justice and Customs, and we have raised matters with the Heads of Commonwealth Law Enforcement Agencies on this question of access to information and databases.

Senator CHRIS EVANS—Perhaps I will phrase it another way—I do not want to be accused of going over old ground again; it was not my intention: which departments were briefed by your department or consulted prior to these changes that were announced by the minister today?

Mr Farmer—I have already mentioned the reference to the Minister for Justice and Customs and the Heads of Commonwealth Law Enforcement Agencies. That is a regular meeting of eight or 10 agencies, most of them in the Attorney-General's portfolio, that work on law enforcement. On the other issue, there is: the establishment of the National Verification and Advice Unit in DIMIA—that is a departmental decision, an internal matter; the appointment of immigration detention review managers in each of our state and territory offices in states where people are detained—that is an internal departmental matter; and enhancement of health services in immigration detention centres—that has involved at least discussions with instructions to detention services providers. I will ask my colleagues to amplify if there have been other people that have been involved in these matters. There is also the case related information management procedures and processes—that may have involved other agencies; I am not aware of that. I will ask my colleagues if there are other details that they are aware of relating to our consultations with other agencies.

Mr McMahon—I would note that, in respect of our national identity unit, there have been a range of discussions around access to data with other agencies, including the National Missing Persons Unit and AUSTRAC, in respect of the development of a missing persons national database et cetera. So we are liaising fairly extensively about how we can get access to data.

Senator CHRIS EVANS—What about Finance and PM&C?

Senator Vanstone—In what context?

Senator CHRIS EVANS—The changes you announced today—the changes in policy in detention procedures.

Mr Farmer—I am not aware that Finance has been involved in these at all. These are internal.

Senator CHRIS EVANS—What about PM&C?

Ms Godwin—We have been keeping in touch with PM&C, as we regularly do on a range of matters. There is a desk in PM&C that takes an interest in this portfolio. That is how they are organised. We have, at various meetings over the last several weeks, when talking about a variety of issues, mentioned that there are things that we were thinking of—administrative issues. We have not formally briefed them on the announcements but talked about the sorts of things where we were thinking that we would want to pursue actions.

Senator CHRIS EVANS—You had a meeting with them on 13 May, didn't you?

Ms Godwin—I honestly do not recall. We have had several meetings with them.

Senator CHRIS EVANS—Perhaps you would like to check and then we could have this discussion later on about which other departments were consulted and when you met with those departments about the development of these changes. At the moment we seem to be going around in circles. I certainly thought that PM&C told me yesterday that they had met with you to discuss the Palmer inquiry and related issues on 13 May. They may be wrong. I do not want to verbal you. This is from my recollection; I do not have the *Hansard* in front of me. I do not want to say definitively that that is what they told me; that is what I recall they told me. But after 14 hours of estimates you can sometimes get a bit blurry.

Senator Vanstone—I am sure the officers will get you whatever you ask for that they can, but I ask you to bear in mind that meeting dates on their own do not necessarily give the full picture, if you like, just like the written record in relation to Rau and Alvarez does not tell us everything because we cannot go and say to officers: 'Why did you do this?' or 'Why didn't you do that?' or whatever. In my own case, for example, I do a lot of work by telephone. I think a lot of people these days do. You ring somebody and say: 'You are in charge in this area; what do you think about this? What about we do something?' It might mean that you say, 'Okay, let's do a bit more work and we'll have a meeting next week.' You might end up having a meeting the following week, but the written record may well only show the date of the meeting and not show the other, informal consultation that is an important part of getting the decision right.

Senator CHRIS EVANS—Sure, Minister, but my difficulty is that I am not allowed to ask you who you phoned and talked to about it, because you would say, 'That is not something you have a right to know, Senator Evans.' What I can do is ask the department about which departments—

Senator Vanstone—I am not complaining about your asking.

Senator CHRIS EVANS—No, all I am saying is that the reason I am asking that particular question, rather than saying, 'Tell me everything you know about this,' is that I am restricted by—

Senator LUDWIG—It is a good question!

Senator CHRIS EVANS—If you are happy to answer the broader question, I am happy to ask it, but I suspect that you would have said, ‘Nice try, Senator, but keep fishing elsewhere,’ and the chair would have ruled that you were not required to answer that. But if you want to tell me who you spoke to about it and the details of those telephone conversations, I am all ears.

CHAIR—I would have been charming about it, Senator Evans!

Mr Farmer—Madam Chair, can I say that we will take the detail of that on notice. We have spoken to the department of health about the health related matters, including the question of psychiatric care.

Senator CHRIS EVANS—It just struck me that there would be a bit of across-government consultation on this issue, given that it has had some public airing, that the Prime Minister has been forced to answer questions, do TV shows—

Senator Vanstone—He has not been forced to answer questions. He answers questions as they are put to him.

Senator CHRIS EVANS—But the fact is that these things are raised with him.

Senator Vanstone—You do not need to bend his arm to get him to answer a question.

Senator CHRIS EVANS—He does a lot of talkback radio, so he is accessible a lot and he gets asked these things. As I recall it, the original inquiry was first mentioned by him publicly on the *Sunday* program. I would just like to know what interdepartmental contact and briefings occurred or what input other departments have had in the development of the policy changes and administrative changes announced today.

Mr Killesteyn—I will just clarify. Minister McGauran’s press release announcing the extension of the Palmer inquiry was on 30 April.

Senator LUDWIG—Thank you. Just to follow up Senator Evans’s question, we are interested in not only those departments that you have consulted or had contact with but also those departments that may have contributed to or indicated their view on any of those initiatives that were put forward in your ministerial statement of Wednesday, 25 May as well. Whilst we are on that subject, are these issues that have been worked on in the department for a while, a short while or just since the Rau matter first came to light?

Mr Killesteyn—Obviously, the announcement that the minister made earlier in the year, immediately after the Rau matter became known, was the first set of initiatives. Since we started to look at the Alvarez matter—Ms Solon and the circumstances surrounding that particular case—it became clear that we could do more. Those ideas have developed over the last three to four weeks, and we moved fairly quickly as a consequence of that.

Senator LUDWIG—Are there any other initiatives in the pipeline that you are considering—or have you referred some to the Palmer inquiry that may be worth looking at? In other words, have you taken discrete issues and said, ‘This is something that we think might work. We’ll refer it to Mr Palmer to have a look at’?

Senator Vanstone—The only references for Mr Palmer are the references that have been made public.

Senator LUDWIG—All right.

Senator Vanstone—I was asked if we had extended it beyond the addition that Minister McGauran made to allow us to send over all of these cases as we found them—was there any other reference? The answer is no. In the context of Senator Evans's question, does a discussion with him amount to him giving a tick-off, I indicated, 'No, it doesn't.' That is not a reference for him; it is more of a courtesy arrangement for sensibly working together.

Mr Farmer—Senator, to answer the first bit of your question, which was whether all of the actions we are talking about followed the Rau and Alvarez cases, the answer is no. For example, we had extensive discussions with the Ombudsman last year about the quality of note taking and record keeping in our compliance operations in one of the state offices and about some of the compliance approaches there. In talking with the Ombudsman we made the point that, on the basis of an evaluation of those particular cases, we shared concerns about the need to improve our performance. I said this morning that we have been working on improving our record keeping; that is one area where we had instituted a process of review before this series of cases arose this year.

Senator LUDWIG—One thing is not clear to me. We have discussed the terms of reference for Mr Palmer's inquiry, the amended terms which Minister McGauran then added and Mr Comrie's role in all of that; that has all been questioned and answered today. But, looking at the terms of reference as a document that Mr Palmer responds to and Mr Comrie responds to, are they two separate documents or was Mr Comrie appointed to assist the original terms of reference as amended? I am not sure if there is only one set of terms of reference or consolidated terms of reference.

Senator Vanstone—There are consolidated terms of reference for Mr Palmer. Mr Palmer is going to report in the next four weeks or so in relation to the Rau matter and, as I have indicated, while Mr Comrie has taken the lead in the Alvarez matter, it has not been to the exclusion of Mr Palmer—and Mr Palmer may have quite a lot to say about the Alvarez matter. It will be up to him how far that has progressed at the time he reports.

Senator LUDWIG—I understand that. I heard that clearly. What terms of reference is Mr Comrie—

Senator Vanstone—To make it crystal clear, that is not saying—I have answered Senator Evans on this—that Mr Palmer will report and complete both of those cases. It is to say that he will have completed Rau and will say in that as much as he chooses to say with respect to Alvarez. I suspect the amount of that will reflect how far the Alvarez matter has gone at that point.

Senator LUDWIG—I will try another way. Is there a written reference or terms of reference for Mr Comrie to work under?

Senator Vanstone—No. Mr Comrie is working with the Palmer inquiry assisting Mr Palmer. So there is one consolidated reference, the one that was first released and then the addition.

Senator LUDWIG—Who else is now working with Mr Palmer and Mr Comrie on the inquiry?

Senator Vanstone—They would have a range of people. They might have seconded some people. They have brought people in. As an example, Mr Chaplow is head of the New Zealand mental health service. He has been brought in. We said at the time we would provide appropriate mental health assistance. Mr Palmer chose the person he wanted. There would be other people. We could get you a list of the skills that he has chosen to have in. I do not think it has changed. We had two people set aside in the department to be contact points, really. We have not got Immigration people in there working on it but they are to be contact points.

Senator LUDWIG—They were to be the liaison between the department and Mr Palmer.

Senator Vanstone—Yes, to facilitate their access to anything they wanted in the department. I take the opportunity to repeat that I was asked the other day whether Mr Palmer was happy with the cooperation he was getting from the department. I looked him straight in the eye, and his answer was yes.

Senator LUDWIG—Are there any secondees from DIMIA working with Mr Palmer or Mr Comrie?

Senator Vanstone—I think that is what I have just covered. What I was saying was that we do not have people working in there from the immigration department on this issue. That is my initial advice and I understand the secretary believes it still to be the case.

Senator LUDWIG—When the Palmer inquiry reports, as discussed today, do any of those contracts terminate at that point?

Senator Vanstone—My understanding from discussions with Mr Palmer is that he has taken people from a variety of places on contract. I have not asked him when those contracts expire, although he has indicated that not all the people he took on originally would have foreseen that they would be in as long an investigation as this may turn out to be, depending on what Mr Palmer recommends at the end of June. So he has indicated that there may be a need for secondment from other departments, for example. If you wanted people experienced in compliance investigations, you could get them from Customs. If you wanted people experienced in organisational structures, I am not sure you would go to Finance—I should not have said that; I'll get a beating at the next ERC.

Senator LUDWIG—Maybe from Justice or somewhere.

Senator Vanstone—The range of experience around the federal Public Service is such that if you want to second some people with specialist skills you can do that. The open invitation to Mr Palmer stands that if he needs more resources, including resources from outside, not seconded people, people he contracts in, we are happy to listen to any of that. In other words, we remain as open as we were in the beginning to giving Mr Palmer the resources and capacity to do the job that needs to be done, and that is to get to the bottom of the problems. No-one ever wants a brutal report, but I have made it clear to him that in a sense problems are opportunities and when you get a problem it is an opportunity to go the full fix.

Senator LUDWIG—Another matter came up yesterday in estimates where Mr Mobbs from CrimTrac indicated that he had supplied a document that was classified 'Law enforcement—in confidence' to the Palmer inquiry. Is the Palmer inquiry authorised to receipt that?

Senator Vanstone—I do not know. Someone did indicate to me that there was some discussion of whether what CrimTrac advised the Palmer inquiry could be made public. That is the context in which it was raised with me. I have not heard the context that you are raising. I will get you an answer. I am simply unaware of it.

Senator LUDWIG—You can certainly discover it in the transcript from yesterday in relation to CrimTrac. There were a number of questions.

Senator Vanstone—Are the estimates *Hansards* now available the next day? They used to be.

CHAIR—Yes, they are. In fact, occasionally on the same day because they are so efficient in their production.

Senator Vanstone—We should give them a gold star.

Senator LUDWIG—They are there now, as I understand it.

CHAIR—For insomniacs there is a lot of reading.

Senator Vanstone—I will have a look at it. It has not been raised with me.

Senator LUDWIG—I wanted to come back to that, depending on the answer. That would be helpful.

Mr McMahon—Could I just note: in respect of our representations to CrimTrac to get information around identity and other information, they have refused to provide it to us on the basis of privacy grounds.

Senator LUDWIG—I understand that. I think I have asked you before about your access to various databases, and I think that may have contributed to Mr Palmer's statements this morning and since then. Mr Mobbs has indicated that he has provided CrimTrac documents to the Palmer inquiry upon the request of the Palmer inquiry, I think. The transcript might demonstrate which way that went. He then classified them as 'law enforcement—in confidence'. I do not know why he classified them in that way, but obviously they are CrimTrac documents. Mr Palmer is not authorised as a law enforcement officer, although he certainly was a commissioner in the past. The question then is: is he authorised to receive that information and then view it? I do not know what powers you have given Mr Palmer or what authorisations or classification clearances you have provided to him. Given that the department is not cleared to obtain CrimTrac material, I do not know the standing of Mr Palmer.

Senator Vanstone—We will get you the answer, but you do invite me to raise Mr Palmer's role. I am aware of the set-up of CrimTrac, because I am the one who thought of it—not the name, sadly. I had a much more boring name than that. I think 'CrimTrac' is a great name.

Senator LUDWIG—Yes. I do know this.

Senator Vanstone—That I had a more boring name?

Senator LUDWIG—No.

Senator CHRIS EVANS—SkaseTrac, was it?

Senator Vanstone—No, it was something like Federal Law Enforcement Tracking. Your interview would be over by the time you got the name out. That is beside the point. Mr Palmer was commissioner of police at the time, and his advice and the work he did in terms of setting up CrimTrac cannot be underestimated. It is fine to have a good idea—it is like the good idea that murder will be against the law—but getting it implemented and done is another thing. It is a long way between making policy or passing legislation and getting things to happen, and Mr Palmer's role in getting that set up was critical. So you have given me the opportunity to put that on the record.

I might point out that the public advocate in South Australia made some disparaging remarks about Mr Palmer's appointment, on the basis that he is not a lawyer. The public advocate really dug himself a bit of a hole by saying that if you are not a lawyer you will not know how to ascertain what is fact and what is not. It was a brave statement about someone who does, in fact, happen to be a lawyer. In fact, the public advocate, who is a lawyer but does not have police training, is a lesser finder of fact than Mr Palmer. More importantly, from having police experience—which is the investigative role—and legal experience in terms of understanding what is a fact and what can be used in an argument, I invite people to have a look at what Mr Palmer did with the Australian Federal Police. When he became police commissioner, many people would not have known that we had an Australian federal police force. They had rigid ranking structures, not enough money, no mobile strike teams—

Senator LUDWIG—I am not sure I asked this question.

Senator Vanstone—I know, but I am just trying to give you the degree of confidence that I have in Mr Palmer.

Senator LUDWIG—You would not have appointed him if you did not.

Senator Vanstone—If I may: they had no real understanding of what their potential role might be in the Pacific. I could go on, but I understand you have had enough of it.

Senator CHRIS EVANS—I am sure the chair would intervene if you did.

Senator Vanstone—His track record is not only in policing and law but also in organisational structures and change management. Just look at the difference between the coppers then and the coppers when he left.

Senator BARTLETT—I will ask a question or two about your two opening statements. I will deal with the minister's opening statement first. Minister, in amongst the further changes that are in the process of being implemented you mentioned that your department had already started working on implementing procedural changes identified in the recent Federal Court judgment about detention and health services. Just to be 100 per cent sure we are thinking of the same judgment, that was the judgment by Justice Finn at the start of this month?

Senator Vanstone—That is right.

Senator BARTLETT—Could you outline in a bit more detail the procedural changes that were identified in that judgment that you were referring to?

Senator Vanstone—Mr Davis can give you some more information about that.

Mr Davis—There is a range of things we have been doing. Indeed, we have been working on aspects of health services for quite some time. Part of the court judgment was around processes associated with our health system and the monitoring of it. We already, as I think I mentioned at the last hearings, have had expert medical advice, which has reviewed health services at Maribyrnong and also now at Villawood. Processes are in place for them to be visiting Baxter in the not too distant future. So part of it will be to move forward, identifying further enhancements if needed and ensuring the processes and procedures on the ground are working appropriately.

There are aspects of the judgment around third party medical reports and what we do with them. I have already issued a direction that, in any situation where we get conflicting medical advice from our own providers and any other source, as a matter of routine we seek a third specialist opinion. We have also, as in the announcement, put in place additional onsite nursing support of a mental health nature as well as more regular visits from psychiatrists. That question will be explored in consultation with our experts for all facilities, not just Baxter. So that is another area where we are looking further.

There were aspects of the judgement around whether the communication processes with regard to appointments between GPs and others were as robust as they should be in ensuring follow up procedures. The procedures are certainly there to give us confidence. But we are doing, if you like, assurance reviews and further examination, both by the service provider and ourselves, to provide additional confidence that indeed if a doctor treats someone and they wish to have a follow-up consultation or treatment that we have robust processes in place to ensure that occurs.

There are a range of other things. We are in dialogue with our service provider as a matter of course in these sorts of matters. The service provider is also proposing, as part of the establishment of the additional nursing positions on the ground, to establish a daily health and welfare meeting associated with detainees who may be on treatment for mental health issues. As well as the onsite treating nurses, psychologists and counsellors, that will also involve the GPs and the treating psychiatrist when he visits. So there are a number of service level delivery issues on the ground that we are looking at enhancing.

We are certainly looking, through our own expert panel medical advice, at assurance and review processes to give us a greater degree of confidence that what we are getting on the ground is delivering to the contract requirements and to the needs of the individual detainees, as well as the specific initiatives to enhance aspects of that. There may be more aspects of that as we move forward with our expert advisors.

Senator BARTLETT—Can I take it from the fact that this has specifically been identified in the opening statement as an area of the ‘government’s desire for continuous improvement’, to quote the statement, that the department broadly accepts the criticisms made in the judgment?

Mr Davis—The view I would express on the judgment is that it is a judgment about individuals in a specific circumstance and is a legal judgment. It is true, as the statement says, that we are looking to the issues that the judge identified in terms of delivery on the ground and also the Commonwealth fulfilling its duty of care in the broad, which we acknowledge

that we hold, and we are responding accordingly. The judgment was about individuals but that does not mean we cannot learn lessons from those individual circumstances that we can apply more broadly. That is really what we are seeking to respond to in reflecting and learning from the judgment.

Senator BARTLETT—You are not disputing the core finding of the judgment that duty of care failed in these cases?

Mr Davis—Not being a lawyer, I guess the way I would express it is on the basis of the evidence presented to the judge. He formed a judgment. We are seeking to learn the lessons of his judgments on the evidence and on the cases that he was making judgments about.

Senator BARTLETT—But you do not refute or dispute that finding? It is just that it is a fairly significant thing to be found by a judge to have failed in duty of care. I do not want you to prostrate yourself on the floor with a hairshirt or whatever; I just want to get the basic indication that that is something you broadly accept rather than refute.

Mr Farmer—I would put it this way. It is not our position to make a judgment on the judgment and to refer to it in those terms. What we do have a duty to do is to read the judgment, see the findings and draw out of that any lessons that we think are appropriate. We try to do that with any judgment on any matter.

Senator BARTLETT—I appreciate that. One of the other aspects that was in the judgment that I do not think your comments have gone to yet relate to the outsourcing arrangements and the cascading subcontracting that occurs with different health professionals and the judge's view that this led to fragmented service provision between unconnected service providers and a disconnection between the immediate people with duty of care—you and GSL—and the people who are providing at least some of these services. Are you reconsidering the contractual and subcontracting outsourcing arrangements that are in place as a consequence of the judgment?

Mr Davis—There are certainly lessons there about how the interactions occur, and I guess that is what I was saying with regard to discussions with service providers and actions they are taking as well as actions we are taking through our quality assurance processes and monitoring processes. We are seeking to deal with the situation as we have it under the existing contractual arrangement. The contract is in existence. We have a four-year contract in place and what we are seeking to do at the moment is ensure that the contract delivers what we expect of it.

Senator BARTLETT—I appreciate that but, in the opening statement to the committee, it was stated that the department has already started working on implementing procedural changes identified in the judgment. I appreciate that you have a contract in place but, if that contract as it operates at present has been found to be a reasonably significant contributing factor to this not terribly positive judgment, I would have thought that you, GSL and perhaps others down the track in the subcontracting positions, would be keen to review, if not the contracts detail itself, at least how it is operating currently. It was referred to fairly regularly in the judgment as a key problem.

Mr Farmer—Yes. Taking that lesson about looking at how the arrangements are working in the light of the judgment, certainly that is something we should be doing, and are doing.

Senator BARTLETT—So what are you doing about it? Are you talking with GSL or some of the other medical practices that are subcontracted to them?

Mr Davis—We have talked to both GSL and their subcontract providers about the judgment and about aspects of it. They are both taking their own initiatives to deal with some of the things you described. We are also accessing independent expert advice to assist us in helping to build the system so that it works as well as it can and to also give us the assurance that it is working on the ground, as the system is built.

Senator BARTLETT—I realise you do not have to follow every single word that Justice Finn said in his judgment but, flowing from the opening comments in the statement, he did say there was a problem with a lack of regular and systematic auditing of the services by DIMIA, which he identified as vital. He also identified a lack of auditing by GSL of its subcontractors, which he stated was necessary. Is a specific use of systematic auditing, by both you and GSL, going to be put in place?

Ms Godwin—I think the points Mr Farmer was making are relevant in this context. The judgment has drawn some conclusions in the context of a couple of cases and formed a view about things that might have contributed to the difficulties in those cases. We are clearly looking at that judgment to see whether or not we think that applies in all cases, whether it is a systemic issue or it only relates to those individual cases, and whether there are other cases it relates to and how we might address those. In that context, we are clearly looking at all of the elements of the judgment—the provision of services, the management of individual detainees and the review processes that relate to individual detainees, and the overall monitoring of the services to see whether or not there are elements, in all of those respects, that need to be worked on. We have made some announcements about service provision. Mr Davis talked about some of the on-the-ground procedures. We are also having a look at our overall monitoring arrangements to make sure they are consistent with the sorts of comments that have been made. But we do have quite an extensive set of monitoring arrangements which include, as part of an expert panel of advisers, a couple of professionals who specifically have medical knowledge and expertise as medical practitioners and in the delivery of services in an institutional setting.

I do not think our position is one of not having rigorous or systematic monitoring arrangements, but we have to look at what our current arrangements are in the light of the judgment that has been made to see whether or not the arrangements that we have in place adequately reflect all of the views formed by the judge in that judgment. That process is ongoing. There have been a range of discussions with the service provider. We have had discussions with our expert panel member, we have had discussions with the department of health about looking at what we are doing and whether or not it reflects what the judge says, what is regarded as proper practice in these areas and so forth. That is an ongoing process. It did not start with the judgment but, clearly, having had such a judgment and noting the sorts of comments that the judge was making, we want to take those into account to the fullest extent possible. We need to make sure that they are reflected in all of the work that we are doing in this important area.

Senator BARTLETT—Rather than burrowing further down this track at the moment—and recognising that the judgment was only a few weeks ago—perhaps this is more of a

general question on notice for the next time we have estimates. If you could provide a more specific outline of all the things you have done as a consequence of the judgment and if you are able to identify some aspects of the judgment that you do not believe require action, just so that is a comprehensive response, I think that would be helpful.

I have a final question on the minister's opening statement about the general concept of enhancement of health services, particularly mental health services which I note the department secretary specifically identified in his opening statement as an area of particular concern. I have received another statement just today saying that there is a man in Port Augusta Hospital acknowledged as needing specialist psychiatric care but being told he cannot go to Glenside Hospital because there is no room there. Is there a problem with spaces at Glenside that presents natural limits to how far you can address mental health needs?

Mr Farmer—To start off, my impression as a concerned citizen is that there is a problem nationally with spaces in psychiatric hospitals. I think the commonsense starting response to that is: yes, there is a national issue there.

Mr Davis—If I could just add to that, Senator. Indeed, there is an issue at the moment with Glenside and space, particularly for voluntary patients. If someone is involuntarily sectioned or scheduled then it is recognised by the South Australian health system that they need to find them a space. So there is an issue about voluntary assessment or treatment at the moment in Glenside, that is true. We are working with our service provider to seek access to, potentially, assessment or treatment interstate as an alternative to relying purely on the South Australian system. That is something that we are actively exploring for individuals who may need that.

Senator Vanstone—The mere existence of a triage service which operates for rural and remote clients in South Australia indicates there is a problem. That is what triage is: it is an ordering—and you do not do that if you have the capacity to take everybody who might otherwise be there. I do not say that to be critical of South Australia; I do not have enough information to be in that position. Obviously, if you are offering services which are presumably expensive, you do have to take into account who is most in need. I cannot help you with the degree to which they have a problem, but there certainly is not an open door.

Senator BARTLETT—If I could go to a couple of aspects of Mr Farmer's opening statement and then I will vacate the field for a while.

CHAIR—We will go back to Senator Ludwig then, and then to Senator Nettle.

Senator BARTLETT—My question touches again on flexibility, which we had some questions about earlier today. Mr Farmer, you said—it is on the second page of your statement—that the legislative and regulatory regime does not have some of the flexibility that people feel the need for. One of the question marks I want to pursue a bit further, following earlier answers on the matter, is not so much whether or not there should be more flexibility but what happens with the identification of and acting on mistakes that are made—inadvertently or otherwise. One of the apprehensions I have about more flexibility is that it gives people more scope to do things but it gives people more scope to make mistakes as well and if a range of mechanisms to detect and then act on those things are not in place then that might not improve the situation.

I know you are waiting for Mr Palmer's report on a range of things but the specific question mark that leaps out at me more than anything else with regard to the Alvarez Solon matter is not so much that the mistake was made but that it took two years to find out about it and then apparently no action was taken even then. Is that aspect being factored into this issue of giving people more flexibility and those other oversight and accountability mechanisms?

Mr Farmer—I will elaborate on the issue of flexibility. What we are talking about is having a more flexible bridging visa regime in the sense that there would be further options which would be available to officers. I do not think that we are looking at a return to the situation that applied before the codification of the Migration Act in 1989, when before that a great deal of discretion, if you like, was given to individual officers. What we have had for a long time is a Migration Act which is highly codified and which is prescriptive about the criteria for the grant of a visa. We are looking at operating within those basic parameters but we are saying that there are some circumstances in which we believe an expanded or changed bridging visa regime would be desirable. Do you understand my basic point? It is not giving officers more flexibility to administer the law; it is really saying that we are thinking about ways in which the legal regime could be expanded so as to give the officers an enhanced range of options to pursue when they are looking at alternatives to detention. They would be options or visa arrangements spelt out in detail as with other areas of the Migration Act.

The second point you make about the delays in identifying cases is obviously of concern to us. We are attempting through the measures that the minister announced today to make sure that we have what we think should apply—namely, an arrangement whereby for the great majority of cases the process of establishing identity will proceed as quickly, regularly and correctly as it does now but, in cases where we have difficulty establishing identity quickly to our satisfaction, we will have a mandatory referral process to a unit in Canberra which will in effect be charged with dealing with the unusual cases. The aim is that that process will avoid a repetition of cases. Because we do not have a national missing persons register or something of that sort, people have not been able to be identified quickly by one of our individual state offices.

Senator BARTLETT—Thank you for that. You specifically identified in your opening statement a question of possible broader use of biometrics. Biometrics can be a fancy word for fingerprints—

Senator Vanstone—Or iris technology or digital photographs.

Senator BARTLETT—That is what my question goes to. How wide are you thinking of in that face recognition area? Are you thinking of iris?

Senator Vanstone—As you know, a bill was passed by the Senate I think last year that gives us quite wide-ranging capacity. We have moved on that in the context of fingerprints—I am not sure if you were here earlier—and that has already proved effective. No doubt as the database of that moves up it will increase in its effectiveness. I have just asked the department to have a look at if there is anything else, vis-a-vis biometrics, within the immigration department that we could use. I do not have a preconceived idea but it is an obvious place to look. If I have either a permanent or episodic mental health issue and I have my drivers licence or passport—which I understand some people now think is a joke—with me, I could

lose all of those things, but I cannot lose my fingerprint. I cannot lose my biometrics, my DNA, for example. It is odd how things come to be seen in a different light. There was a time when people would look at fingerprints, for example, and think that that means you are on a database and you are going to be put in jail or something. People more and more are seeing these sorts of things as personal keys.

I understand you can now get locks, for example, that you could have in your house. I do not know that you can buy them here but they are constructible. So you could have your fingerprint that operated the lock, and only you could go ‘click’ and get access into your house, a safe or whatever you want. So fingerprints are now starting to be seen as one of the things that can never be taken from you and can be your key to access whatever you like or to protect your identity. It is the one thing that cannot be taken. There is such development in technology there. Ten years ago maybe—say 15 to be sure—was when we had that ridiculous, out-of-date fingerprint database around Australia. It was pretty much about sending a photostat of the fingerprints, hoping someone could find the paper copy and match it up. That was because technology did not allow us to do what technology now allows us to do with CrimTrac. It is evolving very quickly.

So I have just flagged that I want the department to have a look at what can be done now and to consistently keep its eyes open for what sort of technology we can use. Apparently if you are a platinum Qantas Club something holder and platinum Frequent Flyer, you can now get a passport that has the digital photo business. When you go in through Melbourne and Sydney you just put your passport there, stand in front of the camera, get a green light and through you go. It is tremendous. It would not have been possible five or six years ago. So it is just worth keeping your eyes open.

Mr Killesteyn—Biometrics also includes photographs. We do not necessarily have to go down the line of fingerprints, although that is what we are currently doing.

Senator Vanstone—The photograph thing works at the airport.

Mr Killesteyn—That is right. We are currently collecting photographs of individuals who are applying for a number of visas—for instance, where they have health tests or where they have to sit an English language test. We are starting to collect the photographs. This is part of a process essentially to ensure that the same person who undergoes the health test or the English language test is the same person who ultimately rolls up and gets the visa. We can start to use those sorts of less intrusive biometrics as part of our subsequent checking in those cases where we have some complexity in establishing the identity of the person.

Senator BARTLETT—Thank you. I was trying to get an idea of the breadth, but I guess we will see how it evolves.

Senator Vanstone—And it may not. There may not be anything more we can do at this point.

Senator BARTLETT—At the end of your statement, Mr Farmer, you acknowledged that you are the subject of criticism, which has probably always been thus—though perhaps not as much as recently. I have read your statement a few times and one aspect that I did not get from it—which has been commented on a few times, including by the minister—is the issue of the culture of the department. The minister said, ‘The department has developed a

somewhat defensive attitude which has encouraged them to be less than open to a reinterpretation of their assessments.’ Do you acknowledge that that is an issue that needs addressing and that the culture, attitude and defensiveness is something you are acting on as secretary well as?

Mr Farmer—I think I said in the statement that we have to look at processes. But I also said that we have to look at attitudes. I said we will need to develop an organisational culture or set of attitudes, values and approaches, which give us greater assurance that we are securing outcomes which are lawful, use commonsense and are found to be appropriate in the light of scrutiny. And I think that is right; we do have to look at the way we do things. And we have been—for example, with things like record keeping. We have identified that this is an issue that we have an obligation to get right. If the sorts of pressures that are on us are leading to a less than satisfactory approach in that area, we have to move beyond that. We have to make sure that the way we do things is appropriate. That may well call for changes of approach or attitudes.

In my statement I did refer to this question of cultural change. I did so in the context of a department that has shown quite a clear readiness and determination to look at aspects of our environment and change them—for example, in the area of visitor visas. Faced with what were, in some cases and in some countries five or six years ago, refusal rates of 30 or 40 per cent, we simply did not throw up the barriers and the fortress and say: ‘That’s just too bad. That’s how we assess people. They’ll just have to like it or lump it.’ What we have done in that area—and it reflects some quite serious thinking about our environment and what we need to do to change it—we have developed a range of mechanisms: things like sponsored family visitor schemes, very extensive liaison with community organisations and individuals in Australia, the use of bonds and the use of no further stay provisions. These are a range of elements designed to change the environment and the outcome, and we have done that. Over the last three or four years, in particular, our approval rates for non-ETA visitor visas have gone substantially up and the non-return rates have gone substantially down. So we have changed our attitude. We have changed our environment. We have worked with our clients and stakeholders. We have produced, I think, a very good outcome for legitimate travellers, Australian tourists and other businesspeople, as well as a proper and improved performance against—one of our basic criteria—the integrity of the border.

We are saying yes much more often to people who should get a yes, and that is not being reflected by more immigration problems in terms of people overstaying. So I think we have certainly shown that we can change our environment and I think that in some ways we need to do that in these areas which overall are at the very difficult end of our spectrum.

Senator Vanstone—Can I add to that. I tried to make it clear in my statement—and I feel quite strongly about this—that I do think the immigration department has done a tremendous job in a wide range of areas. I think I outlined them on the bottom of page 3 of my statement. I made the point particularly in relation to unauthorised boat arrivals, where there has been a tremendous change, from a few hundred a year up to 3,000. Bang! There you are. We have a government that turned and said, ‘Right, this is how we want it done. You’ve got to find accommodation, guarding services and all the rest that has to be done’—a tremendous logistics exercise—and the department went and did it.

Furthermore, one of the things that I feel very strongly about is that not only did they do it but they did it in the face of criticism. While I understand that mandatory detention is a contentious policy, it is not one the government intends changing. I know you have a different view on this, but it is a government policy and they are not changing it. So criticism of that policy belongs directly with the government, not with the department officials. You see in letters to the editor and often hear from commentators who should be more informed that in a sense people seek to blame the department for what is a government policy. We will stand by our policy, but I do not think it is fair that officials are criticised for a government policy.

If, in implementing it the department make decisions they should not make or fall down on administration then that is a fair cop. That is fair criticism, but criticism of the policy being levelled at the officers is not. I am not suggesting you do this, but it is commonplace to read that sort of thing. People who do not like mandatory detention assume certain things about everybody in DIMIA. It is an inappropriate assumption and certainly not one that reflects where the responsibility actually lies. When I make the point about ‘less than open’—look, I do not know. If I went along this table and picked up something that you think you have done well and say to you, ‘Well, I think you’ve messed that up,’ anyone of you would say, ‘Oh, gee, okay; what would you like to tell me about it?’ It is not the natural human reaction! The natural human reaction is to stiffen up, immediately work out what you have done and seek to defend it. That is just natural.

So in a sense what the government are now asking the department to do is quite a lot. It is to climb over a degree of unfair criticism—that is, the stuff that is levelled at them about the policy, which is the government’s decision, not theirs. The unfair criticism also comes from another quarter, which is all those people who get a no. In this sense the department is about as popular as Family Court judges! It is a fair bet that 50 per cent of the people who go before a custody or property dispute hearing are unhappy. So the department officials get genuine criticism, political criticism that does not belong with them and then criticism from the noes who are unhappy that, quite fairly, they have got a no. So in a sense we are asking them to learn how to completely discard a normal human reaction and climb over that. And I am sure they can do it.

Senator BARTLETT—I appreciate that. I think that added up to slightly more than one sentence all up!

CHAIR—We need to move on.

Senator Vanstone—Sorry, but I do feel quite strongly about this. If fate deals the world a cruel blow and the Democrats end up running the country—it would have to be a big twist of fate at this point—

CHAIR—I said earlier that we would not deal in hypotheticals, Minister.

Senator Vanstone—the minister at that time would understand that you feel strongly about your department being unfairly criticised.

Senator BARTLETT—I acknowledge all of that. I also say, perhaps more gently than plenty of other people, that you have had some criticism of your department as being too defensive and as needing some sort of cultural change—constructive criticism perhaps, but nonetheless criticism. My question a little while ago was about whether the department

accepts that there is genuine, valid criticism about the culture. Also, beyond just saying, ‘Yes, we’ll try to cop it on the chin a bit better,’ what specific things are you doing to address that?

CHAIR—I thought we had dealt with that.

Senator BARTLETT—I actually thought we had a lot of not dealing with it.

CHAIR—I am acutely aware of the time frame in which we have to work. The only way that this is going to work effectively is with concise questions and concise responses. Senator Bartlett, if that is your last question, please ask it again and then we will move on to Senator Ludwig.

Senator BARTLETT—I don’t think I need to ask it again. I think it has been understood.

Mr Farmer—I was going to illustrate the ways in which I think the giving and receiving of criticism can be quite a positive process. We have worked very constructively with the present Commonwealth Ombudsman for the last couple of years. That has been reflected both in changes to our operating procedures and in changes to the numbers of cases that have been referred to us and in the number of findings of defective administration. We have found a way of working with the Ombudsman that is encouraging that sort of outcome. With the President of the Human Rights and Equal Opportunity Commission, we have established a pattern of consultation both with the president and with me, and also with our officers at the working level. I think we have an environment where there is that giving and receiving of perspectives and a changing of things where we perceive that there is an element of justice and point in what is being said to us. That is, for me, one of the most positive developments over the last couple of years in an area related to your concern.

Senator LUDWIG—I want to go back to the matter of Michael Andrew Tran, the child who was born recently in Perth. When will the family be returned to Christmas Island? I think you indicated this earlier; I was just curious about the stay in hospital.

Senator Vanstone—I don’t know. I suppose that will depend in part on medical advice. I don’t know what condition the mother is in or what the hospital thinks is appropriate. I don’t know whether the officers know that, either.

Senator LUDWIG—I thought there might have been a departmental MSI.

Mr Davis—No. In that circumstance we would be following the medical advice and determining it from there. The baby has only just been born and the welfare of mother and child would be taken into account in terms of whatever arrangements are put in place.

Senator CHRIS EVANS—But the process is that the child will be returned to Christmas Island with the parents and will be in detention with the parents.

Mr Davis—Indeed.

Senator Vanstone—Gee, you wouldn’t suggest that we would leave the child behind in Perth, would you?

Senator CHRIS EVANS—No, I am just trying to be clear.

Mr Davis—Indeed. Mother, father and child are together in Perth at the moment. I guess we would take into account the medical advice and go from there.

Senator CHRIS EVANS—When you have the medical advice, you will return the family to Christmas Island to rejoin the rest of that group in detention?

Mr Davis—That would be my expectation.

Senator Vanstone—If I had nothing better to do tomorrow, I would go through the *Hansard* and find out how many times you have asked that. But I will have more to do tomorrow than that.

Senator CHRIS EVANS—The reason I ask, Minister, is because the Prime Minister said exactly the opposite in question time today. So I am just trying to clarify what is happening.

Senator Vanstone—That may be the case but—

Senator CHRIS EVANS—The Prime Minister actually—

Senator Vanstone—as I say, I don't know how many times you have asked that today.

Senator CHRIS EVANS—Will you do me a favour and ring the Prime Minister and tell him that? Therefore he can go into the House and correct the record. The Prime Minister, from all the reports I have seen, today told the House of Representatives that in fact the child would not be returned to Christmas Island. Those reports may be wrong, but I suggest you might like to give the Prime Minister a call and check with him, because what he is telling the Australian public and what you are telling the Australian public are two different things.

Senator Vanstone—We will have a look at that.

Senator CHRIS EVANS—Good.

Senator Vanstone—I make the point that I am not sure how many times you have asked that today.

Senator CHRIS EVANS—The reason we asked again was that the Prime Minister said something different to what you told us two hours after you told us. So we wanted to be doubly sure of our information. It may be that the Prime Minister has been misreported and the ABC and others have got it wrong.

Senator Vanstone—It may be, but we will check that.

Senator CHRIS EVANS—I would like you to talk to the Prime Minister so that you can be clear.

Senator Vanstone—I am not necessarily going to talk to the Prime Minister, but we will check the proposition you have put.

Senator CHRIS EVANS—Either someone has misled us or the Prime Minister has misled the House of Representatives, so someone ought to fix it.

Senator LUDWIG—In respect of Ms Solon, when did the department first become aware that she had been deported unlawfully?

Mr Killesteyn—There are probably two answers to that question, if you will bear with me. Most recently, we became aware of the possibility early in April 2005, when Ms Solon's ex-husband wrote an email seeking clarification of Ms Solon's whereabouts. As a consequence of that email, that was subsequently brought to the attention of senior management in central office here in Canberra. That was about 20 April.

Senator LUDWIG—Was that the date of the email?

Mr Killesteyn—No, the email was 4 April.

Senator LUDWIG—Do you have a copy of that email?

Mr Killesteyn—I do not have one with me. We can take that on notice.

Senator LUDWIG—Yes, thank you.

Mr Killesteyn—On 20 April that email was brought to our attention. We instituted immediate inquiries. By the end of 21 April we had concluded that Ms Solon and Ms Alvarez were the same person. That was on the basis of an examination of the photographs that we had of Ms Alvarez—the person that we knew at the time as Ms Alvarez—and compared that with a photograph that we obtained from the Department of Foreign Affairs and Trade passport office. As at the end of 21 April 2005, we had reached the view that Ms Alvarez was Ms Solon and had been removed from Australia to the Philippines.

Senator LUDWIG—What was the content or the nature of the email that you received on the fourth? It was from Mr Young, was it?

Mr Killesteyn—Yes. Essentially Mr Young was seeking information on the whereabouts of Ms Solon. He referred to information that had been provided to him by the Queensland Missing Persons Bureau. That comes to the second part of my answer to your question, in that that information was essentially passed on to the Queensland Missing Persons Bureau, who subsequently passed it on to Mr Young, I think around August 2003. At that time, officers in the department, as a consequence of responding to an inquiry from the Queensland Missing Persons Bureau, had concluded a view that Ms Solon and Ms Alvarez were the same person.

Senator LUDWIG—Coming back to 21 April, you received the email on the fourth. You actioned it by the 20th.

Mr Killesteyn—It was brought to our attention on 20 April.

Senator LUDWIG—I am not sure what you mean by that.

Mr Killesteyn—We have a process in the department where people can write to the minister's web site—just like any other correspondence, if you like. That process has the emails registered by the department and then referred for action to the appropriate area within the department. The email was brought to my attention and Ms Godwin's attention on 20 April.

Senator LUDWIG—From internal departmental officers?

Mr Killesteyn—That is correct.

Senator LUDWIG—Which department or subdepartment had it been sent to? Had it been sent part of DIMIA?

Mr Killesteyn—It was sent to the minister's web site. It is just like general correspondence, if you like. The process within the department is to take each of the emails and treat them as correspondence needing to be replied to.

Senator LUDWIG—And then, on the 20th, who started the investigation?

Mr Killesteyn—Ms Godwin effectively initiated further inquiries to determine whether the apparent, at the time, connection between Ms Solon and Ms Alvarez was correct.

Senator LUDWIG—Was that plain in the original email? Was it evident?

Mr Killesteyn—Yes, it was.

Ms Godwin—Could I clarify. I think the email said that that is what Mr Young had been told. What I initiated were urgent inquiries to try to establish whether his statement in his email was correct—whether there was any basis for his statement and what was, in effect, the case.

Senator LUDWIG—What was the statement?

Ms Godwin—That he had been told that she had been removed. I said, ‘We must check this,’ and we sent it to the appropriate area and they started checking.

Senator LUDWIG—Which name was used in the email—Alvarez or Solon or both?

Ms Godwin—I cannot remember precisely—

Senator LUDWIG—That will be apparent from the email. On 21 April what next occurred?

Ms Daniels—Senator, maybe I can answer that question. Mr Young referred to two names. He referred to Vivian Solon Young, and he also mentioned that his former wife could possibly be known under a maiden name, Vivian Alvarez Solon. So we had those combinations of names at that time to start the searching process, which we did, on the afternoon of the 20th.

Senator LUDWIG—What constitutes your searching process? Do you search your own records?

Ms Daniels—On that afternoon?

Senator LUDWIG—Yes, if you could just step through what action you took in terms of determining the identity, once you got the email.

Ms Daniels—When the information came to us from Mr Young, we had that level of information. So our starting point was departmental systems. We had a good range of name combinations, and that afternoon the standard searching on departmental systems was undertaken fairly quickly. That is on our movement records, our client management system, our records management system—during that afternoon.

Senator LUDWIG—What was the result of that search?

Ms Daniels—The result of that search initially was a note to me that afternoon—in fact, I saw it that evening—

Senator LUDWIG—That was the 21st?

Ms Daniels—No, the 20th. The note was that the indications pointed to the fact that these two people—the woman removed in July 2001 and the former wife of Mr Young—were one and the same person.

Senator LUDWIG—What happened next? Did you then contact Ms Godwin?

Ms Daniels—I got to that email that night, and my approach to Ms Godwin was about 8.45 the following morning.

Senator LUDWIG—From that point, once you had determined that, what was done next?

Ms Godwin—I then asked for a further series of urgent investigations to be undertaken, including seeing if we could get absolute confirmation. There are occasions when very similar-looking records turn out not to be the same person, so I asked for that to be further checked and for us to make further inquiries. That was done very urgently that morning, and I think by early afternoon we were pretty confident that that was, in fact, the case, and we started the process of alerting other people. I had briefed Mr Killesteyn in the morning—because he was the acting secretary at the time—and told him that I had asked for further searches to be undertaken. By early afternoon, we did not have the absolute confirmation but it was pretty clear at that point that we had a match and that, in fact, there had been a removal of a person we had thought to be an unlawful noncitizen but who was, in fact, a citizen. We then started to brief people appropriately at that point, including the minister's office and other senior officials.

Senator LUDWIG—On what date was the minister's office advised?

Ms Godwin—On the 21st.

Senator LUDWIG—What time?

Mr Killesteyn—I think we finally concluded at about 5.30 in the afternoon, based on the photograph that I mentioned—a comparison of the photographs—and then during the evening both Ms Godwin and I briefed the minister's chief of staff, at approximately 6.30 pm. Then Ms Godwin and I spoke to Mr Farmer, overseas in Washington, at about 8 pm our time, or early in the morning Washington time, on the 21st.

Senator LUDWIG—You said you had a photo: was that a photo that was part of your records or did you contact another agency to obtain a photo?

Mr Killesteyn—There were two photographs. One was a photograph taken of the person we knew as Ms Alvarez at the time that we detained her. The second photograph was taken off the Department of Foreign Affairs and Trade passport file—there was a passport application for Ms Solon. We compared those two photographs.

Senator LUDWIG—When did you contact the department of foreign affairs to obtain a passport record?

Mr Killesteyn—That was some time on 21 April.

Ms Daniels—It was in the afternoon of 21 April.

Senator LUDWIG—What was that, a request? I am not sure of your procedures. Do you ring up or email the department of foreign affairs and ask, 'Do you have details of passport X, or a photograph'?

Ms Daniels—We started with our colleagues in Brisbane and we asked them to approach the passports office in Brisbane to get whatever details they could about this particular passport. It was from that source that, at about 5.30 pm, we were emailed the photograph that Mr Killesteyn is referring to.

Senator LUDWIG—What name did you give DFAT?

Ms Daniels—At that stage we would have strongly suspected that the person we were dealing with was Ms Solon Young, so we gave them the name that we thought would be on the passport. I cannot remember the exact details, but it was probably Solon Young. In any event, they had the full combination so there was no difficulty finding it.

Senator LUDWIG—Did you give them the full combination of names that you had, including Vivian Solon Young Alvarez and Vivian Solon?

Ms Daniels—I cannot remember, because the request would have come from our Brisbane colleagues, but I can say that they would have had all the permutations of the name.

Senator LUDWIG—Perhaps you could check on when the request was made to DFAT and whether you gave them one name—the later revealed name or all the names that you had available from the original email and from your records.

Ms Daniels—Perhaps I should clarify. At the point that we strongly suspected that they were one and the same person, we had the name of the person we thought was the Australian citizen, so the request to DFAT would almost certainly have used the name under which we thought the Australian citizen had requested a passport.

Senator LUDWIG—It would have included that; what I am asking is whether or not you included the other names as well.

Ms Daniels—Right. We will check.

Senator LUDWIG—How did DFAT advise you—is there a protocol between you and DFAT?

Ms Daniels—There is a protocol for release of these elements of information, and I do recall a request coming through by way of working with central office, but in any event the information was provided to us in the email that my records say was at 5.26 that evening.

Senator LUDWIG—What did the email contain—details of the passport photo?

Ms Daniels—The email contained a digital photo.

Senator LUDWIG—Did you compare that with the one you had on file?

Ms Daniels—Yes, we did.

Senator LUDWIG—Did you conclude that they were one and the same person?

Ms Daniels—Yes.

Senator LUDWIG—And then you advised Ms Godwin of that by email?

Ms Daniels—No. The two photographs, plus papers, went to both Mr Killesteyn and Ms Godwin and we looked at them together.

Senator LUDWIG—At that stage had that become a paper record or was it still on email?

Ms Daniels—No, the photographs were printed in colour.

Senator LUDWIG—What was the next stage after that? Ms Godwin, you had looked at it as well and concluded that it was the same—and Mr Killesteyn?

Ms Godwin—As Ms Daniels said, we looked at it. We were all at that point satisfied that, yes, that was in fact the case. As Mr Killesteyn said, we then went through a process of briefing.

Senator LUDWIG—That takes us up to about 22 April.

Mr Killesteyn—That was in the evening of 21 April when we advised Dr Nation, the minister and Mr Farmer. On the following morning, on 22 April, we instituted action to commence searching for Ms Solon in the Philippines.

Senator LUDWIG—Yesterday I asked whether records had been obtained from CrimTrac. It was indicated that there had already been a search or a requested search, as I understand it, by DIMIA for missing persons through their database and I think there was a referral to Queensland. When did that occur? Was that part of this process as well or was that subsequent? They said April.

Mr Killesteyn—The search that we initiated on 22 April was through the embassy in Manila. We made no specific attempts to search records through Canberra of CrimTrac.

Senator LUDWIG—So the search was through the local embassy or was it the overseas embassy in Manila?

Mr Killesteyn—No, the Australian embassy in Manila.

Senator LUDWIG—Were they cabled with the photographs?

Mr Killesteyn—They were cabled with quite a number of details that we had on our file about Ms Solon. I spoke personally to the ambassador on the evening of 22 April to express the urgency and the importance of immediately instituting search action for Ms Solon.

Senator LUDWIG—What was the response—do you know?

Mr Killesteyn—The response from the embassy was to institute immediate action to search. This was on 22 April.

Senator LUDWIG—More generally, I think. I assume they started working on that.

Mr Killesteyn—They started work immediately that day.

Senator LUDWIG—When did they get back to you?

Mr Killesteyn—We initiated a process where there was a three-way meeting in Canberra between DIMIA, DFAT and the Australian Federal Police whose assistance we sought.

Senator LUDWIG—When was that?

Mr Killesteyn—We started on 22 April with the three-way meeting. In Manila, a similar process was instituted by the ambassador. He brought together a task force under his personal administration. That task force comprised, again, similar officers from the department, from DFAT, the consul-general there and AFP. They immediately went into a process of making contact with various Philippines government departments to seek information about the whereabouts of Ms Solon.

Senator LUDWIG—DIMIA, DFAT and the Australian Federal Police—that is, Canberra based.

Mr Killesteyn—That is right.

Senator LUDWIG—What was the purpose of that meeting? Was that to coordinate the search in Manila?

Mr Killesteyn—No. It was to monitor progress in Canberra, but the search in Manila was effectively coordinated by the Department of Foreign Affairs and Trade. It was essentially a consular matter but, obviously, we wanted to be fully across progress. We wanted to give assistance where possible to the efforts in Manila. We wanted to review the information that was being made available to us on a daily basis from Manila, look at any other leads that we might ask Manila to explore and pursue any leads in Australia if that was relevant.

Senator LUDWIG—Did the role of that committee in Canberra involve asking the AFP to initiate any action in Canberra?

Mr Killesteyn—The AFP's role was essentially to provide assistance to us and the primary assistance that they provided was at two levels: one, to ensure that their officers in Manila were making the appropriate contact with relevant law enforcement authorities in Manila; and, secondly, to act as a conduit to requests for information that we made of the Queensland Police Service. In effect, they acted as a liaison point and from time to time we were seeking information off the Queensland Missing Persons Bureau about information they may have had on their files that would have been of assistance to us in our search in Manila.

Senator LUDWIG—When was the Queensland missing persons unit contacted? I just missed the connection there. Is it that at the Canberra meeting you requested the AFP to coordinate a missing persons search? I will come back to that. They were originally requested to search for a Vivian Alvarez or some other name?

Mr Killesteyn—The search in Manila—

Senator LUDWIG—No, in Canberra at the moment.

Mr Killesteyn—There was no search in a sense instituted for Ms Alvarez in Australia. Our records showed that Ms Alvarez had been removed to the Philippines. We had no other record of course that she had returned to Australia. So the focus of all of our efforts was essentially to locate Ms Alvarez or Ms Solon in the Philippines. That search was primarily around the name Alvarez, but we provided all of the various names that could have been used to the officers in the Philippines. In the inquiries that they made of the various Philippine government authorities, they provided not only the name of Alvarez but also some of the other names that she may have been using.

Senator LUDWIG—What happened next?

Mr Killesteyn—It was a process of making daily inquiries and following the leads that Manila made. The inquiries were quite extensive. They made inquiries with the Philippines National Police; the National Bureau of Investigation; the Bureau of Immigration; the Department of Foreign Affairs passport division; the Philippines Office of Births, Deaths and Marriages; the Department of Health; government welfare agencies; a particular agency called the overseas workers welfare agency, which is a significant one and I can explain that in more detail; and through consular workers in areas of the previous addresses that we had for Ms Alvarez.

Senator LUDWIG—Was the embassy a task force? Were they keeping in daily contact with DIMIA through the Canberra based meeting or was that an ad hoc meeting that was subsequently dissolved?

Mr Killesteyn—The embassy was sending us daily cables of the progress of their search. Those cables were obviously passed to myself and Ms Godwin. The mini task force, if you like, met I think every two or three days just to review that information.

Senator LUDWIG—Could we skip forward to the point when Ms Solon was made known to you. How was that done in terms of DIMIA's involvement?

Mr Killesteyn—At the time our searching was continuing. I should explain that we had a request from Ms Solon's ex-husband to ensure that the matter was kept as confidential as possible. However, the identity of Ms Solon was revealed subsequently and reported in the media. That was then, as we understand it, aired on the ABC. That was then identified, as we understand it, by a gentleman by the name of Father Duffin, who worked in the local church near where Ms Solon was being cared for. He notified the press. The press then subsequently contacted the minister's office to ask whether we knew of this particular location. As a consequence of that, we subsequently learnt of Ms Solon's whereabouts in the mission of charities in Olongapo.

Senator LUDWIG—On what date was that? Was it a journalist who rang the minister's office?

Mr Killesteyn—It was 18 May.

Senator LUDWIG—Just coming back to the point of deportation, when was Ms Solon originally detained?

Ms Daniels—Ms Alvarez, as we knew her then, came into immigration detention on 13 July 2001 after she had been discharged from the hospital where she had been for a couple of months.

Mr Killesteyn—To clarify, she first came to our notice at the end of March.

Ms Godwin—Actually, 2 April.

Mr Killesteyn—Close.

Senator CHRIS EVANS—Any others? Come on, Mr Williams, you have not had a go.

CHAIR—On 2 April, thank you.

Senator LUDWIG—Not the 1st. What was the basis of that?

Ms Godwin—The hospital where she had been admitted over the weekend of the 31st and 1 April called the department to advise that they had—

Senator CHRIS EVANS—So 30 and 31 March, I presume.

Ms Godwin—Yes. That weekend she was admitted to hospital in Lismore and on the 2nd, which I think was the Monday, we were called and they advised us that they had a person there. I think on the basis of what she had told them, they called us. We then had a record of her.

Senator LUDWIG—What was that record?

Ms Godwin—Just that we had been alerted.

Senator LUDWIG—Is there a written record?

Ms Godwin—I am just working from a summary list. This is all from file records, so there is presumably a note in the file.

Ms Daniels—I can confirm that. There is a file note to that effect.

Senator LUDWIG—As I understand it, the hospital rings DIMIA and says what—that they have got a person who has been injured?

Ms Daniels—Yes.

Senator LUDWIG—And you respond?

Ms Godwin—I think they gave us further information than that—that she was claiming to be from overseas, she had not been all that long in Australia and she did not have any identification with her. They gave us her name and the details of what she had said at that point.

Senator LUDWIG—Was a record of interview taken?

Ms Godwin—She was not interviewed at that point.

Senator LUDWIG—No—the hospital talking to the DIMIA official. Did the DIMIA official then take a record of the telephone conversation or interview with the hospital?

Ms Daniels—That is the file note I mentioned. There is a record of that discussion.

Senator LUDWIG—Is that available to the committee?

Ms Daniels—We do not have it here.

Senator LUDWIG—You can make it available?

Mr Farmer—We will take that on notice.

Senator LUDWIG—What detail does that file note go into? What does it indicate?

Ms Daniels—It indicated—this is being passed on from the hospital to us—that the person arrived a couple of years ago, that she was injured, that she had no identification with her and that she indicated that she had arrived in Sydney and spent some time in Sydney.

Senator LUDWIG—Were these handwritten file notes or typed?

Ms Daniels—No, they are formal file notes typed. I cannot remember whether they are in the form of a file note or an email, but they are either one or the other.

Senator LUDWIG—What happened next?

Ms Daniels—Our colleagues in Southport, as it was at that stage, relayed advice to the hospital that in order to test the veracity of those claims by Ms Alvarez she would need to be interviewed but that that would be dependent on her state of health. The hospital was asked to determine a suitable time for officers to come and talk to Ms Alvarez. As it happened, during that month Ms Alvarez was transferred to a hospital in Sydney, to Liverpool if I remember correctly, so that interview did not take place during that time. Subsequent to her transfer back to Lismore Base Hospital, our officers interviewed Ms Alvarez for the first time on 3 May.

Senator LUDWIG—Was DIMIA contacted and informed of the dates of the transfer from Lismore to the Sydney based hospital and then back again?

Ms Daniels—No, we do not know those precise dates. We knew that it was happening from our file records, but the precise dates of the transfer to Liverpool and the return to Lismore we do not know. It was probably in the third week of April.

Senator LUDWIG—What was the status of Ms Solon at that point in time? Was DIMIA just keeping a file note on it?

Ms Daniels—The status would have been unclear; hence the note that I just referred to that the officer passed onto the hospital that they would need to interview Ms Alvarez to ascertain the veracity of her claims. At that point the officers would have reached a conclusion, subject to their interviewing her, that she may have been an unlawful noncitizen. We did not talk to her personally during that period.

Senator LUDWIG—When was she first interviewed?

Ms Daniels—The first record of interview we have, the first contact we had personally with her, is on 3 May.

Senator LUDWIG—Is there a tape or a transcript of that interview available?

Ms Daniels—There are file notes to that effect.

Senator LUDWIG—Who took those? Was it an officer of the department?

Ms Daniels—Yes.

Senator LUDWIG—Was that a compliance officer?

Ms Daniels—Yes.

Senator LUDWIG—And that was while she was still in hospital?

Ms Daniels—Yes.

Senator LUDWIG—Was a clearance obtained from the hospital to interview her and take file notes depending her condition?

Ms Daniels—There is nothing on the file to that effect, but certainly the indications from the paperwork are that our officers were in touch with the hospital at least several times and that the hospital would have expected that visit from our officers simply because of what I have just said—that they indicated that they would need to talk with her to explore her claims.

Senator LUDWIG—What I am asking is whether there was any specific request by the interviewing officer of the medical person who was in charge of Ms Alvarez.

Ms Godwin—If I could just clarify something here. This case is the subject of a specific investigation by Mr Palmer and Mr Comrie. Their request to us was that we not speak to the officers that were involved. So we can tell you what we have got—

Senator LUDWIG—That is a new one.

Ms Godwin—We can tell you what we have file records of. What we are trying to do, I guess, is to be as clear as possible about what that record shows without speculating on anything else, given that we have not actually spoken to the officers.

Senator LUDWIG—That is why I asked about that—so that we did not speculate.

Ms Godwin—We have no specific record, as Ms Daniels said, of a clearance. What we do have a record of, however, is contact between the hospital and officers of the department, including, for example, a phone call to tell us that she spelt her name ‘Alvarez’ not ‘Alverez’—or possibly the other way around. There is evidence on the file of contact between us and the hospital. What there is not evidence of is the specific question you are asking about whether there was a specific clearance about her being interviewed on 3 May.

Senator LUDWIG—So you have no record of that?

Ms Godwin—Not of a specific clearance. We have a record that she was interviewed.

Ms Daniels—If I could just go back on what I said, the compliance officer from our Southport office, in a discussion with the nurse from Lismore hospital, told the nurse that in order to verify the claims of Ms Alvarez they would need to interview her. The officer asked for a suitable time for officers to interview her and mentioned that they would need to then consider what their options were—transportation to another facility or whatever transpired at the end of that interview and at the end of her period of hospitalisation. There was certainly that level of liaison between our compliance officers and the hospital.

Senator LUDWIG—You indicated the nurse but I asked about the doctor in charge. You have no record of that?

Ms Daniels—No.

Senator LUDWIG—Do you know at that interview whether or not an interpreter was used at or brought along to assist in the interview?

Ms Daniels—Yes. My recollection is—and I could seek some clarification of this—that a person who spoke the language went with the compliance officer.

Senator LUDWIG—Are they registered with an interpreter service?

Ms Daniels—I think not. They were a staff member.

Senator CHRIS EVANS—Madam Chair, can I ask what has happened to the minister? She seems to have disappeared. I do not know if she is happy with us continuing without her. She seems to have been gone for a while.

CHAIR—She may simply have stepped out of the room. If you do not want to continue, we will not continue.

Senator CHRIS EVANS—I think it has been 15 or 20 minutes, that is all. I just wanted to know what had happened to the minister.

CHAIR—I will inquire after her health.

Senator CHRIS EVANS—If it is just a private matter I am happy but she does not normally like us continuing without her being in the room.

Senator LUDWIG—That is true. I would not want to be accused of continuing without the minister’s knowledge, now that you have brought it to my attention.

CHAIR—Let us continue and I will inquire after her health.

Senator CHRIS EVANS—Thank you.

CHAIR—Ms Daniels, was there anything further you wanted to add?

Ms Daniels—I think I am finished.

Senator LUDWIG—So a person from DIMIA was brought along as the interpreter or to assist in interpreting but they were not a registered interpreter.

Ms Daniels—We do not know that.

Senator LUDWIG—Perhaps you could take that on notice and confirm whether or not they had credentials.

Ms Daniels—We do know that the person was a DIMIA officer.

Senator LUDWIG—But you do not know whether they were an accredited interpreter. Was a transcript of that interview kept? Was an ‘I said, he said’ taken or, in this instance, ‘she said’?

Ms Daniels—Not that we are aware of—not that we have on record.

Senator LUDWIG—You have a file note.

Ms Daniels—Yes.

Senator LUDWIG—I have asked for a copy of the file note, haven’t I? If I have not, I will.

Ms Daniels—Yes.

Senator LUDWIG—What was the content of that file note?

Ms Daniels—The discussion as recorded indicated that she had arrived a couple of years ago. She was not clear on the circumstances of her arrival; she thought she might have come by boat or that it might have been a plane. She had spent a short time, I think, with a Mr Smith. She had spent five months with him, and that relationship had subsequently finished. She had had a car accident—she had been hit by a car while she was on a bicycle.

Senator LUDWIG—What happened following that?

Ms Daniels—At that stage the record notes that the officers indicated to Ms Alvarez that they would need to identify her and that it would be necessary for them to come and speak to her again. At that point they issued her with a bridging visa, again assuming at that point that she was an unlawful noncitizen. The first bridging visa that she was granted had a life of 3 May to the middle of June.

Senator LUDWIG—At that point did the officer make a determination that she was an unlawful noncitizen in accordance with the act?

Ms Daniels—I will say yes on the basis of the step to the granting of a bridging visa to her, which is on the basis that somebody is an unlawful noncitizen.

Senator LUDWIG—Can you confirm whether or not there was a determination, whether the record shows that?

Ms Daniels—I think it stands as a given that if somebody is granted a bridging visit it is on the basis of the officer's intent to give to that person lawful status when the preceding status is that of an unlawful noncitizen.

Senator LUDWIG—Minister, we are just going through the interview of Ms Solon. In this instance it is the Lismore Hospital on 2 May when the officer made a determination. We have simply been recounting the instances of DIMIA's involvement with Ms Solon in your absence.

Senator Vanstone—Part of my absence, although not all—and, believe me, you do not want the detail of the rest—

Senator LUDWIG—I'm not sure.

Senator Vanstone—I do not want to make light of Red One or the management unit, but even Red One or the management unit gives you the time to go to the bathroom.

Senator LUDWIG—I did not want to go there.

Senator VANSTONE—I just make the point that just because you leave does not mean you have gone off to lie on a banana lounge—

Senator LUDWIG—I did not say anything. I did not make any adverse comment about your not being here.

Senator Vanstone—Fair enough. I had a go at Senator Evans, rightly, I think, because he kept asking the same question more than twice. But he is right: there is a difference between what the Prime Minister has said and what the officer said, and I think the officer can help us with some enlightenment with respect to that matter. I would like to clear the record up very quickly, if we could.

Mr Davis—On my earlier comments about the baby in Perth, I expressed those comments as a personal expectation, given the relationship of that family to the broader family group on Christmas Island. When the family came to the mainland we looked at flexible options for the family, as we do with women and children in detention, and they were placed in the community prior to the birth in the hospital. Once they leave the hospital, that arrangement will continue and there are no immediate plans for the family to return to Christmas Island. If at some point in the future the family wish to return to Christmas Island, at that time that will be facilitated by us.

Senator CHRIS EVANS—So it is just a question of what the family want to do, is it? I thought you had quite strict guidelines on these things. I am taken aback that now it is a question of what they want to do.

Senator Vanstone—We have strict guidelines but we are always flexible.

Senator CHRIS EVANS—Is that right? So I will tell anyone else at Christmas Island that if they want to arrange to come to Perth it is all okay.

Senator Vanstone—That is taking things a bit far.

Senator CHRIS EVANS—I thought we had to defend our borders at all expense—

Senator Vanstone—The woman has just had a baby.

Senator CHRIS EVANS—I asked you twice and you said you were sending her back to detention.

CHAIR—And the record has been corrected. I really do not think these exchanges are necessary. They are not helping the program and they are not helping the process.

Senator Vanstone—I think the answers given by the officer were a reasonable expectation of perhaps the normal course of events of what would happen.

Senator CHRIS EVANS—I was accused of delaying the hearing by asking the question twice because it directly contradicted what the Prime Minister told the parliament today.

Senator Vanstone—I did have a go at you for asking. I did not say ‘twice’ because I said that if I had the time I would count them. I still think you might have asked it more than that. If I were asking the question after question time, having heard the Prime Minister’s remarks, I would have come in, sat down and said, ‘The answer you gave me this morning was this; the Prime Minister has said this. What do you say to that?’ instead of faffing around. In any event, we have solved the problem; it is cleared up.

Senator CHRIS EVANS—So the policy is whatever the Prime Minister says is the policy. The officer obviously does not know what the policy is; it is a question of what the Prime Minister decides. Someone had a baby and we did not want to run the hard line because we have got a rebellion in the Liberal Party, so we will change the rules.

Senator Vanstone—Madam Chair, I am not going to continue if part way through an answer officers and I simply get verballed by Senator Evans raising his voice. We have clarified the record; he can say what he wants.

Senator CHRIS EVANS—What is the policy?

Senator Vanstone—I am not going to keep at it with you if you keep interrupting. It is as simple as that. Officers are not here to be badgered—

Senator CHRIS EVANS—We are very grateful you have finally returned. You have been told off by the Prime Minister. You have now got a different line, but the two previous times—

Senator Vanstone—Everyone is entitled to go to the bathroom, Senator.

Senator CHRIS EVANS—I suspect you were in the Prime Minister’s office getting straightened out. The policy has obviously changed.

Senator Vanstone—I can guarantee I was not there. Heavens above, people are entitled to go to the bathroom.

CHAIR—I do not know how anybody thinks this is benefiting the committee process. I certainly do not. Minister—

Senator Vanstone—The officers are not here to be badgered and I will not put up with them being badgered.

CHAIR—Minister, I agree. I have no intention of allowing officers to be badgered, but I really do not see how either of the parties concerned think this is benefiting the committee process or the estimates process. We have a large number of senators participating. We have

contentious issues under discussion. Agreeing to a process will make it much more simple for all concerned to progress these estimates considerations, which, as chair, it is my job to do. I intend to do that. I do not mind who is interjecting or who is making snide comments; I intend to deal with them. Where are we with the questions?

Senator CHRIS EVANS—I would like to explore the explanation given by the officer, if that is all right with you, Madam Chair, because this is obviously contrary to advice provided twice before to the committee today. Obviously I have an interest in teasing that out with the officer.

CHAIR—If you are using the phrase ‘teasing it out’ as a technical term, Senator Evans, then by all means, but just a direct question-and-answer process would be helpful. Are you talking to Mr Davis?

Senator CHRIS EVANS—I certainly was not going to lay hands on him; I was just going to ask him questions, if that is your concern.

CHAIR—You have no idea what my concerns are, Senator Evans. Please ask the question.

Senator Vanstone—A normal Labor Party teasing out is by laying on of hands, of course.

Senator LUDWIG—Oh, no. I object to that.

Senator Vanstone—And not in the religious sense either.

Senator CHRIS EVANS—Feel free to go for another half-hour bathroom break whenever you like, Minister.

CHAIR—We can adjourn. I am happy to adjourn. We can adjourn or we can just engage in questions and answers. It does not worry me, actually.

Senator CHRIS EVANS—I am happy to ask questions, Madam Chair. I will show the same discipline that you apply to the minister.

CHAIR—I just said I would apply it across the board.

Senator CHRIS EVANS—Good on you.

CHAIR—Your question?

Senator CHRIS EVANS—When did the policy change regarding people from Christmas Island being given the option to be allowed to settle in the community in Western Australia?

Mr Farmer—There are a couple of things to say to that. I do not think anyone is talking about settling in the community in Western Australia. I think what is under discussion here is where the continuing detention would take place—that is in WA or on Christmas Island. In terms of the general policy approach, because of the status of the people, they do not have the status of some former detainees on Christmas Island—that is to say, people who landed first on Christmas Island. The people we are discussing at the moment entered the migration zone, so their status is to all intents and purposes the same as the status of others who are in detention already in Perth. This would not always be the case with people who are brought to Australia from Christmas Island, because some of those would have landed in an offshore excised place and so a different regime would apply to them.

Senator CHRIS EVANS—Will this family be held in detention in Perth now or are they going to be allowed to live out in the community?

Mr Davis—They are in detention now and they will be moving to detention in the community setting.

Senator CHRIS EVANS—Detention in the community?

Mr Davis—Alternative detention in the community.

Senator CHRIS EVANS—And when was that decision taken?

Mr Davis—They were in that situation prior to going into hospital. They have been there for some months.

Senator CHRIS EVANS—But you reassured me on two occasions beforehand that they would be returned to detention on Christmas Island. When was the decision taken that they be allowed to stay in Perth?

Mr Davis—I indicated an expectation based on the relationship of the family to the broader family group. As I said earlier, medical care and other issues also need to be worked through. Simply, after they leave hospital they will go back into the community arrangement and there are no immediate plans to return them to Christmas Island.

Senator CHRIS EVANS—No immediate plans? But they were due to go back to Christmas Island, weren't they?

Mr Farmer—I think Mr Davis talked about an expectation based on a particular set of circumstances—namely, the broader grouping on Christmas Island.

Senator CHRIS EVANS—So they can all come to Perth now?

Mr Farmer—I do not think anyone has addressed that question, and certainly not with that conclusion. The family was brought to Perth because, as I understand it, no woman gives birth on Christmas Island. The medical facilities are not—

Senator CHRIS EVANS—But children live on Christmas Island. I accept your evidence. We are not arguing about that. She came to have the baby. We asked: 'Would she be returned to Christmas Island?' The evidence was: 'Yes.' That seems to have changed.

Senator Vanstone—With respect, I invite you to go back and look at what the officer has said. The officer has told you that he gave you an answer on the basis of a reasonable expectation. He did not say, 'Yes, we've got a plan to do it on this day.' He just gave you an answer on what he believed was a reasonable expectation of what would happen. So your characterisation of his answer is not—

Senator CHRIS EVANS—And you chastised me for asking him twice. The point is: when did the policy change? The officer told me that in the normal course of events they would go back. I am sure the officer is well informed. Somehow this has changed. Has this changed because the Prime Minister made a policy decision at question time or has some other decision been taken?

Mr Farmer—I think the expectation, Senator, was as we have said, but there is another expectation. Personally, I would not expect that the mother and child would stay in hospital in Perth for an extended period.

Senator CHRIS EVANS—I don't think anyone claimed that.

Senator Vanstone—Could we let him—

Mr Farmer—Hear me out, because I want to draw—

CHAIR—Could you let Mr Farmer finish, Senator Evans.

Mr Farmer—Generally speaking, nowadays mothers and children do not stay for extended periods in hospital. They leave hospital, and certainly in many cases, if there was a question of travel, they would be leaving the hospital well before any potential travel. No matter what might have been envisaged, or might be envisaged, for the family, I would not have envisaged their going directly from the hospital other than back into the community environment, although legally still in immigration detention.

Senator CHRIS EVANS—Thanks for that, Mr Farmer, but to be honest, and without being rude, that is a statement of the bleeding obvious. That wasn't the question we asked you, though, was it? I don't expect them to stay in hospital forever and I don't expect them to be sent back to Christmas Island the following day after she comes out of hospital. The point is—

Mr Farmer—Senator, it may have been obvious, but in the minute examination of this issue over the last five minutes, the point had not been made. I simply threw it in for what it was worth because it did bear on the question of what would happen to them after a period in hospital.

Senator CHRIS EVANS—The Prime Minister said at question time that they were going to live in community accommodation in Australia. When was that decision taken by the department?

Mr Farmer—They have come out of community accommodation in Australia. The point I have just been making is that my expectation is that—

Senator LUDWIG—They came out of the Christmas Island detention centre, didn't they?

Mr Farmer—Prior to hospital they have been in the community for some months in Western Australia.

Senator CHRIS EVANS—The mother has had a difficult birth and she was brought down early; I think that is all on the public record. The question is: when was the decision taken that they would live in community accommodation in Perth following the birth?

Senator Vanstone—With respect, that is what Mr Farmer has just told you—in the normal course of events, that is what would happen.

Mr Farmer—Yes.

Senator Vanstone—You said it was obvious.

Senator CHRIS EVANS—They might stay for a few days. The suggestion is that they will live there permanently now.

Senator Vanstone—With respect, these things are done on a case-by-case basis. You say a few days; for a normal birth, you might say they would come down for a shorter period of time before the birth than this one. So the normal course of events perhaps is not helpful because every case is treated individually.

Senator CHRIS EVANS—Is it the case that everyone on Christmas Island can come and live in community accommodation in Perth now?

CHAIR—I think you have asked that question, Senator Evans, several times.

Senator CHRIS EVANS—I haven't got an answer.

CHAIR—The answer has been, 'No, that is not the expectation.' To quote Mr Farmer, 'That is not the conclusion reached.' That was his response. So that has been asked and answered several times.

Senator CHRIS EVANS—So is the long-term plan for the Tran family to live in community accommodation in Perth?

Mr Farmer—I think Mr Davis said that we had been proceeding on an expectation of what would normally happen if the family wished to rejoin this broader group on Christmas Island. We subsequently said, if I recall correctly, that the family's wishes would be an element in this. If they wished to rejoin the group, that would clearly be an element.

Senator CHRIS EVANS—So if other persons currently in detention on Christmas Island would prefer to leave the broader group and settle in Perth, you will facilitate that.

Senator Vanstone—With respect, Madam Chair, that is exactly the same question, as you have just reminded Senator Evans, that he has asked a couple of times, and it has been answered.

Senator CHRIS EVANS—It has been answered? What is the answer?

CHAIR—It may not have been answered to your satisfaction, Senator Evans, but, as I understand it, the department has endeavoured to provide the answer they have several times. I do not think it bears going over again.

Senator CHRIS EVANS—What is the answer, Madam Chair? I must have missed it.

CHAIR—I will have an urgent rush put on the *Hansard* and we can read all three answers on all three previous occasions that it has been answered.

Senator LUDWIG—I am not sure I heard it, quite frankly. I wouldn't mind a summary of what you say the position is.

CHAIR—For the fourth time?

Senator LUDWIG—It will be my first. I did ask Mr Davis before what the likelihood was of them being returned and what was going to happen to them. I think he indicated, at that stage, how long will be the stay in hospital, and the answer was indeterminate. It was left at that point. So, I am still waiting for my answer, I guess. That seems to have changed.

Mr Farmer—Perhaps we could say something to you about the general practice in relation to movement of detainees between centres.

CHAIR—Mr Farmer, to be honest, I think the question is very specific about the Tran family; not about the general practice, not about postnatal experience, but the Tran family and this specific example. If we can get a simple answer to that, that would be helpful; if we cannot, then perhaps you could take it on notice and we could move on.

Senator Vanstone—It might be helpful if we looked over the record of what we have said. So, thank you, we will take it on notice. We will look at what we have said and we will see if we can divine what it is that neither Senator Ludwig nor Senator Evans understood or what it is that we have not said that we should have.

CHAIR—To assist with that, Minister, we will ask for the *Hansard*.

Senator CHRIS EVANS—Can I ask another question then? Can the department advise me whether they have advised the Tran family that they will not be returning to Christmas Island?

Senator Vanstone—I will have to check.

Mr Williams—I have no advice about that at this stage. We will have to get some information.

Senator CHRIS EVANS—Can you take that on notice for me please. I would like a reply as soon as possible as to whether or not you advised the Tran family that they will not be returning to Christmas Island and when you advised them of that.

Senator Vanstone—It is not that they will not; it is that they will not have to.

CHAIR—We understand the difference.

Senator CHRIS EVANS—Could you advise me when you offered them the option of not returning to Christmas Island and whether they accepted that option or whether they chose to return to Christmas Island?

CHAIR—That question is taken on notice, Senator Evans.

Senator CHRIS EVANS—Could you also perhaps take on notice what arrangements you have made for them to live in the community in Western Australia?

Mr Williams—Yes, Senator.

Senator CHRIS EVANS—At the risk of irritating the chair beyond what is reasonable.

CHAIR—You may have already gone there. Whatever comes after that, shall we say—perhaps endurance.

Senator CHRIS EVANS—I feel like throwing myself at the mercy of the chair.

CHAIR—I will find you a pyre and a match.

Senator CHRIS EVANS—I would like to know whether other families currently detained on Christmas Island have, or will be offered, the option of living in the community accommodation on mainland Australia.

CHAIR—Will you take that on notice?

Senator Vanstone—That is exasperating because that question has already been taken on notice.

CHAIR—Thank you.

Senator CHRIS EVANS—I want to make sure it is right because we have had three different answers.

Senator LUDWIG—Did the file note indicate whether or not any clearance had been obtained from a doctor or if a doctor was present during the interview?

Ms Daniels—I do not have that on the record. Maybe I should clarify one thing. You asked whether an interpreter was present. I mentioned to you that our file records noted that a member of staff who spoke the language was present. In a subsequent interview, which we will no doubt come to, when the question was put to Ms Alvarez as to whether she wished an interpreter to be present her answer was that she did not need an interpreter. I think that was worth clarifying at this point.

Senator LUDWIG—I was eventually going to get to whether the file note reflected any question in relation to an interpreter. Did that first file note reflect any question?

Ms Daniels—Just that there was the staff member who accompanied—

Senator LUDWIG—Who was present?

Ms Daniels—Yes.

Senator LUDWIG—But was she asked whether or not she required an interpreter at the first interview?

Ms Daniels—I do not have that on the file record

Senator LUDWIG—Because that was the point at which she was detained, wasn't it?

Ms Godwin—She was not detained. She was granted a bridging visa.

Senator LUDWIG—I was asked to assume that, because she was given a visa, a determination of her status was made that she was an unlawful noncitizen. She was not detained in that sense so I withdraw that, but the determination was made at that point.

Ms Godwin—As I understand it, there was certainly a reference in the file note to the fact that they thought that it was most likely that she was an unlawful noncitizen at that point.

Senator LUDWIG—Is that a determination of status in terms of the act which you enforce?

Ms Godwin—What we said to you before was that we were working from what the file shows. We have not interviewed the officers. The file shows a notation in the file note that they thought she was most likely an unlawful noncitizen and they then went ahead and granted her a bridging visa.

Senator LUDWIG—But you cannot grant a bridging visa to someone who is not determined to be an unlawful noncitizen, can you?

Ms Godwin—No. Prior to the interview they had interrogated databases and could not find any record for her.

Senator LUDWIG—We will come to that, or do you want to go through that now? I will lose my place—that is all.

Ms Godwin—I am saying that prior to interviewing her on 3 May, there is a file note to the effect that they had checked a variety of departmental databases and they could not find any record for her. What we have is the file note for the interview of 3 May and a notation in that which notes that they had formed a view that she was most likely an unlawful noncitizen. Presumably—and I apologise because we have not spoken to the officers so I am drawing a sort of connection here—armed with the information from the database searches and what she said about her own circumstances, that was the basis on which they then noted that in the record.

Mr McMahan—Can I say that the converse is also true: that the proposition that you are putting—that is, that if a person—

Senator LUDWIG—I am asking a question.

Mr McMahan—Yes, okay. But the converse, nonetheless, is true: that, in issuing a visa, for example, to a citizen there is no effect. If you issue a visa to a resident it may also not have any effect, so it may well be at the time that they were simply trying to act cautiously in respect of her status and to put beyond doubt her status.

Senator LUDWIG—A belt and braces approach.

Mr McMahan—It is not unreasonable where they suspect that she is an illegal noncitizen to issue it but knowing that if her status is subsequently determined it may be that the visa has no impact.

Senator LUDWIG—All right. But we are trying at this stage to work out—and this is where the question goes—who made the determination under the section of the act which the department is entrusted to enforce that she was an unlawful noncitizen and that you could then issue a bridging visa. It is not a case that the legislation allows you, as I understand it or read it, to then say, ‘Look, we’ll take a belt and braces approach and hand out a bridging visa just in case.’ That is not how I read it. If that is how you read it, I am sorry.

Mr McMahan—I think the answer to that question is that because we have not interviewed the people for the reasons stated, we cannot be definitive around that.

CHAIR—If you have anything more to add, please continue.

Mr McMahan—No, I have finished.

Senator LUDWIG—I might need to be reminded of your answer.

CHAIR—Why does that not surprise me—through no fault of our own. Mr McMahan, could you repeat what you just said to Senator Ludwig.

Mr McMahan—All I said was that we had already stated that we had not had an opportunity to interview the people involved. Consequently, we really cannot take that question any further at the moment.

Senator LUDWIG—In terms of the next file note or the next interview, what happened after that?

Ms Godwin—After 3 May?

Senator LUDWIG—Yes.

Ms Godwin—Ms Daniels may have more detail, but at some point we were advised that Ms Alvarez may have been residing at an address in Lismore and officers of the department visited that address to see whether or not they could find any further information regarding her passport or how she came to Australia, but there was nobody home during that visit so they were not able to get any further information at that point.

On 3 May she was granted a bridging visa valid until the middle of June on the basis that there was an expectation that she would apply for a visa in the future. If someone has got an ongoing application, as we have discussed before, they can have a bridging visa if they are eligible for it. The officers formed the view, presumably, that she was eligible and they granted the visa. Then there was this follow-up visit to the address where it was thought she might have been living for a period to see whether there was any further information. That did not result in any further information because there was not anybody home.

In the early part of June, according to the file note—or a file note around 7 June—there was a conversation between DIMIA officers and the hospital social worker. At that point they talked to the social worker about whether it might be appropriate to try to arrange legal advice for her, but the social worker said that she had been refusing all offers of assistance at that point. Nonetheless, the officer forwarded some application forms to the hospital just in case she did want to make an application.

Senator LUDWIG—Was Ms Solon still at the hospital at that stage?

Ms Godwin—She was still at the hospital at that stage.

Senator LUDWIG—Did the officers go and visit her at the hospital at that point?

Ms Godwin—No, not according to the file record. This was telephone contact between the officers and the hospital social worker. On 15 June they granted her a further bridging visa.

Senator LUDWIG—On what basis would they grant a further bridging visa? Can they be reissued or extended?

Ms Godwin—You can grant multiple bridging visas, and many people in the community have had multiple bridging visas. Given that her bridging visa expired on 15 June, that she was still in hospital presumably and they wanted to enable her to remain lawfully in the community, they granted her another bridging visa at that point—valid at that point until the beginning of July.

Senator LUDWIG—But, at that stage, the officers, when they granted the second bridging visa, had not contacted Ms Solon, had not interviewed her and had only had contact with the social worker to verify that she was at the hospital, and then they had extended the visa—or issued a new visa, was it?

Ms Godwin—All we can tell you is what is on the file, and that is what is on the file.

Senator LUDWIG—Yes. I was just summarising it to understand that that is where we are at.

Ms Godwin—That is what the file indicates: they granted a bridging visa. There is no further evidence, or no information on the file, of a further interview.

Senator LUDWIG—Is it required of the department to have a reason to issue a further bridging visa? Is there a requirement procedurally for the department or the officer of the department to then say, ‘These are the reasons why I have issued a new bridging visa,’ or reissued, in this instance, a second bridging visa, and then note it on a file?

Ms Godwin—Yes. The person has to meet the criteria for the grant of the bridging visa, or the officer making the decision has to be satisfied that the person meets the criteria for the grant of a bridging visa. On the basis that they granted the bridging visa, presumably the decision maker was so satisfied at that point.

Mr McMahan—Senator, this is perhaps one of the examples which probably stretch the criteria somewhat. It was issued on the basis that she was making arrangements to depart.

Senator LUDWIG—That is what I was going to ask: on what basis was the first bridging visa provided?

Mr McMahan—Sometimes officers take a very broad view about what an arrangement is.

Senator LUDWIG—Was there a file note in the interview on 2 May—was it?—that she had agreed to make arrangements to depart?

Ms Godwin—If I can clarify, the bridging visa that was granted on 3 May was granted on the basis that there was an expectation that she was going to lodge an application, hence the discussion about the application and the application forms. That is a notation on the file note of 3 May.

Senator LUDWIG—What sort of application was she going to make? Does it indicate?

Ms Godwin—Not that I am aware.

Senator LUDWIG—What would have been available for her to make? The officer must have had something in contemplation.

Ms Godwin—We do not know what the officer had in contemplation because we have not spoken to the officer.

Senator LUDWIG—Is it an infinite number that you can issue from the perspective of that officer standing there interviewing the person on 3 May, is it only one, or is there some number between one and infinity?

Ms Godwin—There is not an infinite number. All I can tell you is that the officer granted a bridging visa presumably having determined that she was eligible for the grant of the bridging visa, and the notation is that there was an expectation that she would be applying for a visa. I cannot say what the officer thought she might apply for.

Senator LUDWIG—The file does not show what visa she was then going to apply for?

Ms Godwin—Not that I am aware of, unless Ms Daniels has any further detail on that.

Ms Daniels—As Ms Godwin said a little while ago, subsequently the officer forwarded to the hospital applications for Ms Alvarez to complete if she so chose. The file records that the applications forwarded to the hospital were protection visa applications.

Senator LUDWIG—Following that, the next bridging visa that was issued was on what basis? Does the file note show that?

Ms Daniels—On the basis, as Mr McMahon said, of making arrangements to depart.

Senator LUDWIG—Were the forms filled in or completed, as far as you are aware?

Ms Daniels—Yes, they were.

Senator LUDWIG—That is the protection visas.

Ms Daniels—Sorry, I thought you meant the bridging visa application forms. No record of protection applications being completed.

Senator LUDWIG—That visa was to extend for how long?

Ms Daniels—As Ms Godwin said, that had a cease date of 1 July.

Senator LUDWIG—What happened on that date? Was there a subsequent interview with Ms Solon?

Ms Godwin—There was a subsequent interview but not until later in July. On 10 July there is a note to the effect that information had been sent on to the department that there was an expectation that Ms Alvarez would be ready to leave hospital by the end of that week. I think there was also a reference to officers trying to contact the social worker at that point but being unsuccessful. But on 12 July they visited the hospital and Ms Solon was discharged on 12 July, and there is the discharge note from the hospital on the file. So she was discharged at that point and officers of the department escorted her to Southport office and granted her a bridging visa that day, arranged accommodation for her that night and then the following day, 13 July, she was interviewed again and formally taken into detention on 13 July.

Senator LUDWIG—So there have been three bridging visas issued in total—is that right?

Ms Godwin—That is as the record shows.

Senator LUDWIG—It appears that the first one was issued on the basis that she would seek a protection visa, as protection visa papers were then forwarded to her. The second, as I understand it, was issued on the basis of what Mr McMahon said—that she has made or would make reasonable arrangements to depart, although there is some question mark in relation to that. What was the third issued in respect of? Was that so you did not have to detain her at that point? Was there a reason for issuing the third one? Is there a file note?

Ms Godwin—Yes. As I understand it, the note indicates that she was subject to acceptable arrangements to depart. My understanding is that in the discussions with her it had been indicated that, if she was not lawfully in the country and had not made an application, we would have to try to arrange for her to return home. That was presumably the thought at that stage. So, as I said, they granted her a bridging visa on the grounds that she was subject to acceptable arrangements to depart.

Senator LUDWIG—Which came first—the discharge from the hospital and the officers escorting her back or the officers going to Lismore hospital and then the discharge? Does the record show that?

Ms Godwin—All we can tell you is that on 12 July they went to the hospital, there had previously been contact from the hospital saying that they expected her to be discharged, they went on the 12th, she was discharged and there is a discharge note.

Senator LUDWIG—Is that on the file?

Ms Godwin—Yes.

Senator LUDWIG—Is there a file note from those officers as to what they did at that point? Did they interview Ms Solon?

Ms Godwin—They escorted her to Southport.

Senator LUDWIG—Were there arrangements for a compliance officer to interview her the following day?

Ms Godwin—I am in some difficulty; we are just working from the file notes. They escorted her to Southport, one would presume—

Senator LUDWIG—Imagine my position, then. I do not have the file note.

Ms Godwin—I presume it was so that she could be formally interviewed again the next day. There is a file note about additional information that she provided, a file note about the bridging visa being granted and a file note about the accommodation being arranged that night.

Senator LUDWIG—Are all those available to the committee? Are you going to take that on notice?

Ms Godwin—We will take all of that on notice.

Senator LUDWIG—Was the interview at the Southport office of DIMIA?

Ms Godwin—Yes, on the 13th.

Senator LUDWIG—Was a transcript taken of that interview between the compliance officer and Ms Solon?

Ms Daniels—There is no transcript on the file.

Senator LUDWIG—Don't you have transcripts of when you interview people for these sorts of things?

Ms Daniels—We do have file notes.

Senator LUDWIG—My question is: don't you tape them and have transcripts? These have serious consequences in this instance and in most instances they have serious consequences. You are interviewing someone, which will lead to a detention in most instances. Do you just keep a file note? It seems surprising to me.

CHAIR—You did ask several questions, Senator Ludwig. If you could, let the officer respond.

Ms Godwin—Perhaps I could ask Ms Daniels to include any additional information. There is a record of interview with a suspected unlawful noncitizen. A standard form is followed, an interview format. But, as I understand it—and Ms Daniels can add more detail on this—not all interviews are taped.

Senator LUDWIG—Are any taped?

Ms Daniels—Some interviews are taped with the consent, of course, of the person being interviewed, but what Ms Godwin has said is correct—not all compliance interviews are taped.

Senator LUDWIG—Is that a policy decision? Is it an MSI? I am trying to explore the procedures that are used.

Mr McMahan—There is no requirement for the interviews to be taped. In fact, we do not necessarily have the right to tape interviews because of privacy laws which exist in various states. Sometimes it can be local practice to tape interviews and there are circumstances, particularly where they believe they are going to be contentious, where they might seek to have them taped. But the answer to your question is: no, we do not require tapes to be made.

Senator LUDWIG—There are two types: video taping and tape recording. Which law prevents you from taping an interview?

Mr McMahan—Privacy laws which exist in some states, as I understand it.

Senator LUDWIG—In Queensland?

Mr McMahan—It is not preventing us from taping; it is preventing us from taping without consent.

Senator LUDWIG—Could you check as to what law in Queensland you operate under?

CHAIR—In New South Wales, for example, it is the Listening Devices Act.

Senator LUDWIG—The interview was in Southport in Queensland.

CHAIR—I understand that; I was just giving an example. So you will take on notice to check the status in Queensland?

Mr McMahan—Yes.

Senator LUDWIG—What was filled out, then? Was the form used as the basis of the interview?

Ms Godwin—Yes.

Senator LUDWIG—Is that available? It might contain privacy information, but I guess it can be redacted.

Mr Farmer—We will look at it on notice.

Senator LUDWIG—Is the general view about privacy law issues, whether or not you can tape and the form that is used reflected in the MSI?

Mr McMahan—I would like to take that on notice so we can give you a definitive answer on that.

Senator LUDWIG—The form is completed, I take it, by the compliance officer. Is it signed by the compliance officer? Was Ms Solon asked to sign it to verify the accuracy of the document?

Ms Godwin—Yes.

Senator LUDWIG—Is that the usual procedure?

Ms Godwin—The usual procedure is that it is signed by both the interviewing officer and the person being interviewed. In this instance, it was signed by the interviewing officer, but there is a notation that Ms Solon did not sign—she was unable to sign, I think the notation said.

Senator LUDWIG—Was there a reason given why she was unable to sign?

Ms Godwin—There was not a reason given, although I understand it may have been because she had some difficulty with one of her hands.

Senator LUDWIG—Is there a file note?

Ms Godwin—I think the record of interview has on it, at the signature point, ‘unable to sign’.

Senator LUDWIG—And you do not have any further information about what that exactly means.

Ms Godwin—I am not aware of it. As I said, I have not read every single folio. But I have looked at the files extensively.

Senator LUDWIG—Perhaps you could take that on notice and have a look to see whether or not there was a reason provided at the time.

Senator CHRIS EVANS—I take it you are suggesting that it was a physical impairment rather than a language or other issue.

Ms Godwin—That is my assumption, which I will check. In terms of language, there is a question about whether the person needs an interpreter and, on this occasion, the response included that Ms Solon did not want an interpreter.

Senator CHRIS EVANS—So ‘unable to sign’ does not imply ‘was not able to understand’; it implies ‘unable physically to sign’.

Ms Daniels—I think Ms Godwin’s comments are substantiated by a note on the file that indicates that Ms Alvarez had some mobility problems and some hand weakness.

Senator CHRIS EVANS—I see.

Senator LUDWIG—Was there anyone else in the interview room?

Ms Daniels—There is no record on the file that I can answer that with.

Senator LUDWIG—Did Ms Solon request a friend or other person to be present during the interview to assist?

Ms Daniels—I have no record of that.

Senator LUDWIG—Is the usual practice that you would interview alone?

Ms Daniels—We would make sure that, if there was a female, there would certainly be a female with that person in the room. And, if somebody wanted a companion or a friend with them, that would be perfectly reasonable.

Senator LUDWIG—Would you offer that? Do know whether it was offered in this instance?

Ms Daniels—I do not know.

Senator LUDWIG—It is not reflected on the file?

Ms Daniels—No.

Senator LUDWIG—So the MSI does not give you procedures to follow to reflect that in the file note—to say whether or not the offer was made and refused?

Mr McMahan—I do not believe the MSI says we need to offer it. It basically leaves open whether or not someone would be there for them. Ms Alvarez did make a number of statements about having no family in Australia. It could well be that at the time—and this will have to be verified in due course—there was no-one that she could identify to be with her. But there is no requirement for someone to be there. If they ask for a legal adviser or someone to come in to the interview then we would normally accommodate that.

Mr Farmer—Madam Chair, if it would help, we could make a copy of the MSI available to the committee.

CHAIR—Thank you.

Senator CHRIS EVANS—Could I just ask: was a female officer made available to accompany her? You said that was your normal practice.

Ms Godwin—Senator, I just do not think we have got the information on that from the file, and that is all we can draw on at this point.

CHAIR—Would you take that on notice then, Ms Godwin?

Ms Godwin—Yes.

Senator LUDWIG—I was just going to check: the two compliance officers and the compliance officer that originally made the phone calls and talked to the social worker, the people that went to escort her from hospital and then did the subsequent interview—what gender were they?

Mr Killesteyn—As I understand it, according to the record, there were two compliance officers who escorted Ms Solon to the Southport office. According to the file, one was a female and one was a male—according to the record.

Senator LUDWIG—And then she was accommodated overnight and then there was the subsequent interview. Does it indicate whether the interviewer was a male or a female?

Ms Daniels—The person who completed the form is a male, but there is no record either way whether there was a female present or not.

Senator LUDWIG—So you do not know whether there was anyone else in the room at the time other than the interviewer and Ms Solon?

Ms Daniels—If that is on the file record then I do not remember it.

Senator LUDWIG—Perhaps you could have a look anyway and confirm it.

Ms Daniels—Sure.

Mr McMahan—Could I also note that I am not sure that the requirement to have a woman present during the interview was actually a policy requirement at that time. It certainly is now and has been for a couple of years. I believe we made that very explicit in 2003.

Senator LUDWIG—Is that reflected in the MSI?

Mr McMahon—Yes, it is.

Senator LUDWIG—When you do make a copy of the MSI available you might make a notation of that—when it changed and what the MSI was prior to that—if it is not too difficult.

CHAIR—Thank you.

Senator LUDWIG—Just going back, so that we do not get too trapped in this time line: the issues that were examined between, I guess, April more broadly and the point of detention, which was then at the interview stage in formal terms, and the searches that were done—is there a list of what searches were done in respect of trying to identify Ms Solon?

Mr Killesteyn—We have audit logs on most of our systems that identify when searches would have been done, so we are progressively preparing that audit log obviously for the purposes of Mr Palmer’s inquiry. But if I could speak generally about the issue it may help if—

Senator LUDWIG—It is probably reasonable to say that the best course is to answer in the specifics rather than in more general terms in this instance. I think we can otherwise lead ourselves off into error.

Mr Killesteyn—Yes, but I could give you a whole series of dates—I am not trying to be unhelpful—on which the audit logs actually show that inquiries were made.

Senator LUDWIG—That would be helpful if you could make those available to the committee.

Mr Killesteyn—Sure. Sorry; when I say ‘generally’, I will do it in the context of this particular case, if that would help.

Senator LUDWIG—All right. I may have misinterpreted what you meant by ‘generally’—a reasonable thing to do, I think, under the circumstances.

Mr Killesteyn—The audit logs show that inquiries were made against a number of DIMIA databases by officers in managing the case. Just to explain: there are four primary databases that are used and were used by the officers at the time. One is what is called the ICSE database, and that stands for the integrated client service environment database. Again it might be helpful if I give you some context of all of these databases because it helps put the context of the searches that were then conducted.

The ICSE database was introduced in 1999-2000, essentially as part of DIMIA’s Y2K remediation strategy. It brought together, in a single database, some 13 different client databases, including compliance databases that were used prior to that. It is now used as the major client case management system for onshore applications and is available in a read-only format for officers in our overseas posts. It currently contains about 7.8 million client records.

The second primary database is one called IRIS—the immigration records information system. That is one of DIMIA’s legacy systems. It is a very old system. It is still used in all of our overseas offices for applications lodged offshore, and it has been used for more than 20 years now. It is due for replacement in the next three to four years with a global version of the

ICSE system, so that we reach a point in the not-too-distant future where we have a single client database for all clients, irrespective of whether they lodge their application here in Australia or overseas. My apologies for being a bit longwinded, but you will get the picture shortly.

The third database is one called the total records information management system—which we call TRIM. TRIM is DIMIA's electronic document management system. It contains documents and references to files containing documents relating to cases as well as policy and administrative matters, and of course a lot of the compliance files relating to Ms Solon would contain the sorts of documents that Ms Daniels, Ms Godwin and I have referred to.

Finally there is a system called the travel and immigration processing system—TRIPS. It is a very significant database in the context of this particular case, in that it contains client records but, importantly, it contains something called the movements database. The movements database is a comprehensive record of all entries and exits of Australian citizens and noncitizens. That database includes information about the name of the person, obviously; the passport that they use; the date of entry; the date of departure; the flight used and so forth. At this point it stands at about 301 million movement records contained on that database.

The audit logs show that the compliance officers, during that period from April through July—at the time that Ms Alvarez was removed—made a number of inquiries against the ICSE database, the TRIM database and the movements database. All of those inquiries were in the name that Ms Alvarez gave us—that is, Ms Vivian Alvarez. That included some permutations of the name as a consequence of information that we received from one of the nurses. Instead of the name being spelt 'Alvarez', which is the way we initially did the searches, the name was actually spelt 'Alverez'. So inquiries were made against both of those names against those three databases that I mentioned. In all of those cases, no records were found in the name of Vivian Alvarez or Vivian Alverez.

Senator LUDWIG—What other searches were conducted? Was the missing persons unit contacted?

Mr Killesteyn—No, there was no contact by us to the Queensland missing persons unit.

Senator LUDWIG—The national one might do.

Mr Killesteyn—No, there was no request for information from the missing persons—

Senator LUDWIG—What about the electoral roll?

Mr Killesteyn—I think there was an electoral roll search done not necessarily for Ms Alvarez but for a colleague or a partner that she had mentioned.

Senator LUDWIG—But you did not search the electoral roll for Ms Alvarez.

Mr Killesteyn—There is no record of that on the file. There may have been a search but there is no record of that on the file.

CHAIR—Ms Daniels was about to give you an answer.

Ms Daniels—The file notes that there was an electronic *White Pages* search for a person Ms Alvarez said she knew. That person's records were located in the electronic *White Pages*

and resulted in the visit to the residence that Ms Godwin mentioned earlier in an attempt to find more information about her or her passport. There was nobody home at that point.

Senator LUDWIG—Was a note left or a letter written to that address?

Ms Daniels—We have no record of that on the file.

Senator LUDWIG—What time of day did you turn up at the house?

Ms Daniels—Bear with me, and I will see if we have got that.

Mr Killesteyn—My recollection is that in subsequently checking the movement records of the individual, it turned out that the individual had left Australia. So it was quite clear there was no-one home, but I can confirm that.

Ms Daniels—There is no time of the visit. Maybe it would be helpful to supplement what Mr Killesteyn mentioned in terms of database searches. The record shows that it was 23 April that the searches that Mr Killesteyn outlined were done under those two variations of the surname of Alvarez and Alverez. It might also be helpful if I mentioned that it was on that date, 23 April, that there was a conversation with the Lismore hospital. I am now referring back to your comment, Senator, about whether there was any approval sought for the interview to take place. The compliance officer notes that he advised the person from the hospital that we would attend to interview Ms Alvarez when it was deemed appropriate by hospital staff so as not to cause problems with that person's recovery. That might go in part to your previous question about the hospital.

Senator LUDWIG—Yes. That is helpful, thank you.

Ms Daniels—If I go back to the searches, there was the search on 23 April. Further on in time on 12 July when Ms Alvarez was escorted to Southport there are also records of databases being searched, those ones that Mr Killesteyn mentioned: our movements records, our records management system TRIM, and the passports records. It would appear that they were not looking for passports for Ms Alvarez but rather for the person she said at various stages that she was married to, Mr Smith. So we have those records of 12 July and 23 April.

Senator LUDWIG—But in any event there was no letter sent to Mr Smith, no follow-up and no note left in the letterbox to say that you had called in, notwithstanding that that person had—

Mr Killesteyn—That is not the same is person.

Senator LUDWIG—Is that a different person again?

Mr Killesteyn—It is a different person.

Ms Daniels—But in any event, I think—

Senator LUDWIG—Do we want to use a different nomenclature?

Ms Daniels—There are a number of names of people in the files. You said 'in any event there was no letter'. What we are saying is: there is no record on the file. If a note was left at the address that may well have happened. There is just no record.

Senator LUDWIG—You might take that on notice and check to see whether or not a letter was sent or a note was left at the premises to indicate that officers had called by to inquire about a person you then knew as Ms Alvarez. During that period between—

Mr Farmer—It is a little broader than that. There may not be a note or a record on the file. The officers may have left a note at the premises, but we have not been in a position to ask them that.

Mr Killesteyn—That will not be determined, obviously—

Senator LUDWIG—No, but you can take that on notice.

CHAIR—But you will check.

Senator LUDWIG—I know that Mr Palmer, subject to his inquiry, indicated you not talk to them until he had had an opportunity to interview them, but it might transpire that they have subsequently had that interview and you can access the officer in a short while.

Mr Farmer—We will see what might be possible over time.

Senator LUDWIG—We will go through this just briefly. So there is no record of whether Centrelink or the AEC were contacted, or whether the National Missing Persons Unit inquired into that name—is that right?

Mr Killesteyn—That is correct.

Senator LUDWIG—And there was no check of citizenship records to see if they might reveal the person?

Mr Killesteyn—That is actually the nature of the inquiry. The ICSE database, for instance, contains all records of people granted citizenship, so we were pursuing all of the databases that we had which recorded either the entry of Ms Alvarez or the grant of a visa or citizenship. All of those records are the ones where that information is held, and that is what we were doing: we were taking the identity information provided by Ms Alvarez and running that against all of our records to confirm one way or the other what her status in Australia was.

Senator LUDWIG—That was from the original interview—you might have to remind me when it was, Ms Daniels.

Ms Godwin—It was 3 May.

Senator LUDWIG—So all these searches were being done on ICSE and TRIPS. They were logged on those particular dates—

Mr Killesteyn—The computer actually logs the inquiry as it happens.

Senator LUDWIG—And then there was no contact until 12 July?

Ms Godwin—There was contact with the hospital, as I have already mentioned.

Senator LUDWIG—No, with Ms Alvarez.

Ms Godwin—There is no record of specific contact with her until the 12th.

Senator LUDWIG—Are you aware of whether or not it was put to Ms Solon, as we now know her, that those checks had been done and had revealed that there was no known record

of that name? Did anyone ask, 'Is there another name we can look under to see if we can find you?' between that date of 2 May and 12 July, when your searches were being done?

Ms Godwin—As I understand it, there are no other records that indicate that. We do know that on the 13th we asked her what names and personal particulars she had used to enter Australia, and she indicated that it was in the name that she had given us, which was Vivian Alvarez.

Senator LUDWIG—It just seems extraordinary to me that, after running all those checks and turning up nothing on a person in this country, you would not then go back to them and say, 'Look, we couldn't find you under that name. Is there some other name we can check under?' It does seem extraordinary to me, I must say. Is there an explanation for that?

Ms Godwin—All I can repeat is that we are telling you what we can find on the file. The officers who were involved may well have put that to her, but if it is not recorded on the file we cannot tell you the answer to your question, because we have not spoken to the officers.

Senator LUDWIG—But there is no record of contact? You supplied the bridging visas at the time, so was there any update at that point from the officers? Under what name was the bridging visa supplied?

Ms Godwin—Vivian Alvarez.

Mr Farmer—Senator, could I sort of rewind the tape a bit. You asked whether we had made inquiries of the National Missing Persons Unit.

Senator LUDWIG—Or anyone else, really, such as Centrelink and the normal places you go when you are looking for someone. My poor experience in these sorts of things would suggest that you would look at your own records as a starting point and then look at other databases. Did you make inquiries of Centrelink? Did you make inquiries of the AEC—for instance, ask them to have a look at the electoral roll?

Mr Farmer—It was the particular reference to a unit. I think one of the great gaps in what we have in Australia is that inquiries really have to go jurisdiction by jurisdiction.

Senator LUDWIG—Were any of the jurisdictions contacted?

Mr Farmer—The—

Senator LUDWIG—I am sorry; did you want to say something, Mr Farmer?

CHAIR—No, I think Mr Farmer has finished. I thought he had finished.

Mr Farmer—Yes, the point—

Senator LUDWIG—I thought he was going to volunteer something, and I am happy to share that.

Mr Farmer—At the point in time we are talking about there was not a unit to make inquiries of.

Senator LUDWIG—This is in 2001.

Mr Farmer—Yes.

Senator LUDWIG—The national missing persons database did not come about until 2003. It would have been a contact to the AFP, then.

Mr Farmer—It was just in the interests of accuracy. I did not want to leave you with the impression that we—

Senator LUDWIG—That is quite right.

CHAIR—Okay. Where are we up to in terms of questions?

Senator LUDWIG—I thought we had gone through the searches. From 12 July the interview was on what date and at what time?

Ms Godwin—It was on 13 July. I do not know if we have a time for the interview. Unless Ms Daniels has one, I am not aware that the time is actually noted.

Ms Daniels—I do not have it.

Senator LUDWIG—What happened after that? Ms Solon was detained.

Ms Godwin—She was detained, as I understand it, and they had arranged for her to be accommodated in a motel in Brisbane, one that we use for detention if someone has a particular need. She would have been transferred then from Southport to Brisbane, to the motel where we had arranged accommodation for her.

Senator LUDWIG—Why wouldn't she have been detained in the Brisbane Women's Correctional Centre? That is the usual place you detain in Brisbane, isn't it?

Ms Godwin—It usually is but, as I just said, they sometimes use a motel near the airport if there are particular reasons to do so. In this instance the discharge certificate from the hospital indicated there were some mobility problems, that Ms Alvarez, as she was then known, was able to walk and able to look after herself but had some gait problems and needed the assistance of a walker. So I think they decided, from the information on the file, that it would be more appropriate to accommodate her at a motel. I think they arranged for her to have a ground floor room so that she did not have to negotiate stairs and things like that.

Senator CHRIS EVANS—I have been meaning to ask this for some time now just to be clear. I do not want to unnecessarily get into this woman's medical condition, but she was discharged from the hospital. Did you get a report from the hospital about her current medical state, or did you yourselves then get independent advice about her condition?

Ms Godwin—Sorry, I am just finishing a Smartie.

Senator CHRIS EVANS—The minister distributed Smarties and then left, so I do not know what the story is. She obviously tried to sweeten us up. She always tells people she is a sweetie. No doubt she will rejoin us at some stage.

Ms Godwin—What is on the record is a discharge note from the hospital which indicated that Ms Alvarez had been an inpatient and the period of time she had been an inpatient. It says, 'She walks with a walker for safety as she still has some gait problems and hand weakness. She is independent with self-care, with encouragement.' That was the note provided at the point of discharge. Subsequently while she was in Brisbane she was attended by a doctor.

Senator CHRIS EVANS—Why?

Ms Godwin—This takes us a little later in the story, but there were discussions clearly between us and the consulate in Brisbane about a travel document and so forth. There was a question raised, I think at that point, about whether she was in fact fit to travel, and a fitness to travel certificate is usually sought in any event. So a doctor, a local GP—I do not know whether he was a local GP, but a doctor who I understood was just a community doctor—attended and—

Senator CHRIS EVANS—At the department's request?

Ms Godwin—I think we asked ACM. At that point, ACM were providing the security service at the motel and they sourced the doctor.

Senator CHRIS EVANS—The doctor was sourced at your request to provide a fitness for travel authority for Ms Solon—is that right?

Ms Godwin—That and, according to a note on the file, either medical attention or a certificate of fitness: did she need medical attention or was she fit for travel?

Senator CHRIS EVANS—What was the date of that medical examination?

Ms Godwin—That was 19 July.

Senator CHRIS EVANS—And the doctor gave you a certificate to say that she was fit to travel?

Ms Godwin—Yes.

Senator CHRIS EVANS—Was there any psychiatric assessment done on Ms Solon as part of this process?

Ms Godwin—There is no record of a psychiatric assessment during the period that she was in detention. If she had a psychiatric assessment while she was in hospital, we are not privy to that.

Senator CHRIS EVANS—It was not provided to you.

Ms Godwin—She was a lawful noncitizen on a visa at that point and a patient of a hospital. If the hospital or the doctors undertook a psychiatric assessment, it was not drawn to our attention.

Senator CHRIS EVANS—I am not trying to interrupt Senator Ludwig's flow. The key question for me was that this woman was not able to successfully identify herself to match the travel documents and clearly had some physical disabilities. I guess I am asking whether you got a fitness to travel in the sense of her physical wellbeing. She had a walking problem. She had hand weakness, so much so that she could not sign the statement of interview. The other obvious question is: was there any assessment made of her psychiatric mental health condition?

Ms Godwin—I think I have answered that. There is no evidence on the file of an assessment during the period that she was in detention, which was that one week. If there was a previous assessment, it was not drawn to our attention.

Senator CHRIS EVANS—You do not know whether there was any assessment done, for instance, when she was a Lismore hospital?

Ms Godwin—No, we do not.

Senator CHRIS EVANS—There was nothing that prompted the department to think that one was necessary during the period that she was in your care?

Ms Godwin—I can only tell you what is on the file. I can tell you what the hospital discharge note said. It made no reference to psychiatric issues.

Senator CHRIS EVANS—That is what I am trying to get a sense of. Following the Ms Rau incident, it is one of the things that has come to you and the question of how we handle people with mental health conditions seems to turn up in every Senate inquiry that we are involved with now. It is an obvious question.

Senator LUDWIG—With regard to the identification on the 12th and the interview on the 13th, were fingerprints requested or taken? Were any other identifying marks or photographs taken at that stage?

Ms Godwin—Clearly a photo was taken at some point during the process because that is the photo that we had that we were able to use to compare with the passport photo when we looked at it recently, but there is no evidence at all that she was asked to provide fingerprints. Of course, at that point we did not have any powers to require people to give us fingerprints.

Senator LUDWIG—No, but you can ask and they can provide them.

Ms Godwin—There is no evidence that she was asked and there is no evidence that she provided them.

Senator LUDWIG—You do not know whether the photograph was taken in hospital or at the earlier interview on 2 May or at a later date? Is there a file note to indicate when her photo was taken?

Ms Godwin—I am not personally aware. I do not know.

Ms Daniels—No, not that I recall.

Senator LUDWIG—So you are unsure of when the personal identifiers were taken from Ms Solon—is that right?

Mr Killesteyn—That is correct. I will make a point about fingerprints. There is no point taking fingerprints if you do not have a database to compare them against. You have photographs. In the context of the subsequent identification in April or May this year when we were trying to confirm, we obviously had a comparison of one photograph with another. But if you have a fingerprint and nothing to compare it against or no process—and we are talking about four years ago—it does not help.

Senator LUDWIG—I am just following up on matters. My recollection is that there was a missing persons bureau; post 1999, Senator Vanstone introduced a new regime which included the establishment of CrimTrac, and their key deliverables—there were a number of them—included a fingerprint or a CNI process. So we are talking about a period that was certainly very close to that one. I am not sure whether those things were up and running, but at least by asking we will know what you did do or what you did not do in this instance.

Certainly, states may have had records of those sorts of things, and if you had taken them you may have been able to send them to various states, be it Queensland or New South Wales, to check those records. But that is a matter of conjecture by me. Firstly, were fingerprints taken? Secondly, were they then forwarded to any state police force for checking?

Mr Killesteyn—We have no record of that on file.

Senator LUDWIG—You can see the purpose of the question, though.

Mr Killesteyn—I understand, but I did not want people to jump to conclusions that that was a failing in some way that could have solved this issue. I am registering a view that this is an evolving art, if you like. Four years ago the sorts of technologies, processes and procedures that we are now talking about just were not in place.

Senator LUDWIG—I do not know what was in place then. Certainly, that can be established. I can ask what you in fact did and what checks you made. Did you check with the Australian Taxation Office to see whether there were any records?

Ms Godwin—There is no record of searches other than the ones that we have mentioned to you.

Senator LUDWIG—Was there a record of the interview of 13 July that indicated that those searches or checks had been done and they had revealed there was no identity able to be established from any of the records held by DIMIA? Was that put to Ms Solon at that time?

Ms Godwin—I am not aware that it was. I do not think there is a record that says it was. I think there is a file note that says we checked the databases again at that point, but I do not know whether that was put to her or not.

Senator LUDWIG—Which databases were checked after the 13th?

Ms Godwin—I do not have a list here. The databases that were checked on the 13th?

Senator LUDWIG—From the 13th onwards.

Ms Daniels—On the 12th we have records that ICSE, TRIPS and TRIM were checked. We also have another system called MPMS.

Senator LUDWIG—Is that a new system or a legacy system? I have not heard of that one.

Mr Killesteyn—It is one of the legacy systems. Essentially, it would provide the same detail about the movements of any individual.

Senator LUDWIG—So it is similar to TRIPS?

Mr Killesteyn—That is correct.

Ms Daniels—There is a record that the passport system was checked but it goes on to say that they could not identify an Australian or New Zealand passport in the name of Philip Smith, whom Ms Alvarez had indicated was about 53 years old, because there were too many records. So the inference is that it was the passports check on Mr Smith that was being checked.

Senator LUDWIG—But you are unaware whether there was a passports check in respect of Ms Alvarez or under—

Ms Daniels—There is no indication that there was a passports check on Ms Alvarez, but we know that there was not an Australian passport under Ms Alvarez's name. If I can go back to your original question, in terms of what we asked of DFAT about Ms Alvarez's passport, I said that we had requested a passport photograph from the DFAT passports office. We made a request under the name of Vivian Young because we knew at that stage that a passport had been issued to Vivian Young.

Senator LUDWIG—How did you come to know that?

Ms Daniels—By the time we did the searches on 21 April this year, and we had those various combinations of her name, we were able to identify reasonably quickly that that person, Vivian Young, was an Australian citizen. We then checked with the passports office.

Senator LUDWIG—So you only then checked the passport under that one name?

Ms Daniels—Yes.

Senator LUDWIG—Have you subsequently asked the passports office whether her name appears under any other name?

Ms Daniels—DFAT has some run some very extensive checks on their passports database under all combination of names, at our request.

Senator LUDWIG—What has been the result of that?

Ms Daniels—Nothing—nothing except the records that we know exist of her in her various passports.

Senator LUDWIG—Under the name of Mrs Vivian Young?

Ms Daniels—I do not know about the Ms or Mrs but Vivian Young.

Mr Killesteyn—Can I clarify a point about the searches. I mentioned those databases. The searches on the name Vivian Alvarez did not yield anything. We subsequently understood that she was Vivian Solon Young, and when you search against the same databases I mentioned then all those records emerge. All the records on our records—citizenship records and movement records—actually come up.

Senator LUDWIG—What was on the citizenship record—does it show?

Mr Killesteyn—It essentially shows that Ms Alvarez came to Australia in 1984 as the spouse of Mr Young, that she was granted citizenship in 1986—

Senator CHRIS EVANS—In what name?

Mr Killesteyn—Vivian Solon Young—and that during the period from 1986 through to 1993 there were movements in and out of Australia—in fact, I think about 14 movements—travelling on an Australian passport. It is those records of the passport numbers that we then used to retrieve the photograph.

Senator CHRIS EVANS—Can you tell me the name the passport was held in?

Mr Killesteyn—The Australian passport?

Senator CHRIS EVANS—The one you say she travelled on on 14 occasions.

Mr McMahan—Vivian Young.

Senator CHRIS EVANS—So it was not Vivian Solon Young; it was Vivian Young?

Ms Daniels—From our movement records, and covering those various movements that Mr Killesteyn mentioned, there are initially movements for Vivian Solon Young. This does not necessarily mean that that is what was on the passport but, on our movement records, it is Vivian Solon Young; likewise, Vivian Solon and then back to Vivian Solon Young.

Senator CHRIS EVANS—Are you able to provide an explanation as to why they were different? I am not familiar with your systems, so forgive my ignorance, but I would assume the passport would have been only one passport or successive passports in the same name. Can you explain for me how the—

Mr McMahan—The passenger card was filled out by her.

Senator CHRIS EVANS—That is what I was trying to understand: the movement records reflects what the passenger card says.

Mr McMahan—Correct.

Senator CHRIS EVANS—But obviously the passenger card would have to have borne some relationship to the passport, because you have to produce them at the same time. You could not have said Fred Smith and the passport say Vivian Young'; it must have been close.

Mr McMahan—That is correct. It had either Solon Young or Young. At the primary line, the expectation would be that they would ask why they she had used a different name or they may have just accepted it, because women in particular change names and use variations of that.

Senator CHRIS EVANS—That makes sense. I am just trying to understand why it was that your records showed up with two different names, but your record would be the name off the passenger card.

Mr McMahan—Yes.

Senator LUDWIG—I think we are at the point where certain checks were made on the 12th of your current systems, and there was no record. There is no record of whether or not that was subsequently put to Ms Solon again that there was no record. That is correct, isn't it? I think that is where we were at.

Ms Godwin—There is nothing on the file that says it was. That is all I can say. It may have been, but we do not know.

Senator LUDWIG—So there were no further checks of the ATO, Centrelink or AEC records or any other checks outside of those that you have just indicated that are reflected in the file?

Ms Godwin—There is no record of it, no.

Senator LUDWIG—What happened from there? We have accommodation in Brisbane at that point in time—on what night?

Ms Godwin—Starting on the 13th. After that—and again this is based on what the record shows—there appears to have been a process of exchange between us and the consulate. The consulate interviewed her on 16 July. There are indications of us instituting inquiries about

services to assist her on her return, given that she said she had no family in the Philippines to assist her, and about arrangements to meet her. On 18 July there was an inquiry from a community worker who had apparently been approached, according to the record, by the Philippines consulate regarding Ms Alvarez's financial situation. There were some discussions with that person. On the same day, the 18th of July, at the request of the consulate, a community worker—who I think in fact was a Catholic nun—visited Ms Alvarez with Ms Alvarez's agreement. So she had contact with the consulate, she had contact with the community worker and there appear to have been discussions between us and the consulate about the issuing of a travel document. On the 19th there is an indication that the consulate was asking about whether she was fit to travel, and that is the same day that we asked ACM to arrange for a doctor to attend Ms Alvarez. There is an email that says that was in the context of either medical attention or a certificate of fitness to travel. I think we have already mentioned that we then got that certificate from the doctor on the 19th.

Senator LUDWIG—What happened next?

Ms Godwin—The travel document was issued—according to the file note that was issued on the 19th.

Senator LUDWIG—So that was from the Philippines consulate?

Ms Godwin—Yes, it was from the Philippines consulate in Brisbane.

Senator LUDWIG—And then?

Ms Godwin—On the same day, the 19th, prior to the travel document being issued there was some discussion in an email that they did not yet have the travel document and that she had been booked to fly the following day but if that did not happen then we would have to re-book her travel arrangements and at that point we might need to review place of detention et cetera. So there was some discussion at that point about what would happen if the travel document was not issued. In any event, the travel document was issued and she departed the next day.

Senator LUDWIG—Was she escorted?

Ms Godwin—She was escorted.

Senator LUDWIG—What does the record show about the escort?

Ms Godwin—The email that we got on the 19th—

Senator LUDWIG—Is that by a contractor from ACF?

Ms Godwin—The airline arrangements for escorts have changed in recent times. I think in those days there was no specific requirement for an escort and we would normally only arrange an escort if we thought there was maybe a security issue. In this case the notation was that they arranged an escort because of her particular needs, not because of her demeanour. That was the notation on her file.

Senator LUDWIG—So it was because she had a walker that you arranged an escort to assist her?

Ms Godwin—Yes. Again, I am just telling you what is on the file.

Senator LUDWIG—So that is not notated on the file.

Ms Godwin—It says ‘because of her needs’ not because of her—

Senator LUDWIG—But you do not know what that means?

Ms Godwin—It says, ‘Due to her condition it was decided to provide an escort to Ms A to assist with her travel,’ not because of her demeanour. That is part of this particular file note.

Senator CHRIS EVANS—So what we do not know is what ‘her condition’ means.

Ms Godwin—We have the other information—that she was walking, but with difficulty, and that she was able to look after herself, but with encouragement. We also knew that she had said that she had no family back in the Philippines. Again, this is an assumption on my part, I am putting together the fact that she had this mobility problem and that we were thinking, obviously, in terms of how she could be assisted on return. That was part of the consideration about having an escort, who was a female escort, to assist her and to, presumably, make sure she arrived safely and so forth.

Senator LUDWIG—Did she still have the walker at that stage?

Ms Godwin—There is no record of that. I do not know.

Senator LUDWIG—Do you know whether it was returned to the hospital prior to departure?

Ms Godwin—I do not know. We do know that she booked three pieces of luggage.

Senator LUDWIG—So there was no walker booked.

Ms Godwin—I do not know if one of the pieces of luggage was a walker.

Senator LUDWIG—What is the arrangement for when you return them? What happens at the point where they disembark the aeroplane?

Ms Godwin—It depends a lot on the nature of the—

Senator LUDWIG—In this instance. What does the file note show?

Ms Godwin—The file note shows that we arranged an escort. There are clear indications on the file of consideration about what would be the arrangements for meeting her and assisting her when she arrived. There is a file note from late in the evening of 20 July which indicates that a call was received from the escort to advise that Ms Alvarez was met on arrival by an officer, named, from the Overseas Workers Welfare Administration—and the file note indicates from the Australian embassy. That, as it turns out, is a misunderstanding on the part, presumably, of the escort. But the file note referred to the phone call from the escort to advise that they had arrived safely, that she had been met and that she had left Ms Alvarez with the Overseas Workers Welfare Administration. As I said, the file note says, ‘from the Australian embassy’ but, given that the information was from the escort, we think that was the escort making an assumption that they were from the embassy, not because they actually were.

Senator CHRIS EVANS—How do I know that is not an assumption on your part, though?

Ms Godwin—Because the Overseas Workers Welfare Administration is, in fact, a Philippines government agency. That is the first point. And there is no record of anybody with

the name of the officer from that agency that met Ms Alvarez being employed at the Australian embassy.

Senator CHRIS EVANS—Can you just read me the file note?

Ms Godwin—File note: ‘Call received about 10.30 pm from escort to advise that Ms Alvarez was met on arrival by [name of the officer] the Overseas Workers Welfare Administration officer from the Australian Embassy.’

Mr Killesteyn—Senator, this was the immediate point at which we started the search for Ms Solon in the Philippines. We had that note on the file and, as a consequence, we immediately started inquiries with the embassy in Manila to make contact with the particular individual that was named in the embassy. As Ms Godwin said, the embassy started to search their records—they obviously did not know of this person—to see whether this person had ever worked for the embassy in Manila. Subsequently, through a range of inquiries, it was concluded that she did not. The reference to the Overseas Workers Welfare Administration was actually a reference to an agency which is part of the Philippines department of social welfare. The OWWA actually keeps a desk, if you like, at Manila International Airport. They greet returning Filipino workers as part of their role. So, we pieced together that particular—

Senator CHRIS EVANS—What does the file note say about who was supposed to meet her?

Ms Godwin—There are indications on the file of a variety of considerations about her being met. It is not clear from the file precisely what those arrangements were, and there does appear to have been confusion, at least at one point. There is also a file note from the same day, 20 July, from our DIMIA office in Brisbane saying that they had advised the DIMIA office in Manila that she had departed on the flight and that she was accompanied. Then there was a phone call from the DIMIA Manila office to DIMIA Brisbane in which DIMIA Brisbane confirmed that DIMIA Manila was not required to meet her at the airport—again, presumably because alternative reception arrangements had been made.

Senator CHRIS EVANS—Did part of that discussion suggest at any stage that the Australian Embassy was to meet her?

Ms Godwin—There was the reference I just made to us clarifying with Manila that they were not to meet her. What is not clear is whether there had been any earlier discussion about whether they would meet her or not.

Senator CHRIS EVANS—You said there was a range of discussions about who would meet her. I am trying to ascertain what you mean by that and who were mentioned as possibilities.

Ms Godwin—I am sorry we are jumping around a little bit here. I think I mentioned that earlier there had been an indication that we had set inquiries in train about services that might have been available to assist Ms Alvarez when she arrived back in the Philippines due to her limited mobility. I think there was also a reference on the file to us telling the Manila DIMIA office that those arrangements were being pursued by a community organisation here in Australia. That is why I say it is not completely clear from the various notations on the file precisely who made the arrangements—whether it was us or the community agency. There

does appear to have been a point of confusion about who would meet her. It was clarified on the day that the embassy did not need to meet her, presumably because other arrangements had been made.

Senator NETTLE—My question is related to the Finn judgment that Senator Bartlett was talking about. I might ask a couple of question on Alvarez first. I understand the situation that you are in in having been instructed not to interview the officers involved in the Alvarez case, but there seem to have been a lot of occasions during the evidence on which you have said something is not indicated on a file note. I am wondering if you have any guidelines within the department about what kind of level of detail should be indicated on file notes.

Ms Godwin—Generally speaking, we would expect the records to be as comprehensive as possible, but all I can tell you is what is in the record. One of the issues that I think Mr Farmer referred to earlier was that looking at some of these cases raises the question of whether these records are sufficiently comprehensive and whether people have understood the need to record things. One of the issues is that we have not asked for any other source of information. For example, there might be emails or something of that sort. We have just looked at the files. There may well be other records that we have not yet been able to access or there may be other recollections that officers have. But I am only able to tell you what is on the file and, to the extent that there are things that are perhaps not as detailed on the file, that is obviously one of the lessons coming out of all of this.

Senator NETTLE—At what point did DIMIA become aware of any mental health issues that Vivian Alvarez may have?

Ms Godwin—I think I have already answered that. We were not specifically aware, at that point, of mental health issues. While she was in hospital, if there were any, they were not drawn to our attention—or at least there is no evidence that they were. We ourselves engaged a doctor to attend her, and that doctor did not draw any mental health issues to our attention.

Senator NETTLE—So there was no awareness prior to her deportation. That is the evidence from what you were saying before. The question is: when did you become aware? Was the department notified of any—for example; I do not know—history of mental health issues that Vivian Alvarez had had through the email contact that you had in 2003? Would that be the first point at which you were aware?

Ms Godwin—I would have to ask others to comment on the detail. I am not aware that that was drawn to our attention at that point. The inquiry in 2003 was a missing persons inquiry and focused on her travel, if I can put it that way. The only other indication, Senator, if I can just make sure that we are complete on this, is that we understand that, when she was admitted to hospital in Lismore, on the weekend of 31 March, 1 April, she was admitted to a unit in the hospital called the Richmond Clinic, which is, as we understand it, the psychiatric clinic of the hospital. She, however, did not remain there. She was transferred to the main part of the hospital, I think after about only two days and, as I say, there was no information provided to us, at that point, of a mental health issue and no subsequent information provided to us of a mental health issue.

Senator NETTLE—I was asking the question because, in the context of what we were talking about before—lessons learnt from particular cases—it is a question that, particularly

after Cornelia Rau, as Senator Evans said, is often asked: at what point may it have been appropriate for a psychiatric assessment to be carried out? Is that one of the issues that the department is looking at? Where there are instances where somebody has an unknown identity and there may be indications or there may not be—for example, somebody being in the Richmond Centre at Lismore Base Hospital I would see as an indication—but whether there are or whether there are not, that point at which somebody has an unknown identity might be an appropriate time to carry out a psychiatric assessment.

Ms Godwin—One of the things we are certainly looking at in the context of the review and escalation processes and the national identity verification and advice unit that Mr Farmer has referred to is to make sure that cases where identity and status cannot be quickly confirmed, resolved definitively, are drawn to more senior attention so that advice can be provided of what additional either searches or indeed other actions such as a medical assessment should be undertaken. One of the challenges in these situations is to try to get a picture of the whole case, if I can put it that way—why might the person not be able to give us a complete account of themselves or in a way that enables us to establish their identity? So that is one of the things that we are looking at in that context. I would say, however, that obviously we will still need to be careful about those sorts of processes because we also do not want to assume that everyone who cannot give us information is by definition psychiatrically ill and have them all assumed to need psychiatric assistance, although the question of an assessment may well be a relevant consideration at that point.

Senator NETTLE—Would it be fair to say that you were looking at options which may include referral to a senior officer, who may suggest a psychiatric assessment, rather than requiring a psychiatric assessment at that point?

Ms Godwin—I do not know that we have definitively decided on all of the procedures that would be attendant on this escalation—if I can put it that way. One of the things that we have already done is to issue new instructions on the nature of the identity checking steps that need to be taken. One of the tasks of the detention review manager will be to check that all of those steps have been taken; to review the results of all of those steps; and then, if it is still not resolved, to escalate it. At that point, the initiating officers would be looking for advice on what next we should take next—bearing in mind that, at that point, it seems to us that we are moving from a process of standard procedures into a more intensive investigation phase. We will need to work through the question of what the nature of that investigation is and whether we would want to do the same investigation in every case. The point I am making is that, clearly, the issue of whether or not a mental health assessment would be a relevant part of such an investigation is one of the things that will be on our list, if I can put it that way.

The other thing that we are including in the instructions is that, regardless of whether or not the officers believe it has been resolved, anybody who says they are a citizen or a permanent resident, or for whom a record cannot be located in our entry records, regardless of whether or not the initiating officer believes that has now been resolved, those cases must be drawn to more senior attention so that senior officers can satisfy themselves or, if it is not resolved, how we take it forward. If the initiating officers think it has been resolved, the question is whether senior officers agree that it has been satisfactorily resolved.

Senator NETTLE—One of the things I remember reading on an MSI yesterday was about where somebody says that they are a citizen and—correct me if I am wrong—the officer is required to, perhaps, travel with them to a point at which they can show any documentation to verify that they are a citizen. Is that correct?

Ms Godwin—I am not sure of which MSI you are talking about. Is it the new one?

Senator NETTLE—I do not know either. It would be one of two that I have got, and they are MSI321 and MSI234. I do not remember which one it was. I could have a look now, but it is going to be one of those two. The dates are June 1999 for MSI234 and July 2001 for MSI321.

Ms Godwin—If it is possible, I will need to take that on notice. Two things are happening around this general question. First of all, we have issued a new instruction on identity checking, which replaces previous instructions. So I would need to check whether or not it replaces one of those. Secondly, we are reviewing all of the instructional material around this issue to make sure that wherever the MSIs talk about identity checking they talk about it in a consistent fashion—in other words that the new instruction, which is the most up-to-date advice to officers, is reflected in revisions to any other MSI that talks about identity checking. That process is under way now. It is one of the tasks of the new unit: to make sure that the instructions on identity checking are consistent throughout all of our instructional material.

CHAIR—Senator Nettle, can we resume this after a break?

Senator NETTLE—Yes.

CHAIR—Thank you. It being 6.30, I can advise that the Migration Agents Registration Authority, the MRT and the RRT will not be dealt with this evening. I have asked the secretariat to advise them accordingly and to ask them to return tomorrow morning. I can also advise that it is not expected that we will reach any of the outputs in outcome 1 this evening, but we will continue in general questions. I am of course keen to reach internal product, but my colleagues are just not cooperating. We will continue in general questions until the conclusion of examinations this evening. Mr Farmer, did you have something you wished to say?

Mr Farmer—I have a question, because of the need for us to let officers know who will be required in the morning. Do you envisage getting on to outcome 1 at the beginning?

CHAIR—I cannot advise you on that right now.

Proceedings suspended from 6.31 pm to 7.40 pm

CHAIR—When we concluded at 6.30 we were taking questions from Senator Nettle, which we will go back to. But just to clarify matters in relation to tomorrow morning, the current agreement is that the first hour between 9 and 10 will be spent on outcome 2. We will then go back to the order of the agenda for outcome 1 and follow the program.

Senator Vanstone—Do you mean by that that the committee has decided the people from outcome 2 only need to be here between 9 and 10—that you will finish with them in that time and we can then send them away—or do you want us to keep them waiting in case you subsequently want them back?

CHAIR—I will make that determination at 10 o'clock, but I expect they will be able to leave then. Unless there is any further information to place on the record—

Mr Williams—In follow-up to some issues raised by Senator Ludwig earlier in the day about the photographs for the family in Perth concerning their newborn child, photographs have been taken, facilitated by GSL. They have taken some photographs and they have been sent away to get printed. Since that occurred, there has been an incident in which a supporter of the group arrived with a bag and in the bag was a camera and they wanted to give that camera to Mr Tran. GSL said, 'That's fine; we will give that to him.' But the supporter was not happy with that and, before the conversation could be fully concluded, she left. That has happened in the last hour or two. In order to make sure there is no misunderstanding, I thought I should let you know.

CHAIR—Thank you. Senator Nettle, please continue.

Ms Godwin—Senator Nettle, I would like to add one point to the conversation we were having and the series of questions we were pursuing just before the dinner break. In terms of the psychiatric assessments, the legal advisers have pointed out a particular issue that we need to make sure is included in the consideration of the issues. We cannot force someone to have a psychiatric assessment; we would have to have their consent. If they do not consent to it, it would then be a matter for a medical practitioner to decide whether it was sufficiently necessary to warrant some sort of involuntary arrangement. So while we could include it among the list of things that we would consider, we cannot, as I say, insist.

Senator NETTLE—Thank you. Does the list of things to consider include any external review by somebody other than DIMIA of the ongoing detention of that person?

Mr Davis—It depends on what you mean by the term 'ongoing detention'. As I indicated earlier, on a case-by-case basis, where there has been independent medical advice of some sort, we have sought third opinions on occasions where there is a difference of view. I have already instituted arrangements where routinely, if we get external medical advice from whatever source—as long as it is medical, of course—we will provide it to our service provider and they will examine it. Within a short period of time—and I have put a seven-working-day time limit on that—I want them to assess that and indicate whether they agree, disagree or whatever. If there is any disagreement, we will automatically seek further advice. So that is in terms of medical care. How that impacts on their status is a different question, because it goes to the nature of the visa arrangements.

Senator NETTLE—Thank you for that. I was not actually thinking about medical care; I was thinking about an organisation outside DIMIA making a decision about the lawfulness and the reasonableness of the suspicion that DIMIA has reached in relation to their ongoing detention. Thank you for the answer but that is actually what I meant. In the way that being detained, for example, under the Crimes Act in a whole variety of different states and in the Commonwealth has a point at which there is a requirement to go before a magistrate or whatever about the decision on ongoing detention, is that one of the things on the list to be considered?

Ms Godwin—It is not something that we are currently considering. It would constitute a major policy consideration which would be something that would be a matter for discussion with the minister and the government.

Senator NETTLE—Ms Godwin, you mentioned before the report by I think the social worker that she was able to take care of herself. I wrote down at the time that you said she was ‘able to look after herself with encouragement’. My understanding is that the Philippines Embassy indicated they had been shown a letter from an Australian social worker stating that she was able to take care of herself. Do you know what the advice was? Was it ‘able to take care of herself’ or the words that you used before, ‘able to take care of herself with encouragement’?

Ms Godwin—I think what I read out was the actual discharge note from the hospital, written by the social worker provided as the discharge note on the day she was discharged from hospital.

Senator NETTLE—Presumably there is not another letter from another Australian social worker to which, for example, the Philippines Embassy could be referring.

Ms Godwin—It goes to our basic difficulty. From our files, no, there is no evidence of another letter. If somebody else has written to the Philippines Embassy we do not have that on our file.

Senator NETTLE—What is your understanding of ‘with encouragement’? What does that mean in that context?

Ms Godwin—I do not have any particular understanding of it in the sense that we have not spoken to the people at the hospital, we have not spoken to the social worker and we have not spoken to our own staff.

Senator NETTLE—I will put that on notice: what the ‘with encouragement’ would mean in that context.

Ms Godwin—If we can provide any further information on that, we will.

Senator Vanstone—Senator Nettle, you have probably heard me say this before but it bears repeating. I say it particularly in relation to the media, that I have seen plenty of things in the media that I do not have any evidence to conclude are true or in some cases I have got evidence to conclude otherwise. But I am trying to refrain, as I indicated earlier, from making comment about that and saying, ‘That’s not what I think,’ because I have appointed someone who will find out the facts. In addition to that, which is a simple point, we really do not know until we get someone to assess, as you are indicating, the record we have with various other records and what people say about them. So we will not know until Mr Palmer has reported. I am not saying that he will report on every fact either, but we will know the important things we need to know.

Over and above that, as you would expect, if I have a conversation with you, you might write a file note that reads somewhat differently than mine does on those matters. This issue here is a small one I know, but it does highlight it. I have seen comments about her travel, I have seen comments about whether she had an accident, I have seen comments about initially how many kids she had—a whole range of things that have been so far off the mark from

what I believe to be the case. I have seen other things that I think if they were in the media would also create a completely different impression if you put that thing alone in. It is just an example of how difficult it is going only from the paper record and comparing one with another as opposed to trying to get the whole story. I do understand the media's desire—need, in fact—to inform and get a story et cetera. But the fact that someone in the media has seen something written down does not of itself make it a fact.

Senator NETTLE—That is a fair point to make and you have made it before.

Senator Vanstone—I am not doing it because of you; I am doing it because, if I do not take every opportunity to do it, everything does become fact. I am not talking about your issues. I could make a list now of things that have become fact in people's minds about Ms Alvarez that I think are a load of rubbish.

Senator NETTLE—Yes. It is a fair point to make. In that particular instance I was not quoting from the media; I was quoting from a statement from the Philippines embassy.

Senator Vanstone—That is what I am trying to say. I am just taking this opportunity. If I was rousing on you, I would make it a bit clearer.

Senator NETTLE—When we were talking before about her incapacity to sign her name, is that some indication of what the term 'with encouragement' might relate to?

Ms Godwin—I do not know. I am telling you as factually as I can what the record says. That is what the record says.

Senator NETTLE—Okay. Earlier, when I asked, 'Are you considering any outside review of detention?' you said, 'That would be a major policy change.' Perhaps I should just ask that question of the minister.

Senator Vanstone—Sorry?

Senator NETTLE—I just asked Ms Godwin a question before: on the list of things being considered, is there the option of external review to the ongoing detention by DIMIA? In the way that people who are detained under the Crimes Act, for example, have an external review about their ongoing detention, was that on the list? Ms Godwin said that that would be a major policy change and something that was up to the government. So can I ask you: is that up for consideration?

Senator Vanstone—I think I will leave my comments too. I will particularly wait and see what Mr Palmer has to say. That will be not an absolute guide, as I said to Senator Evans, but it will be an indication of what we need to do. Just to reaffirm what I said this morning, this department is the best in the world in so many fields. We are determined to fix whatever problems there are and be the best in this one too.

Senator NETTLE—So you are not ruling it out; you will wait and see.

Senator Vanstone—Yes.

Senator NETTLE—Okay. I want to ask a question about something that Senator Bartlett asked earlier today in relation to a comment about a particular detainee in Baxter not being able to have access to psychiatric care at Glenside. I have had calls in my office from people who are in contact with that person. I want to clarify what you had said, because my memory

of the answer was that it mentioned 'the difficulties of getting people into Glenside'. Did you say anything more specific in relation to that person's case that I missed?

Mr Davis—I did. At the time when I said those comments I understood we were seeking to place the gentleman you were talking about into Glenside under voluntary assessment. I understand since that time he has actually been scheduled or sectioned for involuntary care, although perhaps I need to confirm that as well. I also understand that he is on his way to the Royal Adelaide Hospital as an interim measure via the Royal Flying Doctor Service. That has evolved since I made my comments earlier in the day. That was a statement based on the information I had at the time.

Senator BUCKLAND—If the particular detainee is suffering a psychiatric condition, then the Royal Flying Doctor Service will not fly them. You would have to go by road. I understood that was the way it was done. I am not complaining if they are flying him, but that information seems to be contrary to my understanding of how it works.

Mr Davis—I am reporting what I have been advised. I am happy to try and check that again, but I am just reporting what I have been advised earlier in the evening. I can seek to confirm that if you would like me to.

Senator BUCKLAND—I would, because it seems a shift in policy within the services themselves.

Mr Davis—I will seek to clarify that.

Senator NETTLE—I will go to some comments about Glenside that have been mentioned previously. Do you know how many detainees are currently at Glenside?

Mr Davis—My understanding, again based on this morning's information, is seven.

Senator NETTLE—How many GSL staff are required to be at Glenside per detainee or however you qualify that?

Mr Davis—Perhaps Mr Williams can help me, but I do not actually know how many are there at the moment. That is basically part of an assessment process, depending on the case load, the configuration and where they are in Glenside. I do not know if Mr Williams can help me there.

Mr Williams—I think it is roughly two officers per detainee, although it is something that we are in discussions with Glenside about, because there is probably a better way to configure that.

Senator NETTLE—Is that two all the time or two on shifts?

Mr Williams—Two all the time, as I understand it.

Senator NETTLE—I do not know how long their shifts are, but if there are seven detainees there currently what do you estimate would be the total number of guards that would be needed?

Mr Williams—If it is two per person at any given time and there are seven people, there are probably 14 staff there.

Senator NETTLE—Would they be on eight-hour shifts?

Mr Williams—They are on shifts, yes.

Senator NETTLE—So it would be three times that number.

Mr Williams—That is right. There will be shifts and the staff will be replaced after eight hours or whatever by another group.

Senator NETTLE—Could you take on notice the costs of providing those guards?

Mr Williams—Sure.

Senator NETTLE—Because presumably there are costs associated with not only wages but also where they are staying.

Mr Williams—Yes. As I say, we think there is probably a better way to configure that and we are in discussions with the hospital about that.

Senator NETTLE—Another thing I wanted to check: is it correct that there is a new wing that has been opened up at Glenside for Baxter detainees called the Brentwood ward?

Mr Davis—My understanding is that there was an area that Glenside identified themselves and that they reopened—my understanding is it has been used before—for the detainees. Our detainees are together in that wing. But that wing has been used at other times.

Mr Williams—They are mostly together, I think; there might be some who are not.

Senator NETTLE—Is DIMIA required to pay any sum of money to, say, South Australian Health for the provision of that wing that has been opened up?

Mr Davis—Yes.

Senator NETTLE—Can I put that on notice as well—the amount?

Mr Williams—Yes.

Senator NETTLE—Is there a budgeted figure for both those costs for the coming financial year?

Mr Davis—Not as an explicit item. I think I have answered questions on the budget. Essentially, there are standard payments under the contractual arrangements which are uniform, based on detainee numbers and facilities open. The sorts of costs we are talking about here would be in addition to that and essentially on a needs basis. I do not have an explicit separate budget for that; it is part of my overall budget which I manage. The particular costs of this activity at Glenside, for both the hospital and GSL, are in addition to normal day-to-day, standard payments under the contract.

Senator NETTLE—So, because they are not a specific budgeted item, is it possible—or are you saying it is not possible—to say, ‘This is what we anticipate we would be spending on that’?

Mr Davis—We can certainly seek to identify, and I think we could identify, the costs we have borne. As to anticipating how long we bear those for, that is speculation. In that sense, I think the best thing I can do is give you the costs that we have borne to date. How long those detainees are there for et cetera is a matter of treatment, care and so forth and can change on any day. So I would not want to project a particular figure around these detainees, nor second-guess any others who might go there over time. It is just too difficult to assess that.

Senator NETTLE—That is fair enough. Seven detainees at the one time seems to me a reasonably large number of people—

Mr Davis—Indeed.

Senator NETTLE—and that is while you are paying for a ward and two guards per person. Is that large in comparison to the normal number of people who would be there? I am just trying to get an idea.

Mr Davis—That is the largest number that has been there, as I understand it.

Ms Godwin—Senator, can I just make a comment: we are not paying for a ward, as I understand it. We pay a fee for service to the hospital, regardless of where they are accommodated. It is the hospital's choice as to whether they have a ward or open a ward—however they do it. We pay a fee for service and that is how we do it wherever people are, whether it is that hospital or any other hospital.

Senator NETTLE—We were talking before about them reopening a particular ward. Presumably the costs associated with their doing that are taken into consideration in the fee that they charge you?

Ms Godwin—How they calculate the fee is a matter for them. We pay the fee that they—

Senator NETTLE—You are not paying anything additional for them to have re-opened a ward. You are simply paying them.

Ms Godwin—We will have to take that on notice, but not that we are aware of at this point.

Senator NETTLE—I will go to the Finn judgment questions that were being asked previously. Ms Godwin, in one of your answers you talked about assessing the proper medical practices with experts to see whether that was proper practice within the field. I think you were saying that you were consulting with the department of health for that.

Ms Godwin—We are doing a number of things. Mr Davis can talk in more detail about it, but I think I said that there are a number of elements to the proper provision of services. There has been a judgment in relation to two detainees. In the context of comments about the more general delivery of services, it means that we are looking at all of the elements, which includes monitoring. In looking at that, we are consulting with professional experts, some of whom are on our expert panel already, but also talking to the department of health about whether they have got any further sources of advice that would assist us in looking at that. I think that was the point I was making. I do not know if Mr Davis wants to make any further comment.

Mr Davis—Indeed, that is the case. The procedures that are used on the ground were developed some time ago, and we went through a process involving our expert panel members and reviewing those procedures. I ultimately approved them after those processes were gone through. We have procedures in place which are already approved, including through independent medical scrutiny. We have a process of expert panel members visiting facilities. We have already had a review of Maribyrnong and Villawood, and one is scheduled for Baxter. The judgment, as Ms Godwin just said, asks a whole range of questions, and we are seeking further advice and further review processes to give us assurance that the

professional medical care that we get on the ground is what we need. That also goes to the issue of the service providers themselves having another look at their own procedures as well as us seeking further expert advice to assist us in giving us additional assurance and advice to also have a look. I think we are seeking to work together to enhance or improve in light of the judgments or the issues raised in the judgment. That is what we are seeking to do.

Senator NETTLE—Could you indicate on notice, if you like, who the members of that expert panel are.

Mr Davis—I can take that on notice.

Senator NETTLE—Is that expert panel the health advisory body?

Mr Davis—No, it is not. That is not yet established but that is another process. We have an expert panel arrangement which includes advisers in a whole range of areas, and health is one of them. It includes security, fire services, and education—a whole range of different people who are on a contracted panel that we established some time ago. We are in the process of updating and expanding that panel to get further expert advice in a range of areas. The expert panel advisers that I am talking about are from one of the companies on our panel who provide medical advice.

Senator NETTLE—In the immigration detention standards—the ones quoted in the Finn judgment, which, if it helps, are 2.2.1.1.2—they talk about establishing health care services:

In establishing the health care service, the Services Provider:

... ..

c. draws on the advice, knowledge and experience of a health advisory panel.

Did you say that has not been established?

Mr Davis—No, it has not. It has not been established as yet. It has been in process for quite a while. It was a requirement of the contract to establish such a panel. As part of that process GSL put national ads out last year. They had a range of applicants. I also approached the colleges and others to seek nominees, if you like, to sit on that panel. That information has come together, and we are currently in dialogue with our service provider and also the IDAG, who were part of the original proposal to establish the health advisory panel, in terms of taking the next steps to establish that panel. It has been a process that has taken longer than we had hoped but, nevertheless, is one that the service provider, IDAG and ourselves are working towards at the moment.

Senator NETTLE—You said that it was a condition of the contract.

Mr Davis—Yes.

Senator NETTLE—GSL have had the contract since August 2003.

Mr Davis—It was signed in August 2003 and they took over their first facility in December 2003. There was a progressive takeover from there. They initiated the process of establishing the panel from then. So it has been a process that has taken, as I said, longer than we had all hoped. Nevertheless, it is moving forward with them and with the IDAG.

Senator NETTLE—Are they having difficulty finding people to sit on it?

Mr Davis—That is one issue, yes.

Senator NETTLE—Is there also a health expert, I do not know if they are independent or internal, who sits on the MURT, the Management Unit Review Team?

Mr Davis—The Management Unit Review Team, which is one of the procedural things established in the operational procedures of GSL and the health subcontractors, is a group within the facility. A requirement of the MURT, which reviews the placement of people into more restrictive areas of the detention within a detention facility—for example, a management support unit—is that that team, as part of the procedures, involve a mental health professional. That could be a psychologist, a psychiatric nurse or a psychiatrist. So there is a requirement that a mental health professional be one of the group who undertake those review processes. It also involves GSL themselves—the operations managers et cetera—and the general nurse is also involved. DIMIA is also involved in those processes.

Senator NETTLE—Is that an external health expert?

Mr Davis—No, it is one of the contracted service provider employees.

Senator NETTLE—I will continue for a moment on these immigration detention standards. That same standard I was talking about earlier says that it requires that the department be:

... provided with evidence on a monthly basis that the health care service is available and accessible.

Can you indicate in what form that monthly reporting is done and at what level of detail?

Mr Davis—We receive monthly reports from both health subcontractors. They provide us with details of staff on the ground during the month in every facility, consultations and major areas of consultations—as in types of consultations. I do not have any of those reports here but I believe there is also information on the medication dispensed. I would need to confirm this—I think we receive those reports monthly but it could be quarterly; I just cannot remember. I will have to check.

Senator NETTLE—That would be good, because the performance measure is that they be presented monthly.

Mr Davis—My understanding is that they are presented monthly. That is a detention standard which has been met so far, so that is probably right. I just do not have it here to confirm that.

Senator NETTLE—Is it a standard form?

Mr Davis—Yes.

Senator NETTLE—Can I ask that the form, obviously not with information on it, be tabled?

Mr Davis—Can I take that on notice?

Senator NETTLE—Yes, that is fine. You were mentioning that that performance standard has been met. I note that another of the performance measures mentioned in the Finn judgment is in relation to access following an incident of self-harm or a hunger strike. It says, ‘not limited to psychological and psychiatric assessment and counselling’, and in relation to the performance measure being:

No substantiated instance of any such detainee not being provided with appropriate and timely treatment.

I note comments in the judgment to say that the judge did not believe that that had been met and the delay in providing the psychiatrist had made conditions worse in relation to a particular detainee. If you accept that, did that constitute a breach of the contract?

Mr Davis—That is a matter I have under consideration right now. The view expressed by the judge is a significant question. I have some information, and I am seeking more on what was provided. Indeed, we presented material to the court during the process on what was provided at the time. That is a matter that I as the contract administrator have under active consideration.

Senator NETTLE—Can you take on notice to give us an indication of the number of occasions on which there have been breaches of the contracts and the clauses to which they are related?

Mr Davis—We can take that on notice.

Ms Godwin—I do not want to sound too pedantic but assessing whether all of the standards have been met is not necessarily a breach of the contract as such. It is a question of looking across the whole range of what has been delivered. There is certainly a process of following up each of the standards that are regarded as not being met at a particular point. We can take on notice your more general point.

Senator NETTLE—Are there penalties associated with a breach of contract? A standard not being met is different to a contract being breached. Are there penalties associated with all or any of those levels?

Mr Davis—The performance standards do have financial penalties attached to them but each circumstance is assessed individually and, ultimately, I make the decision quarterly and issue a statement on my view. The answer is yes. There is a financial figure attached to each of those performance measures.

Senator NETTLE—To each of the standards rather than any breach of contract.

Mr Davis—Yes. The standards themselves have a thing called a performance linked fee matrix, whereby a financial figure is attached to each of the standards.

Senator NETTLE—Do you know what the figure is for any of those?

Mr Davis—They are different for different standards.

Senator NETTLE—On the question on notice about the number of breaches, are you able to provide the financial penalty associated with those breaches?

Mr Davis—That will be a bit more difficult because, when the contract was signed, that was one aspect of the contract which was agreed between the parties to be commercial-in-confidence at the time. We will see what we can do to answer the question, but that will be a matter that I will need to consider. I will see what I can do.

Senator NETTLE—I appreciate that. Another question I want to ask relates to medical professionals operating there. It is interesting in the light of your comments about the difficulty GSL is having in finding people to sit on the health advisory panel. We have just

been talking about expert panels and who has been asked for advice. I was surprised in reading the judgment—and it appears that Justice Finn was also surprised—that the consulting psychiatrist had not been asked for advice about the conditions of Baxter detention centre and any implications that might have for psychiatric treatment. You have taken on notice the question about who the advisory panel and experts that you are taking advice from are. Do you know whether the current consulting psychiatrist is one of those people? Has his advice has been sought? The indication from Finn is that it has not been, but perhaps subsequently it has been.

Mr Davis—The consulting psychiatrist is not on our expert panel. Following up his advice and feedback on that particular issue is one of the matters on which we are in discussion with GSL. That is one of the questions that the judgment raises on which we are in discussion.

Senator NETTLE—Back to what I was saying about the difficulty of getting people to sit on the expert panel, I note that in his evidence to Finn the consulting psychiatrist describes himself as a consultant. He says:

I see myself as a consultant. The day to day medical care is in the hands of the medical staff on site and they can refer back to me as required.

Do you share that view about the role that he plays—that he is a consultant?

Mr Davis—Yes.

Senator NETTLE—On the announcement that the minister made today about access to fortnightly visits by a psychiatrist, would you similarly see anyone who is filling that role as playing the role of a consultant whose advice is sought, as the current consulting psychiatrist sees himself, rather than as having a role to play in the day-to-day or ongoing management of the detainees?

Mr Davis—I am having difficulty understanding the distinction in the sense that he is a visiting psychiatrist, and he calls himself a consultant psychiatrist. But, in terms of providing advice or recommending treatment or assessments, part of the process of follow-up exists already with him being a visitor there. In terms of processes moving forward and the observations and the judgment, as I indicated, GSL and the health subcontractors are looking at the question of whether the feedback loops, follow-ups and all those sorts of processes are as robust as they should be and as the detainees deserve and need. Those questions of process and the current procedures which, as I indicated before, are approved, are the sorts of issues that we are in discussion about to give us all confidence that the detainees get the care that they need.

Senator NETTLE—Perhaps I can explain how I was perceiving that difference. It may not be legitimate, but I will explain and you can tell me if it is appropriate or not. There are certainly comments within the judgment about the capacity for a range of different health experts to be consulted in relation to someone's case, to be able to discuss it with each other and to be able to see documents. Somebody who contributes to that process in providing some information is not necessarily a part of that holistic process of managing the care. That is what I was seeing as a distinction.

Mr Davis—I mentioned earlier an initiative of the service provider, which we are endorsing: the daily health or welfare meetings that they intend to have. In that context I think

this issue is relevant in that they are seeking to involve the visiting psychiatrist in those meetings on the days when he is there on his fortnightly or more regular visits. We have talked already with the service provider about the sort of issue you have just raised in terms of holistic management and active involvement of both the visiting psychiatrist and the GPs with the on-site day-to-day medical staff—the nurses, psychologists, counsellors and psychiatric nurses. All of those people will be involved in that new process of daily health and welfare meetings. The psychiatrist will be visiting fortnightly and when he is visiting he will be an active participant in those discussions, particularly on cases he is involved in, to ensure that there is active participation in that context. That is one of the aspects of the discussions we have been having with GSL and their health subcontractors to enhance what we do now.

Senator NETTLE—Are you envisaging the announcement about more regular visits as relating to an additional psychiatrist at a closer location to Baxter who can be involved?

Mr Davis—It may be the existing one more often or a combination of that and one more local. Those are the sorts of questions the contractor is working through. To start the process the contractor has requested the existing visiting psychiatrist to come more regularly in the near future, but they are also looking at the question you have just raised about engaging other psychiatrists to assist in that process on an ongoing basis. That is a matter they are currently looking at.

Senator NETTLE—So in the model you are envisaging of a psychiatrist visiting every two weeks you imagine there would still be the requirement for access to other psychiatric services at times when they are not available.

Mr Davis—Indeed. And we have agreed processes with the South Australian mental health system already in place for emergency situations.

Senator NETTLE—Which are referred to in the Finn judgment in the view that they were not followed in relation to that case. A question which I put on notice last time, No. 80, related to responsibilities for implementation of recommendations of medical professionals. You indicate from the answer there that precedence is given to the responsibilities under the Migration Act—

Mr Davis—That is the law. We have to follow it.

Senator NETTLE—Yes. Rather than the recommendations of the medical professional.

Mr Davis—We have to be careful about what is meant by that. In most circumstances the medical advice can be followed. Within the provisions of the Migration Act there are some specific circumstances in which they cannot but they are very specific, I guess. We were simply observing that there are some—we should not pretend there are not—where there may be a difficulty. An example perhaps is where eligibility for a particular type of visa requires a medical assessment and an ongoing process. The medical advice can be there but if there is no ongoing process that means there is a conflict. So there are some circumstances where that exists and that is what we were saying—the factual statement that we are required to abide by law. But in overwhelmingly most circumstances it is possible and we work through that in individual cases to follow the medical advice within the constraints of the law. It is all we were trying to say.

Ms Godwin—This has come up a number of times over the years—

Senator LUDWIG—Has it been that long?

Ms Godwin—It has been, unfortunately or fortunately, depending on your view of how enjoyable these events are. The most obvious example is if a recommendation says the person should be released from detention and there is no legal way to do that. That does not mean that we simply ignore the advice; it means that we then try to look for some way to work with that advice to assist the individual even though we cannot just release them. For example, there is alternative detention. There are numbers of people over the years for whom we have arranged alternative placements in circumstances where they cannot be granted a visa or cannot be released but nonetheless the advice is that they need some other support than can be provided in the facility where they are.

It is not a question of us either following it or not; it is a question of following it to the extent that we can. If it includes advice that is simply not able to be implemented because of the legal provisions then how else can we, in a sense, achieve the outcomes that the recommendation appears to be pointing to, in a way that enables someone to be given the support that they need? The sorts of arrangements whereby people are in hospital with detention officers in attendance are an example. It is not a question of not having someone go to hospital. If we have to keep them in detention—we cannot release them—and if the hospital will not agree to be declared as a temporary place of detention, which we have occasionally done, then we have to find a way to help that person have their access to hospital as well as meet our legal obligations. As I say, I think this concept of what takes primacy is difficult. It is a question of trying to find a solution for the individual that is consistent with the medical advice as well as consistent with our obligations under the act.

Senator NETTLE—On your example, is it only in an instance where a hospital refuses to be deemed as a temporary place of detention that guards are required?

Ms Godwin—Two things have to happen. A place has to be designated as a place of detention and somebody has to agree to be an officer to hold. For a variety of reasons—and these are things that we often talk through—some places will agree to being designated as well as to having an officer designated as a person to hold. Some places will not, for proper reasons from their perspective. We try to look at those and work them through.

Senator NETTLE—I showed this answer to the question on notice to a leading psychiatrist in New South Wales. I want to read to you the questions that they asked in response. One of those questions is: given the suggestion that primacy be given to the provisions of the Migration Act rather than the medical recommendations, is DIMIA prepared to take the responsibility for any damages to health that giving precedence to immigration law over medical recommendations might cause?

CHAIR—Senator Nettle, I am not sure how many questions there are and how much you are going to read out. It is difficult for the officers to answer these questions in this context. It may be helpful if you would at least place those on notice, I think.

Senator NETTLE—They are quite brief. That is the longest. There are four of them.

CHAIR—They are literally scribbling to take notes as you are doing that.

Senator NETTLE—That is okay.

CHAIR—It has been a long day, and there is more of it to come. I am keen to give you this opportunity, of course, but then to go back to the opposition as well. Having watched that exchange then, it would be helpful if the officers could have the opportunity to take these questions on notice.

Senator NETTLE—I am happy if there is a general indication now and then I will otherwise put them on notice.

Mr Davis—That would be appreciated.

CHAIR—Perhaps you could read them out and they can go onto the record, and then they will be answered on notice.

Senator NETTLE—There is the question of whether the principle of precedence of the immigration laws over medical recommendations was a principle applied in the case of Cornelia Rau. The second paragraph in answer to the question on notice raises the issue of families. It seems to be seeking to equate DIMIA to the role of a family member in a consultation outside of the hospital. It says that, in the community, a medical recommendation may need to take into consideration the family. My reading of that is that it is equating DIMIA to the role of the family. If that is a wrong reading of that, I am happy to take that advice; but that is certainly the reading that I took and that the psychiatrist who read it took of that answer.

Mr Davis—I will try to be brief. I would say that that is a misunderstanding of what we were trying to say. We were trying to say that any medical advice requires other people within the facility—DIMIA, GSL and others—to be involved in the care of that person when the medical advice is provided. We are trying to say that if there is medical treatment and somebody goes back to a compound then the compound officers need to know if there are any issues they need to be conscious of or aware of or whatever in the care of that person after they have gone back into the community into which they are living day to day.

To use the family as an example, if a GP says something about my wife, I need to be conscious of it when she comes back home. If a detainee goes back to the compound, the detention officers and others who are in the compound need to have, within the bounds of privacy et cetera, sufficient information to understand it or to be sensitive if there is a particular issue they need to be conscious of when the person is living day to day within the compound. That is the sense in which we were trying to make that statement. We will perhaps take it on notice—

CHAIR—In terms of a detailed answer.

Mr Davis—to try to clarify it further but that was the sense in which we were trying to make the statement.

CHAIR—Thank you very much. Senator Nettle, in terms of time, perhaps if you wind up in about five minutes in this area and we will go back to the opposition. I will come back to you in due course.

Senator NETTLE—I have a lot more questions on the Finn judgment.

CHAIR—It is okay. We are not going far.

Senator NETTLE—I thought we were going by issues, which was why when Senator Bartlett went to the Finn judgment I said—

CHAIR—We were trying but it did not work very well as a plan. It was not actually my fault.

Senator LUDWIG—Why don't we finish the judgment then? It might be easier for everyone.

CHAIR—What does 'a lot' mean?

Senator NETTLE—Half a dozen.

Senator LUDWIG—It might be easier if they are still on it.

CHAIR—All right. You complete that half dozen. Then we will go to Senator Ludwig.

Senator NETTLE—Thank you. On the issue that we were just discussing, the response—I will put it all on notice—from the psychiatrist was that, in giving medical advice in the community, it is a breach of their medical ethics to provide advice which is different from what is the best advice because of circumstances extenuating to how it can be implemented. They would be pulled before a medical ethics board if they are told they must give a lesser standard of advice because they have to take into consideration the capacity of the family or the environment to be able to implement it.

Mr Davis—Perhaps we can address it in the answer. I would like to make one comment—that is, we have a duty of care to the detainees. In a sense, what we are saying is that, if someone comes out of the medical centre in a wheelchair, the people in the compound need to know they need a wheelchair simply so we meet our duty of care obligations to the individual. Again, I recognise the issue of privacy and ethics, and that is recognised by our health professionals and our service provider. But there needs to be at least some communication and information to allow us to fulfil our duty of care requirements day to day. That is really what we were trying to say here.

Senator NETTLE—Is that an issue that you have discussed in consultation with the medical professionals, the associations or the medical boards from whom you are seeking advice about the health standards that operate in the detention centre?

Mr Davis—That particular issue has not really arisen but, now you have asked me the question, I will take it on board.

Senator NETTLE—It is interesting. In light of the comments that have been made today by groups like the Mental Health Council and the Royal Australian and New Zealand College of Psychiatrists recommending that people do not take up psychiatric positions working in Baxter detention centre—the position announced today—a consideration of why they would make such recommendations and such comments may be related to these sorts of issues. That is why I was asking whether you have consulted, because in light of those comments it seems to be a wise thing to do. But you have said you intend to do that.

Mr Davis—I will take it on board. I will restate—and this is something that is clear in the Finn judgment—that we have an ultimate duty of care. All we were trying to say in answer to

this question was that there needs to be a degree of sharing of information around the circumstances or the management requirements of an individual, whether that be a special diet or something else, from the medical professionals to other people within the facility so that the duty of care can be discharged. That is all we were trying to say here. If we did not do it, we would be culpable. That is all we meant by the way we have answered this.

Senator NETTLE—So it is more to do with the information that would need to be provided for that care to be carried out, rather than a differing level of care?

Mr Davis—Yes, that is right.

Senator NETTLE—Another contention of the Finn judgment is his belief that there was enough evidence for DIMIA to know about the susceptibility of long-term detainees to the mental health impacts of their ongoing detention. Is that a contention that you accept or find unreasonable or that you are considering?

Mr Farmer—Speaking for myself, I am still going through that judgment. There is a lot there that we need to reflect on and digest.

Senator NETTLE—Many of the issues that are raised in the Finn judgment are issues that have been raised elsewhere and by other people, so they are not new. The other contention—and you may have the same answer, that it is not something that has been looked at—is to what extent ongoing detention causes or exacerbates mental illness. For example, the comments of the consulting psychiatrist that detention exacerbates the mental illness of people relevant to a case are mentioned on several occasions in the judgment. Does the department have a view on that contention?

Mr Farmer—I think we would prefer to answer that on notice. It gives us an opportunity to give you a considered view. This is an area where there is really, as I understand it, a lack of research, and it is an issue that we think needs to be addressed. There is a gap.

Senator NETTLE—Yes. I am interested that you say you believe there is a lack of research on this issue, because at the last estimates in February I asked whether the department had commissioned any primary mental health research into the capacity for long-term detention to have an impact on mental health or result in mental illness, and I was told no, that none had been commissioned. Is that still the case?

Mr Farmer—We have been looking at how we can address that gap.

Senator NETTLE—It seems to be an issue that is being raised with increasing regularity. Comments such as ‘the detention environment drives people mad’ are things that we hear pretty regularly from leading psychiatrists now. I imagine that, even in just a legal sense, determining the department’s position on that is becoming an increasingly important issue. This is an issue we discussed at the last estimates as well, when we talked about the research, which the department paid for, by Dr Samuels in which he was questioning the credibility of studies that implied that the detention environment caused mental illness. So there was no primary research commissioned by the department but rather the views of Dr Samuels had been paid for. These are all questions that I asked last time around—whether Dr Samuels had been paid to provide a report which cast doubt on other documents.

Senator Vanstone—With respect, that is not correct. Dr Samuels was not paid to provide a report that cast doubt on research that had been done. He was asked to do a review of the existing literature and provide comment on it.

Senator NETTLE—Thank you. In response to the review provided by Dr Samuels, does the department now have a view of which primary research studies and documents they believe provide the most substantive answer to that question of whether or not detention affects mental health? I accept what the minister was saying about Dr Samuels, that he was not saying, ‘These ones are good, these ones are bad.’ As a result of the review that has been done, can the department now indicate, ‘These are the key or primary research studies by psychiatrists that we look to in determining our view’?

Mr Farmer—I think I said that we had discerned a gap in research that would really provide a satisfactory set of answers to this range of issues, and we have been turning our minds to how that gap might be filled. It is a question that recurs, so I think there is a point in going through that process of looking at how we might fill the gap.

Senator NETTLE—So one way to fill that might be to commission the research.

Mr Farmer—Yes. That is one possible way.

Senator NETTLE—What would be other options? If you say there is a gap in the existing studies, then presumably filling the gap would not be to look at the existing studies. You are expressing a view that the gap needs to be filled by additional studies being done, whether they are commissioned or not. Am I missing something?

Senator Vanstone—He did not say that. You asked would one way to do that be to get additional research and he said yes. That is all he said.

Mr Farmer—That would be one way.

Senator NETTLE—My view of the question I just asked was that it was about you commissioning research, which is a different thing to research being done. Whether you commission it or not, it may be that the research is done. It may be that it is done elsewhere. Are there other options for how to fill that gap that I am missing in only being able to identify either commissioning the research or looking elsewhere for having the research carried out?

Mr Farmer—We are turning our minds to those questions. I think commissioning research is one option that has some attractions. Of course, there are some dimensions to that, like time lines and how long that takes in order to get a product that would stand up to peer review and so on. So there are some issues that we are thinking about and may need some assistance in developing further. I said it was one option. I think it is quite a good option. There are other potential options: you could try to do something which looks at research into other environments in Australia or other countries. But you are not talking really about comparable environments, so I think there would be some drawbacks. I personally think that commissioning research is something we should look at. Whether that will lead to anything concrete, I just cannot say at the moment.

Senator NETTLE—I appreciate that answer. There is reference in the judgments, in relation to one of those cases, about a two-month wait for a doctor. I can find it if you want.

Are there any guidelines that operate in terms of what is an appropriate period of time for somebody to wait to access a consultation with a GP?

Mr Davis—There are no rigid time lines in the procedures. It is a matter of the treating health professionals making their own judgments about what is required. Certainly, we have arrangements to have, for example, GP consultations in an emergency situation. We have them on call. If it can be done the next day, that can be arranged, if needed. Or it can just be scheduled into normal clinics that go on in our facilities. It really depends on the individual circumstances, the health situation and the advice of the health professional for some of those referral processes. The judge did make some observations and, indeed, those are the sorts of questions that the service provider is asking as well. And we are asking and discussing with them in terms of all being assured and comfortable that we have the system that we need.

Senator NETTLE—I accept that there are not currently guidelines. Is there any thought to having any form of, or stricter, guidelines about what period of time would be appropriate when waiting for a consultation?

Mr Davis—I would say it is premature for me to speculate on whether or not we are going to go down that pathway. Again, it is a matter I can take on board. It is one of the matters that we are in discussion on. It is premature for me to indicate a view because I do not yet have one. I am not a medical professional, so I need to seek advice to assist us all in moving forward.

Senator NETTLE—While we are talking about guidelines, the judgment mentions—and I know it has been mentioned in other judgments—the lack of regulations provided for in the Migration Act in, I think, section 273, where it provides for there to be regulations about the operation of detention centres. The judge refers to this and also to critical comments made by the judge in the Mastipour judgment that there are not regulations. Is there an intention for there to be regulations about the operation of detention centres?

Mr Farmer—Again, that is something that we will be taking under consideration as a result of the examination of the judgment.

Senator NETTLE—It has been there since that section of the Migration Act was introduced. It has certainly been raised and criticised in the Mastipour judgment in 2004 as well, so it is not a new thing from the Finn judgment. It is not one that falls necessarily straight into the category of: ‘We’ll take it into consideration on the Finn judgment.’ It is something that has been there since that section of the act came in. It has been commented on critically by the Federal Court in Mastipour and again in this one, but it seems to be—

Mr Farmer—Just as a general observation, I take your point. But I think also in the area of detention there has been a very significant volume of work done in recent years in terms of trying to elaborate the arrangements under which we work. A lot of work has been done. We still have a large agenda to get through in terms of things like memoranda of understanding with a number of the state and territory services on a range of issues relating to detention. We work through a lot of things. We have gone quite a long way in the last few years. There are numbers of areas where we have got further to go—that is a statement of fact.

Senator NETTLE—We were talking during the last estimates about negotiations to seek a memorandum of understanding on health services in South Australia.

Mr Farmer—Yes.

Senator NETTLE—I have two more quick questions. You can take them on notice, if you like. Mentioned in the judgment is the fact that the first audit to be carried out was in January 2005 and that did not include psychological or psychiatric assessments—is that correct?

Mr Davis—The review that was carried out in Maribyrnong did include all health services at Maribyrnong.

Senator NETTLE—This was in relation to Baxter—the first audit was in January 2005 and that did not include psychiatric and psychological assessments.

Mr Davis—That is correct. But the forthcoming visit by our expert panel member in June, which was scheduled before the judgment was made, includes all aspects of health service being independently audited by our expert panel member. That has been scheduled for some time.

Senator NETTLE—My last question is about the legal cost to the Commonwealth of the Finn case.

Mr Davis—Can we take that on notice?

Senator NETTLE—Yes, sure.

Senator LUDWIG—There have been media reports about the Department of Foreign Affairs and Trade being aware in 2003 of Ms Alvarez or Ms Solon having been deported. Has the immigration department or have you, Mr Farmer, investigated that or had a look at that issue?

Mr Farmer—An issue relating to DFAT?

Senator LUDWIG—Well, yes, because it is about a person that you deported, so it would not surprise me if you had seen the press reports and then examined the issue. It would surprise me if you have not.

Mr Farmer—I just wanted to be clear about what you were asking.

Ms Godwin—I have to confess that I am still not clear what you are asking. Are you asking—

Senator LUDWIG—There were a couple of different things. There was the claim that in 2003 the Queensland Missing Persons Bureau, as I understand it, wrote to the Philippines Overseas Workers Welfare Administration. That is one of the issues that surround 2003. Subsequent to that, recently the Philippine embassy in Australia wrote a letter in response to, I suggest, the current furore about this issue. I am sure you are familiar with that letter.

Ms Godwin—There is a lot of paper around. I know there has been a letter from the—

Senator LUDWIG—Have you had an opportunity to see that?

Ms Godwin—Yes, I have seen it.

Senator LUDWIG—We know which letter we are talking about—this is from the embassy staff in Canberra.

Ms Godwin—Yes.

Senator LUDWIG—There are a couple of different areas but there was an allegation around 2003 that the department of foreign affairs had reports that Ms Alvarez was an Australian citizen who had been deported and that she was in the Philippines. Broadly, the allegation surrounds that date. Those are a couple of the disparate areas I want to question you about. Does that give you an idea of the area?

Ms Godwin—Broadly. I am certainly aware of the inquiry to us around the missing persons inquiry in 2003.

Mr Killesteyn—I do not think we can shed any light on that at the moment. There is nothing in the records that we have that would indicate that the allegation has substance. As we have said before, we are going on the records contained in DIMIA departmental files. We do not yet have all of the other potential material that may be in other departments. But there is nothing to indicate on our records that that is the case.

Senator LUDWIG—Have you had a look at the records in 2003 within DIMIA as to whether the department of foreign affairs contacted your office in relation to either a Ms Solon or a Vivian Alvarez?

Mr Killesteyn—As I said, there is nothing in our records that indicates that.

Senator LUDWIG—Secondly, in relation to the Queensland Missing Persons Bureau, is there any record that that office contacted DIMIA around 2003—

Mr Killesteyn—Yes.

Senator LUDWIG—or subsequently in relation to—

Mr Killesteyn—There are several contacts by the Queensland Missing Persons Bureau with DIMIA. The first was in July 2001.

Senator LUDWIG—As you go through them, perhaps you could give the nature of the inquiry and what the response was from DIMIA.

Mr Killesteyn—All of the inquiries were seeking details of the whereabouts of Mrs Young. She was the reported missing person.

Senator CHRIS EVANS—What were the names used as her first name?

Mr Killesteyn—Vivian.

Senator CHRIS EVANS—Mrs Vivian Young.

Mr Killesteyn—Yes. So the first inquiry was in July 2001.

Senator LUDWIG—Do you have a date for that? What was the nature of the inquiry and how was it recorded in DIMIA's—

Mr Killesteyn—It was 19 July.

Senator LUDWIG—What other information was given at that time? Was there a date of birth, general description or photo?

Mr Killesteyn—If you will just allow me I will go to that.

Mr McMahon—While Mr Killesteyn is looking for that, could I make a correction to an answer I gave to Senator Evans earlier. I am advised that the differences in the names in terms of the movement records arose because of the use of both Australian and Filipino passports.

Senator CHRIS EVANS—I see. Are you aware on what occasions Ms Vivian Solon Young was using either/or passport?

Mr McMahon—We need to actually go through the records again to satisfy ourselves, but there does seem to be a consistent thread of an Australian passport in the name of Vivian Young, and that is just from looking in a cursory way at the information. And then there are other documents, which we are assuming to be Filipino passports.

Senator CHRIS EVANS—In the name of Vivian Solon Young?

Mr McMahon—I think there is more than one variation in respect of the use of that name, but in general I think the most frequent one, as I recall, is Vivian Solon Young.

Senator CHRIS EVANS—So you are basically saying you think she moved in and out of Australia on two different passports—one an Australian and one a Filipino passport.

Mr McMahon—That appears to be the case by just looking at some of the information that was pulled out tonight.

Senator CHRIS EVANS—Is that legal?

Mr McMahon—Yes, it is.

Senator CHRIS EVANS—You can go out on one and come back on the other? Or was she coming in and out on one at a time?

Mr McMahon—If you are a dual national, it does actually make our record keeping extremely difficult in terms of matching who is illegal in Australia and who is not, but, yes, it is not unlawful to do so. Some people do it as a measure of convenience and it may well be—

Senator CHRIS EVANS—To get in the shorter queue when you are coming in or out?

Mr McMahon—It could be that or, for some people, if they are returning to their home countries, they may not want to signal that they are a national of another country as well. There are all sorts of reasons. Obviously in respect of the EU, for example, it is just convenience.

Senator CHRIS EVANS—So you still say she came in and out of the country 14 times in that period?

Mr McMahon—I think that was the answer that was given earlier. I have not physically counted them myself.

Senator CHRIS EVANS—Maybe you would like to take on notice for us the dates of travel and whether or not she used an Australian or a Filipino passport, just to give clarity to it. I appreciate your correcting the record, but if we do get that on notice then we will know exactly what we are dealing with.

Mr McMahon—We will take it on notice.

Senator CHRIS EVANS—Thanks.

Ms Daniels—Senator, I can answer the question that you asked about the nature of the inquiry on 19 July. The inquiry was asking about movement details for a person known as Vivian Solon, also known as Young. The response—provided by the Southport office, or the Brisbane office—was that there had been a number of movements, the last one being in September 1993.

Senator LUDWIG—What date in September?

Mr Killesteyn—On 2 September 1993. We indicated that there was no record of departure since that date.

Senator LUDWIG—With that inquiry from the Queensland Missing Persons Bureau, what details did they provide? Did they only provide ‘Vivian Solon Young’ or did they provide passport details?

Ms Daniels—There was not a passport number mentioned. They asked the details that I have just put to you, and my recollection is that they provided her actual birth date and two other birth dates around that same date.

Senator LUDWIG—How was that communicated?

Ms Daniels—It is a handwritten request—very brief, as I have outlined—to our investigations area in Brisbane.

Senator LUDWIG—Do you have a copy of that?

Ms Daniels—I do not have it with me.

Senator LUDWIG—Can that be made available to the committee?

Ms Daniels—We will probably need to take that on notice.

Ms Godwin—Senator, can I just extrapolate on this? Clearly, one of the issues that we have identified coming out of both the Rau case and this case is the question of how we manage missing persons requests. Mr McMahon might have a bit more information on the precise sorts of procedures. We often get requests for missing persons information, but generally speaking it is a specific request for movements records. We usually respond—if we have got a movement record, we give that data. That is essentially what is provided in response to requests from police in these sorts of situations.

One of the things that Mr Farmer mentioned at the beginning of the day in his statement is that one of the issues that the new unit that we have set up in central office is going to look at is the whole question of how we handle missing persons inquiries. So there is clearly an issue around this. The fact is—or what has happened to date is—we get requests for a specific piece of information and, if we have got that piece of information, we provide it. We do not usually undertake, in a sense, an investigation then in relation to the missing person; we just provide the data. That is what appears to have happened in this situation. But there are clearly some issues in this area.

Mr McMahon—Can I just add to that that we get about 30,000 requests to check records a year, and there are different forms of missing persons, depending on the requesting agency. The police may be requesting information around missing persons in the normal sense; they can also be chasing criminals who are also missing—

Senator Vanstone—Different sense.

Mr McMahon—We also get requests from child support agencies who are chasing missing spouses. We would not at any time be able to say whether or not a request relates at all to a missing person. For example, we could simply be asked, for law enforcement purposes, which would be sufficient justification, to supply details around a person who, in the event that we interrogated further, could be a missing person. In addition to that, there are various agencies, including the AFP, who have direct access to our databases, so they could be interrogating our databases about missing persons and we would not know. In general, the way that we have responded to missing persons requests is where there is something in the request that suggests that it is worth looking at in respect of people in detention—and I think certainly in terms of our initial thinking it is a much more direct way not to work off the request in respect of missing persons but access directly into the missing persons database.

Senator LUDWIG—Thank you for the information, but if you get a phone call from the Queensland Missing Persons Bureau I suspect they are looking for someone. Be that as it may, that was the first contact. What was the next contact? Did they ring again?

Senator Vanstone—As I understood what the officer was saying to you there, that is right: they are looking for a missing person, but the immediate assumption is not that they are in detention. That is the connection that is not necessarily made.

Senator CHRIS EVANS—There are two aspects. One is that you have been asked to provide information as to whether or not that person has moved in and out of the country, which is the primary request, and the second, which is probably more on our consciences now, is whether or not they are in detention or have in fact been deported. But you are saying that the majority of the requests relate to the former—that is, ‘Can you help us? Have they left the country?’

Mr McMahon—Almost always the request is simply a request asking, ‘Has this person moved in and out of the country?’ and sometimes, ‘Do you have any other information on that person?’ The missing persons requests do not ask, ‘Do you think there is any chance that this person might be in your care?’

Senator CHRIS EVANS—But I guess one of the issues is: what does prompt you to, if you like, investigate that option?

Senator Vanstone—Recent events over the last year would have.

Senator CHRIS EVANS—That is right, but I guess—

Senator Vanstone—With hindsight you can see that, but—

Senator CHRIS EVANS—That is right, but historically was there any attempt to match up the request with people you held in detention when you were not sure who they were or had some doubts about their identity?

Mr McMahon—Occasionally it happened and I think it was because something in the nature of the request has twiggged that there should be some further investigation in respect of that particular missing persons request.

Senator CHRIS EVANS—But in the absence of a reminder, a specific request or something being jolted in someone's mind it would not necessarily have meant that you searched your detainees—

Mr McMahon—That is correct. There has been no systematic attempt to use that data.

Senator LUDWIG—Was there another contact? I think you mentioned there was more than one from the Queensland Missing Persons Bureau.

Mr Killesteyn—The second check was on 14 July 2003.

Senator LUDWIG—What was the nature of that request?

Mr Killesteyn—It was also seeking details, information and records for Vivian Solon, also known as Cook and Young, with a date of birth of 30 October 1962.

Senator LUDWIG—Was any residential address given or any other information provided at the time?

Mr Killesteyn—My information is that they indicated that she was reported to have been a missing person since 16 February 2001, when she failed to collect her four-year-old son at a child-care centre in Brisbane.

Senator LUDWIG—What was the response from DIMIA in respect of that inquiry? Was that the total information that was provided? Was there a file note or another slip from the Queensland Missing Persons Bureau?

Mr Killesteyn—I would have to take on notice whether there was more information.

Ms Daniels—There was more information. I do not have the full details with me, but there was reference to the fact that the child was in foster care and that they were looking to get some more information about the mother to pursue longer term foster care arrangements.

Senator LUDWIG—Perhaps you could have a look at that and, if you can assist the committee with further information on that or the file note, that would be helpful.

Senator CHRIS EVANS—On 14 July 2003 the Queensland Missing Persons Bureau again contacted you, but on this occasion they gave three possible names: Vivian Solon, Vivian Cook and Vivian Young. Is that correct?

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—You said they gave you a date of birth somewhere in 1962.

Mr Killesteyn—30 October.

Senator CHRIS EVANS—Forgive my ignorance, but is that the correct date of birth?

Mr Killesteyn—Yes, it is.

Senator CHRIS EVANS—So this was a much more informed request in the sense that it had the correct date of birth for her and had in combination the names that she had been travelling on et cetera?

Mr Killesteyn—Whether she was travelling on them I do not know, but certainly they gave us more names.

Senator CHRIS EVANS—We know from your earlier evidence that she travelled as Vivian Young, Vivian Solon Young et cetera.

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—So you had records of someone moving in and out of the country under those names?

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—Regarding the nature of this second request, did they specifically ask you because they were trying to track her or because there was some concern that she might be in detention?

Mr Killesteyn—The motivation is something that we cannot necessarily speculate on, but it was obviously as a consequence of the fact that she was reported to be a missing person and they were still pursuing that matter. I can only surmise that they had not formed any view that Ms Solon was in detention.

Senator CHRIS EVANS—From the way you introduced it—you talked about the sort of information they got—I got the sense that they were asking for a bit more than they were the first time and that obviously they provided a bit more information in 2003 than they had in 2001. What was the nature of their request? You described it before; I want to be clear about what you were saying.

Mr Killesteyn—Again, it is worded here as ‘requested information and records’.

Senator CHRIS EVANS—We take that to be your records of people’s movements.

Mr Killesteyn—Any records that we would have of Ms Solon, also known as Cook and Young.

Senator LUDWIG—What was the reply?

Mr Killesteyn—The reply, which was sent on 21 August was that:

Ms Vivian Solon Young arrived as a migrant on 7 July 1984 with husband Robert William Young. Ms Young acquired Australian citizenship on 3 March 1986 in the name of Vivian Young, alias Vivian Solon. Miss Young came to DIMIA’s attention on 20 July 2001 using the name Vivian Alvarez. Ms Young was removed from Australia on 20 July 2001 using the name Vivian Alvarez.

Senator CHRIS EVANS—So you knew in August 2003 that you had deported an Australian citizen?

Mr Killesteyn—Officials within the department knew, yes.

Senator CHRIS EVANS—Who signed that response?

Senator Vanstone—I do not think that is appropriate to ask.

Senator CHRIS EVANS—I was not asking for the name but what sort of officer we are talking about.

Senator Vanstone—That is fair enough.

Senator LUDWIG—Step through the way that that works, whether it is a compliance officer or the division. We are not after actual the person in that it must go through a number

of hands. It will not be one officer that responds. That is a letter that was written back to the Queensland Missing Persons Bureau, wasn't it?

Mr Killesteyn—I am not sure whether it was a letter or an email.

Ms Daniels—It was an email.

Senator LUDWIG—Perhaps you can step us through that.

Mr Killesteyn—It was a search conducted within the central office in the section of the department that has expertise in the movement records database. The particular officer, or several officers, in fact, initially at a fairly junior level started to make inquiries using the name Solon Young. They were able to retrieve the records of Solon Young the citizen and then, through a further series of checks, they made the connection to Ms Alvarez. They then made further inquiries against the compliance file, which was located in Brisbane, and then formed the view, as recorded in the advice back to the Queensland Missing Persons Bureau, that Miss Solon Young and Ms Alvarez were one and the same person.

Senator LUDWIG—Did they advise the Queensland Missing Persons Bureau of that fact?

Mr Killesteyn—Yes, they did. What I quoted was the advice that was sent back to Queensland Missing Persons Bureau.

Senator CHRIS EVANS—Was that copied to anyone else?

Mr Killesteyn—It is on the file?

Senator CHRIS EVANS—Did anyone else receive that letter other than the Queensland Missing Persons Bureau?

Mr Killesteyn—We will have to take that on notice.

Ms Daniels—I do not remember seeing another name there but we should check.

Senator LUDWIG—Depending of the nature of the computer at the time, there might be blind copies. You will be able to determine that from the email. As you might be aware, when you send an email you can send a copy and you can send a BC, or a blind copy, which will not show up on the original so, when you receive one, you will not know who else is on the distribution list.

Senator Vanstone—I personally do not welcome that facility. I like to know who has got what I am reading.

Senator LUDWIG—It is very common practice, let me tell you.

Senator Vanstone—I understand that it is.

Senator CHRIS EVANS—Senator, if work on the basis that anything you send on email you will read on the front page of the *Sydney Morning Herald* you are okay.

Senator Vanstone—I do not send much. I think it is a common courtesy when you say, 'I'm sending you this,' to tell people to whom else you are sending it to, that is all.

Senator CHRIS EVANS—So this was an email sent on 21 August, not a letter?

Mr Killesteyn—Yes.

Senator CHRIS EVANS—Did we establish the level of the officer who sent it?

Mr Killesteyn—There are a number of officers involved and I would probably describe them as middle-ranking officers.

Senator CHRIS EVANS—But in terms of the sectional responsibilities, who are we talking about as signing off on it?

Mr Killesteyn—There is no indication that anybody formally signed off on it. It was an inquiry that was made by the missing persons bureau. As a matter of course, the response was provided, in the same way as Mr McMahon indicated we respond to tens of thousands of such inquiries a year.

Senator CHRIS EVANS—Sure, but—and I do not want to sound like a smart Alec in hindsight—I think we all agree it was a fairly explosive finding and was not in the normal course of events. The reply said, ‘Yes, we have found this woman on our records; she’s an Australian citizen and we’ve deported her.’ That is clearly not, in the normal course of events, something that the officer would have been dealing with. It is not the sort of reply they would normally have sent.

Mr Farmer—That is quite true, Senator.

Senator CHRIS EVANS—As I say, it is fairly explosive stuff and it must have been self-evident to the officers that it was highly unusual and highly controversial information.

Senator LUDWIG—Which they then shared—

Senator CHRIS EVANS—To be fair to them, it seems they shared it openly with the Queensland Missing Persons Bureau. One can’t claim there was a cover-up, if they sent off the email saying, ‘Yes, we found her and we deported her a couple of years ago.’

Senator Vanstone—Without having spoken to the officers—and we have been asked not to do that—I have to say, on the face of it, that it is inexplicable. I certainly don’t want to prejudge anything because I don’t know any more than what I have been told off the paper record, but as you say, if you were going to try and cover it up, presumably you would not give such an overt and direct answer to an outside organisation. Presumably, it would be equally a surprise to receive such an email as it would to find yourself in the position of wanting to send one.

Senator CHRIS EVANS—The officer just gobsmeared me. I had heard the rumours and heard the suggestions of this, but to hear it read out like that, I almost fell off my chair.

Senator Vanstone—The answer, apparently—I can’t say it was freely given but obviously it was given. I can’t say what the Queensland police did when they got that. I will be very interested in what Mr Palmer has to say because of the explicit and direct nature of the reply to Queensland police. But the apparent failure to send it any further up leaves me completely perplexed—the openness with the Queensland police but the failure to send it up. I can’t give you an explanation. I can’t even hypothesise under what circumstances both of those things would happen.

Senator LUDWIG—Couldn’t it be the case—I don’t want to add fuel to the fire on this—that, depending on the culture of the organisation, they felt they could not actually say anything, but by sending the answer to the Queensland police missing persons bureau they would be able to deal with it and bring it to the attention of someone that might be able to

assist? It would just seem to me that if it was something like that, you would then pass it on to your superior. For the life of me—and I have worked in the bureaucracy—I could not understand why I would not then walk in to the supervisor and say, ‘Look what I found.’ I would not feel particularly responsible for it; it wasn’t me who instigated the deportation, as the compliance officer or something like that. You would imagine they would have gone to a superior officer and said, ‘We’re sending an email; this is what it says, and we expect you to do something about it.’

Senator Vanstone—Your hypothesis does not jell with me. If you recognise that it was a problem, you obviously would, presumably, raise it upwards, and if you were trying to cover it up, you presumably would not give the direct answer. To me, having regard to what happened, there are two inconsistent things pushing there. Mr Palmer may have already spoken to these people.

Senator LUDWIG—So we don’t know whether they have provided any information to any superior section? You say they are middle ranking officers. The question really is whether or not you have asked that section whether the superior of that section at the time was aware of the email and whether any action was taken—whether it was brought to that person’s attention and what action they took. These people may have simply sent the email, brought it to the attention of their superior and expected it to be actioned. That would be a simple explanation in the sense that they were middle ranking public servants doing their job. They did their job and it stopped at that point—or at a point above that. Their superior might have then handed it up to the next superior or level.

Mr Farmer—I think it is true—my colleagues will correct me if I am wrong—that, if you like, the paper trail leads as far as we have told you. To go beyond that you would need to talk to the individuals in that area, and we have not done that.

Senator CHRIS EVANS—You are confident that there is no other paper trail or record as to what happened with that email and the finding made by those officers that in fact Ms Vivian Solon Young was an Australian citizen and had been deported.

Mr Farmer—We have gone through the files, and I am aware of what that has found. You are asking me if I am confident that there is nothing else around. I do not know the answer to that.

Senator CHRIS EVANS—But to date you have not turned up anything else, any other communications, that relate to that matter—is that fair?

Mr Farmer—That is my understanding.

Mr Killesteyn—That is correct.

Senator LUDWIG—Were there any further emails sent to the Queensland police missing persons bureau after that date?

Mr Killesteyn—There was a subsequent communication on 9 September with further advice to QPOL that the escort, the senior constable, that accompanied Ms Solon back to the Philippines phoned DIMIA on 20 July 2001 at 10.30 pm to advise that Ms Alvarez was met on arrival at Manila by Ms Grace Olajay, the overseas welfare administrations officer from

the Australian embassy. I should very quickly indicate, as we established before, that we believe that that was a misunderstanding on the part of the escort about the—

Senator CHRIS EVANS—That is accepted and you made that point. You are saying that on 9 September you further advised the missing persons bureau in Queensland?

Mr Killesteyn—Yes. The departmental official further advised—

Senator CHRIS EVANS—Sorry, I was not using ‘you’ in a personal sense.

Mr Killesteyn—Careful with that finger!

Senator CHRIS EVANS—I noted you quickly wanted to clarify that. We were not trying to turn it into a kangaroo court. The departmental official provided further advice to the missing persons bureau in Queensland.

Mr Killesteyn—That is what I said, Senator.

Senator CHRIS EVANS—By email.

Ms Daniels—Yes, it was email.

Senator LUDWIG—Was that the same person who sent all three emails?

Ms Daniels—The two emails.

Senator LUDWIG—There was the first inquiry from the Queensland police missing persons which was—

Senator CHRIS EVANS—Two years before.

Senator LUDWIG—Then there was the follow-up.

Ms Daniels—No.

Senator LUDWIG—The first one was a file note so it was not an email, so there were two emails and a file note. Was it the same person?

Ms Godwin—Just to clarify: the first one, the one in July 2001, was dealt with in Brisbane; this one was dealt with in central office.

Senator LUDWIG—Were these two sent by the same person?

Ms Daniels—Yes, they were.

Senator LUDWIG—The second email provided more fully the details of what went on—in other words, they provided additional information so that the Queensland police could locate, presumably, Ms Solon. It seemed to be the import of the message that she had been escorted, dropped off at a certain location—

Senator CHRIS EVANS—I think we missed asking the middle question, which is: was there a return email from the missing persons bureau to the department following the first one on 21 August?

Ms Daniels—There is nothing on file of a response, as I remember. There was a response from QPOL after the 9 September advice that Mr Killesteyn has outlined.

Senator CHRIS EVANS—We will come to that in a second, but you do not know what prompted the second email on 9 September from your department to the Queensland Missing Persons Bureau?

Mr Killesteyn—There is nothing on the records that indicates that prompting—or if there was a prompting.

Senator LUDWIG—You are unsure of whether there was a phone call or a phone call record from Queensland. Have you checked?

Mr Killesteyn—There is nothing on the records that show that there was a phone call either, so we just do not have that information.

Senator LUDWIG—Have you referred both those emails to the Palmer inquiry?

Mr Killesteyn—They have access to all of this information.

Senator LUDWIG—So you are unaware of whether or not they have contacted the Queensland Missing Persons Bureau to ascertain what actions were taken on the other side of the fence, so to speak?

Mr Killesteyn—I am not aware of the progress of Mr Comrie's inquiries on this matter at this point.

Senator CHRIS EVANS—Can we go back to 9 September. The further advice was providing basic details of the handover of Ms Solon Young. Is that fair?

Mr Killesteyn—Yes, indicating what we had on the file about who met Ms Alvarez. Presumably that information was thought useful for the continuing inquiries by the Queensland Missing Persons Bureau.

Senator CHRIS EVANS—Is there any suggestion that that email was copied to anybody?

Mr Killesteyn—I will take that on notice, Senator.

Ms Daniels—I do not remember; we will have to take it on notice.

Senator CHRIS EVANS—Following the 9 September email from the department to the Queensland Missing Persons Bureau which provided further detail of the handover of Ms Solon Young in the Philippines, you then got a contact from the Missing Persons Bureau to the department, you were saying, Ms Daniel?

Ms Daniels—It is a very brief acknowledgment of that email of 9 September that says that they will do more checks on this information—nothing more than that.

Senator CHRIS EVANS—What was the date of that?

Ms Daniels—It was 9 September.

Senator CHRIS EVANS—So, on the same day, they sent an acknowledgment email saying that they will do further checks.

Ms Daniels—Yes: 'We will do further checks on this information.'

Senator CHRIS EVANS—Was that the end of the email traffic?

Ms Daniels—That we have available to us, yes.

Senator CHRIS EVANS—But you did not hear from the Queensland Missing Persons Bureau again?

Ms Daniels—Yes, we did.

Mr Killesteyn—There was a further inquiry from QPOL on 28 September 2004.

Senator CHRIS EVANS—What was the nature of that?

Mr Killesteyn—Essentially it was an email from the Queensland Missing Persons Bureau to another officer, also in central office. It referred to discussions that had happened on that day, presumably by telephone.

Senator CHRIS EVANS—With that officer?

Mr Killesteyn—We would assume so, Senator. The email went through the history of the information that we had provided in August 2003 and then sought any further information that we had.

Senator LUDWIG—In going through that information, what indicated that an Australian citizen had been deported? That was manifestly clear from the record—is that right?

Mr Killesteyn—Essentially it went through the advice that had been provided earlier.

Senator CHRIS EVANS—What were they seeking from you, then, if you had already given them all of that?

Ms Daniels—They told us that the former husband was seeking information and was asking for a contact person in DIMIA; it was so that the information could be passed to the former husband.

Senator CHRIS EVANS—The implication being that the former husband had been told of the deportation?

Ms Daniels—No. I think the former husband was making further inquiries.

Senator CHRIS EVANS—Yes, but if they were looking to provide a DIMIA contact, one assumes that it would not be to tell them that DIMIA does not know where they are but for DIMIA to provide them with information. The Missing Persons Bureau knows that she has been deported. The husband contacts them and they contact you—

Senator Vanstone—It might have just been from movement records—‘We don’t know where she is; why don’t you ask DIMIA if they know anything? We’ll ask them for you.’

Senator CHRIS EVANS—But they do know where she is.

Senator Vanstone—Sorry, I thought you were saying—

Senator LUDWIG—That was the summary; they indicated—

Senator CHRIS EVANS—They indicate in that they do know where she is.

Ms Godwin—Could I just clarify: we do know that he was told, because when he wrote to us this year he said that that is what he was told. We are just not sure when he was told that or by whom.

Senator CHRIS EVANS—But the clear implication in the correspondence is that, by looking to contact you, they are helping him in his search for his former wife.

Ms Godwin—That was the implication as I understand it in the inquiry in 2004—that he had sought information and they were trying to find a contact to give him.

Senator CHRIS EVANS—So they, on 28 September, spoke to another officer inside DIMIA—not the original officer who alerted them. What did that officer do?

Mr Killesteyn—There is actually no record of the response to QPOL in relation to that particular inquiry.

Senator CHRIS EVANS—So in terms of the file records et cetera you have no knowledge of what the DIMIA officer did in response to the Queensland Missing Persons Bureau?

Mr Killesteyn—Not from the file records.

Senator LUDWIG—Was there a file note?

Ms Daniels—Perhaps I can give a bit more detail. The information that is on the file that is in the email that comes from the Queensland police to us on 28 September 2004 says that, in August 2003, there was a missing persons photo aired on a Channel 9 program, *Without a Trace*. That airing seems to have prompted a call from one of our officers here in central office, and that seems to have provided again those details that came to light in 2003. The email goes on to say that the ex-husband, Mr Young, is now making inquiries and has contacted the department—that is, us—and has been advised that, because his ex-wife was an Australian citizen, she was not deported. He goes on to say that he states that he wants to come to the office to discuss the matter and wants to take the matter further. Hence the Queensland police are looking for a contact within the department who might be able to provide information or some form of contact for Mr Young.

Senator CHRIS EVANS—So the email from the Queensland Missing Persons Bureau of 28 September provides all that information?

Ms Daniels—Yes.

Senator CHRIS EVANS—Including the fact that a DIMIA official had contacted them following a Channel 9 missing persons bulletin.

Ms Daniels—Yes.

Senator CHRIS EVANS—Does that name the DIMIA officer who contacted them?

Ms Daniels—Yes, it does.

Senator CHRIS EVANS—Is that one of the officers involved in the earlier identification?

Ms Daniels—Yes, it is.

Senator CHRIS EVANS—So one of the officers involved in providing the positive ID of Ms Solon Young for the Queensland Missing Persons Bureau also then contacted Channel 9 or the Queensland Missing Persons Bureau following the broadcast?

Ms Daniels—There is no hint that they would have contacted Channel 9; rather, QPOL.

Senator CHRIS EVANS—So the DIMIA officer who had been involved earlier—the previous month or so—in this identification then rang the Queensland Missing Persons Bureau and said, ‘I know who that woman is, and we deported her.’

Ms Daniels—I do not think that is quite the right time frame. They are saying that in August 2003 the program was aired, and then the officer made the call. So it actually fits the time frame of the inquiries in the previous year.

Senator LUDWIG—What occurred, as I understand it, is that the officer made the connection, rang the 1800 number that was aired on the show, and that prompted the Queensland Missing Persons Bureau to start inquiries into DIMIA itself about what had happened. Does that seem right?

Ms Godwin—No, I think not.

Senator CHRIS EVANS—The first email was in July.

Ms Godwin—The request in 2003 was in the middle of July. The records indicate that the various database searches and other things were going on during the latter part of July and the early part of August, and that the formal response was provided on 21 August—I think we said—which was about simultaneous with when the program was aired. It all seems to have been in the context of that same missing persons inquiry in 2003.

Senator CHRIS EVANS—But the officer who contacted them as a result of the Channel 9 broadcast was, in fact, one of the officers who helped provide the advice to the missing persons bureau officially around the same time that they had identified Ms Solon Young and that they knew that they had deported her.

Ms Godwin—It appears so.

Senator CHRIS EVANS—So following this quite extensive contact from the Queensland Missing Persons Bureau, you have been unable to find any response from DIMIA to that second email from them?

Mr Killesteyn—Yes. As the minister said, we are somewhat dumbfounded as well, but it appears as though the matter was not brought to the attention—at least on the records that we have—of other officers.

Senator CHRIS EVANS—I am not trying to go over that ground, I am just trying to understand the sequence. What we now know is that there was a second DIMIA official notified, and they also appeared not to have done anything about it.

Mr Killesteyn—There is no record that the matter was referred to any other officer.

Senator LUDWIG—Were they all from the same area?

Mr Killesteyn—The last two officers are, yes.

Senator LUDWIG—You said they were middle ranking. Do they have an APS level? Or would that identify them? Do not provide it if it does.

Mr Killesteyn—It probably does not identify them. One of them would have been an APS5 or APS6 officer at the time, and the other one may have been be an APS6 or an EL1 officer at the time. I cannot be absolutely certain.

Senator LUDWIG—Does that section have a supervisor? How many people in the section.

Mr Farmer—It would certainly have a supervisor, yes.

Mr McMahon—There is a section head, and there have been quite a few structural changes, but I think at the time there were around 45 people in that section.

Senator LUDWIG—And their basic role is to do what?

Mr McMahon—Their basic role is to answer the 30,000-plus inquiries that they receive a year.

Senator LUDWIG—So their role is information processing.

Mr Farmer—Yes. Could I say something, Senator. It is an important point, because you said ‘they knew this and did nothing’—you used words something like that. Looking at it, they appear to me—*prima facie*, anyway—to have been quite diligent on the question of answering the inquiry from Queensland and also in following up after the television program. The point I am trying to make is: there they seem to have been quite active, but on the evidence available to us, and it is only partial—I stress that—the penny does not seem to have dropped that ‘This is something quite extraordinary and I should do something about it to elevate this out of our day-to-day task of checking details for legitimate law enforcement purposes.’ That to me is the inexplicable—

Senator LUDWIG—We do not know. They may have.

Senator Vanstone—Senator Ludwig, you put the proposition. I do not rule any proposition out, as I say, because it is inexplicable to me—

Senator LUDWIG—No. And it was not what I was being strong with.

Senator Vanstone—You put it, as a possible proposition, that somebody who knew did pass it to someone, perhaps verbally, and believed they had, in that sense, discharged their duty. We do not know if that is the case. Mr Palmer, when he has finished his interviews, will find that out.

Senator CHRIS EVANS—Minister and Mr Farmer, I want to make it clear that I do not think that either Senator Ludwig or I are attempting to make judgments—

Senator Vanstone—I do not say you are either.

Senator CHRIS EVANS—I was just absolutely blown away by it.

Senator LUDWIG—I am a bit gobsmacked.

Senator Vanstone—I was just indicating that I do not rule that out; I do not rule it in. I do not know. I have a piece of information that I find inexplicable—this openness with the Queensland police on two occasions, or the program therefore leading to. If you are considering it without knowing whatever else there is to know, you think, ‘That’s as it should be: a direct and open response.’ But then there is no advice of it having gone further up and you think, ‘That’s not as it should be.’ It is inexplicable, as I say.

Senator LUDWIG—It does seem to explain the embassy’s letter.

Senator CHRIS EVANS—We will come to that, but just so I am clear, at the end of this email, they advise that Mr Young wants to come in and discuss whether or not she had been deported. Is that fair, Ms Daniels?

Ms Daniels—Yes.

Senator CHRIS EVANS—Maybe you would like to use your own words to make sure I got that right.

Ms Daniels—The report from QPOL indicated that he had tried to contact the department and the advice given to him was that, given that he said his wife was an Australian citizen, she would not have been deported. It is quite a reasonable response in the circumstances.

Senator CHRIS EVANS—At the time it would have been a perfectly sensible response.

Senator LUDWIG—To say, ‘That can’t be right and I need to talk to you about that.’

Senator CHRIS EVANS—So he then went to them, seeking their assistance in speaking to DIMIA about what had happened to his wife.

Ms Daniels—That seems to be the case.

Senator CHRIS EVANS—But you cannot tell us what happened after that because you have no written record of that.

Ms Daniels—I think our trail ends just about there.

Senator LUDWIG—Is there any contact from Mr Young with DIMIA?

Ms Godwin—He said that he had called our contact centre, so there is that contact. And then, of course, he contacted us in April this year.

Senator LUDWIG—By email?

Ms Godwin—Yes.

Senator LUDWIG—Have you had a look at your email traffic for earlier contact from Mr Young?

Ms Daniels—Yes, we have. Through ministerial correspondence, we have checked, and we found nothing.

Senator LUDWIG—What about at the departmental level?

Ms Daniels—Sorry, I do not—

Senator LUDWIG—If he had used a similar email to what the Queensland police were using. He was obviously in contact with QPOL and they were apparently keeping him informed of what they were doing. They may have given him the email they were using and he may have emailed DIMIA with that. Have you checked to see if in fact that occurred?

Ms Daniels—We have come across nothing on the file or through the checks that we have done.

Senator LUDWIG—But have you conducted an email search? I understand that you have conducted an email search on the ministerial email web site. What about the departmental one and that email traffic going backwards and forwards between QPOL and the DIMIA section—whether there was email traffic from Mr Young?

Ms Daniels—No. I cannot say. We have not checked that. Do you mean all the email traffic at that time, Senator?

Senator LUDWIG—Yes. You can see what could happen. One possibility is that QPOL may have given the email address of an officer they were using to him and said, ‘Contact them,’ and he may have. It is hypothetical but it would have—

Mr Killesteyn—We have not done a general search of the email system. There would be literally millions of emails.

Senator LUDWIG—I understand the scale.

Mr Killesteyn—So we have not done that. As I said, we have continued to look at the information that is on the paper records. There is no such email from Mr Young on the paper records.

Senator CHRIS EVANS—But you subsequently met with Mr Young and spoke to him, so you have some sense of who is involved, haven’t you? I presume so. I know he later made contact with you—or am I overstating that? You said he later made contact with the department—in April this year, wasn’t it?

Mr Killesteyn—That was the original email of 4 April 2005 that he sent to the minister’s web site.

Senator CHRIS EVANS—Did you subsequently have contact with him?

Mr Killesteyn—Not the department personally, but once the matter had been concluded and Ms Alvarez had been removed then there were some discussions between the minister’s chief of staff and Mr Young to let him know what we were doing.

Senator CHRIS EVANS—So no-one from DIMIA has actually spoken with Mr Young or dealt with him directly?

Mr Killesteyn—As Ms Godwin said, there may have been contact with our telephone contact centres, but in terms of any of the officers that have been involved to date in pursuing the matter since it was brought to our attention in April 2005, no.

Senator CHRIS EVANS—So the contact with Mr Young has been via the minister’s chief of staff?

Mr Killesteyn—Yes.

Senator CHRIS EVANS—Mr Farmer, are you prepared to table these emails with the names of officers et cetera removed?

Mr Farmer—I will have to take that on notice.

Senator CHRIS EVANS—I appreciate that, but it just seems to me that, now we have discussed the context, we might as well have them. I am not asking for them with the officers’ names or any identifier. We have had a fairly frank discussion. I appreciate that the officers have been very open about what is in them, so it seems to me we might as well have them tabled. That is obviously a decision for you and the minister.

Senator Vanstone—I can say that there is a point at which you can have them; I am just not sure when that is. I may seek Mr Palmer’s advice on that. I would like to think about that overnight. The only correction—it is not so much a correction; it is an additional piece of information—about not having spoken to these people is that I did ask my chief of staff to

speaking to Mr Palmer and indicate that I was concerned that there may be junior or middle-level officers who were significantly stressed over the degree of coverage. We do not know that the scenario, for example, that Senator Ludwig put might be correct. You would have someone sitting there in a very uncomfortable position, with no-one else speaking to them about it because Mr Palmer is doing an inquiry. I wanted to make sure that anyone who needed appropriate counselling could have it available. But we did not want to contact them without making sure that Mr Palmer was happy with that. In that context, I understand the officers were spoken to. The secretary can confirm if that is correct or not. We simply got clearance from Mr Palmer to do that and indicated to the department that it should be done. That is the only context that I am aware of in which these matters have been raised with any of these officers.

Senator LUDWIG—By way of care, is someone now contacting those officers to provide counselling?

Senator Vanstone—That is what I am saying—

CHAIR—That is what Senator Vanstone is just explaining.

Senator Vanstone—Having got clearance that they could be contacted—I do not think it was me; I think it was probably my chief of staff who indicated to the department that that could now proceed. But whether they have accepted such an offer or not, I do not know.

Mr Farmer—By counselling, we mean—

Senator LUDWIG—You can qualify it so it is clear on the record.

Senator Vanstone—To be of assistance in handling the situation, as opposed to prejudging any fault.

Mr Farmer—It is the services of our so-called external assistance provider.

Senator LUDWIG—That is as I understood it.

Senator CHRIS EVANS—Someone from your department made that offer to those officers you think might feel under pressure as a result of these inquiries.

Mr Farmer—That was the intention—to make that offer.

Senator CHRIS EVANS—That was made by someone under your direction?

Mr Farmer—Yes—after we had gone through the process that the minister mentioned with Mr Palmer.

Senator CHRIS EVANS—Can you tell us how many officers you offered that to?

Mr Farmer—I would have to take that on notice; I just do not know the answer.

Senator CHRIS EVANS—I presume someone senior from the department was tasked with that?

Mr Farmer—Yes.

Senator LUDWIG—Regarding the content of the file, you said there was a file in that section which contained some of that material. What else was in that file? There was the email traffic; there was that content. Were there any other notes or files in that folder?

Ms Daniels—There is a series of screen dumps from various system searches—quite extensive screen dumps which reflect the nature of the searches that were undertaken. I am not sure that I am answering your question. I am referring now to the query that came in 2003.

Senator LUDWIG—Yes, that is right.

Ms Daniels—There is quite a number of screen dumps reflecting various names and searches through the various databases to which Mr Killesteyn has referred.

Senator LUDWIG—So ICSE, TRIM, TRIPS?

Ms Daniels—Yes.

Senator CHRIS EVANS—Ms Daniels, could you perhaps translate for those of us who do not share your and Senator Ludwig's affection for and knowledge of these technical matters what we are talking about?

CHAIR—Is that small box in front of you there just for decoration?

Senator CHRIS EVANS—I am actually able to receive and send emails now, Senator, I will have you know, very proudly. I have come a long way in the last few years, but I am not sure that I understand what a 'screen dump' means.

Mr McMahon—You can capture the screen—any screen—and simply send it to a printer.

Senator LUDWIG—There is a button on your computer.

CHAIR—We could all pop down there and help you.

Senator CHRIS EVANS—Thank you, Senator Ludwig. That was not an invitation to you and Senator Payne to enjoy yourselves at my expense.

CHAIR—Trust me: I am not enjoying myself.

Senator CHRIS EVANS—I confess to being a Luddite. I just wanted to be clear what a screen dump meant.

CHAIR—Does that help you?

Senator CHRIS EVANS—Not particularly, but—

Senator LUDWIG—I did not think so.

Senator CHRIS EVANS—that is not to be insulting to Ms Daniels.

CHAIR—I could do it from my computer to the printer, if that would help, but you do not want to read my emails.

Senator CHRIS EVANS—No.

Senator Vanstone—I picked up a 30-year-old Parker pen the other day, and it still works, just as a matter of interest. Laptops get chucked out every few years.

CHAIR—Thank you, Minister.

Senator LUDWIG—Was there anything other than the screen dumps which indicated that they had been searching ISCE, TRIM, TRIPS and the like or any of the legacy systems?

Ms Daniels—There may have been—I cannot remember—but the majority were as I have described.

Senator LUDWIG—In terms of QPOL, is there any correspondence coming from them after these emails to DIMIA in respect of this issue?

Ms Daniels—For both years—2003-04?

Senator LUDWIG—Yes: onwards.

Ms Daniels—No, not that I remember.

Senator LUDWIG—Have you had a look?

Ms Daniels—Yes.

Mr Killesteyn—There is nothing on the record that suggests that they responded.

Senator LUDWIG—Was there any correspondence from DIMIA to the embassy?

Mr Killesteyn—At what time?

Senator LUDWIG—2003 or post 2003—2004—prior to the current letter.

Ms Godwin—Which embassy?

Senator LUDWIG—The Philippines embassy.

Senator CHRIS EVANS—Or DFAT more generally, I suppose.

Mr Farmer—Do you mean the embassy of the Philippines in Canberra or the Australian embassy in Manila?

Senator LUDWIG—Let's do all of them then, so there is no mistake. We can start with any of them about this issue—the Canberra Philippines embassy, DFAT based in Canberra, the overseas Australian embassy and the overseas contact, whether it be the Philippines government or the overseas workers welfare agency.

Mr Killesteyn—Once again, there is nothing on our records that indicates that, as a consequence of that, at those times—in July or September—contact was made with any of those parties or organisations that you have just nominated.

Senator CHRIS EVANS—Do you have any reason to believe that DFAT or anyone within DFAT knew that Ms Solon Young had been taken to the Philippines?

Mr Killesteyn—Again, there is nothing in our records which would indicate that they knew that.

Senator CHRIS EVANS—That is why I asked you a more general question.

Mr Killesteyn—I am not going to speculate, Senator. I just have the information on the files.

Senator CHRIS EVANS—No, I was just asking whether you knew.

Mr Killesteyn—Whether I knew what?

Senator CHRIS EVANS—Whether you had any other information that they allegedly knew.

Mr Killesteyn—No, I do not.

Senator CHRIS EVANS—Do you want to go to your letter, Senator Ludwig?

Senator LUDWIG—Coming to the present, 2005: when the Philippine embassy in Canberra wrote that letter to DFAT, did you have cause to look at that letter? That is the information, effectively, as I understand it; I have not seen the letter. Whether a copy has been sent to DIMIA is another issue.

Senator CHRIS EVANS—Ms Godwin said she had seen it.

Ms Godwin—Sorry, what was that? I beg your pardon, Senator.

Senator LUDWIG—This is the letter from the Philippine embassy in Canberra.

Ms Godwin—This is the very recent letter?

Senator LUDWIG—Yes.

Ms Godwin—I have seen it but, right at the moment, without it in front of me, I cannot recall it, if you have a specific question on it.

Senator LUDWIG—As I understand it, that letter outlined a complaint. The Philippine embassy indicated that the Queensland Missing Persons Bureau had contacted them directly through the office of the Overseas Workers Welfare Administration. The complaint was that they could have and should have contacted their consular officials in a more formal way and that would have brought this issue to light. That is my understanding of the contents of that letter, from the press reports; I have not seen the letter. The question is whether DIMIA was made aware of the letter and was sent the letter or a copy, and whether that has been referred to the Palmer inquiry as well.

Ms Godwin—I understand we got a copy of it. Ms Daniels might be able to specify how. I think it was probably copied to us just in the last week or 10 days or whatever from DFAT. Whatever we have got on our files, whatever information we have about this, is being made available to the inquiry. Anything they are asking for in terms of background information on systems, processes et cetera is being made available. Anything we have got, we will provide to them. That in a sense answers that part of your question. As I understand that letter, it refers to their view of contact with the Queensland police in 2003 to which we were not a party.

Senator LUDWIG—I have not seen the contents of the letter. I am only going on reports about it.

Senator CHRIS EVANS—Ms Daniels, are you able to help us as to when that letter was sent and to whom? When did you get a copy—was it ccd to you? And by ‘you’ I mean DIMIA.

Senator LUDWIG—And are DFAT seeking information from DIMIA so that they can respond to it?

Ms Daniels—I do not think I can help on that one. I have seen the letter as well, but I now—

Senator LUDWIG—Can you recall what it says, then?

Ms Daniels—Not particularly well, I am sorry.

Ms Godwin—Senator, I think we will need to take that on notice. As I recall it, it was sent to us simply for our information. I do not recall that we were asked for a specific response,

because in a sense it was not about DIMIA; it was talking about the Queensland police inquiry at the time.

Senator CHRIS EVANS—Let us be clear: this is a letter from the Philippine embassy in Canberra to DFAT—is that right?

Ms Godwin—That is as I understand it.

Senator CHRIS EVANS—This was sent some time ago?

Ms Godwin—No, just in the last week or 10 days.

Senator LUDWIG—What it sets out is the chain of events that may reflect on what happened in 2003 and therefore provide an understanding of what might have happened. It is a request from the Philippines' perspective for an explanation of what happened—which would be helpful in understanding it. I also want to know what DFAT might or might not have known at the time and what their response to that letter will be.

Ms Godwin—I cannot speak for—

Senator LUDWIG—These are questions I will also put to DFAT, but it is one of those areas where we unfortunately need to put it to you too to see what information you have on it, so that we are not directed back to you when the estimates are finalised.

Ms Godwin—As I said, all I can do is take it on notice because, as I recall it, we were simply alerted to it; we were not asked for a response. It is not about us; it is just another piece of information that has been put in the mix, if I can put it that way, most recently.

Senator LUDWIG—It is just that, as far as I recall it, the press reports indicate that the Queensland police Missing Persons Bureau wrote on 10 September 2003 to the Overseas Workers Welfare Administration inquiring about the whereabouts of Ms Solon, because by that time they had understood from the email traffic, it seems, that that was where she was and they were trying to locate her, as the Queensland Missing Persons Bureau was tasked to do, I suspect. There is a question of whether you have contacted the Philippines embassy about whether there is any additional information they can provide to you on their records dating back to that period—whether or not there were any subsequent inquiries. During 2003 and 2004, after these emails, were there any inquiries made by DIMIA to the Canberra embassy in respect of the whereabouts of Ms Solon?

Ms Godwin—Back in 2003 or 2004?

Senator LUDWIG—Yes, around the email traffic time.

Ms Godwin—We have already said that there is no evidence that we can see that we approached the Philippines embassy at the time. If the Queensland missing persons unit did, that is something that we were not aware of at the time, as far as we can tell from the files.

Senator LUDWIG—Outside the emails, there was no correspondence or there were no other calls from the Queensland police Missing Persons Bureau as to their actions, that they were writing to the overseas workers welfare agency?

Ms Godwin—There is nothing on the file that indicates that we had any further information beyond what we have already given you.

Mr Killesteyn—I did write to the commissioner of Queensland police—I think on 2 May 2005. We were interested in whatever information they had on their files—what inquiries they had made—in an effort to help us with our search. That was a formal letter, as requested by the Queensland Police Service. Up until the point at which Ms Solon was located, we had not yet received a response.

Ms Godwin—There is one other thing could I just add one other thing by way of completeness. You asked about any contact with DFAT around this time. There is, as I understand it, a record on the file of an inquiry of the DFAT passport office about Ms Solon Young's passport in September 2004, which we did not actually follow up. But we appear to have at least initiated a request about passport details. You asked whether DFAT were aware that she had been deported. The record does not indicate that they would have been aware of that at that point. It seems to have been a passport details request that, as I say, we did not ultimately pursue to its conclusion.

Senator CHRIS EVANS—You might have to explain that. That was an inquiry by DFAT?

Ms Godwin—No. We made an inquiry of DFAT about access to the passport record. DFAT came back to us and said, 'There's a process for requesting this; here is how you go about doing it,' and there is no evidence that we did then follow that inquiry through.

What was the date of that?

Ms Godwin—That was late September 2004.

Senator CHRIS EVANS—So this is following the email of 28 September?

Ms Godwin—Yes.

Senator CHRIS EVANS—This implies this was in reaction to the email on 28 September, does it?

Ms Godwin—It seems to; 29 September is the date that I have for us making the inquiry of DFAT.

Senator CHRIS EVANS—So the day after you got an email from the Missing Persons Bureau, again referring to Ms Solon Young and her deportation and her husband's inquiries, it seems someone in DIMIA sent off a request to Foreign Affairs and Trade for passport details. What does that mean?

Ms Godwin—I do not have any more information than that.

Senator LUDWIG—In what name?

Ms Godwin—Ms Solon Young.

Senator CHRIS EVANS—And Foreign Affairs advised that you had to follow some other procedure.

Ms Godwin—That is right. There is a formal procedure for seeking that information and there is no further record on the file as to whether that in fact was followed up.

Senator CHRIS EVANS—That assumes the DIMIA official did not know what the procedure was for dealing with Foreign Affairs on passport details.

Ms Godwin—I do not know why DFAT came back to tell us what the protocol was. All I can tell you for completeness—you asked about DFAT—is that there is that contact.

Senator CHRIS EVANS—Do we have any idea of what sorts of details you would have requested or DIMIA was requesting?

Ms Godwin—It may well have been the same sorts of details that were requested. Is there a passport? What is the passport number? I honestly do not know.

Senator CHRIS EVANS—You would not have that yourselves.

Ms Godwin—We had some of that information from the movement record. That is all I can tell you. There was a request which does not appear to have been pursued.

Senator CHRIS EVANS—I was just trying to understand myself whether DIMIA held that information—had access to passport details.

Ms Godwin—Not except in the context of our movement record. If we need further information, we have to ask for it from DFAT—which of course is what we did in April this year.

Senator LUDWIG—Was that an email? How was the request actioned?

Ms Godwin—I would have to check. I am working from a summary here. I do not know whether it was a file note of a phone contact or it was an email.

Senator LUDWIG—What officer was involved in that?

Senator CHRIS EVANS—Is this the officer who received the 28 September email from the missing persons bureau?

Ms Godwin—It is not clear. As I say, I am working from a summary and it is not clear whether it was that office. I apologise. I have got that notation. I will have to check the details that you are asking for.

Senator CHRIS EVANS—Maybe you could take it on notice for us.

Ms Godwin—Sure.

Ms Daniels—I can add one point to Ms Godwin's point. It was through the Brisbane office again. The inquiry was referred to our Brisbane office, so this request that Ms Godwin is referring to is being carried out in Brisbane.

Senator CHRIS EVANS—So it will not be the same officer, then.

Ms Daniels—I do not think so.

Senator CHRIS EVANS—You said the officer who received the email on the 28th was actually a Canberra based officer.

Ms Daniels—We probably need to check that.

Senator CHRIS EVANS—Check your earlier evidence?

Ms Daniels—No. As Ms Godwin said, just check the precise nature—

Senator CHRIS EVANS—Whether the passport inquiry was generated from Brisbane or from central office?

Ms Daniels—I am confident that it was generated in Brisbane. I just cannot remember the names of the people involved.

Senator CHRIS EVANS—But we are also confident that the email of the 28th was received by an officer in Canberra.

Ms Daniels—Yes.

Senator CHRIS EVANS—Okay. It therefore seems to follow that it is going to be a different person, unless they flew overnight to Brisbane.

Senator LUDWIG—Was there any interoffice email traffic between the Brisbane office and the central office about this issue in that time between July and September 2003? In other words, were there inquiries made out of Brisbane to the central office by way of internal DIMIA traffic?

Ms Godwin—Can I clarify that the contact with DFAT I am talking about was September 2004, not 2003.

Senator LUDWIG—Stretch the period, then, from the beginning of 2003 to the end of 2004 about this issue. Was there internal traffic? It obviously appears—

Ms Godwin—Between central office and Brisbane?

Senator LUDWIG—Yes. It appears there has been some chasing of the information out of Brisbane—that is how it appears and I do not want to put it any higher than that—and obviously a clear traffic out of the Canberra office or the central office, if I can call it that. But is there any check between the two of them about this issue—whether or not they have sent an email and the Brisbane office has asked the central office separately about this issue and they have responded? We have not asked that particular question.

Ms Godwin—If we could just take that on notice. The only reason I say that is I just want to be confident when we provide you with the answer because I am aware that in a couple of instances we made assumptions about which office it was and, when we checked the actual office, it was not the office we thought it was in the first place. I just want to be confident that they were not both from central office or, if Brisbane was involved, how that happened—if there is anything on the file that indicates that.

Senator LUDWIG—So do you think there is something—I do not want to go there; you will check.

Ms Godwin—If I can just clarify: what we said was that there was an inquiry which appeared to have been made to central office on 28 September and another inquiry that appeared to have been made—I had not recalled; Ms Daniels said she thought it was from Brisbane. All I am saying is that I know that in a couple of other instances we had made assumptions—not in the context of missing persons but just putting this together—that an office had made an inquiry, when in fact it was, say, Brisbane when we thought it was Southport or it was Southport when we thought it was Brisbane. Because I do not personally have a recollection of this, all I am saying is: I think, rather than trying to say it, if we could just put it all together and give it to you on notice so that we have got a clear picture—

Senator LUDWIG—All right. You can understand the inquiry.

Ms Godwin—Yes.

Senator LUDWIG—It is just trying to tie off whether or not, if the central office had been responding to the Queensland Missing Persons Bureau, there had been inquiries from the Brisbane unit to the central office and whether there had been replies back during that period—2003 to 2004—in respect of the whereabouts of Ms Solon and what information may have been provided to the Brisbane office. Thank you.

Senator CHRIS EVANS—Mr Killesteyn, I think you indicated that you had not had any contact with the Brisbane Missing Persons Bureau other than—I took it there had been some telephone conversation and you had formally written to them. Is that a fair summary?

Mr Killesteyn—Yes. It was the time that the searches were going on and I thought it was important that we get as much information as possible to help us in our search in Manila. Through the Australian Federal Police I was given a contact officer in QPOL to ring about the matter, in a sense to indicate our keenness to get whatever information was available on their files. I spoke to that contact officer. That contact officer suggested that the request should be put in writing, which I did and sent it off that afternoon.

Senator CHRIS EVANS—That is 2 May?

Mr Killesteyn—That is correct, 2 May.

Senator CHRIS EVANS—So there was no contact between you—that is, DIMIA—and the Queensland Missing Persons Bureau before that?

Mr Killesteyn—Other than the matters that we have just proceeded with—the three contacts?

Senator CHRIS EVANS—Yes, the email traffic. So, apart from the emails in 2003 and 2004, which discussed, effectively, the deportation of Ms Solon Young, there was no interaction? Following Mr Young's contact, following your awareness at senior levels in DIMIA that this had occurred, there was no contact then with the Queensland Missing Persons Bureau?

Mr Killesteyn—Not directly, although, as I mentioned before, we had the IDC that we put together with the Australian Federal Police, the Department of Foreign Affairs and Trade and ourselves meeting every few days to review progress with the search. Through the AFP we were seeking that support, if you like, or detail, from the missing persons unit in QPOL. But there was no direct contact other than the one that—we reached a view that it would be better if I approached QPOL directly in this case.

Senator CHRIS EVANS—What I am trying to get a sense of is why you did not involve them earlier, given that it was clear that they had material knowledge of the matters, had been searching for this woman, had been in contact. Is there a problem there? I guess that is what I am asking. Given that they had been actively searching for her—including seeking contact in the Philippines—why were they not in the loop for a month or so? When did you become aware that Ms Alvarez—

Mr Killesteyn—On 21 April, and we commenced the search on 22 April. We had the AFP with us. The AFP generally act as the liaison point into missing persons bureaus with the states.

Senator CHRIS EVANS—So it was only about 10 days. Is there a problem between DIMIA and the Queensland Missing Persons Bureau?

Mr Killesteyn—Not as far as I am aware. We relied on the AFP initially—

Senator CHRIS EVANS—Do you know if they were in contact with the Queensland Missing Persons Bureau?

Mr Killesteyn—I understand there were telephone conversations between the AFP and QPOL.

Senator CHRIS EVANS—Do you know that they accessed what they knew about Ms Solon Young's whereabouts?

Mr Killesteyn—I am not privy to the conversation, but there was nothing that was brought to my attention which indicated that information was being withheld. My own personal view was that we would be better satisfied, if you like, about the information that we could use to progress the search for Ms Solon if we had a much closer look at the information that was on the Queensland missing persons files. I just wanted that particular issue pursued to the nth degree.

Senator LUDWIG—Are you aware of whether the AFP were informed to contact QPOL, because they had obviously written to the Overseas Workers Welfare Administration, so they had at least some of that primary knowledge? When that task force was formed in Canberra with the AFP and DIMIA—that included you, did it?

Mr Killesteyn—Yes.

Senator LUDWIG—Was that information available to the AFP to follow up on at that time?

Mr Killesteyn—That Queensland police had written to the Overseas Workers Welfare Administration?

Senator LUDWIG—Yes.

Mr Killesteyn—We did not know that at the time.

Senator LUDWIG—But you had known that the Queensland Missing Persons Bureau had some involvement. Do you know whether or not that was passed directly to the AFP?

Mr Killesteyn—No. That information that Queensland police had written to the Overseas Workers Welfare Administration did not emerge until recently. I cannot remember precisely when that emerged but, at the time that we were searching through the Australian Embassy in Manila, that was not information that we had.

Senator LUDWIG—What about the information about the email traffic? When did that first come to light? That is 2003—which indicated that the Queensland Missing Persons Bureau had been in contact with one of your officers.

Ms Daniels—We came across those papers on 21 April, which was the day that Ms Godwin initiated the urgent inquiries that she referred to earlier.

Senator CHRIS EVANS—So almost immediately when you launched the investigation for Ms Solon Young you actually became aware that your officers had been aware of this a year or two before?

Ms Daniels—Yes, within a day—

Senator CHRIS EVANS—Was that because you did a search of the name and turned up records—or did officers come forward?

Ms Daniels—Officers certainly did not come forward. We were looking at papers at that stage. I actually do not know how those papers came to light, except that, on that day, we had the compliance file from 2001 and these other papers that you are referring to.

Senator CHRIS EVANS—So virtually instantaneously you had the full story—not the full story but the story that was going to be available from the departmental records?

Ms Daniels—Yes.

Senator LUDWIG—Was that file with that correspondence made available to the Australian Federal Police at that task force meeting so that they could then action the leads that were available in it—that is, the Queensland police?

Ms Daniels—I am not sure exactly how much of the paperwork went to the AFP on that day, but at the meeting that Mr Killesteyn referred to and that he chaired, he mentioned that an amount of documentation was passed to the AFP and DFAT. I cannot remember the exact volume of that information.

Mr Killesteyn—We prepared a dossier, if you like, of all of the information that we had on our files that we thought might be of any sort of assistance in locating Ms Solon in the Philippines. That information was provided to the AFP. The AFP used their communication channels to urgently get that dossier to Manila that afternoon of 22 April so that Manila would have all of that information available to then start the range of searches and inquiries with various government agencies using all of the names that we knew of from Solon to Young to Cook to Alvarez and so forth.

Senator LUDWIG—Did the dossier contain the information about the Queensland Missing Persons Bureau searching for her?

Mr Killesteyn—I would have to take that on notice. I do not know.

Senator LUDWIG—Do you know whether or not you drew that to the attention of the AFP at the meeting that you chaired? Can you recall?

Mr Killesteyn—No, I cannot recall. I have to take it on notice.

Senator CHRIS EVANS—Was there a decision taken to not make this public at the time?

Mr Killesteyn—No. The minister was advised and that is what led to the extension of Mr Palmer's terms of reference, and Mr McGauran's press release indicated—

Senator CHRIS EVANS—That was some eight days later, though, wasn't it?

Mr Killesteyn—That is true, but there was no attempt to hide it. This was a matter of going through the processes, making decisions about the best way of handling this matter.

Senator CHRIS EVANS—I will put it another way. I was out of the country at the time, so I might have lost some of the contextual issues. I will say that I was not travelling with Senator Vanstone.

Senator LUDWIG—Thank you for that.

Senator CHRIS EVANS—As I read the record, you initiated these inquiries on 21 April and the public statement by the minister was made on 30 April. I am not suggesting you tried to keep it secret but was there thought given to making the issues public to help in the search for Solon Young?

Mr Killesteyn—Not at the time because of the request from Mr Young that the whole matter be kept confidential. He was very concerned about the impact on his family. We felt an obligation in relation to his request. Therefore, the searches that were conducted were initiated on the basis of the information that we had and inquiries through the agencies.

Senator CHRIS EVANS—How did you know Mr Young wanted it kept quiet?

Mr Killesteyn—That was a matter that was discussed between Dr Nation, the minister's chief of staff, and Mr Young at the time.

Senator CHRIS EVANS—But no-one at DIMIA had actually spoken to Mr Young.

Mr Killesteyn—No. We had a view that this was a serious matter and that we should treat it as such. As a consequence, we think the matter was appropriately dealt with by personal contact between Dr Nation and Mr Young to show that we were treating it seriously and that we were in the process of searching for Ms Solon.

Senator CHRIS EVANS—Is that Dr Nation?

Mr Killesteyn—Yes.

Senator CHRIS EVANS—Sorry, I do not know him. Was he the one who provided you with the information about Mr Young's wishes?

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—Was DIMIA represented at these meetings with Mr Young or not?

Mr Killesteyn—They were not face-to-face meetings; they were telephone conversations, as I understand it.

Senator CHRIS EVANS—So Mr Young spoke to Dr Nation, and Dr Nation informed you that it was Mr Young's desire to keep the matter private, and so you went about the search with the AFP and contacted the Philippine embassy et cetera. Why then was the decision taken on 30 April that Minister McGauran release that information publicly?

Mr Killesteyn—He did not release publicly any of the details. What he indicated in his terms of reference was the fact that an Australian citizen had been removed and that that matter was being referred to the Palmer inquiry. The details of Ms Solon's identity were not made public by anyone in the federal government. It emerged as a consequence, I believe, of media inquiries and the subsequent release of details by the Queensland government.

Senator CHRIS EVANS—I see. I was not trying to verbal Minister McGauran; I knew he had done the terms of reference and referred in general terms to the case. But you say that you never released Ms Solon Young's name, that that came into the public arena by other means?

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—So your position remains that that was done because of her former husband's request?

Mr Killesteyn—It is not my position; they are the facts. It was a clear request that came from Mr Young. He was particularly concerned about the impact on his family, and we felt it was important to pursue the matter in accordance with his wishes.

Senator CHRIS EVANS—What is the legal status of a former husband?

Mr Killesteyn—There are obviously privacy issues there, but bear in mind that there is also a child from that marriage. Notwithstanding that the former husband may not necessarily have legal issues, there are certainly some issues around the child.

Senator CHRIS EVANS—Does Mr Young have legal custody of the child?

Mr Killesteyn—I am not totally aware of it. The child obviously lives with Mr Young, but I cannot comment on those other arrangements.

Senator CHRIS EVANS—I read one report that there was a child in state care. That is another child, is it?

Mr Killesteyn—That is a second child, as we understand it.

Senator CHRIS EVANS—I know, I am just checking.

Senator LUDWIG—Just to come back on that a bit, who informed you? Did Mr Young personally inform you that he did not want the name revealed?

Mr Killesteyn—As I said in my answer to Senator Evans's question, there were conversations between Dr Nation and Mr Young about the most appropriate way to handle this matter, given the concerns about confidentiality and the impact on the family. That information was then relayed to us.

Senator LUDWIG—How was that relayed? Was it in a letter or an email; did Dr Nation ring you up?

Mr Killesteyn—You mean from Dr Nation to DIMIA?

Senator LUDWIG—How was it relayed?

Mr Killesteyn—That was through telephone conversations.

Senator LUDWIG—What was the nature of those conversations?

Mr Killesteyn—They were a description of the conversation that Dr Nation had had with Mr Young and the request that had been made at the time.

Senator LUDWIG—And you accepted that at face value?

Mr Killesteyn—Yes.

Senator LUDWIG—You did not ask what the relationship was between them—whether they were divorced or separated? Did you go and check the privacy laws to see whether or not that was in fact a valid request?

Mr Killesteyn—Our interest was in locating Ms Alvarez as quickly as possible, and we pursued that.

Senator LUDWIG—Yes, but this appears to be one of the mechanisms that would have stifled that because you could not use the name publicly to pursue it.

Mr Killesteyn—I think we had pretty good information in our records at the time.

Senator LUDWIG—But you did not know where she was at the time Dr Nation made his call to you?

Mr Killesteyn—We knew she was in the Philippines.

Senator LUDWIG—Yes, broadly, but that is it.

Senator CHRIS EVANS—You knew that; you had dropped her off in the Philippines.

Mr Killesteyn—That is correct. We had removed her to the Philippines.

Senator CHRIS EVANS—You did not have any current knowledge of her whereabouts?

Mr Killesteyn—Not at that stage.

Senator CHRIS EVANS—That is why you could not find her.

Mr Killesteyn—I beg your pardon?

Senator CHRIS EVANS—That is why you could not find her immediately: you had no current knowledge of her whereabouts.

Mr Killesteyn—That is correct.

Ms Godwin—Except to say that we did obviously check whether there was any record at all of her returning to Australia—whether there was any information at all that might lead us to that view. There was not.

Senator CHRIS EVANS—I was not suggesting anything other than, for accuracy's sake, that is why you were looking for her because you did not know where she was, which is the point. I think the point Senator Ludwig was trying to make was it seems to us on face value, without attempting to be critical of anyone, that the more public the knowledge that people are looking for someone the greater the likelihood that they will turn up. If more people know they are missing, more people know to look for them or to bring matters to your attention, which is why the police did the missing persons bulletin on Channel 9, which the DIMIA official responded to. I guess we are just exploring why the inquiries after her were done in secret when I would have thought, at first blush, it would have got a better result, more quickly, if it were public.

Mr Killesteyn—It was hardly secret. If you look at the range of inquiries that were made in Manila, there was no attempt at concealing the search. There were inquiries, as I mentioned before, with the Philippines National Police, the National Bureau of Investigation, the Bureau of Immigration, the department of foreign affairs, the Philippines office of births, deaths and

marriages, the department of health and government welfare agencies—a whole range of agencies.

Senator LUDWIG—One of the areas was reported on 7 May. Mr Diaz said that, while his police had received a formal request from the AFP three weeks ago to search for her, they had only been given the names ‘Vivian Alvarez’ and ‘Vivian Solon’ plus possible addresses to check. Checks of these names and addresses in the cities of Cebu and Tacloban had proved fruitless. Dr Diaz told ABC Radio that they did not know anything about this woman except the name. That was from the Philippines.

Mr Killesteyn—I am not going to comment on what the Philippines may or may not have said but I am satisfied, given the reports that we were getting from Manila, that very extensive inquiries were being made and that all of the names that Ms Solon may have been identified with were being provided to those relevant agencies.

Senator CHRIS EVANS—When and how did you come to know that she had been located?

Mr Killesteyn—This arose through media contacts that were being made with the minister’s office here—that she was being located. We had I think two inquiries, if my recollection is correct, from two different newspapers. One did not provide any further details—just claiming that they had made contact. Through the second inquiry, we ultimately learnt of the location of Ms Solon in the mission of charities in Olongapo.

Senator CHRIS EVANS—When was the first contact with you or the Australian government, bearing in mind it may not have been a DIMIA official? I do not know the answer but what was the first Australian government contact with her and when did that occur?

Mr Killesteyn—On the day that we were informed of her potential whereabouts—I will have to get advice on what that day was—we immediately arranged through the embassy in Manila to despatch the consul general to the area. The consul general was not able to see her until the next day.

Ms Godwin—The day that the consul general went to Olongapo was the evening of 18 May. He saw her on the morning of 19 May.

Senator CHRIS EVANS—He made then the positive identification? You were certain then that you had the right person?

Mr Killesteyn—Yes. The mission of charities had the original documentation that Ms Solon had with her when she was taken to the Philippines.

Senator CHRIS EVANS—Did that include her Australian passport?

Mr Killesteyn—No. Obviously it would not have included her Australian passport because at the time she was removed she had not been identified as an Australian citizen.

Senator CHRIS EVANS—No, not by you. I am just trying to get at what was in her personal possession.

Mr Killesteyn—As I recall, it contained the travel document that had been issued by the Philippines consul in Brisbane and, I think, the passenger card that had been completed upon her departure.

Senator CHRIS EVANS—What arrangements for or offers of assistance were made to Ms Solon Young?

Ms Godwin—I think in the first instance the focus was on providing her with immediate assistance, in keeping with normal consular practice for an Australian overseas. In a sense that was arranged by the embassy as part of their normal consular duties, although obviously this is an unusual or extraordinary consular case. So I think in the first instance there were discussions with her about the sorts of immediate steps, and that included whether she would stay in Olongapo for a short while longer or go to Manila. In the event, after just a couple of days, I think she moved to Manila, where the embassy had arranged accommodation for her and had also arranged for family members to join her to assist her. They were also providing her with other assistance—sorting out a passport for her and those sorts of things. A consular official was available, I think, to assist her during the early days. We also had discussions with the Philippines department of social welfare and development. They made some social workers available to provide support and counselling in the event that that was needed. So there were a variety of things.

Senator CHRIS EVANS—Was there a medical assessment done?

Ms Godwin—Yes, they initiated access to medical advisers for her, and I think a series of appointments was arranged based on the advice. In the first instance, she saw a GP and he proposed a series of additional checks.

Senator CHRIS EVANS—Are you able to help us at all with the general description of her health condition, or is that not appropriate?

Ms Godwin—I am not; that has not been provided to us. I am not aware if it has been provided to DFAT.

Senator CHRIS EVANS—I am conscious of privacy concerns. But there is a great deal of concern in the community about how she is, so I just wondered if there was any general information. But I appreciate that you have not got it or have not been provided with it or that you may not be in a position to provide it even if you had got it.

Ms Godwin—It has not been provided to us and, as I say, I am not sure if it has been provided to DFAT. Subsequent to that, of course, there has been a series of discussions with her and her advisers—she now has legal advisers—about assistance available to enable her to return to Australia. In that context, a variety of provisions have been proposed and she and her advisers are considering that, as I understand it.

Senator CHRIS EVANS—Who is managing that on behalf of the Commonwealth government?

Ms Godwin—The lead agency now is the Department of Family and Community Services but in consultation with a range of other relevant agencies.

Senator CHRIS EVANS—Have they made an offer to her?

Ms Godwin—As I understand it, we started last week with a sort of general outline of the sort of assistance that would be available, and that has now been progressively fleshed out, as I understand it, in discussion with her legal advisers.

Senator CHRIS EVANS—Is that now agreed or is it still being negotiated?

Ms Godwin—I am not aware if it is agreed. It was ongoing as of yesterday, and of course today I have not been party to those discussions.

Senator CHRIS EVANS—You are in the time warp with the rest of us. Does that Commonwealth offer include an offer of compensation?

Mr Farmer—We are not the primary players in the matter of discussions with Ms Alvarez so, that being the case, I do not think we should be commenting on that matter.

Senator CHRIS EVANS—I got the sense that it was a sort of interdepartmental thing and, while you are not the lead agency, you are involved. Is that right, or are you no longer involved?

Mr Farmer—You have already said we are in a time warp. This is something that is going on right now. I do not want to do anything that would be misleading, because I am not confident that we are in control of the facts.

Senator LUDWIG—Never a truer word said.

Senator CHRIS EVANS—Do we know whether it is Ms Solon Young's intention to return to Australia?

Ms Godwin—I think she has publicly indicated that she is interested in returning to Australia, but that matter is being pursued in consultation with her legal advisers.

Senator CHRIS EVANS—Is it the case that you would have all internal departmental inquiries on hold in the sense that it has all been referred to Mr Palmer? You are leaving the question of inquiring as to what has gone wrong and following up any of these issues to Mr Palmer. Is that fair?

Mr Farmer—In terms of an inquiry in any formal sense, that is right, and certainly in terms of contacting the officers and making inquiries that is the case. As I indicated this morning we have certainly been reflecting on the sorts of things that seem to have happened and the sorts of things that did not work as they should have, drawing our conclusions and in some cases coming to our own views about the sorts of things that we should be doing to change our processes, hence the announcements that the minister made this morning.

Senator LUDWIG—Mr Killesteyn, when Dr Nation spoke to you, did you ask him whether or not Mr Young had next of kin status?

Mr Killesteyn—No, I did not.

Senator LUDWIG—Did you just assume that he did?

Mr Killesteyn—No, I did not make any assumptions at all. As I said before, our interest was in finding Ms Solon as quickly as possible. We had information on our files which gave us some confidence that we had substantive and positive leads, and that is what we pursued.

Senator LUDWIG—But you took Dr Nation’s advice in the conversation he had with you about the matter?

Mr Farmer—Yes. That would be perfectly normal, I would think.

Senator LUDWIG—I am not saying it is not. I am just confirming what the facts are.

Mr Farmer—But you seem to have asked the question a couple of times, and I am a bit puzzled by that.

Senator CHRIS EVANS—Senator Ludwig may be more comforted than I am, but I find it a trifle strange that DIMIA did not have any direct contact with Mr Young. I must admit I find that odd.

Mr Killesteyn—There was an agreement that we wanted to establish contact with Mr Young and, rather than have multiple people speaking to Mr Young, we ultimately concluded that Dr Nation could make the original contact and should continue to make contact and that that was a way of indicating that this matter was being treated seriously, as it was.

Senator CHRIS EVANS—The weakness is, I gather, that he is not an officer of DIMIA.

Mr Farmer—Mr Young had originally communicated via the minister’s web site.

Senator CHRIS EVANS—No, he originally communicated by trying to contact you, and when that proved unsuccessful a year or two later he went to the ministerial web site. Let us be fair.

Mr Farmer—That is a fair cop. I am talking, though, about the immediate past.

Senator LUDWIG—Even looking at the immediate past, then. You took at face value what Dr Nation had asked you to do. But this is in respect of an Australian citizen you had deported. I would have thought the responsibility would have been to establish who the next of kin was and contact them to see whether they could assist. That is what I would have thought would have been the appropriate action, rather than to then agree that Dr Nation, who is not in DIMIA, should be the conduit for the contact to the outside world in respect of this matter. That is what I would have thought.

Mr Farmer—As we were in the process of trying to find Ms Alvarez Solon, we were unable to establish from her who the next of kin was. We had what was an approach from her ex-husband, who was inquiring about the mother of the child. The child lived with the ex-husband. So the child certainly had a direct relationship with Ms Alvarez Solon.

Senator LUDWIG—But wouldn’t it have been a simple matter to contact Mr Young and say, ‘Who is the next of kin?’ The brother would have probably been pointed out at that stage. I understand that is hypothetical, but at least you could have then established the custody issue or the number of children and then established who the next of kin was to draw them in and advise them of what was going on, rather than leave it to Dr Nation to determine the outcome.

Mr Killesteyn—We did make contact with next of kin. As part of the search, we were seeking details of siblings that could help us in any way with an address or a location of Ms Solon. We made contact with Ms Solon’s half-brother in Australia. Through a range of further inquiries we made in the Philippines, we were able to establish the next-of-kin siblings of Ms

Solon, and progressively we started to make inquiries of those people as to whether they knew of her whereabouts.

Senator LUDWIG—When was that?

Mr Killesteyn—That was during the period from the commencement of the search—22 April—through to the time that she was ultimately located on 11 May.

Senator LUDWIG—Was that through Dr Nation?

Mr Killesteyn—No, that was through the embassy in Manila making the contact with siblings in the Philippines. The contact with Mr Solon in Australia was through DIMIA.

Senator LUDWIG—This is a person who was on a missing persons database and a television show. That is where the idea that you have indicated of worrying about privacy in this instance escapes me. I do not want to say it but, in terms of the culture, why would you then raise privacy concerns and worry about them when, in this instance, it would seem important to find the person?

Mr Farmer—I think we are just answering the questions factually.

Senator LUDWIG—Yes. We are going around in a circle on that.

Mr Farmer—That is what happened.

Senator LUDWIG—Yes. Thank you.

Mr Farmer—It seemed important to take account of the wishes of the family. That is just a statement of how it happened.

Senator CHRIS EVANS—I assume, for instance, when you contacted the half-brother, his initial response was that she was a missing person. Or by this stage did he know that she had been deported?

Ms Daniels—I contacted the half-brother on 30 April. It was a reasonably short discussion. I mentioned to him that we were looking to contact Ms Solon and sought from him whether he had any contact that he might be able to help us with on that matter. He did not, but he was very willing to talk about Ms Solon. I explained to him that he did not need to assist us, of course, but whatever he could provide to us would be to Ms Solon's benefit. He knew of her then as a missing person, yes.

Senator CHRIS EVANS—Did you tell him that she had been deported to the Philippines?

Ms Daniels—No, I did not. The issues are similar to the ones that have been discussed so far—namely, that the issue was not public at that point and it was a particularly sensitive matter. We considered that discussing that with him may well be inappropriate. We did not know where Ms Solon was; nor were we in a position to know how she might have wanted that sort of information to be passed on.

Senator CHRIS EVANS—But you had a fair idea that she was not living next-door to her half brother; you had a fair idea she was in the Philippines.

Ms Daniels—Yes.

Senator CHRIS EVANS—You did not tell him that that was the likelihood?

Ms Daniels—No, not at that point.

Senator CHRIS EVANS—How did he find out? Did he read about it in the paper?

Ms Daniels—He found out through the media.

Senator CHRIS EVANS—What about the other relatives? Were they similarly not given the information, even the ones in the Philippines?

Mr Killesteyn—I am not privy to the particular conversations that were had with those individuals. Essentially, the nature of the inquiry with them probably would have made it obvious that we were seeking information about the possible location of Ms Solon in the Philippines.

Senator CHRIS EVANS—In the Philippines, that is right.

Mr Killesteyn—I understand your point about the publicity. With hindsight, clearly the publicity, in a sense, helped in locating her. We thought we had very good leads. We pursued those. There was some confusion initially about the individual from the overseas workers welfare agency and whether they worked for us or not. Once we had established that confusion, we started to look for that person. That became difficult, and I can go into the details if you wish, but we continued to track that person down to see whether she could provide information about where Ms Solon had been located. Progressively, as the search occurred, we started to contemplate at that point whether we should put the information into the public arena as well. It was not as if we were going to continue to search down all of these leads. We were at a point where we thought the next step was to put the information into the public arena.

Senator CHRIS EVANS—Who made the decision not to do that? Was this a departmental decision?

Mr Killesteyn—It was a discussion that we had about the way in which—

Senator CHRIS EVANS—Who is ‘we’?

Mr Killesteyn—Myself, Dr Nation, Ms Godwin—about the way in which we should be managing this particular issue.

Senator CHRIS EVANS—Were those discussions held with the AFP? By that stage you had an IDC, I gather?

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—The IDC was set up on the 21st ?

Mr Killesteyn—22 April.

Senator CHRIS EVANS—Was the question of publicity or making this issue public discussed at the IDC or was the decision purely taken between senior officers and the minister’s office?

Mr Killesteyn—I don’t think we formally discussed the options at that first meeting. We had those leads and we pursued them.

Senator LUDWIG—It seems to me you were conducting a missing persons search in silence, quite frankly, because you still cannot confirm whether or not, when you had

established the IDC, you had passed on to the AFP the dossier which contained the Queensland police missing persons bureau details.

CHAIR—Senator, I think that is a comment you can make, and I think the officers have spent some time answering your questions and Senator Evans's questions—

Senator LUDWIG—Sorry; I will let Senator Evans have a go.

CHAIR—and we don't have a great deal of time available. If there are any new questions, perhaps you could ask those.

Senator CHRIS EVANS—I just want to be clear: the decision not to go public with the search was made by senior officers inside the department in consultation with the minister's office?

Mr Killesteyn—I think that is a fair summary.

Senator CHRIS EVANS—In the end it was the media who first alerted you to Ms Solon Young's whereabouts?

Mr Killesteyn—That is what I indicated before, Senator. As I said, this was not an exercise conducted in secrecy. I went through the range of agencies that we made inquiries with.

Senator CHRIS EVANS—I do not want to get into a debate with you but one can take different views about that. You did not tell the half-brother you had deported her. You did not make it public. Sure, you were conducting inquiries with official agencies, but even the minister on the 30th, some eight days later, did not reveal the name. It only came out because of the media. You made a point of stressing to me that in fact you never released the name—

Mr Killesteyn—That is correct.

Senator CHRIS EVANS—As a mark of holding to your assurance to Mr Young. It may well be that we would never have known the name if we had relied on DIMIA.

Mr Farmer—I think that is really going beyond the point where we could express a view. The conduct of that sort of inquiry might well have led to developing views on the part of Mr Young and/or others about what was necessary if the searches had not had success in locating Ms Alvarez Solon.

Senator CHRIS EVANS—So you think that eventually you might have been forced to go public.

CHAIR—I do not think we can indulge in that sort of conjecture, Senator Evans.

Mr Farmer—I said what I said, Senator.

Senator CHRIS EVANS—I am just trying to understand what it was you were trying to say there, whether you think at some stage you might have been forced to go public if you had not been able to find her.

Mr Farmer—I was commenting on your remark that it might have stayed secret or something indefinitely or forever. I was really saying that, no, I would not accept that as a proposition. I do not think we have a basis for agreeing to that.

Senator CHRIS EVANS—That begs the next question: how would it have become public?

Mr Farmer—It is a hypothesis and, as I tried to say, if the various steps that were being taken over time—and I am not attempting to put any period on that time—proved unsuccessful then different views may have been formed by Mr Young or by others about what was necessary to change the approach.

Ms Godwin—Can I clarify one thing. I have just checked with one of the other officers. It is my recollection, and I just confirmed it with another officer who was at the meeting, that we did tell the AFP on the 22nd that there had been a Queensland Police missing persons inquiry, so they were aware of that particular component.

Senator LUDWIG—Did you check the dossier?

Ms Godwin—I did not check the dossier; I just checked with the other officer who was at the meeting to check whether my recollection was correct. He confirmed that, yes, we did tell the police. But we have not checked the dossier. We said we would do that on notice.

Senator CHRIS EVANS—Do you know as a question of fact whether or not the AFP directly dealt with the Queensland Missing Persons Bureau on that issue in those days following the establishment of the inquiry?

Ms Godwin—I do not personally know as a matter of fact. I had understood that there had been some contact—

Senator CHRIS EVANS—Would you mind taking that on notice, then?

Ms Godwin—Sure.

Senator CHRIS EVANS—I just want to know that a connection was made; that is all.

Mr Farmer—There is one matter to follow up a question by Senator Buckland which we have a bit of information on. It was the flying doctors.

Senator CHRIS EVANS—The flying doctors transporting those with mental health issues.

Mr Davis—I am provided with information that says that the decision to use the Royal Flying Doctor Service in South Australia in these circumstances is made by the certifying doctor in consultation with the Royal Flying Doctor Service and the receiving hospital. The detainee was indeed detained under the South Australian Mental Health Act today and was scheduled to be transferred to Adelaide at 9 pm—I assume that is South Australian time—by air. I have no information since I received this about three hours ago, so I am presuming that occurred.

Senator LUDWIG—We will pass that along.

Senator CHRIS EVANS—We will make sure that Senator Buckland knows.

CHAIR—We have two colleagues undertaking to ensure that that information gets to Senator Buckland as a matter of priority.

It being 11 o'clock, I will confirm my earlier advice that when we commence tomorrow morning at 9 am we will begin in outcome 2 for approximately one hour, certainly no longer. We will then return to the order of outputs under outcome 1 and discuss output matters. I am not able to guarantee that those output matters will not canvass matters we have also discussed today, but they may have a broader flavour.

Mr Farmer—This is just for our marshalling the officers sort of routine: can I ask about the Torres Strait Regional Authority, outcome 3 Indigenous issues, and then MARA.

CHAIR—It would be my intention to certainly hear from the tribunals and MARA during the course of the day tomorrow. I cannot really provide you with a time frame in relation to the Indigenous portfolio areas until we have made some progress through the day tomorrow. I am sorry about that; I cannot give you any greater certainty.

Mr Farmer—Thank you. That is helpful as far as it goes.

Committee adjourned at 11.01 pm